

Annual Report 2009

European Anti-Fraud Office

**Ninth Activity Report
for the period 1 January 2008 to 31 December 2008**



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1 OLAF's mission

1.1 Mission statement



The mission of the European Anti-Fraud Office (OLAF) is to protect the financial interests of the European Union, and therefore of its citizens, and the reputation of the European Institutions. OLAF performs its duties with integrity, impartiality and professionalism, respecting individuals' rights and freedoms.

It is the responsibility of the European Institutions to guarantee that the best use is made of taxpayers' money and to fight fraud as effectively as possible. Illegal or improper use of Community financing and evasion of the taxes, duties and levies which fund the Community budget therefore harms European taxpayers and the entire European project.

OLAF achieves its objectives by:

- investigating fraud, corruption and any other illegal activity affecting those interests, and misconduct within the European institutions;
- assisting Community and national authorities in combating fraud;
- promoting means of deterrence and prevention, and strengthening legislation to make it more difficult for fraud and irregularities to occur, thereby contributing to public trust in the European project.
- monitoring how its recommendations for follow-up are implemented by the competent authorities, and providing support whenever necessary.

OLAF's mandate covers in principle all Community expenditure and a part of the revenue side of the budget. It includes the general budget, budgets administered by the Communities or on their behalf and certain funds not covered by the budget, administered by the Community agencies for their own account. It also extends to all measures affecting or liable to affect the Communities' assets.

It also covers other, non-financial interests, and concerns all activities designed to safeguard Community interests against serious irregularities liable to lead to administrative or criminal proceedings.

1.2 OLAF's main powers and responsibilities

OLAF's task is to conduct, in full independence, internal and external administrative investigations as provided for in Articles 3 and 4 of Regulation (EC) No 1073/99.¹ The legal basis for Community action against fraud is Article 280 of the EC Treaty².

OLAF's status is of a hybrid nature: being formally part of the Commission, it is able to exercise Commission powers, but it is endowed with budgetary and administrative autonomy, designed to make it **operationally independent when conducting its investigations**, for which the Director General has sole authority and control.

The legal framework encompasses two structures to reinforce OLAF's operational independence: guarantees associated with the **post of Director General** and the **Supervisory Committee**.

¹ OJ L 136, 31.5.1999. Where reference is made to Regulation No 1073/99, this also applies to the equivalent Euratom Regulation.

² For more details, see OLAF's Annual Report for 2006 at http://ec.europa.eu/anti_fraud/reports/olaf_en.html

OLAF staff act as agents of the Commission subject to its internal rules and powers as far as activities such as general administration, participation in the Commission's legislative and policy initiatives and international cooperation are concerned.

1.3 Reform of 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)

European Parliament and Council Regulation (EC) No 1073/1999 and Council Regulation (Euratom) No 1074/1999 confer on OLAF powers to conduct internal and external investigations.

The first evaluation of OLAF in 2003, as well as the Court of Auditors' special report of 2005 showed there was room for improvement concerning the operational efficiency of the Office. In 2006, the Commission prepared legislative proposals³ that would:

- enhance the procedural rights of persons concerned by investigations: Incorporating these rights in the Regulation itself makes it possible to constitute a uniform body of basic guarantees applicable to all OLAF investigations.
- ensure better control over the course of the investigations, by introducing an Independent Review Adviser, appointed for a five-year term by the Director General, acting on a proposal made by the Supervisory Committee.
- strengthen the cooperation between the Supervisory Committee and the other institutions, by establishing a 'structured dialogue' between the Supervisory Committee and representatives of the European Parliament, the Council and the Commission.
- improve the exchange of information between the Office and the EU Institutions, as well as with the Member States.

The proposal is under examination by the European Parliament and the Council under the co-decision procedure. This revision of OLAF's legal framework should strengthen the legal basis and procedural safeguards for the activities of the Office.

The European Parliament delivered a favourable opinion on the Commission proposal in December 2008, subject to certain amendments being taken into account⁴. OLAF has already taken some practical steps to anticipate some of the improvements contained in the revised Regulation, as reflected in its new shortened Manual of procedures.

³ 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), COM(2006) 244 final.

⁴ For more detail, see in particular the article *The Reform of OLAF*, in *Eucrim* of 3-4/2008, pages 177 and following, available at http://www.mpicc.de/eucrim/archiv/eucrim_08-03.pdf

2 Statistical trends in operational activities

2.1 Evaluation of incoming information

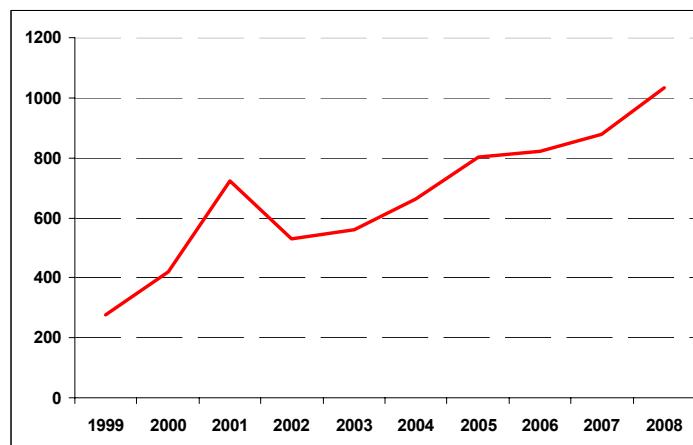
The volume of information received has steadily increased since the creation of OLAF in 1999, and rose for the eighth consecutive year (up by 55% in the last five years), mainly as a result of a sharp increase in the number of referrals to OLAF from sources within the EU Institutions, but also because of an increasing number of informants⁵, Member States' referrals and more information forwarded to OLAF through the free phone network.

In 2008, OLAF received five new items of information from whistleblowers who sought protection under the provisions of the Staff Regulations.

Three sources of information account collectively for about 90% of the incoming information (informants 43%, the European Commission 30% and Member States 14%).

The latest figures reflect heightened public awareness of the Office, confirming and reinforcing OLAF's role as a 'pillar of trust' in the fight against fraud.

Chart 1: Number of initial items of information received per year



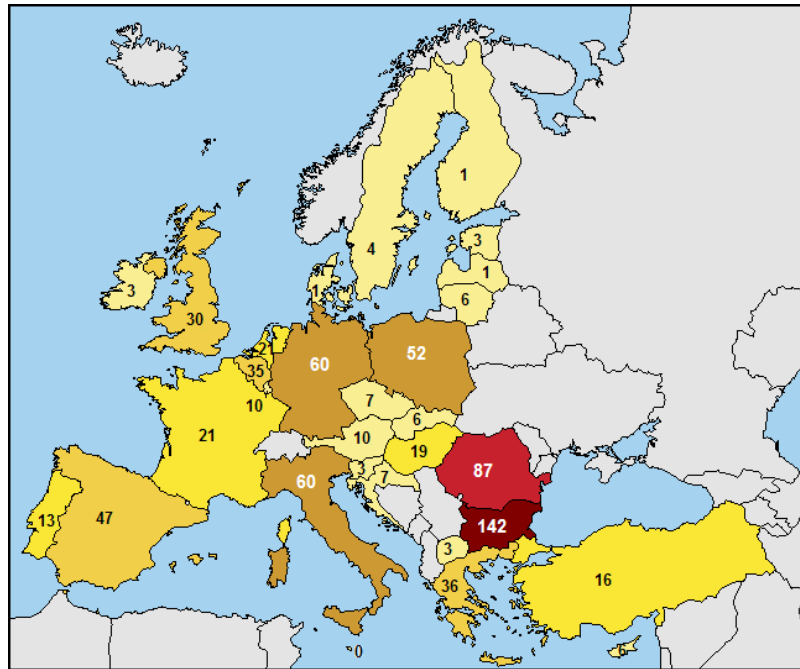
The information received mainly concerned allegations related to the EU Institutions and bodies (nearly 30%) and agriculture (20%), followed by external aid (17%), internal EU policies (15%) and structural measures (13%). This spread is consistent with that observed in the last four years.

The geographical breakdown of incoming information is illustrated by **Chart 2**. A significant share of OLAF's new items of information relates to a small number of countries: in 2008, approximately 65% had to do with suspected fraud in six Member States (Bulgaria, Romania, Germany, Italy, Poland, Spain). **This does not necessarily imply that more fraud is perpetrated in the countries with the highest occurrence of allegations being forwarded to OLAF, as better cooperation can also lead to a higher number of referrals to the Office.**

A proportionally higher occurrence of allegations is to be expected in Luxembourg and Belgium relative to their size, population and receipts from the EC budget, given that they are the seats of the largest European institutions. The vast majority of the allegations regarding the EU Institutions and bodies therefore originate in these countries.

⁵ Informants include: witnesses; anonymous sources, media and trade sources, and whistleblowers. A whistleblower is defined as an EU official or other EU staff member who comes forward to OLAF with information they have discovered in the course of or in connection with their duties concerning matters which may be within OLAF's competence. Unlike informants, officials and other EU staff are under a legal obligation to come forward with such information.

Chart 2: Distribution of incoming information by Member State or Candidate Country in 2008



Each initial item received by OLAF is subject to a thorough evaluation leading to a recommendation as to whether a case should be opened or not and, if opened, the type of action required by OLAF and the priority it should be given.

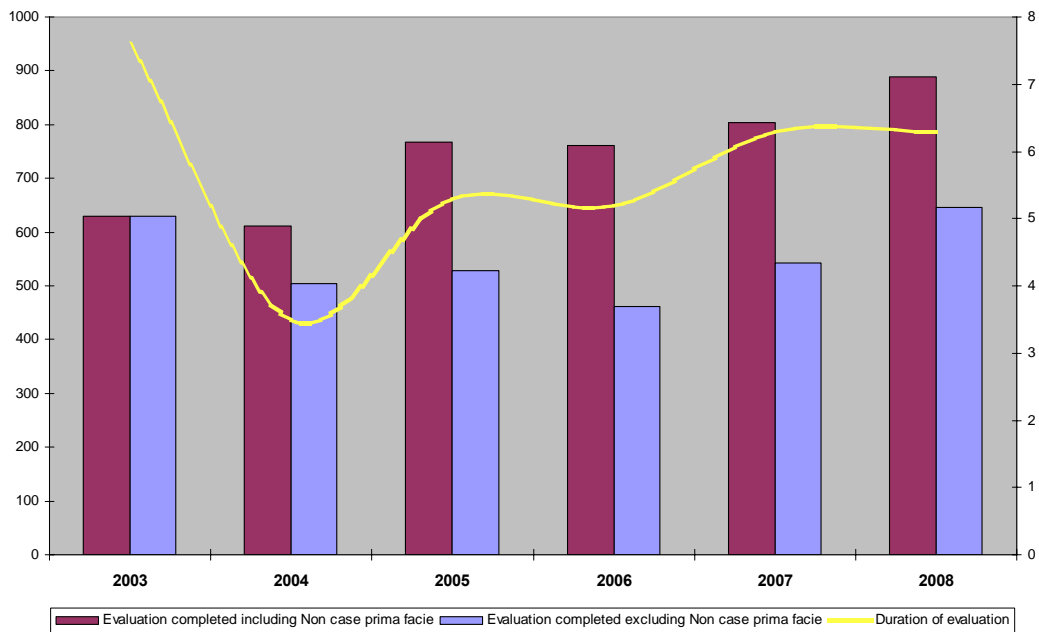
The evaluation period is calculated from the date of receipt of the information to the date of the recommendation made by the Board to the Director-General. The total number of evaluations increased again in 2008 (**Chart 3**).

By contrast, the average length of standard evaluations, which had fallen from 10.6 months in 2002 to 5.2 months in 2006, was stable in 2008 over a year, at 6.3 months. An increase in the average duration of evaluations from 2005 onward was to be expected, as from 2004 onward a greater proportion of information received was excluded from this calculation with the introduction of the ‘*non case prima facie*’ system. As a result of the introduction of this simplified procedure⁶, the Board is required to assess only information containing allegations falling within the competence of the Office.

While OLAF continues to seek to improve this aspect of its performance, the information passed on to the Office is of an increasingly substantive and serious nature. Moreover, delays can often be caused by translation requirements and by the need to wait for replies from external operational partners. Priority continues to be given to the thorough assessment of information in respect of which OLAF has a clear mandate.

⁶ The information falling outside the competence of OLAF is considered as a prima facie non case, as detailed in the OLAF Manual available at http://ec.europa.eu/dgs/olaf/legal/index_en.html#11

Chart 3: Number of evaluations including and excluding “non case prima facie” (separate axes)

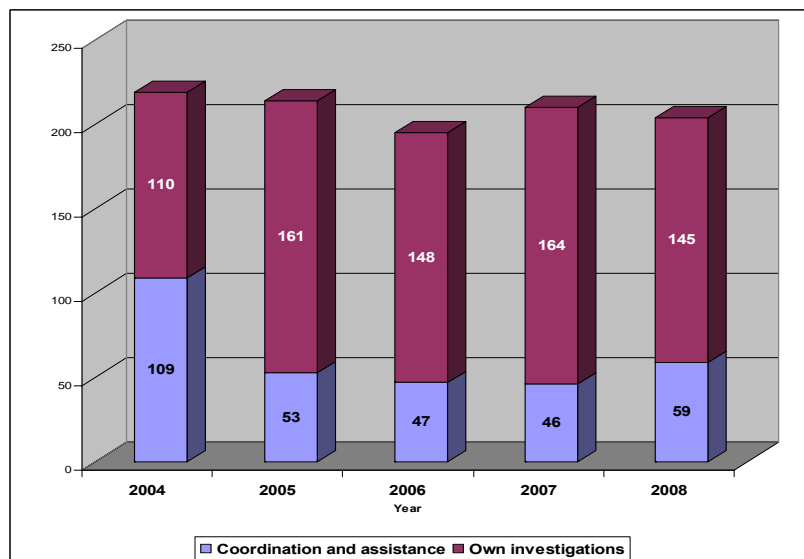


2.2 Active investigations

The overall spread between the different types of cases indicates that OLAF tends to increasingly concentrate on its own investigations, in order to maximise the added-value of its work.

The total number of opening decisions has been quite stable over the past five years. Since 2004, the number of OLAF’s own investigations has progressively caught up with and overtaken the number of cases in which OLAF assists national authorities (see **Chart 4** below) to the point where ‘own investigations’ account for about 75% of cases opened, compared with 25% for ‘coordination and assistance’ cases.

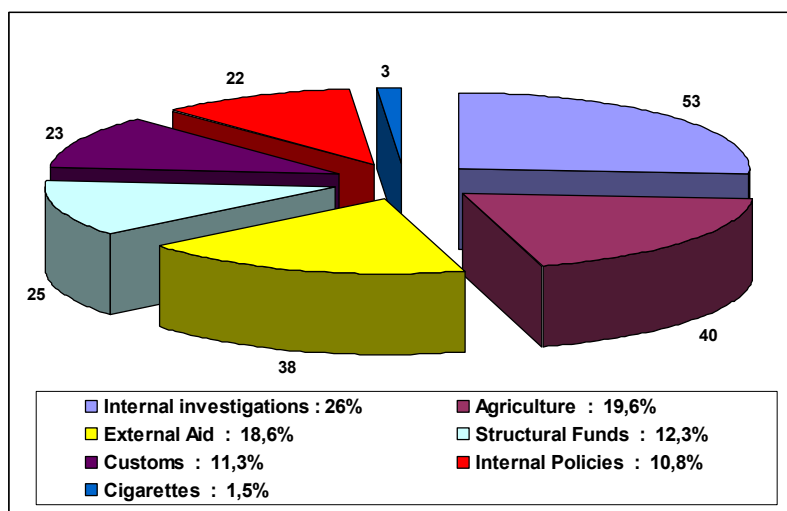
Chart 4: Number of opening decisions by year and nature of the investigation



This trend is driven by three main factors:

- a decline in the number of agriculture-related cases opened (from 64 in 2004 to 40 in 2008), due in particular to an increasing shift in agriculture-related opening decisions from coordination and external investigation towards monitoring;
- an increase in cases opened in internal investigations (from 20 in 2004 to 53 in 2008, a 160% rise);
- a change in the types of cases opened having to do with the Structural Funds (11 external investigations were opened in 2004 compared to 25 in 2008, while fewer monitoring actions are being opened);

Chart 5: Opening decisions taken in 2008 by area



Equally, areas in which Member States do not exercise specific responsibilities — ‘Internal EU Policies’ and ‘External Aid’ cases — have represented a growing proportion of the new cases opened by OLAF since its creation (around or above 30% since 2005). This evolution is in line with the Office’s policy to focus on areas where the added-value of its work is the highest.

The number of cases opened in the ‘external aid’ area decreased (from 64 in 2007 to 38 in 2008), while ‘internal EU policies’ cases reverted to their level of previous years (22 cases in 2008). This trend was mainly driven by the progressive phasing-out of investigations related to pre-accession aid in the 12 Member States that joined the Union in 2004 and 2007 and became eligible for EU internal programmes centrally managed by the Commission⁷.































Chart 6: Number of internal EU policies and external aid cases opened

| Area | 2004 | 2005 | 2006 | 2007 | 2008 |
|----------------------|------|------|------|------|------|
| Internal EU policies | 23 | 28 | 11 | 11 | 22 |
| External aid | 30 | 36 | 54 | 64 | 38 |

Chart 7 provides a **snapshot** of all active cases at the end of 2008 showing the instances where Member States and acceding or candidate countries are involved. One case record may relate to more than one country, as cases can have a transnational dimension.

⁷ See part 3.2 on internal EU policies and 3.3 on external aid for more details.

Chart 7: Active cases at the end of 2008 by Member State and Candidate Country

| Status of Country | Country involved | | | Agriculture | Cigarettes | Customs | Internal EU Policies | External Aid | Internal Investigations | Structural Funds | VAT | Total |
|---------------------|------------------|----------------|---|---|------------|---------|----------------------|--------------|-------------------------|------------------|-----|-------|
| | Member States | BE | Belgium |  | 4 | 4 | 4 | 6 | 2 | 29 | 2 | |
| BG | | Bulgaria |  | 23 | 1 | | 5 | 11 | 2 | | | 42 |
| CZ | | Czech Rep. |  | 1 | | 1 | | | | | | 2 |
| DK | | Denmark |  | | | 1 | | | 1 | | 1 | 3 |
| DE | | Germany |  | 3 | 3 | 8 | 3 | 1 | | 3 | | 21 |
| EE | | Estonia |  | | | | | | | | 1 | 1 |
| EL | | Greece |  | 4 | | | 4 | | 5 | 4 | | 17 |
| ES | | Spain |  | 2 | 1 | 2 | 5 | 1 | 1 | 4 | | 16 |
| FR | | France |  | 2 | 1 | 1 | 5 | 7 | 1 | 2 | | 19 |
| IE | | Ireland |  | 1 | 2 | 2 | | | | | | 5 |
| IT | | Italy |  | 10 | 5 | 2 | 5 | 1 | 6 | 12 | | 41 |
| CY | | Cyprus |  | | 4 | | 1 | | | | | 5 |
| LV | | Latvia |  | | 1 | | | | 1 | 1 | | 3 |
| LT | | Lithuania |  | | | | 1 | | | 1 | | 2 |
| LU | | Luxembourg |  | 1 | | | 1 | 1 | 4 | | | 7 |
| HU | | Hungary |  | 1 | | 1 | 2 | 1 | | 2 | | 7 |
| MT | | Malta |  | | | | | | 1 | | | 1 |
| NL | | Netherlands |  | 5 | 1 | 4 | 1 | | 1 | 1 | | 13 |
| AT | | Austria |  | 2 | 1 | 3 | 1 | | | 1 | | 8 |
| PL | | Poland |  | 1 | 4 | 3 | 1 | 1 | 1 | 1 | 1 | 13 |
| PT | | Portugal |  | 1 | | | 1 | | | 6 | | 8 |
| RO | | Romania |  | 5 | 1 | | 1 | 11 | 2 | 1 | | 21 |
| SI | | Slovenia |  | | | | 1 | | | | | 1 |
| SK | | Slovakia |  | 1 | | 1 | | | | 1 | | 3 |
| FI | | Finland |  | | | | | | | | 1 | 1 |
| SE | | Sweden |  | | | | | | | | 1 | 1 |
| UK | | United Kingdom |  | 2 | 4 | 4 | 4 | 4 | 4 | | | 22 |
| | | Subtotal | | | 69 | 33 | 37 | 48 | 42 | 59 | 41 | 5 |
| Candidate Countries | HR | Croatia |  | | 1 | | 1 | | | | | 2 |
| | MK | FYROM |  | | | | | | 3 | | | 3 |
| | TR | Turkey |  | 2 | 2 | | | 6 | 2 | | | 12 |
| | | Subtotal | | | 2 | 3 | 0 | 1 | 6 | 5 | 0 | 17 |
| TOTAL | | | | 71 | 36 | 37 | 49 | 48 | 64 | 41 | 5 | 351 |

2.3 Investigations closed

The number of cases completed has declined over time, because of a **sharper focus on more complex cases**. In parallel, the **average ‘active stage’ duration decreased from 28 to 24 months in 2008 (Chart 8)**, while about **60% of OLAF cases were closed in less than 2 years**. OLAF will continue to take action to monitor and limit the duration of its investigations, even though this duration is in large part due to factors which are beyond the Office’s control. Since the introduction of the ‘simplified procedure’ in 2004 along with other changes in operational policy, the decision to open a case is targeted more and more on the most serious cases, which are often multi-faceted and take a long time to finalise.

OLAF remains committed to tackling the issues arising in this domain so as to keep the average duration below 24 months. However, this long-term approach must take account of wide differences between types of investigations and areas concerned. This is evidenced by **Chart 9** and **Chart 10** which illustrate the difficulties faced by investigators in complex cases and where the assistance or collaboration of Member States or outside authorities is required. **Chart 9** shows that **internal and external investigations** carried out by OLAF do not exceed the 24-month threshold. However, **coordination cases** as well as **criminal assistance cases carried out by the Member States’ authorities** significantly exceed this limit.

Chart 8: Cases completed and duration of active stage completed in each calendar year (separate axis for each indicator)

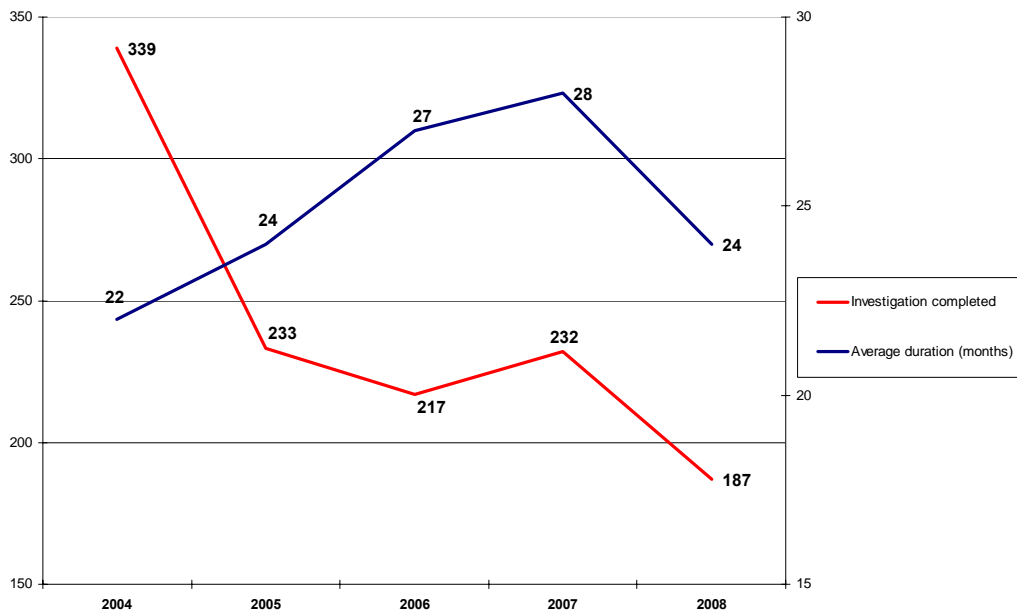


Chart 9: Average duration of active stage completed in 2008 per type of investigation (in months)

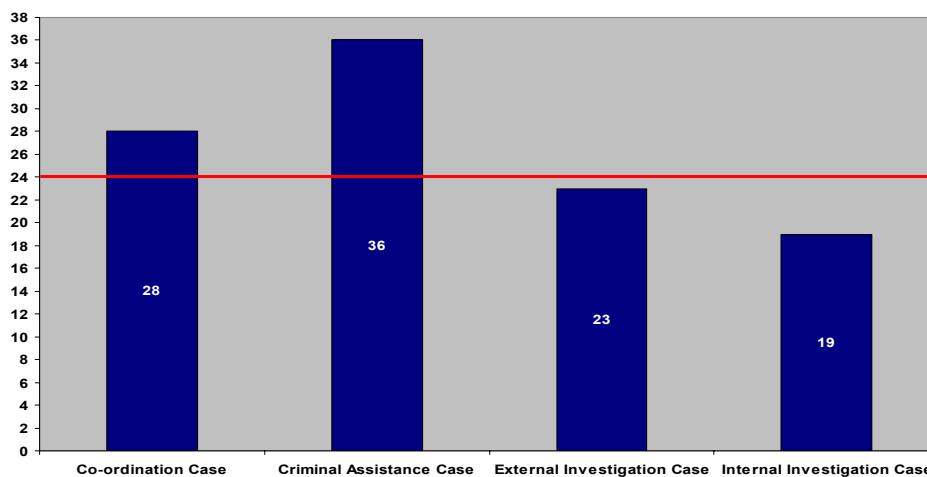
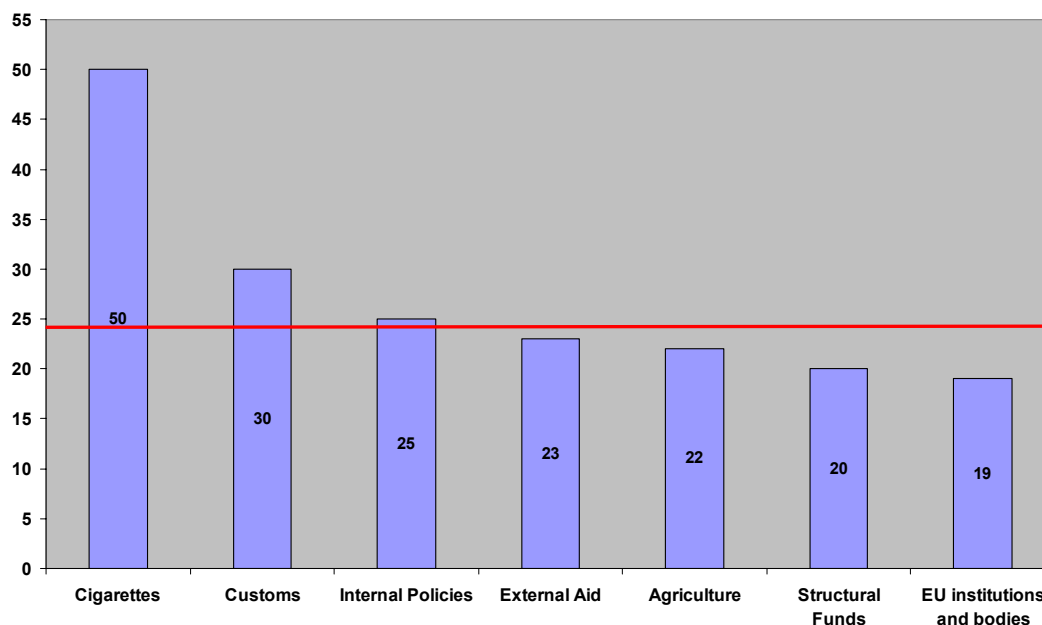


Chart 10 further illustrates these developments by showing the spread in investigation times between different areas of OLAF investigations, which is in large part attributable not only to the level of complexity of frauds and irregularities, but above all to the involvement of external partners and the type of expenditure — direct or shared management — in question.

Chart 10: Average duration of active stage completed in 2008 per area concerned (in months)



2.4 Follow-up of investigations

Follow-up is a monitoring stage which can include various activities undertaken by OLAF designed to verify that the competent Community and national authorities carry out the administrative, disciplinary, financial and/or judicial measures recommended during or more frequently at the end of an OLAF investigation.

The duration of the follow-up stage necessarily includes standby periods in which OLAF must wait for the results of action taken by other parties. If court procedures are involved, the follow-up phase can be very protracted.

- OLAF's **financial follow-up** activity consists mainly in monitoring and supporting Member States and Commission services' efforts to get successful financial recovery.
- **Administrative follow-up** consists in verifying that the necessary measures to implement Community policies and law relating to recommendations arising from OLAF cases are duly taken by the Community institutions, bodies and/or Member States, and that the provisions of agreements with third countries have been respected. It also includes monitoring the application of potential administrative sanctions and the withdrawal of privileges (e.g. for the importer in the traditional own-resources sector), and flagging companies through the Commission's EWS (Early Warning System) at OLAF's request.
- OLAF ensures **judicial follow-up** of its cases with the competent national judicial authorities.
- **Disciplinary follow-up**: Where an internal investigation reveals evidence of serious matters relating to the discharge of professional duties such as to constitute a dereliction of duty on the part of an official or other servant of the Communities, OLAF will recommend that the case and its file be referred to the competent EU authorities, for appropriate disciplinary action. OLAF ensures follow-up with the authorities.

In those situations where the same case has been sent to both judicial and disciplinary authorities, OLAF aims to ensure a consistent approach by liaising with both.

The proportion of cases closed with follow-up has continuously increased since the creation of OLAF, and now represents close to 70% of all cases closed, compared with less than 45% before 2004. The majority of follow-up work is still financial recovery and judicial follow-up, which accounted for about 75% of total follow-up activities undertaken by the Office in 2008. This trend confirms that OLAF is increasingly focusing on serious cases, and on substantial information received. The steady number of disciplinary follow-up paths shows OLAF’s determination to support the zero tolerance policy applied within the EU Institutions and bodies when serious misconduct arises.

Chart 11: Cases closed with or without follow-up in each calendar year

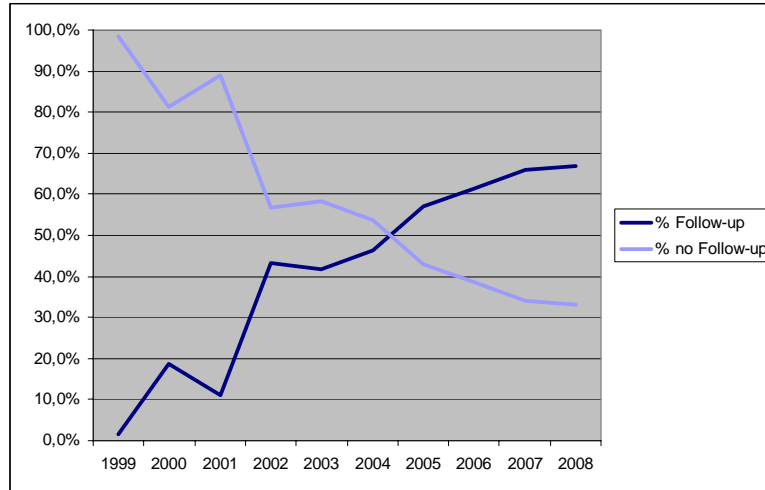
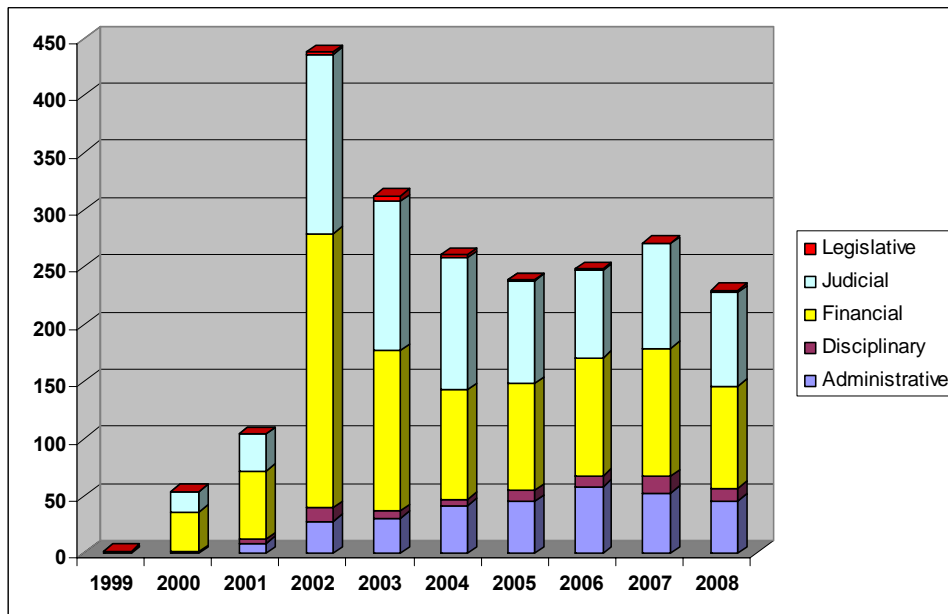


Chart 12 illustrates the spread of follow-up activities related to the cases closed in the last ten years.

An individual case often leads to several follow-up actions. For instance, the 125 cases closed with follow-up in 2008 have triggered 230 follow-up proceedings, including 89 financial, 82 judicial, 46 administrative and 11 disciplinary.

Chart 12: Cases closed with follow-up and type(s) of follow-up opened



NB: One closed case can have several types of follow-up

Definition of new procedures for financial follow-up and possible impact on future statistical reporting

In 2008 OLAF reviewed its financial follow-up procedures. This resulted in the definition of new case handling and acceptance criteria involving *de minimis* thresholds to be applied from 2009. The introduction of these thresholds will enable OLAF to focus on the more significant cases of fraud or irregularity involving larger amounts of money which need to be recovered.

An important new distinction was also created between those financial follow-up cases which OLAF is still actively processing in order to identify debts which need to be established, notified and recovered following the conclusion of OLAF's live operational activity, and cases where this action is already completed thus enabling transfer of the remaining tasks to OLAF's operational partners (e.g. Commission Directorates-General, competent national authorities) for them to take forward in accordance with their assigned legal competences and responsibilities. This latter category of cases will, from 2009 onwards, be transferred into a new "Pending" stage during which OLAF will only periodically check to see whether any further recoveries have taken place and, if so, record them in OLAF's CMS for reporting purposes.

It will therefore be possible in the future to separate the financial follow-up cases in which OLAF still has an active ongoing involvement from those where OLAF's operational partners will exclusively be executing all the remaining tasks.

Furthermore, implementation of new *de minimis* thresholds for financial follow-up could lead to a greater number of case closures in 2009 and a lower number of cases being transferred to financial follow-up.

Since it was established in 1999, OLAF estimates that the financial impact of the cases it has closed amounts to more than **€6.2 billion**. In 2008 alone, the Office estimates this impact at **€85 million**.

Chart 13 reflects the annual breakdown of financial recovery completed in the last five calendar years: **€147 million** recovered as a result of follow-up actions closed in 2008; **€315 million** also recovered in respect of follow-up actions which are still ongoing. The large fluctuations observed from year to year are due to the fact that a few high-profile cases accounted for the bulk of recoveries in past years.⁸ **These sums represented only a fraction of the total amounts recovered following the discovery of fraud or some other irregularity, as most of the recoveries are made by Member States with no direct link to OLAF cases.**⁹

Chart 13: Breakdown of amounts recovered following OLAF cases in € million¹⁰ (data relates to amounts recovered in financial follow-up paths closed in each calendar year by OLAF, except for the last column)

| Major Area | 2004 | 2005 | 2006 | 2007 | 2008 | Total | Additional amounts recovered in respect of follow-up paths still open in 2008 |
|-------------------------|---------------|---------------|---------------|---------------|--------------|--------------|---|
| Agriculture | 0.07 | 14.43 | 1.18 | 0.84 | 2.0 | 18.4 | 147.2 |
| Customs | 1.58 | 63.05 | 0.13 | 3.34 | 14.2 | 82.2 | 142.8 |
| Internal EU Policies | 1.86 | 0.18 | 0.25 | 0.49 | 0.5 | 3.3 | 1.2 |
| Internal investigations | 0.04 | 0.00 | 2.16 | 0.13 | 0.2 | 2.4 | 1.9 |
| External Aid | 2.01 | 31.78 | 92.72 | 0.90 | 1.9 | 129.3 | 2.5 |
| Structural Funds | 192.62 | 97.96 | 17.22 | 197.67 | 128.0 | 634.1 | 18.7 |
| Total | 198.17 | 207.40 | 113.66 | 203.37 | 146.8 | 869.7 | 314.3 |

⁸ Notably, one monitoring case regarding structural funds led to the recovery of more than €15 million in 2007

⁹ See the *Commission Report on the Protection of the Communities' financial interests — Fight against Fraud 2008* for more details.

¹⁰ Figures are subject to exchange rate fluctuation in respect of non-euro area currencies

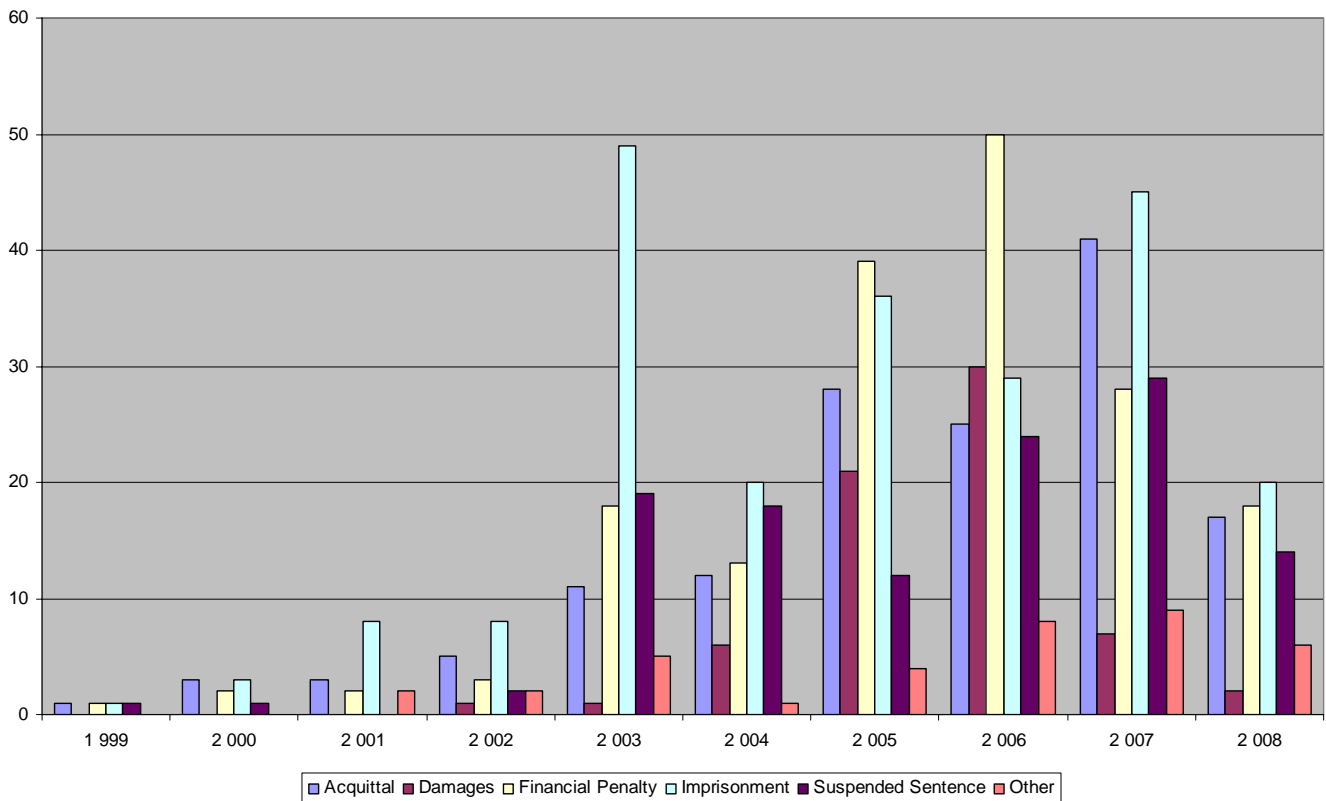
FOCUS on Judicial follow-up

Where a case brings to light evidence of possible criminal acts, the Office must recommend in its final case report that the case and its file be referred to the competent national judicial authorities for further investigation and prosecution. OLAF ensures judicial follow-up with the competent national judicial authorities. Once the decision adopted by the judicial authorities becomes definitive, OLAF closes its judicial follow-up. Often, this is many years after the case was initiated by OLAF (or its predecessor UCLAF).

Chart 14 shows judgements made from 1999 to 2008 in relation to OLAF cases. They are broken down into six different categories of court rulings.

A total of 764 actions for the protection of the EC’s financial interests have been brought since 1999. A significant proportion of the court rulings resulted in imprisonments (30%). The three other most frequent outcomes are financial penalties (22%), suspended sentences (15%) and damages (9%).

Chart 14: Summary of judgments communicated 1999-2008



Since it was established in 1999, OLAF has opened more than 3 000 cases, and over 300 individuals have been sentenced by criminal courts as a result of OLAF’s investigations to a combined total of nearly **875 years**, of which 208 were suspended. More than 400 other cases are currently with the competent judicial authorities with recommendations from OLAF to launch criminal prosecutions. OLAF’s investigations have led to **more than €1 billion** of European taxpayers’ money being recovered.

OLAF has opened close to 800 judicial follow-up paths¹¹ (**Chart 12**) since 1999.

OLAF’s achievements cannot however be measured by statistics alone. Studies have shown increasing public confidence in the European Institutions and a perception that corruption within the Institutions is not in fact higher than at national level. Over the past ten years, trust in OLAF’s ability to effectively tackle fraud and corruption has gradually and constantly been increasing among both the general public and civil servants of the Institutions.

OLAF judicial follow-up activities are conducted by a team of experienced personnel, most of whom are former magistrates in national jurisdictions. The Office works in close cooperation with a network of partners in

¹¹ One case may lead to several follow-up paths

prosecutorial services specialising in financial and economic crime. OLAF's Supervisory Committee is informed of any transmission of information to national judicial authorities. The second protocol to the Convention on the Protection of the European Communities' Financial Interests entered into force on 19 May 2009. It has been ratified by most Member States and provides specifically for direct cooperation between the European Commission and the judicial authorities of the Member States to protect the Community's financial interests.

Member States' authorities are not legally bound by OLAF's recommendations. Criminal law remains a national prerogative, and OLAF can only encourage competent national authorities to cooperate. The Office is therefore not in a position to give an opinion on the quality of the follow-up given by national judicial authorities.

Once a case has been transmitted to the national authorities in a Member State, they act independently to determine what further action should be taken in light of the national legal framework. OLAF's experience demonstrates that in most cases, the transmission of cases to national authorities triggers the opening of an investigation. Some cases however are dismissed without any investigative proceedings, mainly because of national *de minimis* rules. Contacts are very frequent between OLAF and the national judicial authorities.

Judicial proceedings often take several years, with national authorities having no legal obligation to report to OLAF on the evolution or the outcome of a case. **Therefore, figures alone must be considered with caution**, as the majority of the cases transmitted to national judicial authorities are still pending before national courts or are still subject to national investigative proceedings.

Chart 15: Summary of reasons for case dismissals by Public Prosecution Services

| Reason for dismissal | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | Total |
|-----------------------|----------|----------|----------|----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|
| Insufficient evidence | 3 | 1 | 3 | 4 | 16 | 22 | 25 | 28 | 12 | 60 | 174 |
| Low priority | 0 | 0 | 0 | 0 | 1 | 2 | 4 | 5 | 4 | 3 | 19 |
| No legal basis | 0 | 2 | 0 | 0 | 2 | 2 | 1 | 1 | 4 | 1 | 13 |
| No public interest | 1 | 0 | 0 | 0 | 1 | 1 | 2 | 0 | 9 | 25 | 39 |
| Time bar | 0 | 0 | 4 | 1 | 2 | 2 | 3 | 14 | 5 | 3 | 34 |
| Procedural errors | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 2 |
| Other | 1 | 0 | 0 | 1 | 2 | 6 | 4 | 18 | 13 | 5 | 50 |
| Total | 5 | 3 | 7 | 6 | 25 | 35 | 39 | 66 | 48 | 97 | 331 |

Over the last three years (2006-2008)¹², the Office has identified 161 cases which have triggered the opening of one or more national judicial proceedings and are linked to: criminal investigation, trial, judgement, appeal or closure of judicial proceedings. These 161 cases correspond to 311 different judicial proceedings, as one case may lead to several proceedings (at different stages).

In the same period, OLAF identified 77 closed judicial proceedings, of which 46 have already led to decisions by the courts, while 24 have been dismissed. For the 15 cases for which 65 judicial decisions were adopted, 33 countries were identified as having been involved in taking judicial decisions. This also shows the 'internationalisation' of the EU's fight against fraud, both in terms of judicial proceedings and as regards investigative activity.

Chart 15 shows that when a case is dismissed, the main reasons put forward by the national judiciary are insufficient evidence (50%), followed by a lack of public interest (11%) and time barring (10%).

Landmark convictions in adulterated butter case after 10 years of work

The "adulterated butter" case exemplifies the issues at stake in the judicial follow-up of OLAF investigations. The aim was to uncover offences involving the production and distribution of adulterated butter on the European market, which impacted on the Community budget. The facts put before the national courts date back to the end of the 1990s. OLAF provided back-up for the investigations conducted by the national authorities in four Member States over a number of years. The related activities undertaken by OLAF in this case, which had been opened in

¹² These elements were further detailed during a *Workshop on the follow-up of OLAF's administrative investigations in Member States* organised by the European Parliament's Committee on Budgetary Control in February 2009.

1999 shortly after the creation of the Office, resulted in a final judicial outcome only some ten years later in one Member State (France).

The Italian authorities opened an investigation in agreement with the Italian anti-mafia prosecutor, after it was discovered that the company was producing adulterated butter. This investigation also uncovered the fact that the company was importing chemicals from a German company, which it later used in the production of this adulterated butter. OLAF provided back-up, as it was discovered that **16 000 tonnes of adulterated butter had been marketed in Italy, France, Germany and Belgium.**

This led to the subsequent intervention of police services in France and Belgium, who stopped and searched shipments of adulterated butter and interviewed personnel of the French company.



As a result, a second and separate investigation was opened in France by the *Office de Répression de la Grande Délinquance Financière de la Police Judiciaire*. The French company's managers, as well as its owner, were all accused of having prior knowledge of this adulterated butter being delivered. The investigation later established that the operational staff of the company had been aware that the butter had been adulterated.

In Italy, the company's owners were each prosecuted and sentenced to five years in prison for illegal adulterated butter production and marketing, production of adulterated substances and production of false documentation. This successful judicial outcome came as a result of hard work and long-term cooperation between OLAF and the Italian authorities. OLAF had provided major technical assistance at the request of the Naples Prosecutor's Office. This was also a significant factor in bringing these individuals to justice.

In France, the local importing company (its managers, its owner and an intermediary) were charged with allegations of selling products containing adulterated butter. In February 2009, due to the evidence obtained throughout the investigation and the testimony of OLAF staff, the Court of appeal of Paris upheld the ruling of the Court of first instance. The manager and the owner were sentenced to respectively 12 months imprisonment (9 months suspended) and 18 months imprisonment (12 suspended) on counts of swindling. The intermediary between the French and the Italian company who had been acquitted in first instance was sentenced to 15 months imprisonment (9 months suspended) as an accomplice of the fraud. The company itself was also sentenced to a €200 000 fine. **The order of the Court of first instance to pay back €23 million in unlawfully obtained European subsidies to the French Office of Livestock** (subsequently to be reimbursed to the Community budget) was confirmed as well. The matter is still subject to appeal before the *Cour de Cassation*.



In Belgium, a separate investigation has been launched against two Belgian companies which received shipments of adulterated butter from the Italian company: the outcome is not yet known.

In Germany, the authorities decided not to launch criminal proceedings, but have recovered Community subsidies totalling €150 000 from the German customer of the adulterated butter.

This case demonstrates clearly that had it not been for OLAF, such coordination between various authorities of four Member States (France, Germany, Belgium and Italy) would not have been possible, making the successful outcome of the investigation less likely. Moreover, the testimony of OLAF agents before the courts proved to be decisive in that they alone could provide a complete overview of a multi-faceted international case.

This landmark case is a clear demonstration of how OLAF's work cannot always be expected to bring overnight results, as proceedings are still ongoing in Member States, 10 years after the start of the initial investigation.

3 Key achievements in 2008 by area of activity

3.1 Internal investigations

3.1.1 *Guaranteeing the smooth operation of the European Institutions and strengthening their reputation*

OLAF's internal investigations are administrative procedures within the Community institutions and bodies and their overall purpose is to detect fraud, corruption, and any other illegal activity affecting the financial interests of the European Communities. These investigations can also focus on serious matters such as a breach of the professional duties and obligations of officials and other servants, members of the institutions and bodies, heads of offices and agencies, or members of staff, liable to result in disciplinary or criminal proceedings. Internal investigations are therefore a key part of OLAF's daily work.

The consequences of OLAF's actions can be much wider than those concerning an individual investigation, such as:

- **Deterrence against possible impropriety.** Individuals who may be inclined to act improperly are deterred by the fact that such conduct will be subject to effective investigation and they will have to face consequences.
- **Commitment to accountability.** Investigating possible employee misconduct is part of OLAF's duties. As investigations are conducted into other categories of personnel engaged in EU activities, it is important for individuals, beneficiaries and Member States to see that there are consequences for misconduct. This requires a robust capacity to establish facts and clear individual responsibilities if any.

3.1.2 *Enforcing the Commission's 'zero tolerance policy' by investigating a wide range of allegations*

Although studies have consistently shown that corruption in the EU Institutions is not perceived to be worse than at national or local level, due to the reinforcement of internal audits, control standards and OLAF's work¹³, experience shows that no country or institution in the world is safe from cases of corruption or breaches of their responsibilities by their officials, especially where the handling of finances by officials is concerned.

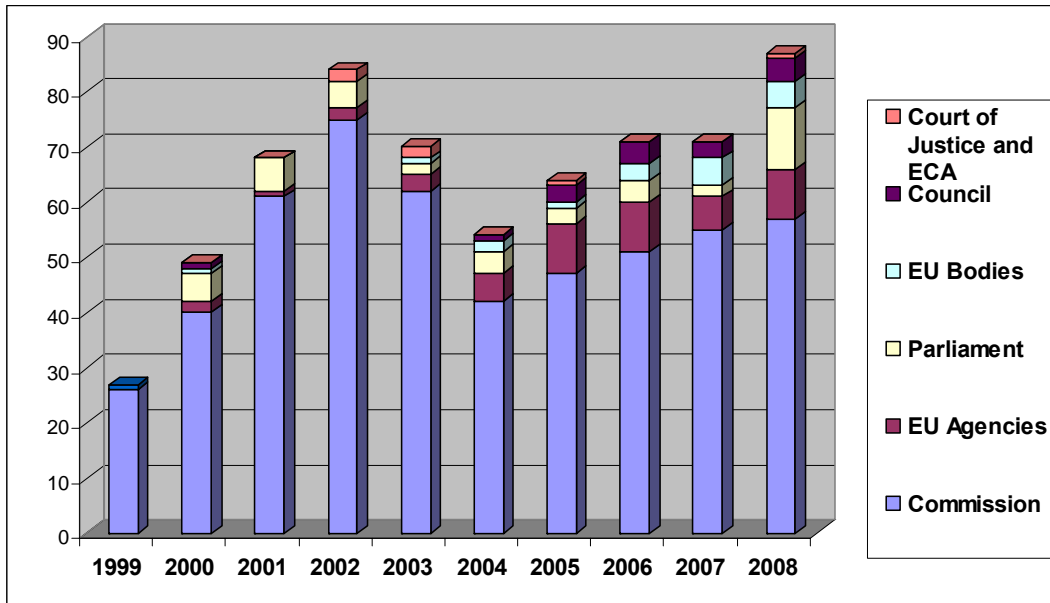
An internal survey was conducted in order to gain a better understanding of OLAF's perception among Commission staff. Overall, the results, published in early 2008, showed good awareness of the Office and a high degree of trust in OLAF's efforts to combat EU budget fraud: 79% of respondents said they trusted OLAF, while 85 % said that they would alert OLAF to cases of suspected irregularities, fraud or corruption. It should be noted that OLAF had the **highest level of trust** of all organisations mentioned in the survey. The Office remains committed to ensuring that its work is more fully understood and to boosting the confidence in OLAF shown by the staff of the EU Institutions.

A zero-tolerance policy underpinning the prevention and prosecution of corrupt practices within the EU bodies and Institutions has been in place for a number of years. To implement this policy, in accordance with Regulation 1073/99 relating to internal investigations, OLAF investigates '*serious matters*'. To ensure zero tolerance, other matters are referred to IDOC or the security office, as appropriate.

Compared to previous years, the number of active internal investigations in 2008 has slightly increased, owing in part to a higher number of opening decisions in that field (53 decisions compared to 46 in 2008). The European Commission still constitutes the source of the vast majority of internal investigations conducted by OLAF, in large part because it employs far more staff than the other EU Institutions and bodies and manages a far greater part of the budget.

¹³ E.g. The United Kingdom House of Lords stressed that the 'EU budget is not more exposed to fraud than the UK budget', House of Lords, European Union Committee 50th Report of Session 2005-06, Financial Management and Fraud of the European Union: Perceptions, Facts and Proposals, Volume I.

Chart 16: Cases in active investigation in EU Institutions and Bodies at the end of each year



Allegations forwarded to OLAF may concern a wide range of issues such as embezzlement, favouritism, fraudulent claims by staff (e.g. allowances, retirement benefits, etc.), wrongdoing in tender procedures, conflict of interest, etc. **OLAF's annual report features case studies for illustrative purposes only. The fact that OLAF presents such case studies does not prejudice the outcome of judicial proceedings; nor does it mean that the allegations presented imply that particular individuals are guilty of any wrongdoings.**

In practical terms, the Office has a number of powers (e.g. access to information and the buildings of the Institutions, with the possibility to check accounts and to obtain extracts of documents). In the meantime, it has to take full account of the impact of the evolution of Community case-law, which is further detailed in **section 5.5.4**. In addition, OLAF can request, from any person concerned, information that it judges useful for its investigation. In accordance with Regulation No. 2185/96, it can carry out on-the-spot checks at the premises of the economic operators concerned, in order to have access to information concerning possible irregularities held by these operators.

OLAF and IDOC

The competences of IDOC, the Investigation and Disciplinary Office of the Commission and those of OLAF are complementary: both Offices are independently tasked with internal investigations within the Commission.

To ensure any such allegation is thoroughly investigated by the best placed service, a distinction is made primarily through assessment of the 'impact' of allegations. In principle, this includes a consideration of both reputational risk and potential financial impact. By contrast, IDOC's competence starts with a breach of the Staff Regulations, which may only amount to 'minor wrongdoing', with or without financial impact.

IDOC also handles for the Commission the disciplinary proceedings, inter alia following-up OLAF's investigations, based on an assessment of its findings and recommendations.

OLAF is currently working closely with IDOC to achieve an ever clearer delineation of responsibilities, which will allow OLAF to concentrate increasingly on serious matters, as its mandate requires. The aim is also to avoid unnecessary overlap and delays. Regular meetings ensure a flow of operational information between IDOC and OLAF and allow for coordination in the allocation of cases.

Case Study: Alleged request for bribes by a staff member of an EC Delegation

In the course of a mission to an EC Delegation carried out in an external investigation, it was alleged to the OLAF team that a former staff member of the Delegation (Person 1) had demanded a bribe (described as a "gentlemen's agreement") from an NGO which had tendered for an EC-funded project. A member of the local staff at the

Delegation (Person 2) was also accused of involvement in this matter. Separately, Person 1 was also accused of demanding bribes from tenderers for a security contract of the Delegation.

OLAF investigators visited the Delegation and interviewed the sources of allegations, Person 2 and other witnesses.

Concerning the NGO contract, no evidence could be found to substantiate the allegations. Concerning the security contract, OLAF examined the documentation and concluded that it showed evidence of serious irregularities. The case however could not be referred to judicial authorities because of the time bar. It was nevertheless transmitted to IDOC for possible disciplinary action.

Access was obtained to the personal files of both interested parties and these were examined. The personal file of the former Delegation member appeared to contain falsified documents. OLAF subjected this aspect of the matter to evaluation and subsequently opened a new internal investigation.

➤ Follow-up in the area of internal investigations

The case study presented below exemplifies the successful administrative follow-up given to an internal investigation (for more details, see **section 2.4**).

Case study: mechanism barring former temporary staff members from being re-employed in the event of disciplinary misconduct

An internal investigation discovered that a temporary staff member had forged documents, including a university diploma, at the time of recruitment. He had been recruited and classified in an incorrect grade.

Given that the contract with the temporary agent had come to an end before the adoption of OLAF's final case report, and had not been renewed, the Commission informed OLAF that there was no possibility to initiate a disciplinary procedure against the former staff member. However, as suggested by OLAF in its final case report, the Commission developed a mechanism whereby a former staff member could be denied future employment with the Commission, in cases where he/she produced false documents at the time of recruitment or was guilty of serious disciplinary misconduct during the period of contractual employment.

The procedure provides for the person concerned to give his/her opinion before the administration decides on possible exclusion from contracts with the Commission for six years. In fact, the Conditions of Employment of Other Servants provide that a member of the temporary or contract staff may be engaged only on conditions that he/she produces the appropriate character references as to their suitability for the performance of the duties involved.

Currently, discussions are being held to find a suitable *modus vivendi* for the application of this approach across the European institutions.

3.2 Internal EU policies

OLAF plays a leading role in the investigation of cases related to internal EU policies¹⁴, since these mainly concern expenditure directly managed by the Commission and other EU Institutions and bodies, such as EU agencies. This area of activity covers any EU-funded expenditure, project or programme that falls fully and directly within the competence and responsibility of the Commission services. The most substantial feature of the "*internal EU policies*" is that at all stages (publication of call for interest/tender, evaluation-selection, contracting, monitoring of implementation, financial matters and payments, audit) the Commission is fully in charge and solely accountable, and does not share the management of the project or programme with any national or international authority (as it is the case for example with Structural Funds, whose management is shared with various national agencies).

This covers inter alia research projects financed under the Framework Programmes, programmes in the field of education such as Socrates or Erasmus, or communication programmes such as in the case study presented below.

The "*internal EU policies*" area of activity represented some 15% of the incoming information in 2008, and led to the opening of 22 investigations (11% of OLAF's total). Fifteen cases were closed as well during the year, of which two-thirds were followed-up.

¹⁴ Referred to as "direct expenditure" in previous annual reports

Final judgment in the Avignon funds case

A Cour de Cassation order on 22 January 2008 brought to a close the follow-up to an OLAF investigation into a French private-law entity. OLAF had submitted the findings of its investigation to the Avignon Public Prosecution Service in early 2003.

For many years, this entity had been receiving Community funding under the information and communication policy. From 1997 to 2001 the convicted persons had devised 27 fictitious projects in order to deceive the European Commission, involving more than €200 000 of funding. According to the findings of OLAF's investigation, they had planned fictitious training courses, with lists of imaginary participants, false budgets and false invoices.



In a judgment of 20 November 2006, the Avignon Criminal Court had sentenced those responsible for fraud detrimental to the European Commission. They were each given an 18-month suspended prison sentence and three years' probation and ordered to repay the damages caused by the infringement according to their ability to pay and to reimburse the European Commission for damages of **€38 000 and €7 000** in respect of the non-material damage incurred by it. The judgment was upheld by a decision of the Court of Appeal on 11 October 2007. The sentences were made final by an order of the Court of Cassation.

➤ Follow-up in the area of internal EU policies

In the field of internal EU policies, centrally managed by the Commission (as well as for 'external aid'), follow-up covers expenditure which the Commission implements without the involvement of Member States, or which is delegated by the Commission to non-EU countries. Follow-up activities in this field may also cover the financial and administrative follow-up of internal investigations, where appropriate.

Recovery actions may be avoided with a preventive anti-fraud policy which anticipates problems, or by taking action while a case is still open. For direct expenditure, investigations which have led to criminal proceedings often receive financial follow-up. With a view to supporting recovery, OLAF assesses the possibility of taking civil action as part of criminal proceedings in those jurisdictions where this is possible.

Administrative follow-up in 'internal EU policies' cases concentrates in particular on helping Commission departments to apply the appropriate administrative sanctions (such as the exclusion of tenderers or beneficiaries from contracts or grants financed by the Community budget for a maximum period of ten years or the payment of financial penalties) on the basis of OLAF's investigative findings.

The Pluto Project

OLAF has been supporting the European Commission¹⁵ in its drive to further strengthen its audit capability and control. The Office provided powerful analytical tools and knowhow to facilitate and enhance examination of the framework programme research data. The competent external auditor has reported that this collaborative approach is already showing a positive impact in terms of recovery, and provides support to DG INFSO management decision-making as regards continuation or award of contracts.

Commission services, particularly in the Research family, have shown an active interest in receiving similar support from OLAF, to help them develop their audit and control capability. OLAF will, within its limited resources, do its best to respond in a positive manner.

¹⁵ Directorate General for Information Society

3.3 FOCUS on external aid and external relations

OLAF's mission of protecting the financial interests of the European Union **takes its activities well beyond the borders of the EU** responding to the need to safeguard the proper spending of the considerable amounts of EU funds which are granted to third countries and international organisations to advance EU policies. OLAF works together with partner authorities in third countries and with counterpart administrative investigation services in various international organisations. Some of the tools used in this cooperative effort include the holding of regional conferences to build networks amongst operational partners, such as investigative and prosecutorial services, promoting international cooperation, and entering into administrative cooperation arrangements with such partners.

➤ Background

The EU is the largest donor of development assistance (ODA), and the European Commission alone manages around 11% of the world's total ODA. In all of these activities, the EU works together not only with its Member States, but with third countries, international organisations, and other operational partners, including non-governmental organisations. OLAF's main mission of protecting the financial interests has wide-ranging external relations implications: its activities may directly concern the Community budget on either the expenditure or the revenue side, and/or affect the budget of the European Development Fund (EDF) and the resources of the European Investment Bank (EIB), with whom OLAF works closely: regular meetings are held between OLAF and the EIB and inter-agency cooperation has been established on a range of cases.

3.3.1 Investigative activities in the area of external aid

OLAF is mandated to conduct external investigations in third countries under the applicable EU legislation, including Regulations (EC) No. 1073/1999 and 2185/1996, specific financing agreements, EDF rules, and in accordance with the cooperation agreements in force.

External aid is one of the traditional areas of OLAF's so-called 'own' investigations. This area of activity has represented about 20% of all the information received since the creation of OLAF in 1999. At the end of 2008, it represented approximately **25% of all OLAF active cases** (102 active cases).

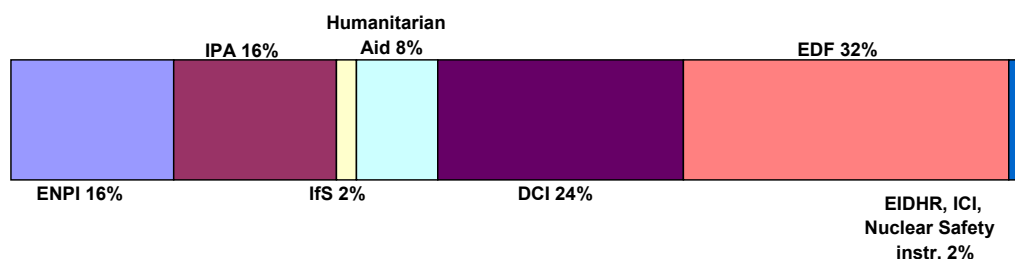
OLAF plays a crucial role in preventing and detecting fraud in this field by working in partnership with other Commission departments — notably the EuropeAid Cooperation Office (AIDCO) and the European Community Humanitarian Aid Office (ECHO) — and also with international partners.

➤ Operational remit and activities

Since 2006, 35 financial instruments have been reorganised into ten instruments for external development assistance. The European Development Fund (covering 77 ACP countries) and the Development Cooperation Instrument (mainly covering Asia, Latin America, the Middle East and South Africa) alone represent 56% of EU development aid.

The EU aid is included in the Community budget, with the exception of the EDF. The latter is funded outside the EU budget by direct contributions from the Member States. However, OLAF has powers to investigate matters falling within all the external aid instruments of the EU, including the EDF.

Chart 17: EU development policy instruments 2008-2013



In the external aid area, OLAF investigators often encounter *modus operandi* typical of organised fraud. The risks that make such fraud possible include shortcomings in coordination between the different global and international donor organisations. These shortcomings affect the allocation of grant aid, auditing, monitoring, evaluation and the operation of warning systems. The abundance of different projects, programmes, NGOs, organisations and foundations, combined with the fact that many of these operate in different legal environments and financial systems, makes coordinating and supervising the aid a challenging task. Moreover, many organisations look for multiple sources of financing in order to implement their projects.

OLAF investigators face various challenges in their daily investigative work in the aid area. These mainly relate to concern obtaining evidence, exchanging information and getting sufficient cooperation. This can cause technical and organisational problems but **may also adversely influence the duration and efficiency of operational work.**

Case study: False declaration of origin in external aid projects

In the framework of a Commission external aid programme, a Commission Delegation signed several contracts with a company for the supply of IT equipment, valued at close to one million euros.

According to the terms of the contract, the supplies were subject to strict rules of origin and should have originated from EU Member States or from a beneficiary of the external aid programme in question.

The relevant Commission Directorate General informed OLAF of serious suspicions that the IT equipment supplied was not originating from the stated countries and that the certificates of origin submitted to the EC Delegation could be false.

OLAF's external investigation confirmed that the certificates of origin were falsified and uncovered evidence that the IT equipment originated from East Asian countries.

Based on the OLAF final report, the Commission imposed a **penalty close to €150 000**. A requirement for a sample check of certificates of origin of goods purchased was also included in the revised 2008 version of the Practical Guide to Contract procedures for EC external action.

3.3.2 *Anti-fraud methods and their development: carrying out effective investigations in third countries*

➤ Cooperation with Third Countries and International Organisations – Cooperation Arrangements

In recent years, OLAF began to establish closer links to its operational partners in third countries and in international organisations through bilateral or multilateral administrative cooperation arrangements. As far as arrangements with services in third countries are concerned, OLAF usually enters into these arrangements along with EuropeAid, as co-signatory, unless the operational partner in the third country is a judicial/prosecutorial body, in which case OLAF enters into the cooperation arrangement with the intended partner alone as a European Commission service.



Administrative Cooperation arrangements have been signed with authorities in Argentina, Djibouti, Morocco, the Republic of Congo, Senegal, South Africa and the FIGE (*Forum des Inspections Générales d'Etats d'Afrique* – as illustrated on the left). Discussions with other third country authorities are currently underway.

These administrative cooperation arrangements encompass multi-faceted cooperation between OLAF and its operational partners to protect the financial interests of the EU and of the recipient country, which includes administrative support, exchange of information, data protection, mutual training and designation of contact points for close cooperation.

➤ Building a Network of Operational Partners to prevent fraud

With a view to expanding its network of operational partners, OLAF has launched a new initiative in 2007 together with EuropeAid to organise a series of conferences dedicated to the protection and optimisation of public funds in the external aid sector; focusing on the cooperation between national and international authorities.

The first such conference was held in Rabat, Morocco in 2007, while the second conference took place in Cape Town, South Africa in April 2008. The initial focus of the initiative on the African continent is in line with the general external relations policies of the European Commission. The two conferences already held attracted public officials from partner services of more than 40 countries and international organisations. OLAF and EuropeAid are contemplating additional conferences in the coming years.

These conferences contribute to the better understanding of sound financial governance and optimisation of public funds. All of the participants to date have stressed the importance of cooperation between the competent authorities at national and international level to ensure the best level of protection of public/EU funds.

The 2nd Conference on the “protection and optimisation of public funds”

Cape Town, South Africa, 14-17 April 2008

The second regional conference on the ‘Protection and Optimisation of Public Funds – Co-operation between national and international authorities’ in the area of external aid was held in Cape Town, South Africa, from 14 to 17 April 2008, at the initiative of the European Commission (OLAF and EuropeAid), and in cooperation with the National Prosecuting Authority of South Africa, directorate of Special Operations.



Bringing together representatives from 17 countries¹⁶, the European Commission, EC Delegations in Africa, the European Investment Bank, and the United Nations (UNDP and World Food Programme), the conference focused on the theme of sound financial management and protection of the financial interests of the European Community, stressing the importance of cooperation between the competent authorities at national and international level to ensure the best protection of public funds.



Participants stressed that the promotion of sound management and efficient control of public funds relies on political commitment and sufficient resources allocated to preventing, fighting and investigating frauds and corruption affecting the European Union development aid, and national budgets. To achieve these goals, the Conference participants agreed on recommendations to establish appropriate ‘cooperation frameworks’ between the European Commission and the relevant national, regional and international organisations, in the context of the current decentralisation and dispersal of the Community’s external aid.

➤ OLAF's Cooperation with International Organisations

An ever increasing amount of EU funds are channelled through other donor and implementing international organisations. OLAF therefore needs to cooperate closely with a growing number of international organisations and their administrative investigation services in particular. OLAF actively collaborates with partner administrative investigation services at international organisations in a number of ways.

¹⁶ Angola, Botswana, Comoros, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Morocco, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe.

For OLAF, the main objective of conducting peer reviews of administrative investigation offices of international organisations is to verify that the reviewed office of the institution entrusted with EU funds has the capacity and procedures to investigate allegations of fraud and corruption. Such reviews also aim at raising standards and promoting better collaboration.

The area of primary interest for OLAF in this regard is the United Nations Secretariat and other bodies, agencies, funds and programmes of the UN system. In the UN context, OLAF is paying particular attention to the implementation of the Financial and Administrative Framework Agreement (“FAFA”) and its verification clause. It is critical that OLAF possesses all the tools necessary to carry out its mandate and to control the EU funds which are channelled through the UN system. Indeed, the EU contributed in excess of €1 billion to the UN in the last five years – the contribution amounted to €1.4 billion in 2007 (the last available figure), a **700% increase** from 2000.

OLAF is currently preparing to revise its existing cooperation arrangements/memoranda of understanding with the UN Office of Internal Oversight Services and the World Bank, while entering into new arrangements with EULEX and the Global Fund.

3.3.3 Intelligence projects

In line with its legal framework as regards prevention activities, OLAF launched intelligence projects in the fields of agriculture, customs, external aid, own resources, research and the Structural Funds. These projects aim at identifying vulnerabilities in the management systems and external threats which could have an impact on the Community’s financial interests.

The "**Double Funding**" project, completed in 2008, identified certain risks in the area of external aid on the basis of an analysis of OLAF's operational casework. OLAF showed that irregularities and (alleged) frauds occur most frequently in the project implementation phase, and that falsified documents constitute modus operandi most frequently observed. It also showed that most cases were initiated as a result of information provided by sources outside the control structure for the implementation of the budget. OLAF underlined the importance of information sharing among donors in order to support the prevention and detection of double funding. In order to improve information sharing for facilitating financial management, the Commission with the support of OLAF is testing a new IT tool (**Transparent Aid – TR-AID**), developed by the Commission's Joint Research Centre.

Further projects are expected to be completed in 2009.

3.4 Structural actions

Some €347 billion has been earmarked to foster prosperity across Europe's regions and boost innovation and competitiveness, representing some 36% of the EU budget for the period 2007-2013. Of this, two thirds will be financed through the European Regional Development Fund (ERDF) and the Cohesion Fund. OLAF has an important role to play in the protection of such funds.

Objectives, Structural Funds and instruments ¹⁷
2007-2013

| Objectives | Structural Funds and instruments | | |
|---|----------------------------------|-----|---------------|
| Convergence | ERDF | ESF | Cohesion Fund |
| Regional Competitiveness and Employment | ERDF | ESF | |
| European Territorial Cooperation | ERDF | | |

Additionally, OLAF investigates matters concerning other structural financial instruments such as the **EAGGF** and the **FIFG**, which were in place in the 2000-06 and preceding programming periods, and which are now, in the

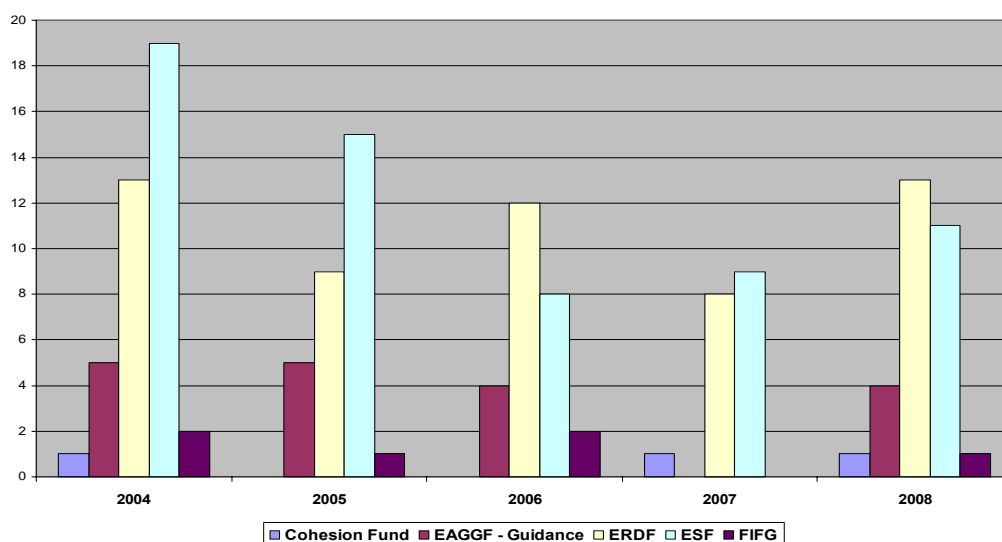
¹⁷ Source: DG REGIO http://ec.europa.eu/regional_policy/policy/object/index_en.htm

current programming period, covered by the European Agricultural Fund for Rural Development (**EAFRD**) and the European Fisheries Fund (**EFF**) respectively.

The control systems in place for Structural Funds are based on the principle that the Member State is primarily responsible for controlling the funds and correcting irregularities that occur. When allegations of serious irregularities or fraud are submitted to OLAF, the Office, following evaluation, may decide to intervene. In such cases, the Member State authorities are contacted to check on the type and level of the EU funds at stake and decisions are then made on the nature of OLAF's intervention. OLAF's operational activities in the Structural Funds area are mainly conducted under Regulation No 2185/1996 concerning on-the-spot checks and inspections carried out in order to protect the European Communities' financial interests against fraud and other irregularities. Close cooperation with Member State authorities is crucial to such activity.

In 2008, OLAF received 136 allegations of fraud regarding Structural Funds. In the same year, 25 new cases were opened in this area, and 18 of the 30 external investigation cases closed entailed financial follow-up. Meanwhile, OLAF undertook 41 on-the-spot checks in the Member States relating to measures co-financed by the Structural Funds. Typical problems identified by OLAF in the course of 2008 included false declarations, false invoicing and failure to abide by public procurement rules.

Chart 18: Structural actions cases closed by Fund in the last five years



Case study: ERDF Financial Aid in Calabria, Italy

An OLAF ERDF investigation in Italy, closed in 2008, was triggered initially by audit information received from the Commission services and Italy itself. OLAF subsequently opened an external investigation into a specific programme involving ERDF financial aid for the development and growth of SMEs in Calabria, Italy. The operations under investigation, which were also financed from the Italian budget, concerned the purchase of equipment used in the construction of buildings and roads.

OLAF's investigation, which was conducted in close cooperation with the Italian authorities, began by examining the applications for support for projects from the local financial institutions (banks). It was established by means of the registration numbers of the machines that, in many instances, funding had been obtained twice for the same equipment, with separate applications having been made at different banks for the same machinery.

Following on-the-spot checks, it became clear that very serious irregularities and possible fraud had been committed involving, inter alia, double invoicing for the same goods with consequent duplication of funding claims and payments, considerable differences between the purchase price and the sale price of the goods, the purchase of machinery previously sold within the framework of the aid programme and the subsequent resale of the same goods. In total OLAF checked more than 40 projects and found serious irregularities in most of them.

OLAF's case findings and recommendations were transmitted to the Commission services and Italy then took further action with higher financial corrections and additional judicial actions being proposed. In financial terms, OLAF

identified irregular funding amounting to more than **€10 million** and sought financial recovery of this amount to the Community budget. Three separate criminal procedures have been opened in Italy against the parties concerned.

Following additional checks on all of the operations funded under this programme, the payment authorities decided to initiate recovery operations in more than 1 700 cases, with a total of close to **€40 million** of public funding being involved. The payment request for these operations has been withdrawn by Italy from the Community budget financing.

This case is a good example of successful investigative interaction and follow-up between OLAF, the Commission and the Member State and demonstrates what is possible under the Community and national legal framework when all parties work well together in protecting of the Structural Funds. It also shows that OLAF investigative results can not be expected to bring results overnight.

The following case study highlights the issues of conflict of interest and procurement manipulation. It is only one of the many similar cases that OLAF is finding throughout the EU. These are instances in which civil or public servants and/or elected officials are found to be in situations of conflict of interest in either being party or central to the decision-making process in relation to the awarding of Community funds and/or the subsequent monitoring/controlling of such Community fund re-allocations. Such issues are, in the first instance, national law matters and have to be addressed foremost by the Member States which have responsibility for the protection of Community funds in accordance with the obligations of article 280 of the EC Treaty. However, if the national authorities are not being seen to act in such cases, OLAF and other Commission services will intervene in defence of the Community budget.

Case study: Conflict of interest in an ESF-funded training programme

OLAF received an anonymous letter about potential irregularities involving conflict of interest and abuse of tendering procedures in a specific ESF-funded training programme in a Member State. Community budget funding of more than €1 million had been provided for this training programme which was being operated in several regions of the country.

OLAF conducted an assessment of the material received in connection with the matter and noted that the results obtained from the checks conducted by the national authorities differed greatly, depending on the geographical region examined. Some further examination revealed additional irregularities which tended to lend credence to the claims made in the anonymous letter received. OLAF decided to conduct checks on the spot under the provisions of Regulation (EC) 2185/96.

In the course of its controls, OLAF found evidence which supported the allegations of conflict of interest and the use of insider knowledge to manipulate the public procurement procedures by a person who was found to have been subsequently involved in approving and checking the operation of the programme in question.

OLAF's final case report recommended recovery of the full amount of ESF assistance from the beneficiary and the relevant OLAF findings were also sent to the national judicial authorities for appropriate follow-up by the Member State against the individual concerned.

➤ Follow-up in Structural Actions

Financial follow-up is performed by Member States and is subject to the formal supervision of the Commission departments concerned as Authorising Officers by Delegation (AOD) responsible for this sector. In the framework of the specific Regulations, implementing Commission's regulations and implementing guidelines and the Working Guidelines agreed in 2007 between OLAF and the AODs for shared expenditure, these financial follow-up activities are subject to systemic verifications.

The information about the progress of recovery supplied to the DG responsible for Regional Policy, as coordinator service through dedicated information channels by the Member States is subsequently exchanged between the AODs and OLAF.

Concerning OLAF investigations where the final report concludes that certain sums have probably been paid to a beneficiary against the rules or that sums that should have been collected have not been, the relevant authorities

(generally the authorities in the Member States or third countries concerned) must recover the amounts in question. OLAF follows the course of these recovery proceedings. In 2008, **€128 million was recovered** in the field of the Structural Funds, following the closure of 50 cases. This amount appeared in the Commission's accounts for previous financial years. Additional amounts were also recovered in 2008 in connection with cases not yet closed.

Case study: The European Regional Development Fund – Quality problems in construction work

OLAF opened an external investigation following allegations received in 2001 of serious irregularities and possible fraud against a municipality, beneficiary of Community assistance under an operational programme co-financed by the European Regional Development Fund (ERDF).

An on-the-spot check was carried out in order to verify the legality and the regularity of the four road construction projects supported.

The investigation concluded that the construction of a road did not conform to the physical and technical features envisaged in the project (use of inferior material in the construction work), and was in breach of the terms of the contract implementing the project, and that documents carrying a later date than the conclusion of work were issued as proof of costs incurred.

The Member State was informed of the results of the on-the-spot checks and was asked to recover the amount concerned. From 2004 to 2007, the Commission was informed that irregular amounts in excess of €500 000 were recovered at national level.

OLAF was also informed in 2008 – **seven years after the opening of the initial investigation** - that an amount of more than **€1.5 million** was considered as ineligible regarding the other projects.

➤ Joint fraud prevention strategy under the structural measures

The Commission¹⁸ has established a joint fraud prevention strategy for the ERDF, ESF and Cohesion Fund, following an audit recommendation of the Commission's Internal Audit Service. The Commission has already implemented some actions of the strategy:

- Fraud awareness seminars for Member States, in Brussels on 10 June 2008 for managing and paying authorities and in Cardiff on 21 October 2008 for national and Community auditors;
- Dissemination of a draft guidance note on fraud indicators for the Member States through the auditors' technical working group.

3.5 Agriculture and trade

OLAF is involved in investigating allegations related to both EU agricultural expenditure and revenue. Schemes concerning direct payments to farmers, SAPARD¹⁹, support for the fruit and vegetables sector and import duties on garlic account for 75% of the current active cases in this area: for example large quantities of garlic of Chinese origin are declared as originating in other countries to benefit from preferential tariff measures in order to pay a lower rate of import duty. SAPARD payments are subject to continuous scrutiny, especially in Bulgaria and Romania.



During 2008, OLAF received 202 allegations concerning agriculture and trade and 40 new cases were opened in these areas –20% of OLAF new cases -, while 27 monitoring decisions were taken. In more than two thirds of the cases closed, follow-up was recommended. At the end of the reporting period, 68 agriculture and trade cases were still open.

¹⁸ The Directorates General for Regional Development and for Employment and Social Affairs in cooperation with OLAF

¹⁹ Special Accession Programme for Agricultural and Rural Development (a former pre-accession instrument during the period 2000-2006)

3.5.1 Agricultural expenditure

Agriculture has historically represented an important share of the EU budget in terms of expenditure. Following successive reforms, its rural development dimension gained importance, while the overall weight of agriculture in the budget decreased. The Financial Framework for 2007-2013 earmarked about 43% of the expenditure of the EU for the preservation and management of natural resources – or €15 billion.

To tackle frauds and irregularities regarding the SAPARD programme and to safeguard the financial interests of the Community, OLAF has intensified its activities in Romania and Bulgaria. In August 2008, Bulgaria established a "SAPARD" task-force which OLAF is actively advising with a view to enabling established cases of fraud to be brought before the courts. OLAF is working in close co-operation with the local authorities and the competent Commission services, especially the Directorate General for Agriculture, on an ongoing basis (see **section 3** of the summary version).

3.5.2 Agricultural revenue

On the revenue side, the European Community is almost entirely financed through the 'Own-Resources'²⁰, namely the revenue flowing automatically to the EU budget, pursuant to the treaties and implementing legislation, without the need for any subsequent decision by national authorities. The overall amount of own resources needed to finance the budget is determined by total expenditure less other revenue. The total amount of own resources cannot exceed 1.24 % of the gross national income (GNI) of the EU. Traditional own resources (TOR) however consist of customs duties, **agricultural duties and sugar levies**. These traditional own resources are levied on economic operators and collected by Member States on behalf of the EU.

The EU grants preferential access to its markets to some countries or geographical regions in the world (e.g. to the ACP countries and under the EBA— 'Everything But Arms' — initiative. As a result, origin fraud is a significant phenomenon in agricultural trade, in relation not only to preferential tariff measures but also to GATT tariff quotas.

Misuse of the New Computerised European Transit System (NCTS) - OLAF's proactive role

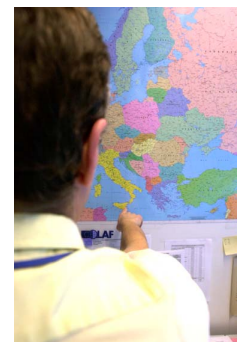


Since 2007 OLAF has noticed several cases of withdrawal from Community transit, whereby important quantities of mainly highly taxed agricultural products (e.g. frozen Brazilian poultry meat and fresh Chinese garlic) were diverted from their declared destination.

The abuses consisted of irregular clearances of these transit movements in the NCTS which was introduced to replace paper clearances by electronic processing of the transit data. By the irregular clearance of the goods, the fraudsters make it appear

that the goods have arrived at the declared destination, whereas in fact, they are diverted and put on the Community market without payment of the applicable customs duties, as any transit operation benefits from a suspension of duties. From the investigations carried out so far, it is clear that significant amounts of customs duties have been evaded over the years.

In 2008, OLAF organised various meetings with all Member States involved. In addition OLAF is co-ordinating the investigations by the Member States, which have established that such irregular clearances have occurred in multiple customs offices in at least four Member States. Moreover, it has been established that once such abuses were detected in one particular customs office, the fraudsters managed to continue their activities by targeting other offices, mostly located in a different Member State.



The investigations into these matters are both difficult and complex. It is very difficult to trace the real itinerary of these movements once carried out, while they very often involve several Member States at the same time (departure, declared destination, real destination, persons and companies involved). OLAF concluded that the

²⁰ In the past, own resources were divided into 4 categories - "traditional" own resources of import duties on agricultural goods (plus sugar levies) and on non-agricultural goods, VAT-based own resources and GNI-based own resources - which is why the GNI resource is sometimes referred to as the "Fourth resource". However, the distinction between the first two categories is today largely obsolete because the previous differentiation of import duties on agricultural products from those on non-agricultural products has since been removed.

absence of an overall Community risk analysis system (each Member State has only access to data that concern its own territory) and the lack of important data for a high number of transit movements (licence plates, commodity description) make real-time detection of such irregularities virtually impossible. OLAF has consequently put forward proposals to remedy this situation, and is closely working with the competent Commission service, DG Taxation and Customs Union, and the Member States.

➤ Follow-up in the field of agriculture

Financial follow-up is performed by Member States' Paying Agencies and is subject to the formal supervision of the Directorate General for Agriculture as Authorising Officer by Delegation responsible for this sector. In the framework of the Working Guidelines approved in 2007, information about the progress of recovery is communicated to OLAF for proper monitoring of the financial follow-up.

Case Study: Export of pork meat

OLAF opened an external investigation after information was received about possible irregularities committed by an EU company in the context of exports of pork meat products to a Member State which did not comply with the Community customs legislation in force, resulting in irregular payments of export refunds.

During the investigative stage, the customs authorities of the Member State concerned carried out an "ex ante" check under Reg. (EEC) No 4045/89 with the participation of an OLAF official; detailed documentation with regard to the basic materials, the production process and all the exports concerned was collected. In addition, the local authorities were requested to provide mutual assistance in order to obtain more information on the consignee mentioned in the commercial documents of the exporter. Finally, OLAF distributed a Mutual Assistance communication to Member States with a request to perform physical checks on exports of canned meat products, to take samples for analysis and to notify any discrepancies to OLAF.

On closure of the operational stage, this case was transferred for financial follow-up. After liaison with the Member State concerned, a total amount in excess of **€500 000** was confirmed as having been successfully established, notified and recovered.

3.6 Customs & VAT

The Customs Union is a pillar of the EU and an essential element in the functioning of the single European market. The single market can only function properly when there is a common application of common rules at its external borders. The EU is the world's biggest trader, accounting for 20% of global imports and exports.

During 2008, OLAF received 64 allegations in connection with customs, while 23 opening decisions were made in this area. 80% of customs cases were closed with follow-up in 2008 — the highest proportion of all areas considered. At the end of the reporting period, 47 customs cases were active (a reduction of one third over the year 2006), including one VAT case. The large number of coordination and criminal assistance cases — up to 70% of cases — highlights the crucial role played by Member States in this area of activity.

Customs duties, like agricultural duties, are levied on imports of products coming from third countries, at rates based on the Common Customs Tariff. Several agreements (e.g. tariff reduction agreements, agreement on the abolishment of tariffs) with third countries have led to a substantial reduction in the share of this resource in the total EU budget in past decades. This evolution was fostered by the conclusion of bilateral (e.g. trade agreements or association agreements) or multilateral agreements (in the framework of the World Trade Organisation, but also agreements with ACP countries), and by the accession of new Member States to the EU. In 2008, customs duties represented some 14% of the total EU revenue or €16 billion.

Case study: Complex international cooperation in the fight against organised crime in the Customs field

Traditionally, fraud in the Customs sector has been organised by the commercial parties directly involved in the traffic concerned – importers, producers, transporters, etc. However this case study demonstrates the increasing involvement of Organised Criminal Groups and professional fraud organisations in this lucrative and illegal activity.

In 2007 and 2008, OLAF initiated and coordinated investigations in several Member States into the illegal activities of organised crime groups situated in major European cities (e.g. Rome, Paris and Budapest).

Hundreds of millions of euros in customs duties and VAT were evaded by these groups by using fake and understated invoices reducing the declared value of the goods at importation to less than 10 % of the real value. Missing traders were also used as the final consignees/importers in the process of importation to evade payment of VAT. Huge profit margins were generated due to the evaded customs duties and taxes throughout Europe. After importation of all kinds of products, mainly various types of textiles and shoes, the goods were sold in (street) markets without payment of VAT and national taxes. The profit gained out of these illegal activities was then laundered via various channels back to China from where the goods had originated, and was re-invested again into real estate and business activities. Informed by Member States and third parties OLAF gathered intelligence and inside knowledge of the Organised Criminal Groups' operations which showed the typical modus operandi described above.

OLAF approached the Member States concerned in order to initiate adequate criminal investigations of the perpetrators. Various suspects were identified in Italy, Hungary and Austria. **However, due what were claimed to be local legal constraints, Hungarian judicial authorities and Hungarian Customs were not in a position to contribute to OLAF's coordination activities. Various attempts were made by OLAF, without success, to find a practical solution to this rigid interpretation of national laws which is not in compliance with EU anti-fraud legislation currently in force.** In the circumstances, OLAF relied mainly on the Austrian and Italian Customs to collaborate in this landmark customs fraud case. OLAF also involved EUROJUST to coordinate further judicial activities in this complex case. Links to counterfeited goods, cigarette smuggling and transit fraud were also discovered during the investigation.

Despite the difficulties resulting from the Hungarian position, various customs criminal investigations, mainly in Austria, were successfully supported by OLAF and will hopefully lead to convictions in court. Another positive aspect of the case is that the collection of traditional own resources was raised substantially – to the benefit of the EU taxpayer and to the tune of some €40 million a year - by the fact that these operators could no longer use their "minimum customs value" approach. Duty recovery demands **in excess of €80 million** have already been issued in respect of part of this traffic.

Criminal investigations and successful court convictions could also lead to the seizure of illegal assets generated by this serious fraud and are therefore supported by OLAF in order to recover taxpayers' money from the criminals concerned.

In addition, OLAF coordinated in 2008 the joint customs operations "MUDAN" and "BOOMERANG" and supported two other joint customs operations (JCOs), "CARETTA" and "BELUGA", conducted respectively by Ireland and France. These operations, during which the customs authorities of the participating Member States brought to light a large number of serious offences aiming to deprive the European budget of revenue, are conducted through the permanent technical infrastructure set up in OLAF. JCOs can significantly improve the effectiveness of the national authorities by targeting checks at European level.

Focus on Operation MUDAN

Operation MUDAN was a joint customs operation involving all EU Member States (22 active and 5 observers) whose objective was to tackle the illicit smuggling of counterfeit cigarettes into the EU through targeted actions on national postal service packages sent from China to Europe via air cargo.



The problem with cigarettes in parcels from China was first raised as a growing concern in the UK. Reactions from other Member States to this new modus operandi led to a request to the Mutual Assistance Committee for a joint customs operation, which OLAF coordinated.

By targeting a specific type of mail, the customs investigators were able to seize 1 100 parcels containing counterfeit goods, as well as **1.5 million counterfeit cigarettes**, and close to 2 tons of counterfeit hand-rolling tobacco. The total potential losses to the budgets of the European Community and its Member States (customs duties and taxes) are calculated to be approximately €500 000.

In order to step up the operational character of provisions on mutual administrative assistance matters as covered by the Euro-Mediterranean agreement, a Euro-Mediterranean Conference, co-chaired by OLAF, was held in Tangiers from 2 to 5 November 2008. A joint customs operation could be subsequently organised in 2009.



OLAF also provides IT-based platforms on an EU-wide basis. In particular, the Customs Files Identification Database²¹ (**FIDE**) became operational on 15 September 2008. The objective of the FIDE is to help prevent operations in breach of customs legislation and of agricultural legislation applicable to goods entering or leaving the customs territory of the Community and to facilitate and accelerate their detection and the prosecution of the parties responsible. Additional details can be found in **section 4.2**.

In 2008 OLAF has continued to support the EUROpean CARrousel NETwork (**EUROCANET**) a system of fast and selected exchange of information between operational anti-fraud units in several Member States. The network managed by the Belgian tax administration aims to detect new missing intra-Community traders. The representatives of these operational anti-fraud units need to meet each other on a regular basis and OLAF provides them a platform for cooperation. OLAF also financed via the Hercule II programme a seminar on data mining in the field of the fight against intra-Community VAT fraud, organised in Brussels by the Belgian authorities (15 May 2008).

Case study: Typical modus-operandi in the evasion of customs and anti-dumping duties

In 2001 anti-dumping duties of up to 66% of the value of the goods were imposed on importation into the European Community of CFL-i ("energy saving lamps") originating in the China. These measures, which were aimed at protecting the EC industry from unfair competition, remained in force until October 2008.

Immediately after the imposition of the duties, some Chinese producers and exporters started to circumvent these measures in several ways, often in agreement with their EC importers. In 2003, OLAF received well-documented information from European Industry representatives that Chinese CFL-i were being imported into the Community with falsely declared origins from a variety of countries and under different customs tariff codes (CN) by which the anti-dumping duties were avoided.

OLAF opened several investigations and alerted the Member States by a number of Mutual Assistance Communications. These Communications resulted in controls at importation, investigations and post-verification controls by the national Customs authorities. In some cases, the investigations led to the initiation of criminal proceedings against EC importers, who were found to be aware of the true origin or who had actively participated in the frauds.

OLAF has coordinated most of the investigation carried out by the Member States and organised joint investigation missions in Vietnam, Pakistan and Thailand in 2005, Malaysia in 2006, Philippines and the U.A.E. in 2007 and Tunisia in 2008. These investigations were carried out in close cooperation with the EU Member States most affected by the fraud and with the assistance of the third country authorities. As a result of these missions OLAF and the EU Member States' authorities obtained evidence which initiated **recovery proceedings for more than €33 million** of evaded Customs and anti-dumping duties.

OLAF provided support with intelligence analysis, coordination, investigations in third countries and legal advice in follow-up matters. These investigations have required a significant investment in time and resources by OLAF, but they have produced significant results in terms of recoveries and criminal prosecutions (criminal proceedings have been initiated in Denmark, Germany and Italy and are concluded in Sweden where 4 people have been convicted and sentenced to terms of imprisonment).

The close cooperation between OLAF and the national investigation and judicial authorities has contributed to the disruption of certain criminal organisations set up to smuggle of the CFL-i and has limited the scale of the evasion of duties, thus protecting the taxpayers and the financial interests of the Community.

²¹ Regulations 766/2008, for more details see the Commission's Report on the Protection of the Communities' financial interest 2008.

➤ Follow-up in traditional own resources

Financial follow-up consists in recovering the duties unpaid for various reasons (e.g. customs and agricultural import duties becoming due following the discovery of false origin declarations). Both administrative and financial follow-up activities were conducted throughout 2008 in an increasing number of cases. Although front-line financial recovery is the responsibility of the competent authorities in the Member States, OLAF supports the national customs administrations in this activity by providing data from the operational case file in order to maximise the chances of timely recovery of import duty debts. This includes providing appropriate advice to the competent national authorities when economic operators appeal against duty demands issued in respect of cases investigated by OLAF.

Case Study: Traditional Own Resources financial follow-up

OLAF opened an external investigation after information was received that silicon metal of Chinese origin, subject to anti-dumping duty, was being imported into the Community from Switzerland declared as being of Swiss origin. The consignments were accompanied by movement certificates (subsequently proven to be incorrect) indicating that the commodity was of Swiss origin. Following an initial investigation in Switzerland, and due to the good cooperation with the Swiss authorities, further investigative action in Germany, the Netherlands and the United States was co-ordinated by OLAF. It established the true origin of the imported silicon metal and the names of the companies involved. OLAF consequently issued a Mutual Assistance communication under Regulation 515/97, warning Member States of the fraud risks identified.

On closure of the operational stage this case was transferred for financial follow-up. After liaison with the Member States concerned, a total amount in excess of **€13 million** was confirmed as having been successfully established, notified and recovered. There was also a successful criminal conviction in Germany in this case resulting in the imprisonment of a German national who was a manager of the Swiss supplier company.

3.7 Cigarettes

In 2008, OLAF's role in coordinating and assisting the national authorities in combating international cigarette smuggling continued to deliver tangible results.

In March 2008, 26 members of an international criminal gang responsible for smuggling millions of cigarettes into the EU from former Soviet Union countries and China were arrested in a series of coordinated raids in Poland and Germany. The raids followed months of cooperation between OLAF, the Polish CBS (Central Investigation Bureau of the National Police) and Germany's ZKA (Customs Investigation Office). As well as the arrests, the authorities seized nearly **7 million cigarettes**, a lorry that was in the process of being loaded with contraband cigarettes, nearly **€3 million** in cash and 9 kilos of gold. The bank accounts of 29 suspects were frozen and personal property, including cars and houses, was seized.

In April 2008, over **one billion contraband cigarettes** were seized at two storage facilities near Liège, Belgium, and nine people were arrested for their part in smuggling cigarettes from Greece to Belgium where they were stored before being forwarded to Germany and the UK for distribution on the black market. Evidence gathered during this operation led to the seizure of a further 75 million cigarettes at a warehouse in Greece and the arrest of four more suspects. Both of these large seizures were made in the framework of an ongoing investigation which has been coordinated by OLAF for over two years involving the authorities in Germany, Belgium and Greece. Prevented losses of duties and taxes from these two seizures amounted to approximately **€44 million**.

On the basis of direct OLAF intelligence over **83 million cigarettes were seized** in 2008, representing prevented losses in taxes and duties of **€20 million**. In addition, OLAF's continuing assistance to the Member States in large-scale international investigations helped them to seize several hundred million cigarettes and dismantle a number of serious international criminal groups.

In 2008, OLAF continued to implement the Agreements concluded in 2004 and 2007 with Philip Morris International (PMI) and Japan Tobacco International (JTI). In cooperation with OLAF and the Member States, the Agreements provide for procedures to monitor and trace products in order to determine the point at which genuine cigarettes (of the PMI and JTI brand) are diverted from the legal supply chain and fall into the hands of smugglers.

The Agreements, which run for 12 and 15 years respectively, provide for the payment of USD 1.6 billion, which can be used to combat the smuggling and counterfeiting of cigarettes. The UK signed both Agreements in 2009, meaning that all 27 Member States are now party to the Agreements. Every year, the budgets of the EU and its Member States lose hundreds of millions of euros in unpaid taxes from contraband and counterfeit cigarettes. Moreover, counterfeit items and other forms of contraband compromise legitimate distribution channels, and compete unfairly with genuine products.

In September 2008, OLAF posted its first overseas liaison officer in Beijing, China. His placement complements the Agreements concluded by the European Commission with cigarette manufacturers. His primary responsibility is to provide intelligence and to facilitate international co-operation with the host authorities in support of the anti-contraband and anti-counterfeit activities of the Office in relation to tobacco products since China is one of the primary sources of counterfeit cigarettes for the EU, and the good cooperation with the Chinese authorities is key to efficiently tackling this problem. In the light of this experience, other countries could be identified for future placements.

Major cigarette seizure in Singapore

OLAF's work in relation to the illicit trade in tobacco products is not confined to the EU but also involves working with law enforcement authorities in many third countries. In November 2008, OLAF passed intelligence to the authorities in Singapore about a number of suspect consignments that were believed to be destined for the contraband market in the EU and would be passing through the Port of Singapore.

Acting on this information, Singapore Customs were able to seize four containers carrying cigarettes fraudulently described in the shipping documents as containing furniture and decorative household items. Two further containers containing almost 19 million illicit cigarettes were seized in Egypt on the basis of information provided by OLAF. Had the cigarettes reached their intended destination, the EU black market, almost €15 million in customs duties and taxes would have been evaded.

In the context of the World Health Organization Framework Convention on Tobacco Control, significant progress was also achieved in negotiating a Protocol on the Illicit Trade in Tobacco Products under Article 15 of the Convention. The aim of the Protocol, which is being negotiated by the Intergovernmental Negotiation Body (INB) to which the European Commission is a party, is to translate the principles for controlling the illicit trade in tobacco contained in Article 15 into more detailed practical measures to prevent tobacco from being unlawfully channelled and to deter fraudsters.

3.8 Fraud prevention

2008 was the first year of implementation of the Commission's new policy entitled *Prevention of fraud by building on operational results: a dynamic approach to fraud-proofing*²². The test phase focused on developing a methodology and setting-up a computer tool to extract data from OLAF cases and to describe and analyse fraud patterns and control weaknesses in a structured manner.

OLAF has analysed a sample of cases linked to internal EU policies and external aid, based largely on the results of its investigative activities. Acting as an advisory service on fraud prevention for the EU Institutions, OLAF made a specific recommendation to a specialised office aimed at improving resistance to irregularities and also conducted analyses of the management of research and development policy.

Additional projects implemented by OLAF are detailed in **sections 3.2** and **3.3**:

- Joint fraud prevention strategy under the structural measures
- Intelligence projects (especially TR-Aid and Pluto)

²² Communication from the Commission to the Council, the European Parliament and the European Court of Auditors — Prevention of fraud by building on operational results: a dynamic approach to fraud-proofing, 17.12.2008, OJ 2008 C 106.

3.9 Protection of the euro:

In less than a decade of circulation, the euro has become one of the strongest currencies worldwide, used daily by 330 million Europeans in 16 EU Member States, Monaco, San Marino and the Vatican City. It is also *de facto* used in a number of countries and territories outside the euro area. Its circulation, at the end of 2008, reached over 780 billion euro in value, corresponding to over 13 billion banknotes and over 82 billion coins.



Its growing importance as a global currency has made the euro particularly attractive for counterfeiters, replacing to a certain extent the US dollar in their criminal preferences. Thanks to its advanced security features and the vigilance of the competent national authorities and the European institutions and bodies, euro banknotes and coins enjoy a high level of protection. As a result, **euro counterfeiting has been successfully contained at very low levels** by international and historical standards. 666 000 counterfeit euro banknotes and 196 000 counterfeit euro coins were removed from circulation in 2008.

Safeguarding the value of the common currency is crucial to ensuring financial and economic stability not only in the countries of the euro area, but in the EU as a whole. The effective protection of the euro against counterfeiting is therefore a high priority for the EU. The **European Commission/OLAF**, the European Central Bank and Europol all have distinct but interlinked responsibilities in this effort.

OLAF's competences include:

- proposal and implementation of the legislation on the protection of euro banknotes and coins;
- training and technical assistance: managing and co-financing of projects for the protection of euro banknotes and coins under the Pericles programme;
- co-ordination of Member States' actions for the technical protection of euro coins through the European Technical & Scientific Centre (ETSC).

Four Regulations²³ initiated by the Commission/OLAF were adopted by the Council of the EU in December 2008 in order to strengthen the protection of the euro against counterfeiting. The new legislation makes it mandatory for financial institutions to ensure that notes and coins are checked for authenticity before they are put back into circulation.

➤ The Pericles Programme

The Pericles programme is designed to support and supplement measures taken by the Member States to protect the euro against counterfeiting. Such measures include information exchanges (seminars, workshops, meetings and conferences), placements and exchanges of staff, as well as technical, scientific and operational support. It has been running since 2002.

In 2008, over 90% of the Pericles budget for the year— €1 million — was committed: eleven projects were launched, including eight of them proposed by the Member States and three by the Commission/OLAF.

The majority of these projects, designed for experts from the Member States and candidate countries, had a pedagogic purpose (training sessions and activities aiming at familiarising the experts with counterfeiting techniques, etc.). Pericles also contributed to four large-scale seminars, bringing together representatives of the Member States and of non-EU countries to strengthen cooperation with external partners on combating counterfeiting of the euro.

²³ For more details, see the Report of the European Commission on the Protection of the Communities' financial interests for 2008

4 Cooperation with OLAF's partners in the fight against fraud

4.1 General cooperation with the Member States

OLAF's consultation of Member State experts is organised as set out in the table below:

Chart 19: Structures for consultation

| Committees/working groups where OLAF represents the Commission |
|--|
| • Committee on mutual assistance in customs and agricultural matters |
| • COCOLAF (Advisory Committee for the Coordination of Fraud Prevention): |
| • Article 280 working group |
| • Irregularities and Mutual Assistance — Agricultural Products — Group |
| • Group on risk analysis on fraud and irregularity |
| • ECEG (Euro Counterfeiting Experts Group) |
| • CCEG (Counterfeit Coin Experts Group) |
| • OLAF Anti-Fraud Communicators Network (OAFCN) |

4.2 Technical Support

4.2.1 AFIS

The IT System AFIS (Anti-fraud Information System), a secure communication system, supports and facilitates the exchange of anti-fraud information among the relevant authorities of the Member States and between them and the Commission. AFIS is primarily used by the Member States and OLAF for mutual administrative assistance in customs and agricultural matters. AFIS consists of several applications (databases, communication modules, coordination and intelligence tools, etc) used by different user groups. During 2008, main developments took place:

- the Customs File Identification Database (FIDE) was launched in September;
- the new web-based Mutual Information System (MIS) with the Russian Federation for meat exports was launched for operational use in November;
- the Pre-Irregularities Management System (Pre-IMS) has also saw its operational launch in November (agriculture module);
- the IMS pilot has been running since September 2008: this project is successful proof of the concept through which an AFIS application can be made available via the Internet in a secure and user-friendly way;
- the development of the Anti-fraud Transit Information System (A-TIS) managed by DG TAXUD went according to plan, most of the Members States having started conformance testing of their new National Transit Applications by the end of 2008. The operational launch of the system is planned for July 2009.
- a new version (1.5) of the AFIS Portal and Framework components was developed and put into production.

In addition, the Permanent Operational Coordination Unit (POCU) continues to provide logistical and technical support for joint customs operations. Virtual-OCU is an application that allows participation in JCOs without actually being present (see **section 3.6**).

4.2.2 CIS/FIDE

Customs Information System (CIS)

The Customs Information System (CIS) is based on Council Regulation (EC) No 515/97, as amended by Council Regulation (EC) No 766/08, and the CIS Convention. The CIS was created to store information on commodities, means of transport, persons and companies as well as on goods or cash detained, seized or confiscated²⁴ in order to

²⁴ Regulation (EC) No 515/97 as modified by Regulation (EC) No 766/2008 of the European Parliament and of the Council

assist in preventing, investigating and prosecuting actions which are in breach of Community customs and agricultural legislation ('first pillar') or serious breaches of national laws ('third pillar').

The aim of the CIS is to create an alert system in the framework of the fight against fraud and to enable operational and strategic analysis of the data entered.

Since it became operational in 2003, the initial level of use of the CIS by national authorities did not match expectations. OLAF and the customs services of a number of Member States therefore adopted a strategy for increasing the use of this powerful tool for cooperation between customs administrations. During the year 2008 more than 800 cases were stored in the Customs Information System (CIS) database. These cases were accessible to more than 1 600 users located in the main ports, airports, border posts, risk analysis units, and investigation and intelligence services.

Chart 20: Use of CIS in 2008

| CIS | 1 st Pillar | 3 rd Pillar |
|---------------------------|------------------------|------------------------|
| Cases created or extended | 567 | 265 |
| Cases deleted | 762 | 549 |
| Cases searched | 1702 | 1442 |

Customs Files Identification Database (FIDE)

FIDE enables the national authorities responsible for carrying out customs investigations, when opening a file on or investigating one or more persons or businesses, to identify competent authorities of other Member States which are investigating or have investigated those same persons or businesses, in order to coordinate their work. FIDE acts as a registry of persons or companies subject to investigations without revealing details about the investigations. Only basic information on investigations (such as the reference, start date, field and status), investigating authorities (names and contacts) and persons or companies under investigation is stored in the database.

FIDE consists of first and third pillar data which are separated from a logical point of view but which, for their specific spheres of application, are operated by users as if they were a single database. Due to this fact it was decided to launch both databases at the same time after the entry into force of the amendments to Regulation 515/97. The amending Regulation 766/2008 was published on 13 August 2008 and FIDE has been in full operation since 15 September 2008.

4.3 Policy Support: Preparing candidate countries

OLAF's enlargement activities include contributions, based on its operational work, to the development and implementation of policy on candidate countries and potential candidates' preparations for accession.

In the course of 2008, OLAF continued to work with other Directorates General of the European Commission, in particular DG Enlargement, on the screening sessions for Croatia and Turkey regarding Chapter 32 issues (Financial Control). No accession negotiations have yet been opened with the third candidate, the Former Yugoslav Republic of Macedonia.

From the beginning of accession negotiations with Croatia and Turkey in October 2005, OLAF has worked to ensure that appropriate administrative structures to combat fraud and protect the EU's financial interests in each country are established in each country. Both countries are committed to creating such structures. Croatia having nominated an AFCOS central point has worked to ensure that it has the proper institutional and legal basis to function effectively

Meanwhile Turkey has confirmed the nomination of the Prime Minister's Inspection Board (PMIB) as the AFCOS central contact point for OLAF.

Contact was maintained with the relevant authorities in the Former Yugoslav Republic of Macedonia for the same purpose: The Financial Police based in the Ministry of Finance has been designated as the AFCOS central contact point in FYROM.

FYROM, Croatia and Turkey were present at the annual AFCOS Round Table meeting which was held in Malta in November.

4.4 OLAF at the forefront of the fight against corruption

The European Commission, with the support of the European Parliament and the Member States, is promoting good governance internally as well as among its Member States and beyond. The Commission endeavours to eliminate any form of corruption at all levels within the EU Institutions through a 'zero-tolerance policy', but also in EU Member States and outside the EU. The EC has signed the UNCAC and officially approved it on 12 Nov 2008. However, the enforcement of anti-corruption legislation is the primary responsibility of the EU Member States. As part of its contribution to an anti-corruption working methodology, OLAF advises European Community institutions and bodies on the systemic lessons drawn from its investigations.

The European Commission and OLAF provide the expertise of their staff in the context of prevention of specific corruption risks in multi-agency spending programmes.

- In October 2008, UNODC and Interpol signed an agreement establishing an **International Anti-Corruption Academy (IACA)** in Austria, near Vienna, aimed at tackling the problem of corruption within public services worldwide. OLAF is actively involved in the development of an academic concept.
- OLAF's Director General is the Chairman of **International Investigators Conference** secretariat. This annual conference includes the UN System, the International Monetary Fund (IMF), the World Bank, and other Multilateral Development Banks. In this forum the best practice for investigating corruption and fraud in an international context is discussed and developed further. The ninth such conference was held in Rome, Italy, on 9-11 June 2008.
- **International Group for Anti-Corruption Coordination (IGAC)**: This expert group operates under the aegis of UNODC in Vienna and is currently chaired by the Director General of OLAF. Its purpose is to improve the exchange of information between the institutions and bodies on anti-corruption and anti-fraud matters. It contributes to coordinating the efforts for implementation of the UNCAC.
- **Interpol Group of Experts on Corruption (IGEC)**²⁵: The group advises Interpol and other relevant bodies on fraud and corruption. It presently has 12 members including the Director General of OLAF. One of its most important results was the adoption by Interpol of Global Standards for the good conduct of officers during investigations and for the personal probity of police officers and investigators.

4.5 Mutual administrative assistance

Implementation of the mechanisms for mutual administrative assistance (MAA) in customs matters, such as those contained in protocols to EC trade and/or cooperation agreements is essential to the defence of legitimate commercial interests. OLAF, which itself applies these provisions as the legal basis for exchanging information in the context of operational enquiries at Community level, seeks to ensure that all preferential trade agreements concluded with third countries contain such provisions, as well as an anti-fraud provision designed to protect the Community's financial interests by providing for suspension of tariff preferences in the event of frauds or irregularities. OLAF negotiates these technical issues with partner countries under the coordination of the Commission which has overall responsibility for the Agreement concerned.

²⁵ <http://www.interpol.int/public/corruption/igec/default.asp>

Chart 22: State of play of Agreements containing MAA and/or anti-fraud provisions

| | Entered into force | Were signed | Are currently negotiated |
|--|---|---------------------------|---|
| Agreements containing MAA provision | Montenegro (01.01.08) | Serbia (29.04.08) | |
| | Japan (01.02.08) | Ivory Coast (26.11.08) | |
| | Bosnia & Herz. (01.07.08) | | |
| | Cariforum (except Haiti) (29.12.08) | | |
| EPAs (Economic Partnership Agreements) containing MAA and anti-fraud provisions | | | Southern African Development Community (SADC) |
| | | | Central Africa |
| | | | Eastern African Community (EAC) |
| | | | Eastern and Southern Africa (ESA) |
| | | | West Africa |
| | | | the Pacific group (PACP) |
| Free Trade/association agreements containing MAA and anti-fraud provisions | | | Central America |
| | | | the Andean Community |
| | | | India |
| | | | Korea |
| | | | Ukraine |
| (non-preferential) Partnership and Cooperation Agreements, providing for possible future conclusion of MAA provisions | | | Several ASEAN countries |

For the record²⁶, Regulation (EC) No 766/2008 of the European Parliament and of the Council of 9 July 2008 amends Council Regulation (EC) No 515/97 on mutual administrative assistance to ensure the correct application of the law on customs and agricultural matters.

The new Regulation creates a platform of services in the customs sector, namely a legal basis for a European data directory. The aim of this directory is to collect data commonly used in international trade for analysis purposes with a view to detecting operations presenting risks of irregularity in relation to customs and agricultural legislation. The directory will be accessible to the Member States.

In addition, amendments introduced via the Regulation establish analysis activity, both strategic and operational, as a new objective of the Customs Information System. To match the extended functionalities of the system, a new category of available information is also created, relating to goods detained, seized or confiscated. Last but not least, the new Regulation establishes a legal basis for the 1st Pillar FIDE.

4.6 Cooperation with European bodies in charge of police and judicial cooperation

In continuation of the Eurojust initiative to bring heads of EU organisations working in the area of Justice, Freedom and Security together, OLAF organised the third meeting of 'Heads of EU Justice and Home Affairs agencies' (JHA) on 18 June 2008²⁷. OLAF participates, in spite of not being formally an EU JHA agency, because of the relevance of this forum for OLAF's independent investigative role in the protection of EC financial interests.

²⁶ For more details, see the Report of the European Commission on the Protection of the Communities' financial interests for 2008.

²⁷ The 'EU JHA agencies' meeting comprise Eurojust, Europol, OLAF, the EU Joint Situation Centre, Frontex and CEPOL (the European Police College), plus Council working groups, such as the Police Chief Tasks Force and the Strategic Committee on Immigration, Frontiers and Asylum.

Based on the preparatory work of the OLAF-chaired technical meetings of the legal and data protection officers of the 'EU JHA agencies', held on 16 January and 22 May 2008, the 'Heads of EU JHA agencies' noted that the 'EU JHA agencies' consider each other as offering the same level of protection as regards the handling of confidential/classified information.

4.6.1 Eurojust



In 2008 OLAF continued to work towards making its cooperation with Eurojust more efficient under the previous Memorandum of Understanding signed in 2004. The Decision establishing Eurojust (version in force in 2008) indicates that Eurojust '*shall establish and maintain close cooperation with OLAF. To that end, OLAF may contribute to Eurojust's work to coordinate investigations and prosecution procedures regarding the protection of the financial interests of the Communities*'.

On 24 September 2008, OLAF and Eurojust concluded a Practical Arrangement on a further improved coordination and cooperation in the fight against financial fraud. For Eurojust and OLAF, it constitutes a further enhancement of their co-operation and collaboration, in accordance with their respective competences and tasks. The Practical Agreement contains in particular provisions for the exchange of general and personal data. The agreement is intended to stimulate more effective cooperation on operational cases of common interest. The opportunity must be taken wherever possible to overcome obstacles to cooperation whether at national or institutional level.

Since the establishment of the joint Liaison Working Group in 2004, cooperation on cases of common interest has increased. In 2008, OLAF was involved in five Eurojust cases and three coordination meetings were held.

Eurojust and OLAF also organised a joint conference on the international dimension of fraud and corruption that took place in The Hague on 3 and 4 March 2008. Participants included prosecutors, judges and high-level officials from competent national authorities of all Member States as well as liaison prosecutors from the USA and Norway.

OLAF is also permanent observer of the European Judicial Network (EJN) meetings hosted by Eurojust. In 2008, Olaf actively participated in one Presidency meeting held in Brussels and in the 29th and 30th Plenary Sessions of the Contact Points held in Ljubljana and in Paris.

4.6.2 Europol

Since the signing of the administrative arrangement with Europol in April 2004, regular meetings have taken place between members of OLAF intelligence units and their counterparts in the economic crime section of Europol. Bilateral relations with Europol have been strengthened, which is reflected in part by the initiation of negotiations for an administrative arrangement similar to that concluded with Eurojust.

Both OLAF and Europol work on combating cigarette smuggling and on the protection of the euro. The analytical resources of Europol combined with the established operational experience of OLAF should ensure the best possible service to the Member States and should avoid unnecessary duplication of efforts.



5 Corporate Governance

5.1 OLAF's organisational structure

Directorates A and B both deal with investigations and operations. Directorate C provides support functions for investigations and operations, such as intelligence, legal and technical advice, and follow-up on cases. It also draws on the Office's increasing operational experience to improve fraud prevention and other anti-fraud actions. A fourth Directorate (D) groups OLAF's general management and policy functions, but also contributes directly to operations by maintaining a dedicated database (the CMS) and other record systems.

Most of the resources are deployed in OLAF's core remit: investigations and operational activity. Three-quarters of OLAF staff²⁸ are occupied with tasks related to the Office's operational activity including administrative support for this activity. On 31 December 2008 there were 475 persons working in OLAF of whom 355 were statutory staff (officials and temporary agents)²⁹. Twenty posts were vacant at the time.

OLAF's organisation chart as at 29 April 2009 can be found in Annex I.

➤ *OLAF's Supervisory Committee*



A Supervisory Committee³⁰ composed of five outside experts provides independent oversight of OLAF's operational activities, so as to guarantee OLAF's independence in the conduct of investigations. The Committee monitors the implementation of OLAF's investigative function without intervening in operational activity. OLAF cooperates with the Committee under the authority of the Director-General.

On 5 September 2008, the Supervisory Committee delivered its Activity Report covering the period from June 2007 to May 2008.

The Director-General of OLAF emphasised in his reply to the Report that he appreciated the constructive approach pursued by the Committee.

In addition, the Committee issued four Opinions on specific issues in 2008, one on 'Prima Facie Non-Cases', one on the OLAF Annual Management Plan, one on 'OLAF's Preliminary Draft Budget for 2009' and one on the OLAF 'De Minimis Policy', for which OLAF provided a follow-up.

The Opinion on "Prima Facie Non-Cases" confirmed OLAF's practice of handling these cases as correct. OLAF implemented the majority of the recommendations made in the Opinion on the OLAF Annual Management Plan for its new AMP 2009.

5.2 The Investigations and Operations Executive Board

The Investigations and Operations Executive Board ('the Board') assists the Director-General by giving advice on the handling of cases. Board members include representatives of the relevant units.

The Board considers and advises the Director General on each major stage in the lifecycle of cases: opening of new cases; decisions on "non-cases"; changing case types; closing; opening new follow-up paths; and closing follow-up. The Director-General or one of the Directors acting on his behalf decides whether to accept the recommendation.

²⁸ Approximate figure based on an estimate of the time devoted by each member of staff to a task which contributes to the achievement of the Office's operational activity. Some OLAF staff carry out both operational tasks and tasks which are related to OLAF's other activities.

²⁹ General remark: the above data rely on the snapshot of Commission personnel actually employed in OLAF as of 31/12/2008. These data do not constitute full-time-equivalent units throughout the year.

³⁰ http://ec.europa.eu/dgs/olaf/sup_comm/index_en.html

Once the operational activity has been completed in an open case in accordance with specific formal procedures and approved by the Board, the case moves to the follow-up stage³¹ where this is necessary.

Where information is received which clearly and unequivocally does not fall within the competence of OLAF, then the relevant Head of Unit may propose not to refer the information for evaluation. This information does not reach the Board and is classified as a “**non case prima facie**”. This is what is known as the **simplified procedure**.

5.3 The Case Management System (CMS)

The CMS is used by operational staff to manage operational cases and related activities. The system contains information relating to OLAF’s new, ongoing and closed operational cases. It is the primary source of operational information within the Office; this information is also used for intelligence and management purposes. Monthly management reports are provided to the management team.

Access to the data contained within the CMS is strictly controlled on a need-to-know basis: staff may only have access to CMS data if there is a compelling business need (see also point 5.5.1).

5.4 External activities and internal training

5.4.1 OLAF conferences

OLAF itself organised six conferences and seminars in 2008 for external training purposes in priority areas such as cooperation with candidate countries, investigations in cooperation with national services of countries in Africa and the Middle-East, communication and cooperation with national prosecutors:

- 2nd Regional Conference on Fraud and Aid Funds: *"The protection and optimisation of public funds: co-operation between national and international authorities"*, 14-17 April 2008, Cape Town, South Africa
- 6th EU Conference of Fraud Prosecutors, 24-26 September, Madrid, Spain
- 8th Training Seminar of the OLAF Anti-Fraud Communicators Network (OAFCN), 13-15 October, Nicosia, Cyprus
- 2008 Anti-Fraud Coordination Service (AFCOS) Conference, 13-14 November, Malta
- Conference on ‘*Mutual administrative assistance in customs matters within the framework of the Euro-Mediterranean partnership*’, 3-5 November, Tangiers, Morocco
- EUROCANET (European Network on VAT Carousel Fraud) Seminars, 16-17 June, Vilnius, Lithuania and 25-26 November, Vienna, Austria.

5.4.2 Hercule programme

The Hercule programme was set up to promote activities to protect the Communities’ financial interests.³² In 2007 the European Parliament and the Council decided to extend the programme for the period 2007-2013³³, with a budget of €4 million (€3.8 million for 2008). It includes a new strand to provide financing for training measures and the purchase of equipment to combat cigarette smuggling (see also section 3.7).

The entire budget for 2008 was committed under the project financing agreements, along three main lines:

- **IT and databases:** €2.7 million (procurement)

³¹ In some circumstances follow-up activities may take place before the formal closure of the investigation stage.

³² http://ec.europa.eu/anti_fraud/programmes

³³ Decision No 878/2007/EC on the Hercule II programme (OJ L193, 23.7.2007).

- **Technical Assistance for law enforcement agencies:** €7.1 million (grants). The aim was to provide necessary technical support and expertise to the competent law enforcement authorities such as police and customs services in the Member States and to assist them in their anti-fraud activities, e.g. one call for proposals launched in 2008 concerned the purchase of X-ray scanning equipment for detecting illicit consignments of tobacco products. More intensive training directly linked to these activities was also included, as well as computer-forensics. For example, the OLAF Computer Forensic team training hosted an internationally recognised forensic computer training course for 70 participants from 45 law-enforcement agencies in 27 Member States.

- **Training:** €4 million (grants and procurement) - including €0.6 million for the European Lawyers Associations. The majority of the training projects had a pedagogic purpose. Ten large training events, which had been selected in 2007, were carried out in 2008, helping to raise awareness of the fight against EU fraud and enhancing cooperation. In 2008, only nine proposals fulfilled the selection and award criteria.

5.4.3 Internal Training

In 2008, OLAF put renewed emphasis on internal training, in particular by providing tailor-made courses for investigators and for new staff. More than nine training days per person were spent by OLAF staff in training for all categories: general, language, informatics both at local and central level. This is seen as an important success, as the total number of days represented an increase of 23% from 2007.

Specialised investigative training sessions focused on interviewing techniques, on the spot checks, specific language courses, and improvement of drafting skills.

In the framework of equal opportunities, a session on 'Best practices for selection interviewing for managers' was organised as well as 'Equal opportunities for women and men'. All staff attended the introduction to data protection training and two 'Away days' for OLAF management were also set up.

5.5 Protecting citizens' rights and communication

5.5.1 Data protection and privacy

Compliance with Regulation (EC) 45/2001 on data protection³⁴ is a comprehensive and challenging aspect of OLAF's operational 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, staff are instructed to comply with the rules on the protection of personal data laid down in Regulation (EC) 45/2001, in particular the requirements on data quality, providing information to the data subject, rights of the data subject regarding access, rectification, blocking, and erasure.

As a data subject, the person concerned has the right of access to his or her personal data contained in the file. However, this right of access may be deferred if access would be harmful to the investigation or operation. This is decided on a case-by-case basis. For OLAF, the most important exemptions and restrictions that may apply in a given case are the need to safeguard 'the prevention, investigation, detection and prosecution of criminal offences' and 'an important economic or financial interest of a Member State or of the European Communities, including monetary, budgetary and taxation matters.'



OLAF treats the protection of personal data as an issue of particular priority. The European Data Protection Supervisor (EDPS) has acknowledged OLAF's progress in this area. OLAF has developed its data protection support tools and activities and has provided training for its staff. Data processing operations presenting specific risks have been sent for prior checking to the EDPS, and the EDPS has issued opinions on all OLAF prior checking. OLAF is working to incorporate all recommendations of the EDPS into its daily procedures.

³⁴ 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 January 2001

5.5.2 OLAF's cooperation with the Ombudsman

OLAF is committed to respect for ethics and to prevention of maladministration. In April 2008, a meeting was organised to discuss at the level of the Director-General of OLAF and the European Ombudsman the specific steps which should be taken to establish an improved relationship based on mutual trust.

Most of the new complaints sent directly by the Ombudsman to OLAF concerned alleged failure to reply to correspondence and were dealt with through the informal upstream inquiry procedure agreed during that high-level meeting.

One complaint concerned the scope of OLAF's powers and another raised the issue of the scope of the mandate of the Ombudsman. OLAF also replied to further requests from the Ombudsman in relation to complaints previously introduced. In total, the Office replied to ten requests in 2008.

5.5.3 Communication and public relations: reaching out to the citizens

OLAF and its operational partners are convinced that information and communication must continue to be used as a means of preventing and combating fraud and corruption. Therefore OLAF supports its operational independence with its own information and communication strategy. The latter must be implemented in a manner which respects the Office's obligation to safeguard investigations and operations so as to respect the rights of the individual, in particular the presumption of innocence, within the framework prescribed by international, Community and national law. During the reporting period, the Office maintained its firm line of balancing these interests.

OLAF launched various information and communication activities in order to inform about the Office's fight against fraud and corruption.

An EU-wide Flash Eurobarometer survey on "*Citizens' perceptions of fraud and the fight against fraud in the EU27*" was carried out in June 2008. Its objective was to study EU citizens' attitudes and perceptions about the issues of fraud and corruption in the EU. Asked how they perceive the occurrence of fraud and corruption in their own Member State and at EU-level respectively, seven out of 10 respondents thought that state budget fraud happened quite frequently within their own country and 63% of all EU respondents believed that corruption occurred within their national government. The corresponding percentages concerning the perceptions of EU budget fraud and corruption in the EU Institutions were significantly lower: 54% and 44% respectively.



On the public relations front, OLAF organised a seminar of the OLAF Anti-Fraud Communicators' Network (OAFCN) focusing on the use of the new generation internet, co-hosted by the Ministry of Finance of Cyprus in Nicosia from 13 to 15 October 2008. Other main activities undertaken together with OLAF's operational partners in the framework of the OAFCN were the second joint participation in the European institutions' Open Day in June in Brussels as well as two OAFCN meetings.

Over the year, OLAF replied to more than 600 media requests and issued 16 press releases. Another 26 additional press releases mentioning the Office were published by OLAF's operational partners. Press conferences were organised in Brussels with the UNODC to mark International Anti-Corruption Day on 8 December, and with EUROJUST on the occasion of the signing of a Practical Agreement on further improved co-ordination and co-operation in the fight against financial fraud, on 24 September. OLAF participated in the joint press conference of the Procurator's Office of the Republic of Bulgaria and the Bulgarian Club of Journalists Against Corruption on the project "*Adopting the OLAF Communicators' Network Experience and the Newest European Models for Partnership with the Court Authority*", in Sofia on 27 October.

In 2008 more than 70 visits to OLAF were organised, involving over 900 persons in total, mainly from customs, investigation services and public prosecutors' offices in Member States and other countries. Additionally, delegations were welcomed to OLAF from a variety of public bodies, including Europol and Eurojust.

The OLAF website continued to be the basic tool of the Office's communication and information policy. The main pages of the OLAF site are available in all official languages. The OLAF website recorded over 1 million visits in 2008.

5.6 FOCUS on Recent Case Law regarding OLAF activities³⁵



Some judgments by the European Court of Justice and the Court of First Instance have a direct or indirect bearing on combating fraud, corruption and other illegal activities affecting the financial interests of the Communities.

The salient points of the courts' interpretation of the law on the components of EU fraud-prevention measures can be identified in the text of these judgments, and can be grouped under the following headings: institutional framework; investigative activity; follow-up on investigations.

➤ Institutional framework

In institutional terms, Community case law in many respects confirms the validity of the legal framework in place since 1999.

It recognises the protection of the Communities' financial interests as an autonomous objective of the Treaties. As such, it is central to the provisions introduced by the Community legislator and legitimates the body created for this purpose (OLAF), which is integrated in the Commission's administrative and budgetary structures and independently exercises autonomous investigative functions.

This specific investigative function is what distinguishes the anti-fraud system. In marked contrast to general monitoring activities such as financial control, OLAF's investigative function focuses on checking serious suspicions of fraud, corruption or other illegal activities affecting the Communities' financial interests.

Such investigations must comply with general and specific rules, identified in the case law. They must fully comply with Community rules, including those on human rights and fundamental freedoms, those applicable to the functions of members of the Institutions and those set out in the Staff Regulations of EC officials.

Issues concerning the situation of members of the Institutions have given the Community courts occasion to set out certain requirements and interpret the obligations arising from those members' positions as imposing on them the most rigorous standards of behaviour.

➤ Investigative activity

For both internal and external investigations, Community case law places fundamental emphasis on honouring the guarantees attached to the exercise of OLAF's powers of investigation.

Among these guarantees, it highlights:

- procedural guarantees for those under internal/external investigation; the courts consider that these are an essential procedural requirement for investigations, and that failure to honour them undermines the legality of the final decision³⁶.
E.g. during an internal investigation OLAF must generally invite the persons concerned to express their views about the facts. Further, OLAF must take measures to ensure that no information concerning its investigations is leaked;
- impartiality in the conduct of the investigation, which requires in particular that the investigators should not be involved in any conflict of interest;
- rigour in seeking to ascertain the truth, failing which the Community may be subject to non-contractual liability;
- observance of the presumption of innocence in the context of an OLAF investigation when transmitting information to third parties and communicating with the public;
- protection of whistleblowers, who are covered by the guarantees contained in the Staff Regulations and continue to be covered by them even after the investigation launched on the basis of the information they provided is closed.

³⁵ The purpose of this section is only informative. It does not intend to provide any legal interpretation.

³⁶ See in particular: Judgment of the Court of First Instance of 12 September 2007 in Case T-259/03 *Nikolaou v Commission* and Judgment of the Court of First Instance of 8 July 2008 in case T-48/05 *Franchet & Byk v Commission*.

Beyond the emphasis on procedural guarantees, the case law also covers the final phase of the investigation. The Community courts deem the final report drawn up at the end of an (internal/external) investigation and sent to the competent authorities/institutions to be no more than a set of recommendations or opinions without mandatory legal effect on the persons concerned. However, in the light of the recent judgment of the Civil Service Tribunal (F-5/05 and F-7/05 *Violetti and others v. Commission* of 28 April 2009), a decision by OLAF to send information obtained in an internal investigation within the Commission to national judicial authorities could constitute an act adversely affecting an official. At the time of press, this decision was still subject to an appeal.

The extra-contractual liability of the Commission towards a person concerned by an OLAF investigation may derive from an act which results in a serious violation of legal principles and statutory rules that have as their effect to protect the rights of the individual, like the presumption of innocence and the right to be heard.

➤ *Follow-up on investigations*

The Community courts have set out a number of principles governing Community powers in this field and the system of penalties guaranteeing real and effective protection of the EC's financial interests.

Thus case law has enhanced the Community's traditional powers to impose administrative penalties to prevent and combat irregularities damaging to the Community's finances by recognising that the Community legislator is, by way of exception, entitled to take measures that relate to the criminal law of the Member States where this is indispensable to guarantee that the rules laid down for a specific Community policy are fully applied.

6 Budget

Chart 23 outlines the areas of expenditure within this budget. OLAF's administrative budget³⁷ was over €53 million in 2008. The 'personnel' heading accounted for over 60% of total administrative expenditure.

Chart 23: Development of the OLAF administrative budget, 2004 to 2008

| Item | Budget 2004 (€ million) | Budget 2005 (€ million) | Budget 2006 (€ million) | Budget 2007 (€ million) | Budget 2008 (€ million) |
|--------------------------|----------------------------|----------------------------|----------------------------|-------------------------------|-------------------------------|
| Personnel | 26.7 | 25.2 | 32.09 | 32.62 | 33.44 |
| External personnel | 5 | 6.2 | 2.6 | 2.98 | 2.77 |
| Management Expenditure | | 2.2 | 2.6 | 2.92 | 3.17 |
| Furniture/infrastructure | 8.6 | 10.5 | 10.9 | 11.6 | 11.98 |
| Anti-fraud actions | 2 | 1.2 | 1.7 | 1.7 | 1.7 |
| Supervisory Committee | 0.2 | 0.2 | 0.2 | 0.2 | 0.2 |
| Total | 42.5 | 43.2 | 50.09 | 52.02 | 53.27 |
| Percentage committed | 93% | 92% | 93% | 94% | 98% |

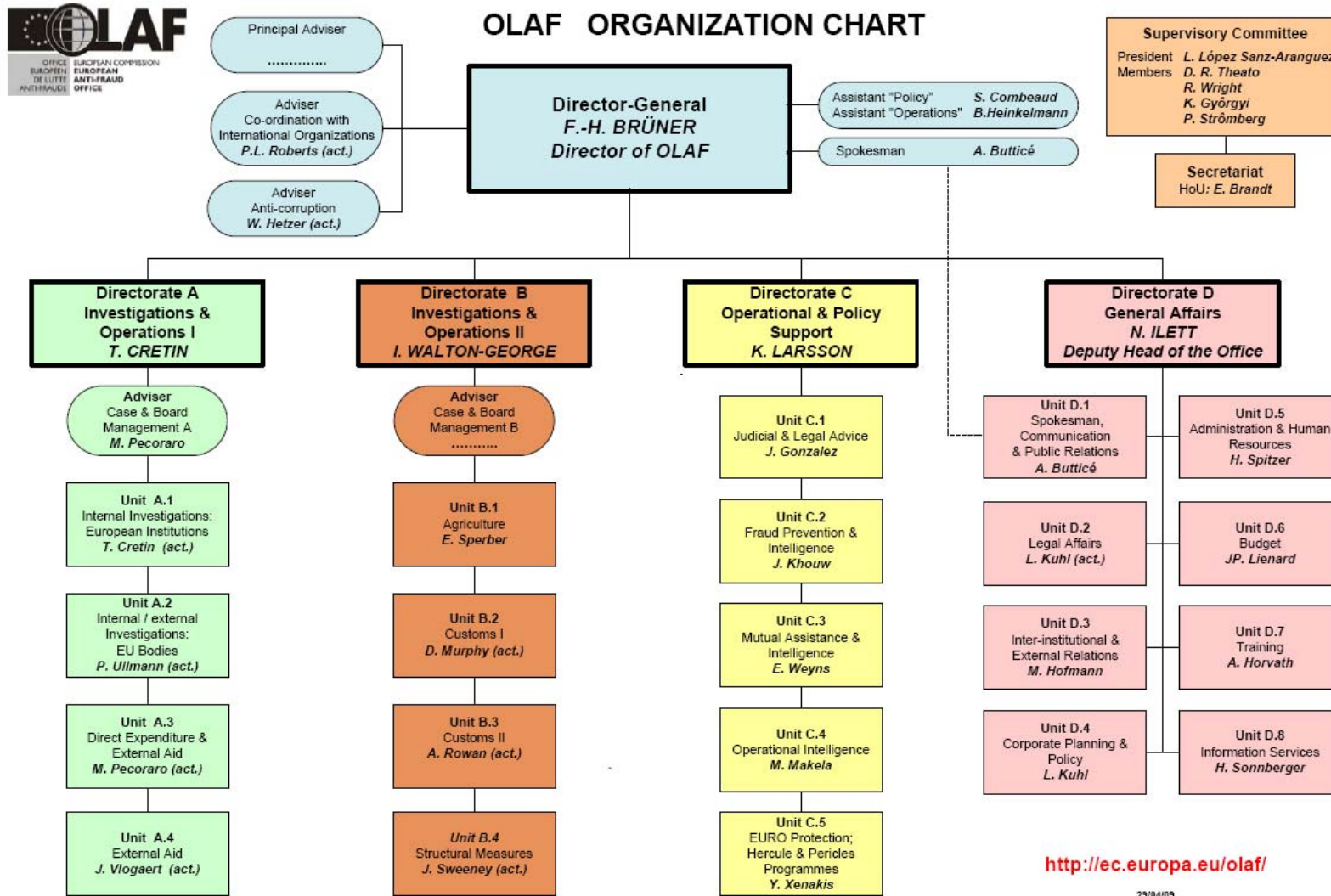
Chart 24 shows OLAF's operational budget for the last five calendar years. It was over €21 million in 2008. The 50% increase from 2006 to 2007 was mainly due to the entry into force of the Hercule II Programme.

Chart 24: Development of the OLAF operational budget, 2004 to 2008

| Budget line | Budget 2004 (€ million) | Budget 2005 (€ million) | Budget 2006 (€ million) | Budget 2007 (€ million) | Budget 2008 (€ million) |
|--|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| 24.0201 General anti-fraud measures | 3.3 | 2.4 | 3.8 | 13.8 | 13.8 |
| 24.0202 Pericles | 1 | 1 | 1 | 1 | 1 |
| 24.0203 Anti-fraud information system (AFIS) | 4.3 | 4.8 | 4.8 | 5.8 | 6.5 |
| 24.0204 Hercule | 3.9 | 3.9 | 3.9 | n/a | n/a |
| Total | 12.5 | 12.1 | 13.5 | 20.6 | 21.3 |
| Percentage committed | 92% | 94% | 94% | 98% | 95% |

³⁷ While Title 24 of the European Commission's budget includes OLAF's total budget, OLAF's administrative budget is set out in Annex COM III to the budget

OLAF's Organisation chart on 29 April 2009



Glossary

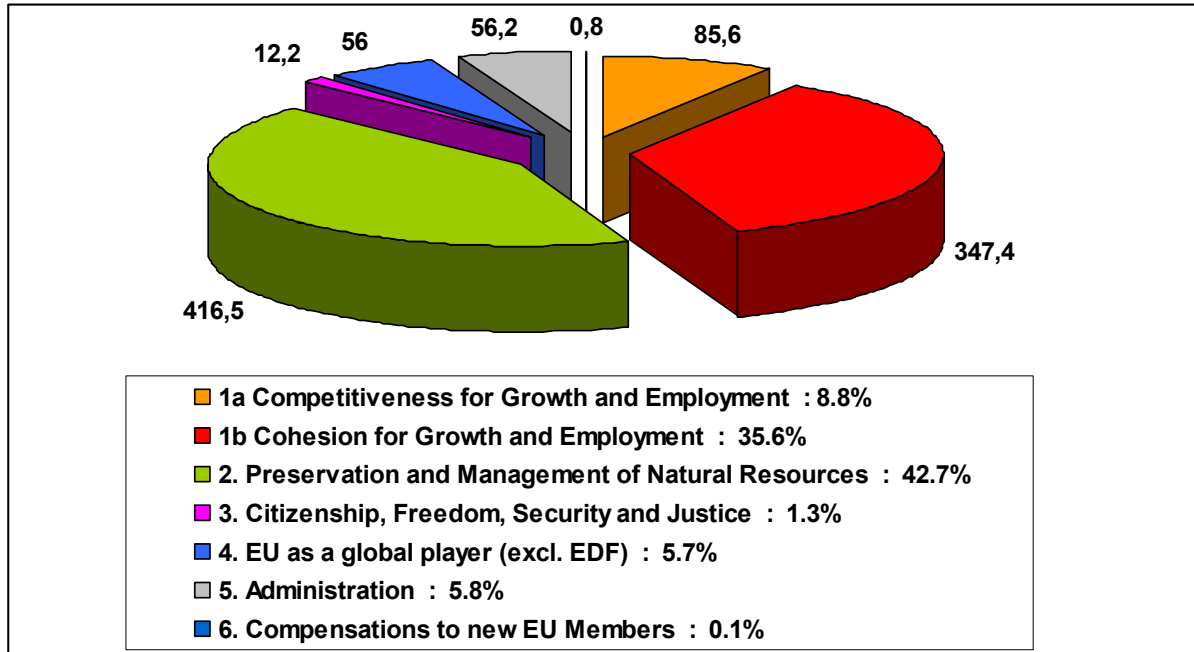
| | |
|------------------|--|
| ACP | African, Caribbean and Pacific Group of States |
| AFCOS | Anti-Fraud Coordination Service |
| AFIS | Anti-Fraud Information System |
| CEPOL | European Police College |
| CIS | Customs Information System |
| CMS | Case Management System |
| DCI | Development Cooperation Instrument |
| ECA | European Court of Auditors |
| ECB | European Central Bank |
| EDPS | European Data Protection Supervisor |
| EIDHR | European Instrument for Democracy and Human Rights |
| ENPI | European Neighbourhood Policy Instrument |
| ERDF | European Regional Development Fund |
| ESF | European Social Fund |
| EUROCANET | Group of experts on VAT carousel fraud |
| FIDE | European Customs Files Identification Database |
| ICI | Industrialised Countries Instrument |
| IfS | Instrument for Stability |
| IMF | International Monetary Fund |
| IPA | Instrument for Pre-Accession Assistance |
| JHA | Justice and Home Affairs |
| JTI | Japan Tobacco International Agreement |
| OAFCN | OLAF Anti-Fraud Communicators' Network |
| OLAF | European Anti-Fraud Office |
| PMI | Philip Morris International Agreement |
| SAPARD | Special Accession Programme for Agricultural and Rural Development |
| UCLAF | Unit for the Coordination of Fraud Prevention |
| UNDP | United Nations Development Programme |
| UNHCR | United Nations High Commissioner for Refugees |
| UNODC | United Nations Office for Drugs and Crime |
| UN OIOS | United Nations Office of Internal Oversight Services |
| UNRWA | UN Relief and Works Agency for Palestine Refugees in the Near East |
| VAT | Value Added Tax |
| WHO | World Health Organisation |

Map of the European Union



Structure of the EU Budget

*The European Union financial framework for 2007-2013
(commitment appropriations – EUR billion adjusted for 2010)*



The EU revenue structure in 2008 (EUR billion)

