

Report of

# the European Anti-Fraud Office

Seventh Activity Report  
for the period 1 January 2006 to 31 December 2006



## **Foreword by the Director of OLAF, Franz-H. Brüner**

Following my reappointment for a second 5-year term in February 2006, I was able to proceed with the reorganisation of the Office to take account of the lessons learned in the previous 6 years during which OLAF had more than doubled in size and greatly increased its efficiency.

The objective of the reorganisation is to place more emphasis on OLAF's operational work, to improve communication within the Office, and to strengthen its management. The new structure came into effect on 1 September 2006. It provides for two operational and investigation Directorates, one dealing with investigations internal to the Institutions and other bodies and with fraud in expenditure programmes managed directly by the European Institutions; and the second dealing with investigations and operations in those areas of the Budget where responsibilities are shared between the Commission and the Member States (Own Resources, agriculture and structural actions). A third Directorate brings together the units which provide specialist operational support, such as intelligence, legal advice on criminal law, and the infrastructure for joint Customs operations. The fourth Directorate covers personnel, finance, management, information services and most of the policy issues on which I report to the College.

At the same time, negotiations were launched with the Commission and with the Staff Associations to identify a mutually acceptable arrangement for assuring the continuity of OLAF's staffing. This was essential, since large numbers of operational staff employed on fixed term temporary contracts were approaching the end of those contracts or were under pressure to return to national administrations. I am pleased to say that a solution was found early in 2007 in the form of a package of measures which included both a mechanism for giving qualified OLAF temporary staff indefinite contracts and the gradual reduction in the ratio of temporary to permanent staff. This agreement should end the uncertainties and instability about future staffing which were increasingly disrupting the operational work of the Office. In addition, it has at last proved possible to fill a significant number of vacant posts following the completion of various selection procedures. Priority was given to the recruitment of staff from the new Member States.

These developments, taken together, mark the end of what has been for OLAF a period of transition between the initial difficult years after the Office was set up and its transformation into a mature organisation which is consolidating the progress that it has made in the fight against fraud to the detriment of the EU's financial interests.

In 2006, for the first time, the number of investigations which OLAF conducted on its own account equalled the number of cases in which OLAF was assisting Member State authorities. I expect to see yet more concentration of OLAF resources in the coming years on major, complex fraud cases, both within the Institutions and in sensitive areas of the Budget such as procurement and external aid. Greater and more effective cooperation both between European bodies and internationally will be an essential part of this process.

I am delighted to say that, within Europe, OLAF's cooperation with Europol and Eurojust in operational matters is increasing. Beyond Europe, OLAF has forged an effective partnership

with its sister agencies in the United Nations and the World Bank, reinforced by the secondment of experienced OLAF staff. OLAF's ability to add value in the coordination of international operations is now well established.

On the revenue side of the Budget, where very large sums of money are at stake, I am pleased to report that the agreement reached between the Commission and Philip Morris on the prevention of cigarette smuggling is working well. All but one Member States have now joined the agreement and are benefiting both from the increase in cooperation in suppressing illegal cigarette trafficking and from the flow of payments provided for by the agreement. However, the refusal of some Member States to allow OLAF the means by which to demonstrate its potential in the fight against VAT fraud is as disappointing as it is difficult to understand.

Finally, I would like to thank the members of OLAF Supervisory Committee for their support, encouragement and advice. Since their appointment in November 2005, the members of the Committee have taken a close interest in all aspects of OLAF's work, making a constructive contribution both to the improvement of operational procedures and to the quality of management. The Committee remains an essential element in the defence of OLAF's operational independence.

F.H.Brüner

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# **1 OLAF'S MISSION AND WORKING METHODS**

## **1.1 Mission statement**

The mission of the European Anti-Fraud Office (OLAF) is to protect both the financial interests of the European Union, and therefore of its citizens, and the reputation of the European Institutions. It achieves this by investigating fraud, corruption and any other illegal activity affecting those interests, and misconduct within the European institutions; by assisting Community and national authorities in their fight against fraud; and by means of deterrence, prevention and strengthening legislation, making it more difficult for fraud and irregularities to occur and so contributing to public trust in the European project.

OLAF performs its activities with integrity, impartiality and professionalism respecting individuals' rights and freedoms.

## **1.2 The main competencies of OLAF**

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) N° 1073/99<sup>1</sup>. The Community legal basis for action against fraud is established in Article 280 of the EC Treaty.

- OLAF is empowered to conduct internal investigations based on Regulation 1073/99, and on the internal decisions which the Community institutions and bodies have adopted in accordance with the Inter-institutional Agreement's Model Decision<sup>2</sup> concerning the terms and conditions for internal investigations conducted by OLAF.
- OLAF is empowered to conduct external investigations based on the applicable regulations, and in particular on Regulation (Euratom, EC) N° 2185/96 which allows OLAF to conduct on-the-spot checks and inspections on the premises of economic operators who may have been involved in, or concerned by, an irregularity, and on the relevant sectoral rules. OLAF's investigators also comply with the national procedural rules of the Member State in which they conduct an investigation. They work in close cooperation with the competent Member State and third countries authorities. The specific legal basis is always identified before an investigation is launched.
- OLAF also organises close cooperation between the competent authorities of the Member States in order to coordinate their investigative activities. OLAF provides Member States, accession countries and third countries with the necessary support and technical know-how to help them in their anti-fraud activities, and cooperates closely with international organisations with parallel interests.

Since OLAF is part of the Commission, it is able to exercise Commission powers. However, OLAF is endowed with budgetary and administrative autonomy, designed to make it operationally independent. The legal framework includes two structures to reinforce OLAF's

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<sup>1</sup> OJ L 136, 31. 5. 1999, p. 1 and 8. Where reference is made to Regulation 1073/99, it also applies to the equivalent Euratom Regulation .

<sup>2</sup> OJ L 126, 31. 5. 1999, p. 15.

operational independence: guarantees associated with the post of OLAF's Director General, and the Supervisory Committee.

As regards its investigative activities, OLAF is independent of the Commission. The opening, conduct and closing of a case is a matter under the exclusive competence of the Director General of OLAF. OLAF investigators operate under his hierarchical control.

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

A Supervisory Committee composed of outside experts provides independent oversight of OLAF's operational activities. The Committee monitors the implementation of OLAF's investigative function without interfering with operational activity. OLAF accordingly cooperates with the Committee under the authority of the Director General.

### **1.3 OLAF's new organisational structure**

OLAF was restructured in September 2006 to take account of the main lessons drawn from the experience gained since its creation in 1999. The new Directorates A and B both now deal with investigations and operations. Each operational Director is now assisted by an Adviser responsible for Case and Board Management.

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

Most of the resources are now deployed in OLAF's core remit: investigations and operational activity. About 70% of OLAF staff<sup>3</sup> is occupied with tasks related to the Office's operational activity including administrative support for operational activity (63% if administrative support staff are excluded). On 31st December 2006 there were 388 persons working in OLAF<sup>4</sup> of whom 313 were statutory staff.

OLAF's new organisation chart can be found in the Annexe I.

### **1.4 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 Directorates. The Board considers evaluation reports prepared by the relevant units

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<sup>3</sup> 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 carries out both operational tasks and tasks which are related to OLAF's other activities. This is the case in particular of units working on follow-up, administration and intelligence.

<sup>4</sup> Excluding 29 IT staff employed from contractors.

and recommends whether or not a case should be opened. The Director General or one of the Directors acting on his behalf decides whether to accept the recommendation.

The Board considers and advises the Director General on each major stage in the lifecycle of cases: opening; decisions on “non-cases”; changing case types; closing; opening new follow-up paths; and closing follow-up. Where relevant the Board is informed of the associated activities of external investigative, judicial and other partners associated with a case.

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 stage<sup>5</sup> if necessary. Follow-up includes various activities designed to ensure that the competent Community and national authorities have carried out the administrative, financial, legislative, judicial and disciplinary measures recommended by OLAF. Once all measures have been taken and the follow-up of the case has been completed, the follow-up stage is formally closed and any associated EC entities<sup>6</sup> or other parties are informed of the outcome.

Since the reorganisation of OLAF in September 2006, the Board has met in two separate formations, one for each operational Directorate.

#### **A. Evaluation of initial information**

Every item of initial information received by OLAF is assessed in order to make a recommendation as to whether a case should be opened and, if so, which category of case. The initial evaluation of a case should normally be completed within two months of receiving the initial information, but can be extended if circumstances so justify.

#### **B. When the Board recommends the opening of a case:**

When the Board recommends that a case should be opened, it is classified under one of the following four categories:

- **Internal investigations:** Internal investigations are administrative investigations within the Community institutions and bodies for the purpose of detecting:
  - fraud, corruption, and any other illegal activity affecting the financial interests of the European Communities;
  - serious matters relating to the discharge of professional duties that constitute a dereliction of the obligations of officials and other servants, members of the institutions and bodies, heads of offices and agencies, or members of staff, and liable to result in disciplinary or criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or members of the staff of institutions, bodies, offices or agencies not subject to the Staff Regulations.

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<sup>5</sup> In some circumstances follow-up activities may take place before the formal closure of the investigation stage.

<sup>6</sup> Institutions, bodies, offices and agencies.

- **External investigations:** External investigations are administrative investigations outside the Community institutions and bodies for the purpose of detecting fraud or other irregular conduct by natural or legal persons. They may be carried out under either horizontal or sectoral legislation. Cases are classified as external investigations where OLAF is providing the majority of the investigative input.
- **Coordination cases:** OLAF contributes to and focuses investigations carried out by national authorities or other Community departments by facilitating and stimulating the gathering and exchange of information and contacts, as well as by encouraging authorities to work together through coordinated action. This ensures operational synergy between the relevant national and Community departments.
- **Criminal assistance cases:** Criminal assistance cases are cases within the legal competence of OLAF in which competent authorities of a Member State, candidate country or third country carry out a criminal investigation and request OLAF's assistance or OLAF offers its assistance. No investigation activities may be undertaken.

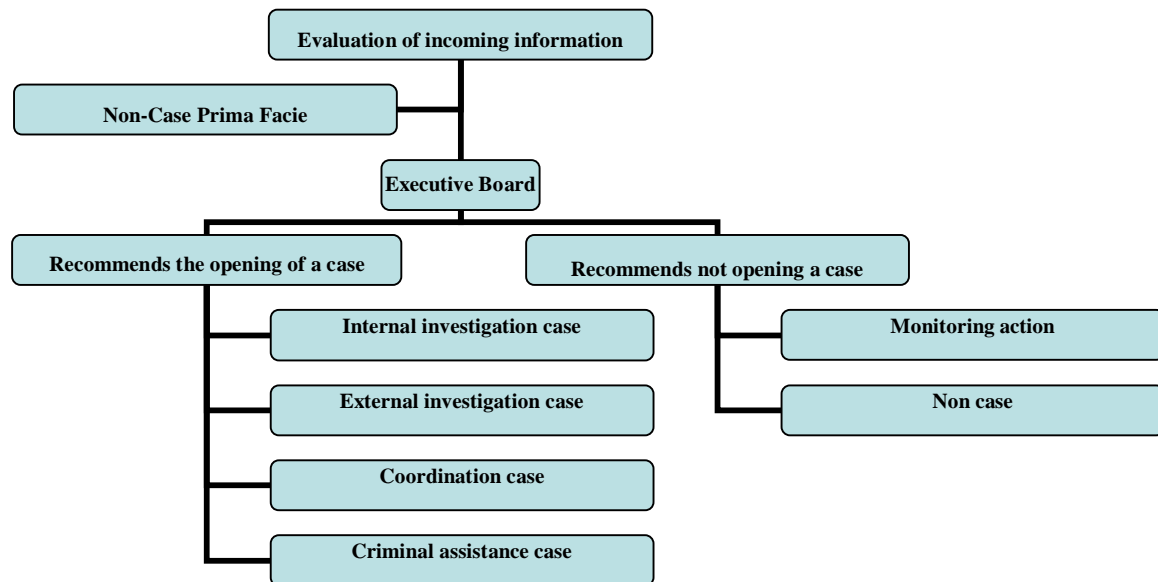
### C. When the Board recommends not to open a case

If the Board is of the opinion that a case should not be opened, it may recommend either undertaking a monitoring action or classifying the matter as a “non- case”:

- **Monitoring action:** OLAF may decide not to open an external investigation but rather to monitor investigations carried out by national authorities, when the financial interests of the European Community are at stake. Monitoring actions are those where OLAF would be competent to conduct an external investigation, but in which a Member State or other authority is in a better position to do so (and is usually already doing so). Monitoring actions are passed directly to the authority deemed competent to handle them. No OLAF investigation resources are required, but, as the interests of the EU are at stake, OLAF will follow up, via the appropriate follow-up unit, with requests for reports on developments at regular intervals. Updates would normally be requested at least once every six months. Once a monitoring action has been opened, control of this action within OLAF passes directly to the appropriate follow-up unit. If the follow-up units consider that there are indications that the Member State or other authority is not dealing with an individual case in an appropriate way, then the matter should be referred back to the operations Directorate with a clear recommendation for re-evaluation on the basis of specific facts. No investigation activities may be undertaken.
- **Non-cases:** A matter is classified as a non-case where there is no need for OLAF to take any investigation, coordination, assistance or monitoring action. Non-cases result from evaluations that conclude that EU interests appear not to be at risk from irregular activity, or other relevant factors indicate that no case should be opened. This process may result in the transmission to Member States of information about possible offences not related to the protection of EU interests.

Where information is received which clearly and unequivocally does not fall within the competence of OLAF, then the responsible 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**.

The diagram below presents the whole process from the initial stage in which the information is received by OLAF to the final stage in which the decision is adopted by the Director General.



## 1.5 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 produced and circulated to the management team. These reports were restructured in 2006 to allow managers to focus on key performance indicators, which were revised after the recommendations of the European Court of Auditors (ECA) in its report 1/2005.

The CMS consists of the following modules:

- The **Case Module** provides a single source of case-related information covering the work of all operational and follow-up units. Case handlers can use this part to manage their cases through each operational phase, to generate standard letters and notes and to organise electronically all case related documents.
- The **Intelligence Request Module** is used to manage all requests to the intelligence units, including both those originating from within OLAF and those originating from external partners;
- The **Investigations and Operations Board Module** (see paragraph 1.4) is used by the management team to manage weekly meetings of the Investigations and Operations Executive Board. It facilitates preparation, circulation and follow-up of documents;
- The **Mutual Assistance Module** is split into two sub-modules: the first is used to organise and record the information OLAF sends to the Member States, and to show the progress of investigations that take place in the Member States; the second is an address book that

records the names and coordinates of the various contact persons in the Member States and third countries;

- The **Legal and Judicial Advice Module** is used to manage and record internal requests for legal advice. This module enables case-handlers to request advice on specific cases and gives the legal experts access to the relevant case file, thus ensuring that advice can be based on a full understanding of all the issues concerned;
- The **Grefte Library Module** is used to manage the transmission of original case-related documents within OLAF. These documents are normally retained centrally by the OLAF Grefte under the supervision of the Document Management Officer.

Access to the data contained within the CMS is strictly controlled.

### **1.6 Reform of Regulation (EC) N° 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) 1073/1999 and Council Regulation (Euratom) 1074/1999 confer on OLAF both powers to conduct internal investigations and all of the Commission's powers to conduct external investigations

On 24 May 2006, the Commission adopted a proposal for the amendment of this Regulation<sup>7</sup>. This proposal is aimed at improving the governance and effectiveness of the Office and its procedures. It is currently being examined by Parliament and the Council under the co-decision procedure. Revision of OLAF's legal framework should strengthen the legal basis and procedural safeguards for the activities of the Office.

### **1.7 The implementation of recommendations made by the European Court of Auditors in its report on the European Anti-Fraud Office**

Special report n°1/2005<sup>8</sup> concerning the management of the European Anti-Fraud Office, adopted by the Court of Auditors on 9 June 2005, put forward a number of recommendations for improving of the organisation and working methods of OLAF. 2006 was the first complete year after the adoption of this Report. OLAF made considerable effort to address the challenges identified by the Court, and a large part of the recommendations have already been implemented.

The organisational structure of OLAF has been changed to enable it to focus on core activities and to improve the management and supervision of its operational work (see paragraph 1.3). In order to enhance the efficiency of operations and investigations, OLAF has refined performance indicators against which the achievement of objectives is measured and has improved operational statistical data and final reporting. Actions are also being taken to

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<sup>7</sup> 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.

<sup>8</sup> Special report n°1/2005 concerning the management of the European Anti-Fraud Office (OLAF), together with the Commission's replies. OJ C 202, 18.8.2005

control the average duration of cases. The limited strategic intelligence resources are being targeted in particular at the identification of high risk sectors where new cases may be identified. Training, particularly of investigators, has been increased.

Some issues remain to be tackled in 2007, mainly reassignment, within the European Commission, of the financial follow-up function to the authorising Directorates General in order to allow better use of OLAF's resources for achievement of its key objectives; introduction of the Time Management System for the whole Office to measure better the staff's actual workload as well as properly to align the workload (put in place on 1<sup>st</sup> April 2007); and definition of investigative procedures in the new OLAF Manual (see annexe II). An agreement was reached early in 2007 with the Commission and with the relevant staff associations on a package of measures to ensure the stability of staffing, notably through making indefinite contracts available to OLAF temporary agents in certain circumstances.

The implementation of a number of other actions recommended by the Court will depend on the adoption of the reform of Regulation N°1073/1999 (see paragraph 1.6 above).

## 2 STATISTICAL TRENDS IN OPERATIONAL ACTIVITIES (2002-2006)<sup>9</sup>

### 2.1 General trends

The volume of information received by OLAF has risen steadily since 2002. In parallel, the average length of the standard evaluations by the Board is declining overall. Since the introduction of the simplified procedure for “non cases prima facie”, more information is assessed in less time. The Board is more efficient because it is only required to assess substantive information.

For the first time the number of OLAF’s own investigations equals the number of cases in which OLAF assists national authorities. The trend observed is that OLAF’s activity is moving gradually towards areas in which Member States do not exercise specific responsibilities. Direct Expenditure cases (including external aid) represent a significant and growing proportion of the new cases opened by OLAF over time.

The proportion of cases closed with follow-up has increased which is also an indicator that OLAF is focussing increasingly on substantive cases. The majority of follow-up work still concerns financial recovery and judicial activities which accounted for more than 70% of the total follow-up activities undertaken by OLAF in 2006. However, the number of administrative follow-up<sup>10</sup> cases is gradually increasing.

More informants are coming forward. The number of referrals from this source increased by 10% in 2006. This encouraging trend may be interpreted as the result of an improved perception of OLAF among the general public.

### 2.2 Trend analysis

Table 1 shows the level of incoming information over the past five calendar years. There is a difference in the data on incoming information this year. As the accounting convention has been changed in relation to previous reports in order to remove duplicate information, there are some differences in the data from the previous year’s reports.

The volume of information received has steadily increased since 2002. The volume of information rose for the fourth consecutive year but not as significantly as lasting the previous year. This rise has also been supported by an increase in referrals from the general public detailed in Table 11 of this report.

*Table 1: Number of initial items of information received per year*

2002	2003	2004	2005	2006
529	559	662	802	826

<sup>9</sup> The last five calendar years (2002-2006) have been chosen as a reference period for identifying the main trends in OLAF’s operational activity

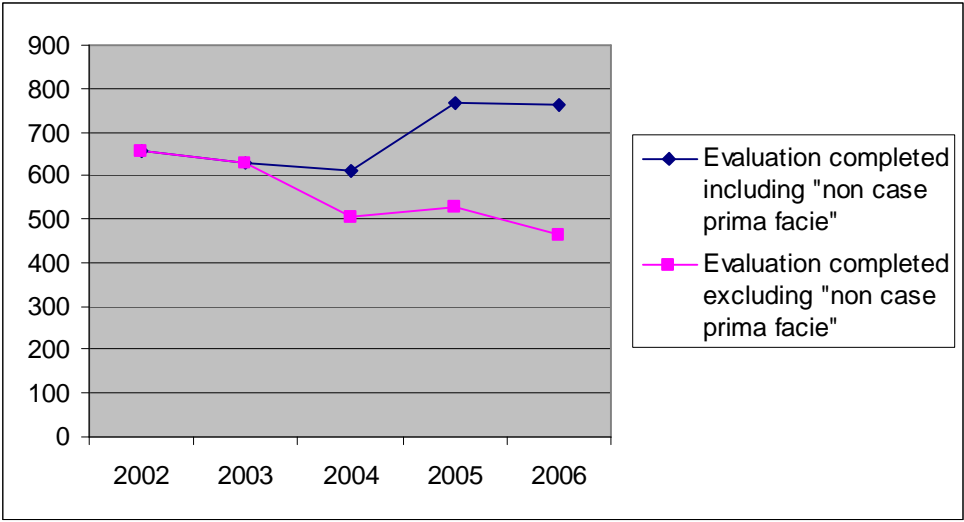
<sup>10</sup> An explanation of administrative follow-up is provided in paragraph 3.4.1

Each initial information item received is subject to a process of evaluation. The purpose of an evaluation is to analyse the information received by OLAF in order to make a recommendation as to whether a case should be opened and, if so, which category of case.

The evaluation period is calculated from the date of receipt of the information to the point when the Board makes its recommendation to the Director General. The declining number of evaluations by the Board should not be interpreted as a decline in its activity. On the contrary, as shown by Figure 1, this is due to the introduction of the “simplified procedure” explained earlier (cf: paragraph 1.4).

Figure 2 confirms the positive trend in the consistent reduction in the average length of standard evaluations in relation to years 2002 and 2003. It fell from 10.6 months in 2002 to 5.2 months in 2006. This shows that resources are being better utilised to evaluate information in respect of which OLAF has a clear competence. The increase in the average duration of the evaluations from 2005 was to be expected because the Board has dealt with more substantive and serious cases since the introduction of the simplified procedure in 2004.

Figure 1: Number of evaluations including and excluding “non case prima facie”<sup>11</sup> information completed in each calendar year



<sup>11</sup> The “non case prima facie” was introduced in 2004.

Figure 2: Average duration in months of evaluations excluding "non case prima Facie" information in each calendar year

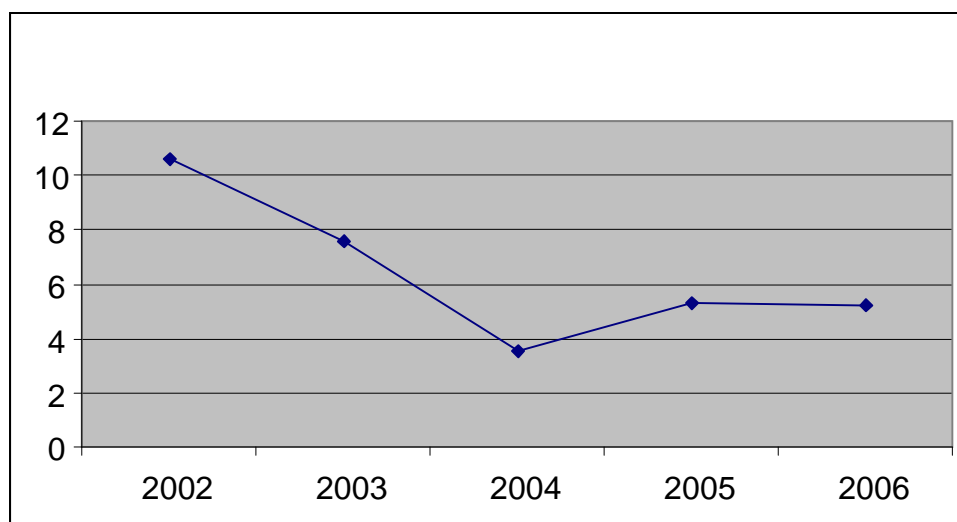


Table 2 below shows the type of decisions taken at the end of the evaluation stage. While the number of decisions adopted declined over time, the share between the different types of cases shows that OLAF tends to concentrate on its own investigations, rather than simply assisting national authorities. Opening decisions in coordination and criminal assistance cases are still tailing off over the five years as shown below. The increasing number of monitoring actions is an indicator of closer cooperation with the relevant authorities in the Member States.

“Non case” decisions under standard evaluation procedure fell from 273 in 2005 to 210 in 2006. (256 in 2004).

Table 2: Decision taken at the end of the evaluation stage in each calendar year

Type of decisions	2002	2003	2004	2005	2006
Internal investigation case	50	27	23	40	37
External investigation case	158	127	87	121	112
Co-ordination case	107	86	81	36	26
Criminal assistance case	49	68	28	17	20
Monitoring action	28	39	29	42	59
Non case	178	261	256	273	210
Investigation created in IRENE	78	19	0	0	0
<b>Total</b>	<b>648</b>	<b>627</b>	<b>504</b>	<b>529</b>	<b>464</b>

The investigations created in IRENE refer to cases which had been classified in UCLAF's IRENE database.

Table 2 above shows that 195 cases were opened in 2006 (internal, external, co-ordination and criminal assistance).

As shown in Table 3, a significant proportion of the new cases opened in 2006 related to the direct expenditure area of the EC budget (65 cases out of 195 cases, i.e. one in three cases). This overall figure seems to confirm the trend that OLAF's activities are moving towards areas in which Member States do not exercise specific responsibilities. For organisational purposes, cases involving funds directly managed by the Commission (or, occasionally, other

EU bodies) are divided into two categories: “direct expenditure” within Member States and “external aid”. Although there was a sharp increase in the number of cases in the external aid area, “direct expenditure” cases fell significantly in relation to 2005 as shown by Table 3.

*Table 3: Number of direct expenditure and external aid cases opened*

Sector	2002	2003	2004	2005	2006
Direct expenditure	39	23	23	28	11
External aid	95	56	30	36	54

This trend is borne out by Table 4 which shows external investigations, cases opened in which the cooperation of Member States is essential and monitoring actions. For the first time the number of OLAF’s external investigations equalled the number of cases in which OLAF assisted national authorities, including monitoring actions.

*Table 4: Ratio between cooperation cases with Member States, including monitoring actions, and cases” owned” by OLAF in the sectors of Agriculture, Customs and Structural Funds by calendar year*

Investigation type	2002	2003	2004	2005	2006
Co-ordination cases	106	86	81	36	26
Criminal assistance case	27	40	14	10	7
Monitoring actions	14	15	21	25	22
	<b>147</b>	<b>141</b>	<b>116</b>	<b>71</b>	<b>55</b>
	67%	69%	76%	59%	50%
External investigation cases	<b>73</b>	<b>64</b>	<b>37</b>	<b>50</b>	<b>55</b>
	33%	31%	24%	41%	50%
<b>Total</b>	<b>220</b>	<b>205</b>	<b>153</b>	<b>121</b>	<b>110</b>

Table 5 below shows that the number of cases completed has been declining over time and that the average duration of the active stage increased slightly from 24 months to 27 months in 2006. OLAF has taken action to monitor the duration of its investigations although a significant part of this duration is due to factors which are out of its 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 very complex and take a long time to finalise.

*Table5: Cases completed and duration of active stage completed in each calendar year*

	2002	2003	2004	2005	2006
Cases completed <sup>12</sup>	668	500	339	233	216
Average duration (months)	37	24	22	24	27

Table 6 shows the number of cases closed with and without a follow-up recommendation at the end of the open stage of the case. The proportion of cases closed with follow-up is still growing. Cases closed with follow-up accounted for more than 60% in 2006. This is a

<sup>12</sup> The statistics on duration of active stages only include those stages closed in the reporting period. They do not include estimations for those stages which are ongoing at the end of the year.

positive development which demonstrates a proportional increase in substantive results from OLAF's operational and investigative work.

*Table 6: Cases closed with or without follow-up in each calendar year*

Type of closure	2002	2003	2004	2005	2006
Follow-up	290	205	157	133	132
No follow-up	380	288	182	100	84
<b>Grand Total</b>	<b>670</b>	<b>493</b>	<b>339</b>	<b>233</b>	<b>216</b>

The result of a case may involve several types of follow-up activity: administrative, financial, legislative, judicial or disciplinary follow-up. Table 7 demonstrates how many follow-up activities are related to the cases closed in each of the last five years. For instance, for the 132 cases closed with follow-up in 2006, 249 follow-up activities have commenced. This is due to the fact that there can be more than one follow-up activity for each case.

*Table 7: Cases closed with Follow-up showing type(s) of follow-up opened*

Type of closure	2002	2003	2004	2005	2006	
<b>Cases Closed with follow-up</b>	290	205	157	133	132	
<b>Related Follow-up Activity</b>	<b>Administrative</b>	29	29	42	45	60
	<b>Disciplinary</b>	12	5	5	9	10
	<b>Financial</b>	233	144	94	93	102
	<b>Judicial</b>	157	132	115	91	76
	<b>Legislative</b>	2	5	3	1	1
<b>Total</b>	<b>433</b>	<b>315</b>	<b>259</b>	<b>239</b>	<b>249</b>	

The bulk of follow-up work concerns financial recovery and judicial activities. These account for over 70% of the follow-up activities undertaken. There is however a constant upward trend in administrative follow-up cases (cf: paragraph 3.4.1). Such cases accounted for almost 25% of the total follow-up actions in 2006 compared with less than 10% just three years ago (2003).

For monitoring actions a similar pattern of activity emerges as indicated in Table 8. The importance of the administrative follow-up is also increasingly significant. As explained in paragraph 1.4 monitoring actions, introduced in 2002, are those where OLAF would have the legal competence to conduct an external investigation but where a Member State or other authority is in a better position to do so. These cases are passed directly to the relevant authority for completion. No OLAF investigation resources are required. One or more OLAF follow-up units will monitor progress. The number of monitoring actions in 2006 almost doubled in relation to 2004. This trend is explained by the improved cooperation with the relevant authorities in the Member States.

*Table 8: Monitoring actions opened showing type(s) of follow-up opened*

Type of closure	2002	2003	2004	2005	2006	
<b>Monitoring actions</b>	28	39	29	42	59	
<b>Related follow-up activity</b>	<b>Administrative</b>	7	11	6	7	19
	<b>Financial</b>	16	20	9	21	34
	<b>Judicial</b>	11	22	21	32	47
	<b>Legislative</b>			1	1	1
<b>Total</b>	<b>34</b>	<b>53</b>	<b>37</b>	<b>61</b>	<b>101</b>	

Follow-up is in most cases the responsibility of the relevant national authorities. Table 9 shows the number of cases and respective follow-up activities completed in each year. The follow-up paths are closed after the national or disciplinary authorities have taken their decision and it has become definitive. Therefore, completion of follow-up depends to a large extent on the input of those authorities. As OLAF made major efforts to close follow-up actions during 2004 and 2005, the number of closed actions came down in 2006 to a more normal level.

*Table 9: Completion of Follow-up showing type(s) of follow-up closed*

Type of closure	2002	2003	2004	2005	2006	
<b>Cases with follow-up completed</b>	11	22	83	87	59	
<b>Type of follow-up activity closed</b>	<b>Administrative</b>	3	2	10	17	12
	<b>Disciplinary</b>				2	2
	<b>Financial</b>	8	18	58	64	37
	<b>Judicial</b>	4	7	31	36	26
	<b>Legislative</b>			2	1	
<b>Total follow-up activities</b>	<b>15</b>	<b>27</b>	<b>101</b>	<b>120</b>	<b>77</b>	

Table 10 shows the annual breakdown of financial recovery completed in the last five calendar years. In addition to the €13m recovered as a result of closed follow-up actions, an additional €336 million has been recovered in respect of follow-up actions which are still ongoing. By way of comparison, the cost of running OLAF was around €50 million in 2006 (cf: paragraph 6) and the prorata cost of OLAF's operational functions, at 70% of this figure was about €35 million (equivalent to 0.03% of the EC budget).

*Table 10: Breakdown of amounts recovered in € million in each calendar year*

Major sector	2002	2003	2004	2005	2006	Follow-up ongoing at the end of 2006
<b>Agriculture<sup>13</sup></b>	0.000	0.000	0.065	14.201	1.175	134.555
<b>Structural Funds</b>	0.726	1.469	192.584	95.172	17.219	146.314
<b>Cigarettes</b>	0.000	0.000	0.000	0.000	0.000	0.736
<b>Customs</b>	0.000	0.035	1.578	2.977	0.130	21.323
<b>VAT</b>	0.000	0.000	0.000	59.972	0.000	29.714
<b>Direct expenditure</b>	0.055	0.348	1.975	0.161	0.376	0.287
<b>External aid</b>	0.005	0.826	2.010	31.773	92.750	1.853
<b>EU institutions</b>	0.000	0.000	0.038	0.000	2.080	0.160
<b>EU bodies<sup>14</sup></b>	0.000	0.000	0.000	0.000	0.080	1.599
<b>Total</b>	<b>0.787</b>	<b>2.679</b>	<b>198.250</b>	<b>204.257</b>	<b>113.810</b>	<b>336.540</b>

<sup>13</sup> Agriculture includes also "alcohol" and "trade" categories from the previous year's reports.

<sup>14</sup> The Sector EU bodies is a new category which merges "EUROSTAT" and "Multiagency investigations" sectors from the previous years' reports.

### 3 OPERATIONAL ACTIVITIES IN 2006

#### 3.1 Incoming information

OLAF received 826 new items of information in 2006 (see Table 1). Evaluations commenced for 464 of these cases (see Figure 1). The remainder were either treated under the simplified procedure as “non-cases prima facie” (300 cases in 2006) or the information was found to relate to existing cases.

Table 11 below shows the breakdown by main sources of the initial information received in 2006.

*Table 11: Distribution of initial information received by source*

Source	Total
European Commission	258
Free phone	26
Informants	397
Member States	105
Other EU institutions	19
Others	21
<b>Total</b>	<b>826</b>

2006 saw a 10% increase in receipt of information from informants in relation to 2005. As this source of information had already increased in 2005 the new figures are encouraging, showing an increased awareness of the competence of the Office among the general public. The other significant categories (information from EU institutions and Member States) remained broadly stable.

Informants include witnesses; anonymous sources, media and trade sources; and whistleblowers. In this context whistleblower is a member of staff of a Community body who, in the course of or in connection with the performance of his or her duties becomes aware of facts which indicate either possible illegal activity falling under the competence of OLAF or serious failure by an official to comply with his or her professional obligations, and who then reports these facts to OLAF. In 2006 OLAF received no information from whistleblowers.

Figure 3 below analyses the initial information received in 2006 by OLAF sector. The proportion is roughly the same as that obtained in 2005. A slight increase in the volume of information received is however to be noted in the external aid area.

Figure 3: Initial information received in 2006 by OLAF sector

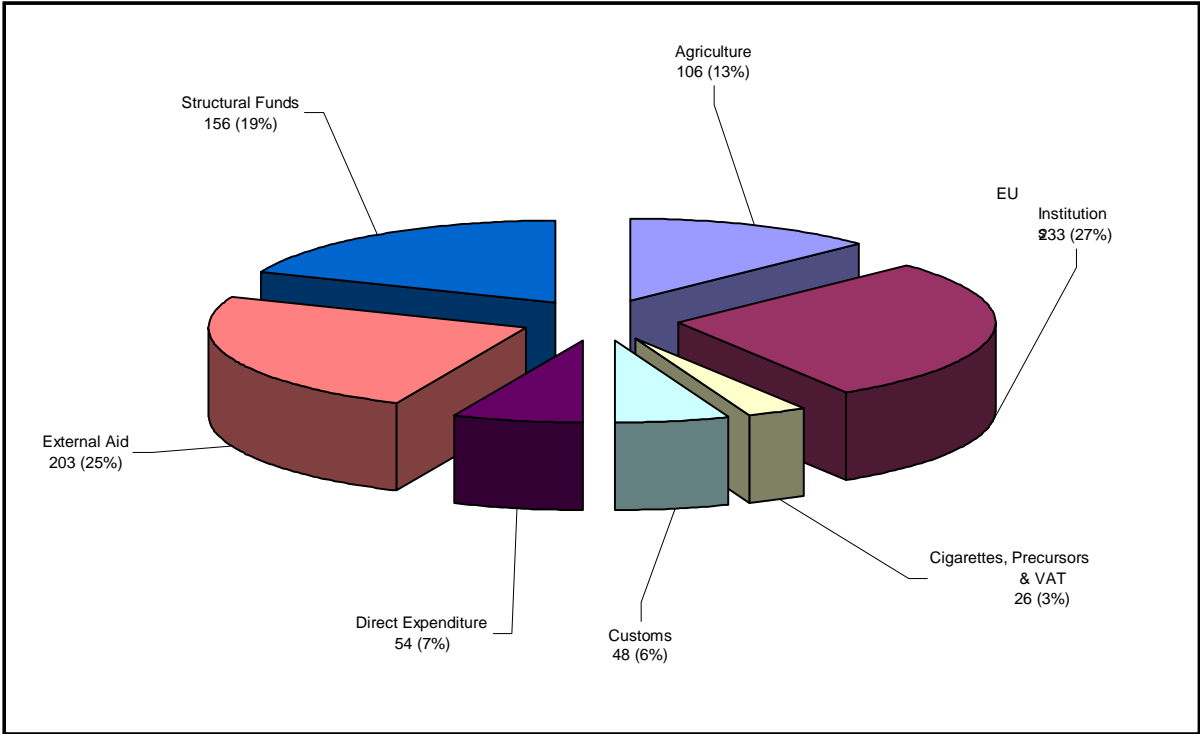
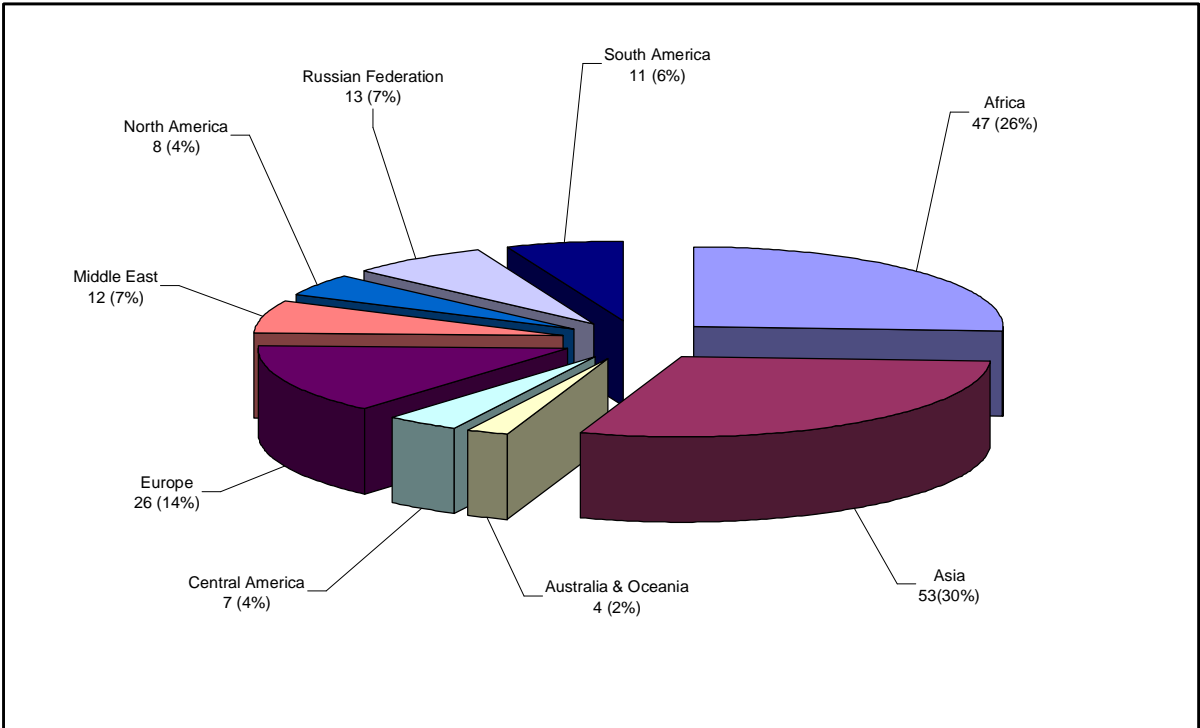


Figure 4 below shows the distribution of initial information in relation to activities in third countries. The pattern is similar to that of previous years. Africa and Asia still represent more than half of all the initial information received.

Figure 4: Distribution of initial information received concerning third countries by geographical region



As described earlier, the Investigations and Operations Executive Board analyses the information received by OLAF in order to recommend to the Director General whether or not a case should be opened. Figure 5 shows a breakdown of the number of decisions to open and not to open a case in 2006. . The proportion is also very similar to that observed in 2005.

Figure 5: Decisions taken during 2006

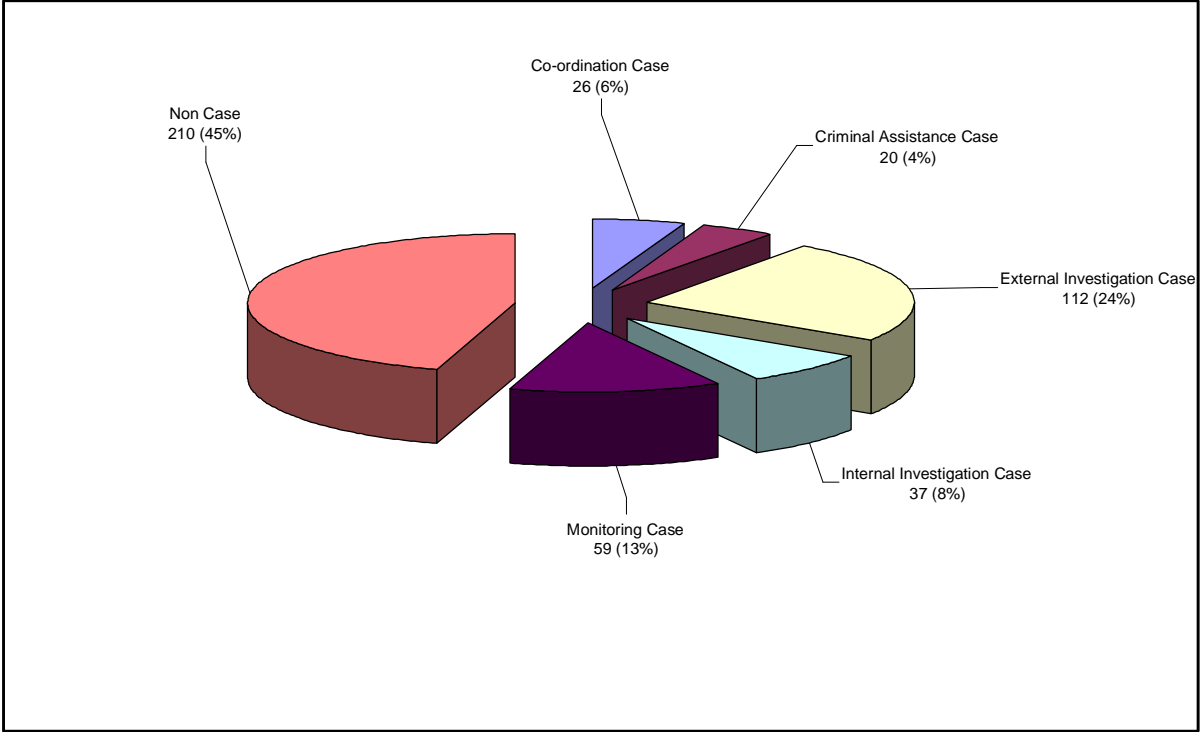


Table 12 below provides details of the opening decisions taken in 2006 by OLAF sector. The total number of opening decisions fell by around 10% compared with 2005 (from 215 to 195). The 2006 figures confirm the distinct shift in new OLAF casework observed last year away from co-ordination and assistance work towards OLAF’s own investigations. This is driven by three factors: a reduction in the number of cases opened in the agriculture sector (64 in 2004, 35 in 2005); an increase in those opened in internal investigations (20 in 2004, 34 in 2005); and a change in the types of cases opened in the Structural Funds sector (11 external investigations were opened in 2004 and 24 in 2005).

Table 12: Opening decisions taken in 2006 by sector and type of decision

Major sector	Co-ordination case	Criminal assistance case	External investigation case <sup>15</sup>	Internal investigation case	Total
Agriculture	9	1	14	0	24
Structural Funds	1	2	25	0	28
Cigarettes	5	2	0	0	7
Customs	8	0	16	0	24
VAT	2	2	0	0	4

<sup>15</sup> External investigation cases within the sectors EU institutions and EU bodies relate to cases in which third parties, i.e. contractors, are involved.

Direct expenditure	0	2	9	0	11
External aid	0	10	44	0	54
EU institutions <sup>16</sup>	0	1	2	32	35
EU bodies <sup>17</sup>	0	0	2	5	7
Precursors	1	0	0	0	1
<b>Total</b>	<b>26</b>	<b>20</b>	<b>112</b>	<b>37</b>	<b>195</b>

Figure 6 shows the geographical breakdown of new case records. One case record may relate to more than one country as cases can have a transnational dimension. A proportionally higher occurrence of cases is to be expected in Belgium and Luxembourg in proportion to their size, population and receipts from the EC budget given that they are seats of European Institutions. The vast majority of the internal investigations are undertaken within these two countries.

Figure 6: Distribution of new case records created in 2006 by Member State

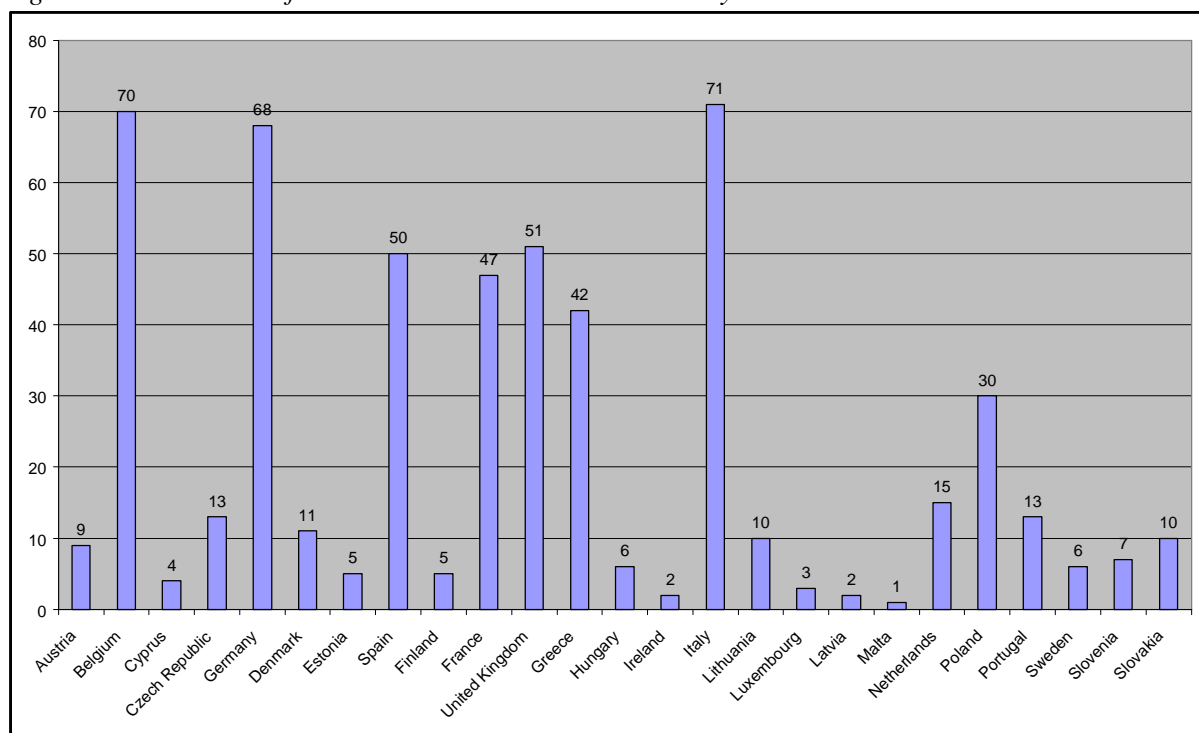
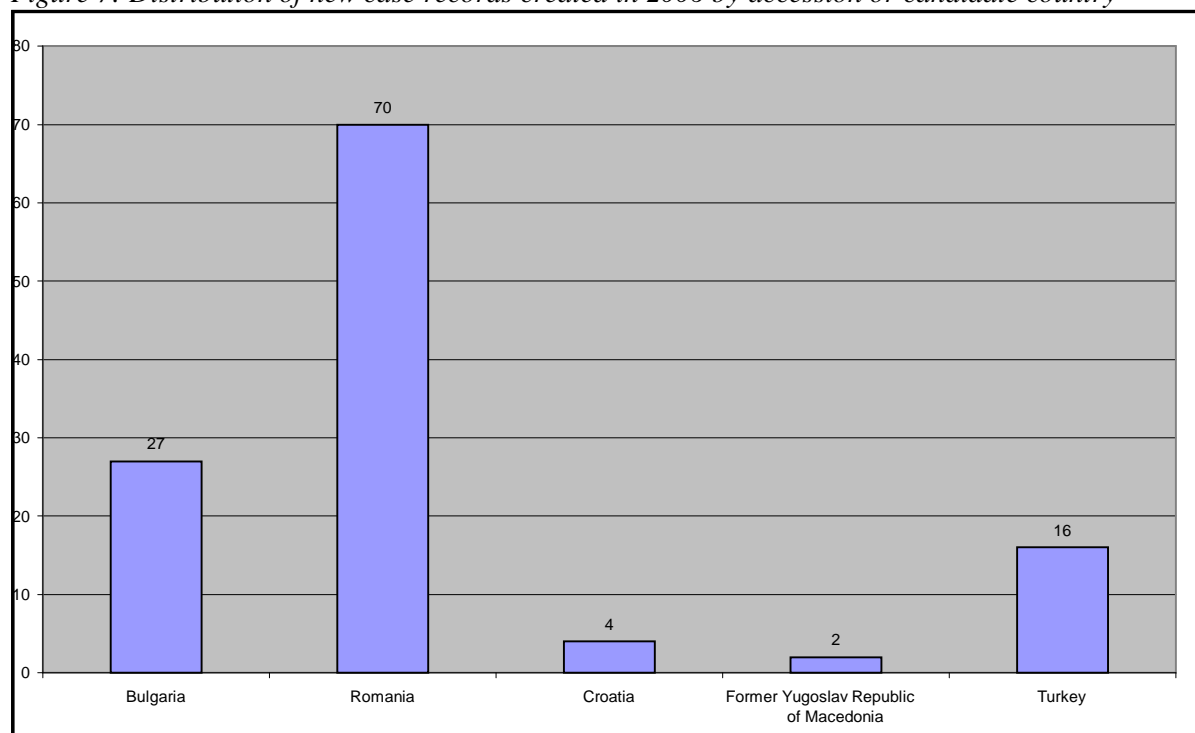


Figure 7 shows the same details for the two acceding states in 2006, Bulgaria and Romania, and the three candidate countries: Turkey, Croatia and the Former Yugoslav Republic of Macedonia (FYROM). The difference in the number of case records between these two groups of countries is due not only to the difference in the amounts of the financial allocations granted but also to the establishment of Anti-Fraud Coordination Structures within Bulgaria and Romania (AFCOS). Similar structures are expected to be set up in the candidate countries in the coming years. The significant difference between Bulgaria and Romania is due not only to the differences in the global amount allocated to each country but also to the good cooperation of Romania in providing OLAF with initial information regarding possible cases of fraud.

<sup>16</sup> External investigation cases within the internal investigations sector relate to cases in which third persons are involved along with EU officials.

<sup>17</sup> The Sector EU bodies is a new category which merges “EUROSTAT” and “Multiagency investigations” sectors from the previous years’ reports.

Figure 7: Distribution of new case records created in 2006 by accession or candidate country



### 3.2 General statistics on case records and investigative activity

Table 13 provides an overview of the active cases and cases under evaluation by sector at the end of 2006. It includes a breakdown of cases under standard evaluation by OLAF sector.

Table 13: Active cases by type and cases under evaluation at the end of 2006

Major sector	Co-ordination case	Criminal assistance case	External investigation case	Internal investigation case	Total	Evaluation
Agriculture	26	1	38	0	65	28
Structural Funds	3	7	36	0	46	69
Cigarettes	22	5	3	0	30	2
Customs	29	0	41	0	70	24
VAT	4	7	0	0	11	1
Direct expenditure	0	5	35	0	40	24
External aid	0	10	68	0	78	85
EU institutions	0	6	3	59	68	37
EU bodies	0	0	12	10	22	12
Precursors	1	0	0	0	1	3
<b>Total</b>	<b>85</b>	<b>41</b>	<b>236</b>	<b>69</b>	<b>431</b>	<b>285</b>

Table 14 provides a snapshot of all active cases at the end of 2006 showing the instances where Member States and acceding/candidate countries are involved. More than one country is possible per case record. The figures indicate each occurrence of a country.

Table 14: Active cases at the end of 2006 by Member State and Candidate Country

Status of Country	Country	Agriculture	Cigarettes	Customs	Direct Expenditure	EU bodies	External Aid	Internal Investigations	Precursors	Structural Funds	VAT	Total	
Member State (2006)	Austria	2	1	2	1						1	7	
	Belgium		12	4	6	4	1	33		2	4	66	
	Cyprus		6									6	
	Czech Republic		1	1		1	1			1	1	6	
	Germany	5	11	16	7			1		1	8	49	
	Denmark	1		2					1		3	7	
	Estonia	2	1				1				2	6	
	Spain	7	3	6	5	1		1		10	4	37	
	Finland		1	1	1					1	1	5	
	France	1	3	7	3			6	4		6	2	32
	United Kingdom	5	7	7	3			1	2		3	3	31
	Greece	8	3	2	3	4					6		26
	Hungary	1		1	1							1	4
	Ireland	1	2	2									5
	Italy	9	5	6	6			6	9	1	13	7	62
	Lithuania	3	1					1					5
	Luxembourg	1		2			2		5				10
	Latvia	1	4										5
	Malta				1								1
	Netherlands	6	6	9	2							4	27
	Poland	1	3					1				2	7
Portugal	3		2	1						4		10	
Sweden		3	1								2	6	
Slovenia		4	1	1			1			1		8	
Slovakia	1						1					2	
<b>Net Total</b>	<b>58</b>	<b>77</b>	<b>72</b>	<b>41</b>	<b>12</b>	<b>20</b>	<b>55</b>	<b>2</b>	<b>48</b>	<b>45</b>	<b>430</b>		
Acceding countries	Bulgaria	5	2	1			2	1				11	
	Romania	5	2		1	1	15					24	
	<b>Net Total</b>	<b>10</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>17</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>35</b>	
Candidate Country	Croatia		1				1					2	
	FYROM	2	3									5	
	Turkey	3		2			3	1				9	
	<b>Net Total</b>	<b>5</b>	<b>4</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>16</b>	
<b>Grand Total</b>	<b>73</b>	<b>85</b>	<b>75</b>	<b>42</b>	<b>13</b>	<b>41</b>	<b>57</b>	<b>2</b>	<b>48</b>	<b>45</b>	<b>481</b>		

Table 15 shows the number of cases closed by sector. They declined slightly from 233 in 2005 to 216 in 2006. As highlighted earlier more cases were closed with follow-up recommendations than without for the second consecutive year.

Table 15: Cases closed in 2006 by Sector

Major sector	Follow-up	No follow-up	Total
Agriculture	26	19	45
Structural Funds	22	4	26
Cigarettes	5	5	10
Customs	17	6	23
VAT	5	7	12
Direct expenditure	9	9	18
External aid	31	12	43
EU institutions	14	12	26
EU bodies	3	10	13
<b>Total</b>	<b>132</b>	<b>84</b>	<b>216</b>

Table 16 provides a snapshot of all registered cases by stage at the end of calendar year 2006. The total number of valid case records is 5 988. This number includes 1 421 UCLAF<sup>18</sup> cases created before 1 June 1999.

Table 16: Distribution of all cases by stage at the end of 2006

Evaluation of incoming information	Non Case Prima Facie	Monitoring	Non Cases	Opened	Closed without follow-up	Closed with follow-up	Follow-up completed	Total
285	647	165	1335	431	2064	799	262	5988

Table 17 shows the historical estimated financial impact of OLAF cases by sector and by stage at the end of 2006. 'Open' denotes those 430 cases in their active stage. "Closed" represents cases in follow-up, including monitoring actions; closed without follow-up and where follow-up is completed. The overall estimated financial impact of cases is way over € 1 billion in each of the areas of the Structural Funds, agriculture and cigarettes.

Table 17: Financial impact of open and closed OLAF cases at the end of 2006

Sector	Open (€million)	Closed (€million)	Total (€million)
Agriculture	202.7	1241.3	1444
Structural Funds	192.9	1413.8	1606.7
Cigarettes	315.6	1004.5	1320.1
Customs	284.4	705.4	989.8
VAT	148.9	578.9	727.8
Direct expenditure	182.4	85.6	268.0
External aid	109.7	241.7	351.4
EU institutions	301.0	243.2	544.2
EU bodies	1.2	108.5	109.7
Precursors	0.0	0.0	0.0
<b>Total</b>	<b>1 738.8</b>	<b>5 622.8</b>	<b>7 361.6</b>

<sup>18</sup> UCLAF (Unit for the Coordination and Fraud Prevention) was OLAF's predecessor up to 1999

### 3.3 Case records and investigative activity by sector

#### 3.3.1 Internal Investigations

As shown earlier in Table 13 the internal investigations workload totalled 68 open cases and 33 items of information under evaluation at the end of 2006. The number of open cases remained stable overall in relation to the previous year.

Table 18 indicates the Institutions involved in these internal investigation cases. As the European Commission manages by far the greatest part of the EC budget and accounts for most EU officials and other staff it appears most frequently. As an internal investigation may involve more than one institution the total number of cases classified by institution (80) is higher than the number of internal active cases (68).

The quality of initial information and the degree of detail of supporting documents have improved over time. Information is received and exchanged faster and more efficiently. Cooperation with the institutions has improved significantly.

Table 18: Internal investigations under evaluation and active stage at the end of 2006

	Evaluation	Active cases	Total
Committee of the Regions	0	2	2
Council	1	3	4
Economic and Social Committee	0	1	1
EU agencies	0	1	1
European Commission	27	69	96
European Parliament	5	4	9
<b>Total</b>	<b>33</b>	<b>80</b>	<b>113</b>

#### **Case Study: – Fraud by an accountant in an EC Delegation**

The Commission's services informed OLAF that a verification of the accounts of an EC Delegation had found that several payments had apparently been made for the rent of the Delegation's offices for a single period. In the light of this information OLAF opened an internal investigation into the conduct of the Delegation's accountant, a member of the local staff.

Based on OLAF's investigation into this conduct, the EC funds improperly diverted by the accountant were calculated to be in excess of €350 000.

As a result of OLAF's investigation, the Commission dismissed the accountant on grounds of serious misconduct. In addition, OLAF recommended referring the matter to the judicial authorities of the country concerned. The necessary actions are being taken to recover the amounts unduly paid.

This case shows the importance of OLAF's powers to operate within the EU Institutions anywhere in the world and to liaise with the relevant national authorities.

#### **Case Study: – False statements made by EC staff in order to qualify for weighting of a portion of their salaries**

Traditionally, the remuneration regime for EU staff provided for an element of their salary to be paid in their countries of origin or countries where they had financial commitments, subject to "corrective coefficients" reflecting differences in the cost of living between the country of employment and the other country. In other words, officials were entitled if they met the conditions of the scheme to remit money to another country at a favourable exchange rate at the employing Institutions' expense. The coefficients were greatly reduced when the current Staff Regulations came into effect on 1 May 2004. However, entitlements which existed at the date were phased out over a period of four years. Existing entitlements were defined as those in respect of which at least one regular payment had been made before 1 May 2004.

OLAF received a copy of a report written by a former internal auditor of the Committee of the Regions, in which it was alleged that a number of employees of that body had set up financial obligations in countries benefiting from a high corrective coefficient, in order to be paid a proportion of their salaries in those countries.

OLAF opened an internal investigation. The persons concerned were nine officials who appeared to have made irregular declarations aimed at obtaining the application of the corrective coefficient to a part of in their salaries as well as five officials who authorised the apparently irregular requests. Three officials fell into both categories.

OLAF reviewed relevant documentation and conducted interviews. At the conclusion of the investigation OLAF reported the cases of five officials to the Belgian judicial authorities. OLAF also recommended that the Institution take disciplinary measures in relation to the officials involved and that made to eight officials be recovered.

### **3.3.2 Direct expenditure (excluding external aid)**

Direct expenditure (excluding external aid) includes all the programmes and actions which are managed by the Commission under the so-called “centralised management” system in Article 53 (1) a) of the Financial Regulation.

#### **Case Study: Rehabilitation of a power station in Serbia**

A private consortium was involved in the major overhaul and rehabilitation of a power station in Serbia funded and managed by the European Agency for Reconstruction (EAR). In July 2004 OLAF received a note from the European Court of Auditors (ECA) relating to possible double invoicing. The company which was supposed to issue the final Work Acceptance Certificate had informed the EAR that the invoices and reports submitted by the Consortium were inconsistent, dubious and difficult to reconcile. The alleged financial impact was estimated to be €300 000.

OLAF’s investigations demonstrated that multiple accounting and invoicing of work components had occurred. Thanks to these findings the EAR avoided paying any more than the amounts properly agreed on the contract.

As there had been an attempt to commit fraud OLAF transmitted the file to the competent Prosecutor’s Office.

#### **Case study: Forged bank guarantees**

An Italian company provided several bank guarantees in the context of the performance of six contracts in the Balkans region, again managed by EAR. There were serious suspicions that the guarantees had not in fact been issued by the banks as claimed by the company.

The external investigation opened by OLAF in cooperation with the Italian Guardia di Finanza concluded that the guarantees were fake. The Office decided to refer the case to the competent judicial authorities which subsequently launched a criminal investigation. This illustrates the importance for OLAF of cooperation with national competent authorities.

The chief executive of the Italian company resigned. EAR is considering a claim for compensatory damages. While there is no direct damage to the EC budget, OLAF’s investigation proved valuable in detecting this criminal behaviour contrary to the Community law and which put the EC budget at risk.

#### **Case study: Fraud in several EC funded projects in Spain**

OLAF received information about possible fraud committed by a company which was participating in various projects financed by the EC in Spain. This information stated that the money was kept by the manager and the projects were not finalised.

The first checks established that the company had benefited from several European projects. OLAF confirmed the veracity of the information received by detailed analysis of the various statements of costs as declared by the company, a systematic cross-check of available national administrative data, and interviews with employees. The damage caused to the European budget amounted to €1 million. The information has been passed on to the Spanish judicial authorities. Judicial proceedings have been launched.

### 3.3.3 Pre-accession funds

Table 19 shows the number of cases opened in the new Member States and the candidate countries relating to pre-accession financial assistance (PHARE, ISPA and SAPARD). For the ten new Member States, all the cases refer to commitments made before their accession to the European Union on 1 May 2004.

It is to be noted again that most of the cases concern Romania (14). This is due not only to the fact that some 61% of the pre-accession assistance in 2006 (€2.9 billion) was granted to Romania and Bulgaria but also, as explained earlier, to the good cooperation of Romania in providing information on the suspected cases of fraud.

*Table 19: Cases opened in 2006 concerning new Member States, acceding and candidate countries in the area of pre-accession funds.*

Code	Country involved	N° of cases
BG	Bulgaria	2
CY	Cyprus	
CZ	Czech Republic	
EE	Estonia	1
HR	Croatia	
HU	Hungary	
LT	Lithuania	
LV	Latvia	
MK	FYROM	
MT	Malta	
PL	Poland	1
RO	Romania	14
SI	Slovenia	
SK	Slovakia	
TR	Turkey	2
	<b>Total</b>	<b>20</b>

#### **Case study: Fraud in a project financed by PHARE in Romania**

A project to train a group of young disabled workers in a clothing factory was financed by the financial instrument PHARE in Romania. In February 2005, a Romanian citizen filed a declaration at the EC Delegation in Bucharest, complaining about alleged fraud and irregularities in this project.

On the basis of this information, OLAF and the Romanian department for the fight against EU fraud, DLAF, jointly carried out an on-the-spot check. The objectives of this joint check were to shorten the duration of the investigation, to increase the effectiveness of the investigation by making use both of the

paves of OLAF and of the paves of Romanian authorities and to ensure that the evidence gathered could be used directly in a criminal proceeding in Romania (if necessary).

The investigations confirmed the irregularities. As there was a suspicion of fraud the case was passed on to the judicial authorities in Romania. OLAF is following up the further developments of the case in Romania.

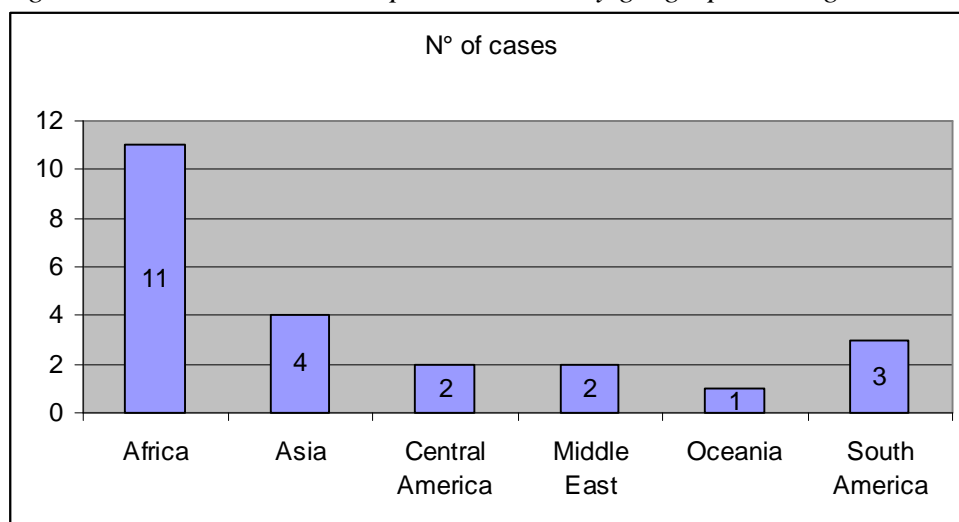
### 3.3.4 External aid

The European Union is the largest important provider of development and humanitarian aid in the world. Development cooperation accounted for €2.3 billion and humanitarian aid for €0.7 billion in the 2006 budget. In addition, €1.30 billion was devoted to the European Neighbourhood Policy. Moreover, the EU was also last year involved in action in response to unforeseen needs, such as the reconstruction efforts in the tsunami-hit regions in Asia, actions in Iraq and Afghanistan, and compensations to ACP countries following the recent reforms in the sugar sector.

External aid is one of the traditional areas for OLAF's so-called "own" investigations. OLAF therefore plays a crucial role in preventing and detecting fraud in this field by working in partnership with other Commission departments- notably the Europe Aid Cooperation Office (AIDCO) and the European Community Humanitarian Aid Office (ECHO) – and also with international partners.

Figure 7 shows OLAF cases opened in cooperation with other Commission departments in 2006 by geographical region. Africa remains the most significant region of interest for OLAF casework, accounting for nearly 50% of the cases opened.

Figure 7: External aid cases opened in 2006 by geographical region



In the external aid sector OLAF investigators often encounter modus operandi typical of organised fraud in the sector of external aid. Some of the risks that make such fraud possible are shortcomings in coordination between the different global and international donor organisations. Such 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. Unfortunately, there is no general information or verification infrastructure which could prevent different cases of double financing of projects.

OLAF investigators encounter various challenges in their daily investigative work in the aid sector. These mainly concern the exchange of evidence, communication and cooperation. These challenges have not

only caused technical and organisational problems but have adversely influenced the duration and efficiency of operational work. OLAF's cooperation with a number of bodies, particularly national authorities, Commission departments and the departments of the international donor organisations responsible for spending money on aid projects would benefit from further development.

The forum in which the problem of better cooperation is discussed is the Conference of International Investigators. All the main donor organisations - the World Bank, IMF, UN and others, as well as the Commission - are represented (OLAF represents the Commission). This forum has created and endorsed international standards for investigations which have become the basis of investigative procedures for most of the international organisations. This standardisation is a crucial step towards the increasing exchange of information.

#### **Case Study: Human rights project**

An NGO was implementing a project in Romania aimed at promoting Community human rights and rule of law standards for people in detention. The same NGO participated in another Community project for which it had received about €133 000.

The results of the OLAF investigation indicated that the total amount of funds received by the NGO from different sources had indeed exceeded the actual project expenditure and that the activities (and expenses) relating to one project had also been combined with those of other projects and reported in more than one report. Furthermore, the NGO had claimed higher salaries than paid in reality, some project staff did not actually work for the project and certain payments had covered personal expenses.

OLAF recommended that the Community grants should be repaid to the EC budget.

#### **Case Study: OLAF investigation in Bolivia**

The European Community part-financed (€6 million) a development programme in Bolivia to sustain agricultural production and to build education centres.

OLAF decided to open an external investigation in relation to alleged irregularities in the implementation of the invitation to tender and administrative development of the programme. As a result of the investigations it was found that several house rentals had been over-invoiced and some buildings planned in the project had not been constructed.

The OLAF investigation is still ongoing. The results of the OLAF investigation indicate that at least €279 000 should be recovered.

Having seen the evidence of irregularities, the Bolivian authorities opened a judicial investigation. OLAF has recruited local real estate experts to help the national Prosecutor to determine the real value of the work done.

The role of OLAF in terms of cooperation with the Bolivian judicial authorities is manifold:

- OLAF has analysed the proof of irregularities and fraud to support the judicial proceedings;
- OLAF has given direct financial support for several activities to be undertaken during the national prosecution;
- OLAF is cooperating with the national institutions in Bolivia which are pursuing the same objectives (the Deputy Minister for Transparency and the Fight against Corruption, the Anti-corruption National Coordinator and the General Prosecutor of the Republic of Bolivia).

### 3.3.5 Structural actions

Some €39.6 billion (in commitments) was allocated in 2006 to EU countries and regions to help with their modernisation, training, infrastructure and other development projects. The structural policy accounted for over 30% of the European budget in 2006. It is therefore an important area in the protection of EU financial interests.

The management of Structural Funds is undertaken under the so-called shared management system in Article 53(1) of the Financial Regulation. This means that the responsibility of management lies in the first place with the Member State.

The control systems in place in the area of Structural Funds are based on the principle that the Member State is generally responsible for controlling and correcting irregularities. When allegations of serious irregularities or fraud are communicated to OLAF, the Office, after the evaluation stage, may decide to intervene. In this case the Member States authorities will be contacted to confirm whether EU funds are at stake.

OLAF's results in the Structural Funds sector are obtained with the assistance of the effective legal powers provided by Regulation N°2185/1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities. Close cooperation with Member States' authorities is crucial.

During 2006 OLAF received 156 allegations in the area of the Structural Funds (Figure 3). 28 new cases were opened in this sector (Table 12). 22 of the 26 cases closed were closed with follow-up (Table 15). At the end of the reporting period, 46 cases were open in this area (Table 13).

Table 20 shows the breakdown by Member State of cases closed in 2006. As might be expected, most of the cases relate to the main countries receiving assistance from the Structural Funds.

*Table 20: Structural Funds cases closed in 2006 by fund and country involved*

Country involved	ERDF	EAGGF	ESF	FIFG	Total
Austria					0
Belgium		1	1		2
Cyprus					0
Czech Republic					0
Germany	2		2		4
Denmark					0
Estonia					0
Spain	2		1	1	4
Finland	1				1
France	1		1	1	3
United Kingdom	1				1
Greece	1				1
Hungary					0
Ireland					0
Italy	3	1	2		6
Lithuania					0
Luxembourg					0
Latvia					0
Malta					0
Netherlands	1				1
Poland					0
Portugal		2	1		3
Sweden					0
Slovenia					0
Slovakia					0
<b>Total</b>	<b>12</b>	<b>4</b>	<b>8</b>	<b>2</b>	<b>26</b>

Table 21 shows the estimated financial impact of the cases closed in 2006 in the area of Structural Funds. The total amount is around €270 million which represents some 0.68% of the total financial allocations in this sector.

*Table 21: Financial impact of the Structural Funds and Cohesion Fund cases closed in 2006 by fund*

Fund	Financial impact (€million)	Percent	Code
European Regional Development Fund	210.3	78%	ERDF
European Agricultural Guidance and Guarantee Fund - Guidance Section	27.1	10%	EAGGF
European Social Fund	5.1	2%	ESF
Financial Instrument for Fisheries Guidance	27.0	10%	FIFG
Cohesion Fund	0.0	0%	
<b>Total</b>	<b>269.6</b>	<b>100%</b>	

**Case Study: Falsification of documents and false payments under Financial Instrument for Fisheries Guidance (FIFG)**

A company received over €2 million of aid under the Financial Instrument for Fisheries Guidance (FIFG) (period 1994-1999). Based on a Commission departmental audit report, OLAF initiated an investigation which established that there had been serious irregularities in the management of funds.

The company in question had falsified invoices and there was evidence of false payments between the accounts of the supplier, the service provider and the beneficiary.

At OLAF's request the case was transferred to the national judicial authorities. The Member State has already recovered the funds.

**Case Study: Criminal assistance case in the sector of Structural Funds**

In the context of an operation against money laundering, the Swiss Federal Prosecutor's Office requested OLAF assistance to prepare charges against a citizen of a Member State who had allegedly undertaken illegal activities affecting several EU countries. The report contained information which showed that grants of the ERDF Industry Programme 1994-99 had been claimed against inflated invoice values. The framework for this cooperation between the Swiss authorities and the Commission is the cooperation arrangement<sup>19</sup> concluded in 2004.

On the basis of the information received from the Swiss investigations OLAF decided to open a criminal assistance case. OLAF's objective in this case was to support and coordinate the investigation of the Member State concerned and the Swiss authorities. Substantial contracts for the supply of machinery had been placed between companies and suppliers mostly located in other EU Member States. However investigations revealed that, while the machinery, described as new and unused, was being shipped using invoices issued by the suppliers, actual billing was done by offshore agents operating in another Member State.

As a result of the investigations a recovery of an estimated € 7.33 million has been requested. The companies in question were expected to receive further funding under an ERDF programme 2000-2006.

This case demonstrates the usefulness to OLAF of being a partner in investigations of possible cases of fraud involving money laundering. Likewise, it shows the importance of the cooperation arrangements concluded with third countries in the fight against fraud in securing effective protection of the Community's financial interests.

<sup>19</sup> Cooperation agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, on countering fraud and all other illegal activities affecting their financial interests CS/2004/12352.

### 3.3.6 Agriculture and trade

The agriculture sector accounted for €42.6 billion expenditure in the EC budget in 2006: most of the allocations concern direct aid and market measures. While the Common Agricultural Policy (CAP) is the most important from the expenditure perspective, this area is also significant from the own resources point of view. Around 14% of EU own resources in 2006 came from customs and agricultural duties. Agriculture accounts for a significant share of EU trade with third countries, both imports and exports.

The European Union grants preferential access to EU markets to some countries or geographical regions in the world (e.g. to the ACP countries and under the EBA Initiative -“Everything But Arms”-). 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. The case study below on sugar imports is an example of this kind of phenomenon.

During 2006 OLAF received 106 allegations in the area of agriculture and trade (Figure 3) and 24 new cases were opened in these sectors (Table 12). Almost half the cases closed (45) were closed with follow-up (26) (Table 15). At the end of the reporting period, 65 cases were open in the area of agriculture and trade (Table 13).

Table 22 shows the breakdown of active cases by market. Sugar, fruit and vegetables and garlic account for over 55% of the current active cases in these areas (large quantities of garlic of Chinese origin are declared with another origin to benefit from the above mentioned tariff measures).

*Table 22: Breakdown of agricultural cases under evaluation and in active stage at the end of 2006*

Area	Evaluation	Active Cases	Total
Area aid	1	1	2
Cereal products	3	1	4
Fish products	1		1
Fruit & vegetables	3	12	15
Garlic	2	16	18
Live animals		1	1
Meat products	6	7	13
Milk products	3	3	6
Nitrates		1	1
Olive oil	1	2	3
Rural development	2		2
Rice		3	3
SAPARD	3	5	8
Sugar	1	10	11
Tobacco		1	1
Wine	1	1	2
Wood		1	1
No specific product	1		1
<b>Total</b>	<b>28</b>	<b>65</b>	<b>93</b>

Table 23 shows the estimated financial impact of cases closed in 2006 in the agriculture sector. While agriculture was the largest Community policy area in terms of budget allocated in 2006, the financial impact of cases in this sector (€53 million) is significantly smaller than the financial impact of cases closed in the Structural Funds and Cohesion Fund sector (see Table 21).

Table 23: Financial impact of agriculture cases closed in 2006

Sub sector	Cases closed	Financial impact (€million)
Trade cases with follow-up recommendation	17	24.326
EAGGF-Guarantee Section cases with follow-up recommendation	9	19.000
Monitoring actions	8	10.024
Cases closed without follow-up	19	0.000
<b>Total</b>	<b>53</b>	<b>53.350</b>

#### **Case Study: Sugar imports in the framework of preferential trade arrangements**

Sugar originated in some African countries can be imported into the Community free of import duty within the framework of a quota system. Imports under this arrangement are subject to presentation of an import license and a proof of origin.

In 2004, British customs authorities informed OLAF of a possible irregular importation of sugar declared as originating in Malawi. OLAF decided to open an investigation. In the context of this investigation it was established that more than 4000 tons of raw cane sugar, originating in a South American country and processed in Bulgaria before being imported to the United Kingdom and Malta, were declared as originating in Malawi, Zimbabwe and Zambia. This resulted in the evasion of approximately €2 million as the sugar could not be considered as originating in ACP countries and, therefore, import duties should have been paid. False movement certificates had been presented at import to disguise the real origin of the goods, the importer having already been previously involved in similar irregularities relating to imports of sugar from the Western Balkans.

Administrative and judicial proceedings have been initiated in this matter. A number of consignments of sugar have been seized by Customs, and assets frozen.

#### **Case Study: Fraud in the peach and citrus fruit sector**

Various producers of peaches and citrus fruit were beneficiaries of agricultural payments financed by the EAGGF (Guarantee Section). Information was received by OLAF relating to the possibility that certain producers in a Member State in the period 2001-2004 had obtained Community aid for the processing of quantities of peaches and citrus fruit which did not correspond to the normal yield of the declared production area. The amount of aid is based on the weight of the raw material, irrespective of the end product.

As there were some suspicions that the financial sum paid did not correspond to the yield of the production area, OLAF carried out an administrative investigation in co-operation with the competent national authorities. It established that several producer organisations had overdeclared their production by using “black” national or imported fruit and had unduly received aid amounting to more than €3.3 million.

The case has been transferred to the national judicial authorities and the competent administrative departments in order to start recovery procedures.

This case is a further example of how OLAF works in partnership with national services to combat illegal actions which damage the EC budget and distort legitimate trade.

### **3.3.7 Customs, cigarettes, precursors and VAT**

Customs duties account for around 14% of EU own resources along with agricultural duties. In addition, VAT resources account for about 16% of EU own resources.

During 2006, OLAF received 48 allegations in the area of customs and 26 in the other sectors of this chapter (cigarettes, precursors and VAT) (Figure 3). 24 opening decisions were made in the customs area and 4 in the area of VAT (Table 12). Most of the cases were closed with follow-up in 2006, in particular in the customs area (Table 15). At the end of the reporting period 70 cases were opened in the area of customs and 11 cases in the VAT sector (Table 13) of which 36 cases were opened in 2006 as shown by Table 22.

Table 24 shows the breakdown of the 36 cases opened in 2006. The remarkable number of co-ordination and criminal assistance cases highlights the important role played by Member States in this area.

*Table 24: Cases opened in customs, cigarettes, precursors and VAT sector in 2006*

Major sector	External investigation case	Co-ordination case	Criminal assistance case	Total
Cigarettes		5	2	7
Customs	16	8		24
VAT		2	2	4
Precursors		1		1
<b>Total</b>	<b>16</b>	<b>16</b>	<b>4</b>	<b>36</b>

Table 25 shows a breakdown of the type of possible fraud involved in each of the cases open in 2006. False origin declaration is not surprisingly, the most frequent method encountered. Smuggling is the other major method of fraud in this group. As each case may involve multiple types of irregularity, the total exceeds the number of actual cases.

*Table 25: Breakdown of types of possible fraud involved in the customs cases open at the end of 2006*

Method of fraud	Cigarettes	Customs	Precursors	VAT	Total
Accounting records not presented				1	1
Drug precursor traffic			1		1
False description of goods	2	8			10
False origin declaration		41			41
Non-fulfilment of customs obligations		1		1	2
Other false declaration	1	6			7
Other fraud	2	13		6	21
Other transit fraud		1		1	2
Smuggling	27	1		1	29
VAT carousel				1	1
<b>Total</b>	<b>32</b>	<b>71</b>	<b>1</b>	<b>11</b>	<b>115</b>

Table 26 shows the breakdown of open VAT cases by product at the end of 2006.

*Table 26: Breakdown of VAT cases open at the end of 2006 by product.*

Product	Total
Automobiles	3
Computer equipment	2
Foodstuffs	1
Mineral oil	1
Mobile phones	1
Multiple Items	1
Non ferrous metals	1
Precious metals	1
<b>Total</b>	<b>11</b>

**Case Study: Misdescription of preferential origin at importation into the EU of fishery products from Oman**

Goods originating in Oman may be imported into the Community from Oman duty free or with a reduction in customs duty under the Community's Generalised System of Preferences (GSP) scheme. In late 2005 certain Member States raised their concerns with OLAF about the origin of raw materials used for the production of fishery products exported to the Community from Oman. Although those specific concerns proved unfounded, research and analysis carried out by OLAF revealed a serious risk of incorrect declaration of origin of fishery products exported from Oman due to the existence of significant quantities of fish caught by third-country vessels.

Following an OLAF-led investigation (with the participation of Member State and Omani authorities) in March 2006 into four Omani exporting companies it was established that significant quantities of fishery products exported under cover of preferential certificates of origin were not entitled to benefit from the reduced GSP tariff preferences, due primarily to incorrect declarations of origin by the exporters and, in certain cases, the use of forged documents.

The amount of customs duties evaded is estimated to be in excess of €1 000 000 and concerns imports into 8 Member States. Member States are looking into the suspected involvement of Community importers in the fraud and proceeding with the recovery of the customs duties where appropriate. The Omani authorities have also launched an investigation into the circumstances surrounding the presentation of falsified documents.

**Case Study: Evasion of anti-dumping duties on importation of Chinese bicycles into the Community**

Since 2000, imports of bicycles originating in China are subject to anti-dumping duties (rate up to 30.6%) on the value of the bicycles when imported into the Community. Various operators have sought to evade these duties by declaring the bicycles under other origins. OLAF received information concerning one such case in June 2003 where it was suspected that the bicycles had been fraudulently declared as originating in the Philippines. OLAF coordinated the investigation with the Member State concerned. The objectives of the investigation were to determine the true origin and, if established as Chinese, to take all necessary action to recover the anti-dumping duties from the Community importers.

A Community verification mission to the Philippines led by OLAF, with the participation of the Member State concerned, took place in October 2004. During the course of this verification mission, information, documents and statements were obtained in the Philippines (and also subsequently from Hong Kong) which demonstrated the true Chinese origin of the bicycles. In fact, it was established that the bicycles had been shipped from China via Hong Kong to the Community, that the containers had never passed through the Philippines and that the documents purporting to show Philippines origin were false. Furthermore, it was found that the Community importer was the owner and effectively controlled the 2 alleged "exporting" companies in the Philippines. As such he is suspected of being the organiser of the fraud and to have guilty knowledge of it.

Following receipt of the OLAF mission report, civil duty recovery action is being taken in Member States to recover the anti-dumping duties evaded, in the region of €1.5 million, from the Community importers. In addition, a criminal proceeding is also under way against the Community importer in question as he is suspected of having knowingly evaded the anti-dumping duties by declaring them as of Philippines origin when he was aware of the true Chinese origin.

### 3.4 Follow-up activity

Follow-up includes various activities undertaken by OLAF designed to ensure that the competent Community and national authorities have carried out the legislative, administrative, financial or judicial measures recommended by the Office, normally when a case is closed. The cases then move from the stage of investigation activity to the follow-up stage. Follow-up activities may, however, begin while the case is still open, if this is deemed necessary.

It is possible that initial information may become known during the follow-up stage, giving rise to follow-up actions other than or in addition to those recommended in the final case report/follow-up recommendations report. The duration of the follow-up phase varies according to the circumstances and complexity of the case. If court procedures are involved, the follow-up phase can often be very protracted.

Table 27 shows for the second consecutive year an increase in the number of cases in follow-up compared with the previous year. Structural Funds remain by far the main area in the number of cases in follow-up. The higher number of cases in most of the areas should be noted. As outlined earlier, it confirms the trend that more cases over time are being closed with follow-up actions.

Table 27: Cases in follow-up by sector at the end of 2006

Major sector	2005	2006	Increase (%)
Agriculture	157	174	15%
Structural Funds	200	211	6%
Cigarettes	26	28	8%
Customs	71	87	23%
VAT	28	33	18%
Direct expenditure	84	86	2%
External aid	87	105	21%
EU institutions	51	62	22%
EU bodies	10	13	30%
<b>Total</b>	<b>714</b>	<b>799</b>	<b>12%</b>

Table 28 shows the follow-up activities related to the 799 cases in follow-up which were closed at the end of 2006. The trend observed is an increase in the proportion of administrative and financial follow-up actions. As there may be several follow-up actions related to one case, the number of follow-up activities is higher than the number of cases in follow-up.

Table 28: Type of follow-up activities in respect of closed cases at the end of 2006

Path Type Label	Agriculture	EU institutions	Cigarettes & VAT	Customs	Direct expenditure	EU bodies	External aid	Structural Funds	Total
Administrative	54	20	2	23	11	3	34	34	181
Financial	129	33	22	78	54	4	65	202	587
Judicial	92	43	64	45	71	7	83	111	516
Legislative	5	1	1	1	0	0	1	0	9
Disciplinary	0	36	0	0	1	4	0	0	41
<b>Grand Total</b>	<b>280</b>	<b>133</b>	<b>89</b>	<b>147</b>	<b>137</b>	<b>18</b>	<b>183</b>	<b>347</b>	<b>1334</b>

#### 3.4.1 Financial and administrative follow-up

Administrative follow-up consists of all measures taken by national administrative authorities or by the Community institutions and bodies with regard to the implementation of Community policies and law.

In respect of its own investigation and operational activity in all budget sectors, OLAF monitors and supports Member States and Commission departments to ensure that the necessary action is taken at the right time to maximise the chances of successful financial recovery.

**Case study: Failure by an NGO to respect procurement rules**

An NGO which received Community funding was found during the OLAF investigation to have systematically failed to respect the procurement rules (false offers, conflict of interest) and to have obliged its aid workers to sign double contracts (one to present to the Commission, one internal document for the NGO). The result was that these employees made so-called “voluntary” contributions to the NGO of up to 30% of their salary, deducted at source by the NGO and effectively financed by the EC.

These serious breaches of contract and instances of professional misconduct, demonstrated in OLAF’s final case report, led to the first exclusion of an NGO from Community funding in pursuance of Article 96 of the Financial Regulation (administrative penalty). OLAF gave full support to the Commission departments responsible for the initiation of the exclusion procedure and the preparation of the related Commission decision, which was notified to the NGO in 2006.

A criminal investigation has been opened by the national judicial authority. This investigation is reportedly close to completion.

**Case study: Investigation concerning the European Social Fund (ESF)**

Following an OLAF investigation it was found that a European Social Fund beneficiary had committed irregularities amounting to around €40 000, in respect of which national recovery procedures have been initiated.

At the same time as these irregularities were discovered, the Member State’s management of the operational programme in question was assessed. This was considered not to be in accordance with the rules, prompting a financial correction of around €30 million for the programme concerned by these irregularities.

As part of the follow-up to the investigation, OLAF made sure that the financial corrections applied to the Member State did not terminate the procedures for recovering the amounts from the operator concerned.

The aim of OLAF investigations is to put an end to irregularities committed by operators and make them bear the consequences. The Member States, for their part, are held financially liable for failures established in the implementation of projects and programmes financed by the Structural Funds.

Table 29 shows the estimated financial impact of the cases in follow-up at the end of 2006. The global sum is over €2.5 billion. Around 20% of this financial impact comes from the own resources side (€560 million coming from agriculture, cigarettes and VAT sectors). Around 80% comes from the expenditure side (€2 billion). Structural Funds account for almost one half of the estimated global amount.

*Table 29: Financial impact of cases in follow-up at the end of 2006*

OLAF sector	Financial impact (€million)	Total
Agriculture	560	22%
Structural Funds	1160	45%
Cigarettes& VAT	410	16%

<b>Customs</b>	150	6%
<b>Direct expenditure</b>	50	2%
<b>External aid</b>	60	2%
<b>Internal sectors</b>	210	8%
<b>Total</b>	<b>2600</b>	<b>100%</b>

### 3.4.1.1 Traditional own resources

Traditional own resources make up a relatively important large share of the EU's financial resources. OLAF cases in the traditional own resources sector typically involve evasion of agricultural import duties, customs and anti-dumping duties applicable to all types of industrial and fishery products.

Administrative follow-up, which accounts for an increased proportion of all follow-up cases, includes in this area the monitoring of the application of sanctions and the withdrawal of importer privileges where fraud or irregularities have been detected. Financial follow-up consists of the recovery of the sums unduly paid or the collection of duties unpaid for different reasons (i.e.: customs and agriculture levies after corrections arising from false origin declaration).

Both kinds of follow-up activity were conducted throughout 2006 in an increasing number of cases.

In performing this often legally complex activity, due attention was paid to the strict provisions of the Community Customs Code, the rules of origin/preference (including the various Trade Agreements concluded by the Community) and the specific requirements of regimes with economic impact such as duty relief linked to inward processing arrangements.

It is frequently the case that points of principle have to be settled in a national hearing. Broadly speaking, such legal proceedings may become necessary in order to confirm an operator's financial liability for the payment of customs duty and thus trigger recoveries of customs duty. Formal challenges and appeals from importers are common. During the last year OLAF found itself increasingly committed to providing specialist support both to other Commission departments and to Member States' administrations involved in such litigation.

The front-line financial recovery machinery rests with Member States' competent authorities. OLAF supports the national customs administrations with the provision of data from the operational case file in order to maximise the chances of timely notification of import duty debts and the action taken to recover them. Council Regulation 2028/2004 introduced some important changes to the latter activity, one of the most noticeable being that after five years from the date when the duty liability was definitively established, any related amounts of debt not yet recovered are deemed to be irrecoverable and are effectively written off in national traditional own resources accounts. Where the amount of debt in question exceeds €50000, the Member State authorities have to provide the Commission with information about the circumstances leading to the write-off. The Commission has six months following receipt of the report to forward its comments to the Member State concerned.

#### **Case study: Garlic imports from third countries**

Following various operational investigations concerning imports of fresh Chinese garlic into the Community from 2002 onwards, OLAF initiated a number of administrative follow-up actions. A Notice to importers<sup>20</sup> was published in 2005 since this type of fraud involved various third countries, six Member States and numerous economic operators in the Community.

The notice warned economic operators of the doubts concerning the origin of garlic imported into the Community. It advised them that declaring the origin for garlic and releasing the goods in question for

<sup>20</sup> OJ C 197/8 of 12.8.2005

free circulation might give rise to a customs debt and lead to fraud against the Community's financial interests.

Following the publication of this Notice to importers, there was in 2006 a significant decrease in the number of cases concerning misdeclaration of the origin of imports of fresh Chinese garlic into the Community via transshipments through certain third countries.

#### *3.4.1.2 Indirect expenditure*

The financial management of expenditure in the fields of agriculture (EAGGF-Guarantee) and structural actions (Structural Funds and Cohesion Fund) is shared between the Commission and Member States. The initial formal responsibility for recovering funds unduly paid falls on the Member States. OLAF's financial follow-up function consists of consulting the responsible services in Member States and with other Commission departments in order to verify that recovery activities have been undertaken and results obtained.

#### *3.4.1.3 Direct expenditure*

Follow-up in the field of direct expenditure, including external aid, concerns expenditure where implementation tasks are performed by Commission departments without the involvement of Member States, or are delegated by the Commission to third countries. Follow-up activities also cover, where appropriate, the financial and administrative follow-up of internal investigations. The accumulated expertise and experience of the Office in operational and recovery matters can be used to improve the fraud-proofing of legislation, contract clauses and financial agreements with third countries. In addition, recovery actions may be avoided with a preventive anti-fraud policy anticipating the possible major problems to be encountered or with actions during the phase in which a particular case is open. These actions consist mostly of initiating, coordinating and monitoring recovery action by the authorising officers of sums due to the Community following OLAF's investigations.

In the area of direct expenditure, financial follow-up often follows those investigations which have led to criminal proceedings. In order to support recovery, OLAF assesses and supports the possibility of launching civil action within criminal proceedings in those jurisdictions where this is possible.

In the area of direct expenditure, administrative follow-up concentrates on assisting the 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 five years or the payment of financial penalties) on the basis of OLAF's investigative findings.

### **3.4.2 Judicial and disciplinary follow-up**

Where a case brings to light evidence of possible criminal acts and such information has not been forwarded to national judicial authorities during the course of the investigation, the final case report must mention this fact. The follow-up recommendation should, where necessary, recommend that the case be referred to the competent national judicial authorities for further investigation and prosecution. Where such a follow-up recommendation has been approved, OLAF ensures the judicial follow-up with the competent national judicial authorities.

Once the different procedural phases are completed and the decision adopted by judicial authorities becomes definitive, OLAF closes its judicial follow-up. Often, this is many years after the initial case by OLAF (or its predecessor UCLAF) was initiated.

Where an internal investigation reveals evidence of serious matters relating to the discharge of professional duties such as to constitute a dereliction of the obligations of an official or other servant of the Communities liable to result in disciplinary proceedings, the follow-up recommendation will recommend that the case be referred to the appropriate EU authorities ( the Directorate General for

Personnel and Administration and the disciplinary units of the other Community institutions and bodies) for appropriate disciplinary action. Where such a follow-up recommendation has been approved, OLAF ensures the follow-up with the appropriate EU authorities. In this context, the Office maintains contact both with the disciplinary services of the different Institutions and with other European bodies and agencies. OLAF is available to assist these departments in disciplinary proceedings, and monitors the outcome of the cases for the same reasons as it monitors judicial proceedings.

Whenever the investigation report recommends disciplinary and/or judicial follow-up, the file is transferred to the national judicial authorities or the relevant institution's disciplinary authorities.

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

### 3.4.2.1 Judicial follow-up

Table 30 presents judgements made in 2006. They are broken down into six different categories depending on the kind of ruling adopted by the judges.

A total of 106 actions corresponding to 35 decisions were undertaken in the area of the protection of the EC's financial interests. A significant proportion of these actions resulted in financial penalties (36). The two other most frequent actions were damages (23), suspended sentences (21) and imprisonment (20). The suspects were acquitted in only 4 cases.

Table 30: Summary of judgments received in 2006

Judgements	Actions
Acquittal	4
Damages	23
Financial penalty	36
Imprisonment	20
Suspended sentence	21
Other	2
<b>Total</b>	<b>106</b>

Table 31 provides a breakdown of the number of cases for which Public Prosecutors decided not to proceed with charges together with the reason given by the relevant national authority. The prescription of the offence and the lack of evidence are by far the main reasons for dropping cases.

Table 31: Summary of reasons given by Public Prosecution Offices

Reasons	Number of Actions
Prescription	11
Lack of evidence	9
Low priority	4
Not specified	1
Other	3
<b>Total</b>	<b>28</b>

Table 32 shows a summary of cases referred for judicial follow-up in 2006. 47 judicial follow-up paths were opened in 2006, most of them, as stated earlier, occurring upon the closure of the case. External aid was the area with the highest number of judicial follow-up actions opened.

Table 32: New judicial follow-up paths opened in 2006 by sector and stage

Major sector	Evaluation	Active investigation	Follow-up	Total
Agriculture			12	12
Structural Funds			4	4
Cigarettes			2	2
Customs			7	7
VAT				0
Direct expenditure			2	2
External aid	2	4	14	20
EU institutions			5	5
EU bodies		1	1	2
Precursors				0
<b>Total</b>	<b>2</b>	<b>5</b>	<b>47</b>	<b>54</b>

### 3.4.2.2 Disciplinary follow-up

Once the internal investigation has been closed, the final case report may contain some recommendations relating to the opening of disciplinary proceedings by the relevant authority. In such instances OLAF follows-up the development of the case.

Table 33 shows that there were 38 cases with disciplinary follow-up at the end of 2006.

Table 33: Disciplinary Follow-up Summary

Stages	Total
OLAF internal review	7
Report sent to disciplinary authority	3
Disciplinary procedure	17
AIPN decision	3
End of proceedings	8
Appeal	0
<b>Total</b>	<b>38</b>

### 3.4.3 Judicial monitoring actions

As specified in paragraph 1.5, monitoring actions are those where OLAF would be competent to conduct an external investigation, but in which a Member State or other authority is in a better position to do so (and is usually already doing so). Monitoring actions are passed directly to the authority deemed competent to handle them.

OLAF receives information relating to cases that have been opened by national judicial authorities. OLAF may decide not to conduct any operational activity but will nevertheless “monitor” the development of the proceedings conducted in the Member State. A “monitoring action” will be opened.

As a result of the strengthening of judicial monitoring with a view to reducing the proportion of cases in which proceedings are discontinued by the national courts, 76 cases were at different stages of judicial proceedings at the end of 2006. 39 cases were at the stage of formal communications sent to the judicial authorities in order to expedite handling of the file. A significant number of contacts were made with national judicial authorities in the course of daily work.

Table 34 shows the number of monitoring actions opened in 2006. Given its increased importance in OLAF's workload, over half of them concern the external aid area. The number of new monitoring actions was higher than in 2005 (37).

Table 34: New monitoring actions opened with judicial authorities during 2006

Major sector	Monitoring actions
Agriculture	5
Structural Funds	9
Cigarettes	0
Customs	0
VAT	0
Direct expenditure	3
External aid	29
EU institutions	1
EU bodies	0
Precursors	0
<b>Total</b>	<b>47</b>

### 3.4.4 Cooperation with other Commission departments

#### 3.4.4.1 Task Force on Recovery

In 2006 the Task Force on Recovery (TFR) participated in the clearance of accounts procedure for the EAGGF Guarantee Section with the result that the final proposals were prepared for Member States to assume the financial liability for approximately 400 cases of non-recovery with a value of more than € 1 billion.

As a result of the TFR's activities, on 3 October 2006 a first formal Commission Decision<sup>21</sup> was taken concerning financial liability for 349 cases of non-recovery (cases of more than € 500.000) totalling approximately €95 million. This Decision cleared from the debtors' lists: (a) 41 cases totalling €176 million, which were charged to the Community budget; (b) 164 cases totalling €317 million, which were charged to the Member States concerned, meaning that this amount will be returned to the Community budget in 2007 and (c) the remaining 144 cases totalling approximately €402 million, which were removed from the debtors' list as non-cases or double entries.

In the Structural Funds' area, recovery of unduly paid sums arising from an irregularity or fraud case is ensured by Member States. The programmes part-financed by the Structural Funds are multiannual and are implemented on the basis of intermediate payments. The refund to the Commission may be carried out through a reduction or withdrawal of the financial allocations. Recovery of unduly paid sums may be undertaken before or after the closure of the programme.

Further to the conclusions and recommendations formulated by the ECA in its special report on the management of OLAF, the Office has undertaken a general rethink of its role on recovery. A management dialogue was initiated, including discussions with other Commission Directorates General concerned.

In the meantime, OLAF continued to assist the other Commission departments with the closure of programmes in the Structural Funds sector for the programming period 1994-1999, in order to make sure that the financial consequences involving irregularities communicated by Member States had been properly defined.

<sup>21</sup> Commission Decision 2006/678/EC of 3 October 2006, OJ L 278, 10.10.2006, p. 24.

#### 3.4.4.2 *Fraud-proofing*

OLAF's operational experience and expertise can be used upstream in the Commission's legislative work.

A dedicated fraud proofing mechanism gives Commission departments access to this expertise at an early stage of the preparation of the legislation in order to make legal instruments more "fraud proof".

OLAF fraud-proofing activity during the period involved the analysis of 21 draft legislative texts (for all sectors concerned) and 17 projects.

OLAF was associated up front in the preparation of the three-yearly revision of the Financial Regulation which led to amendments further protecting the Communities' financial interests. OLAF also contributed from a fraud prevention point of view to the improvement of standard contracts in the research area.

## 4 OPERATIONAL SUPPORT

### 4.1 Intelligence activity

Intelligence activity consists in the provision of strategic and operational analysis, case studies and other support to investigators based on information collected prior to and during a case.

Case analysis may continue to be provided throughout the life of a case to support specific requests from investigators.

Intelligence activity which is intended to provide a source of information for OLAF is called **strategic intelligence**. Strategic intelligence evaluations may lead to the opening of specific cases, or provide more general guidance relevant to policy development and operational strategy.

Conversely, activities aimed at providing specific case-related operational support in the context of an ongoing OLAF evaluation or during the open stage of a case are known as **operational intelligence**.

#### 4.1.1 Strategic intelligence

The strategic intelligence capability of OLAF has continued to develop with strengthened and greater facility to support operational activities and to reinforce OLAF's policy role.

In 2006 activities in the area of strategic intelligence included the following:

- In January 2006 a risk evaluation of fraud against the Community budget was prepared. The paper outlines the specific risks relevant to each individual sector of the European Community budget as well as a number of horizontal risks which apply across the budget as a whole such as corruption, organised crime, multiple financing or the control systems in the Member States.
- A number of risk evaluations based on reports of irregularities in the funding of the Common Agricultural Policy and Structural Funds were produced to support the Office in the setting of priorities for control and case related policies. Likewise, analyses of irregularities and frauds were presented to Member States' authorities in order to highlight trends and major weaknesses in the sectors of shared management (agriculture and structural actions).
- Training and support were offered to the new Member States and Candidate Countries to prepare them for reporting and analysing irregularities in these sectors.
- An in-depth analysis of certain statistical information relating to VAT was carried out to determine its potential as a source for the detection of fraud, fraud patterns and fraud sensitive product groups.
- Co-operation with anti-fraud intelligence units in the Member States, candidate countries, third countries and other international institutions was further strengthened. Specific attention was paid to building working relationships with authorities in the new Member States as part of the multi-country PHARE programme. A working partnership was developed with Europol following the signature of a Memorandum of Agreement (see paragraph 5.7.2), both in terms of strategic intelligence exchange and the sharing of analysis techniques and IT capabilities.
- Progress was made in developing new tools and techniques to gather and make use of information and to identify new and improve existing sources. The ability to access, exploit and analyse data is key to the success of OLAF's intelligence capability.

### 4.1.2 Operational Intelligence

Operational intelligence provides on request specialist support and assistance to OLAF investigators and the Member States.

Operational intelligence activities include:

- information support relating to the provision of information based on available pre-defined databases, in-house or abroad expertise and contacts;
- enhancing initial information highlighting links between people, organisations and their financial interests in EU projects;
- providing hands on expertise in Commission internal or external commercial databases and open sources, which could entail identifying the total expenditure relative to a particular case, trade statistics, checks on companies and persons worldwide or background information on vessels, ports and containers;
- Pre-processing of data with a view to subsequent analysis, which often consists of scanning, processing for optical character recognition and indexing electronic data. Data preparation also requires considerable data cleaning; text mining<sup>22</sup> may help uncover the named entities in a large data set;
- analysing, linking and visualising high volumes of data using I-base environments to produce Analyst Notebook charts, event charts and geographical presentations;
- assisting with comparative and other more complex analysis;
- technical support such as forensic computer support or developing case based IT solutions.

Since April 2004, intelligence support requests have been made through the Case Management System (CMS) making it easier to manage the relationship between the intelligence analyst and the investigator who requires intelligence support. The analysts' involvement with investigations and operations activity is becoming more intensive, with intelligence increasingly becoming an integral part of the investigative process. This is reflected in the growth of requests for support to internal investigations where the combination of normal data and institutional data sources involve specialist knowledge and expertise.

Initial information sources and new software solutions of high qualitative standard were identified, introduced and exploited; together with the introduction of new methodologies (e.g. such as text mining) for data analysis and dissemination.

Technical assistance consists of a wide range of hardware-related actions such as seizure of data in various electronic formats held on computers, laptops, servers and other technical media, and forensic computer support).

This improved technical support in computer forensics provided for OLAF investigations has made electronic data more easily accessible by applying new technologies. The volume of data captured during single operations has grown exponentially. Additional technical support for individual cases was provided

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<sup>22</sup> Text mining refers generally to the process of extracting interesting and non-trivial information and knowledge from unstructured text.

by extending OLAF's scanning capability with two mobile scanning units, which soon proved their operational use in several OLAF investigations. High volumes of seized data are quickly made exploitable by investigators.

After a case has been opened operational intelligence activities may entail more sophisticated techniques such as advising on and coordinating the use of specialised investigation methods, calling upon a network of contacts in enforcement agencies in the Member States, in third countries or with international organisations.

## 4.2 Legal and judicial advice

Investigators may obtain Community law related legal and judicial advice on operational matters within OLAF's sphere of independence.

The Case Management System (CMS) provides for a "legal and judicial advice module" to obtain legal support for operational activities. 2006 was the first full year in which this advice module was operational. This tool enables OLAF operational staff to request advice on specific cases from OLAF's legal units. As the legal advisers have access to the case file this facility brings them directly into the context of the case. It also ensures effective coordination and communication and better organisation and archiving of work within the legal units.

During 2006 legal and judicial advice played a significantly increased role in operational cases. The number of cases in which advice was provided in 2006 was over 200. The historical number of requests for advice reached more than 600.

Table 35 shows the breakdown by sector of the total number of pieces of legal and judicial advice given.

The Structural Funds sector has overtaken external aid as the main area for which legal advice has been provided. It accounts for around one in three instances.

*Table 35: Legal and judicial advice provided in the course of an investigation*

Major sector	Number of cases
Agriculture	40
Structural Funds	208
Cigarettes	28
Customs	15
VAT	21
Direct expenditure	79
External aid	15
EU institutions	102
EU bodies	107
Precursors	1
<b>Total</b>	<b>616</b>

Legal and judicial advice includes among other things the following activities:

- advice on issues that arise in specific cases concerning the interpretation of the Community legal framework which governs OLAF's performance of its investigative tasks, as well as other, more general, Community legal requirements such as professional secrecy, the extent of immunity, EC employment law, the territorial scope of application of OLAF investigative powers, the extent and limits of OLAF's independence, and relations with the Commission, the other Community institutions and bodies and Member States, etc.;

- advice on problems experienced in the execution of OLAF's operational duties requiring solutions that concern the Commission's sphere of competence (e.g. infringements by Member States of their duties to cooperate with OLAF during a case);
- Advice on the establishment of practical arrangements for cooperation with other bodies such as Europol and Eurojust, taking into account the overall legal framework of the European Union.

## 5 COOPERATION WITH OLAF'S PARTNERS IN THE FIGHT AGAINST FRAUD

### 5.1 Cooperation with the Member States

The consultation of Member State experts by OLAF is structured as set out in the table below:

Table 36: Structures for consultation

Committees/working-groups where OLAF represents the Commission
• 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)

In the course of 2006 two COCOLAF meetings, two Article 280 Group meetings, one Group “Statistical analyses of irregularities”, two meetings of the Agriculture sector<sup>23</sup> group and two Mutual Assistance Committee meetings were held. In addition OLAF followed two formal discussions in the EAGGF Committee.

The Euro Counterfeiting Experts Group (ECEG) met four times.

A Memorandum of Understanding was signed by the General Prosecutor of the Italian Court of Auditors and the Director General of OLAF to establish a system of cooperation with judicial audit authorities in Italy.

Lastly, OLAF has started a new policy of arranging for audits and accountancy expertise at the request of national authorities when this is necessary to make investigations possible. This type of assistance was provided on three occasions during 2006.

### 5.2 Anti Fraud Information System (AFIS) / Customs Information System (CIS)

#### 5.2.1 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 in the area of mutual administrative assistance in customs and agricultural matters.

The objectives for 2006 were twofold:

- Ensuring internal and external quality management of AFIS in OLAF
- Introducing the new AFIS system, comprising new applications under new technologies

In order to ensure internal and external quality management of the AFIS project in OLAF it was planned to launch calls for tenders so as to establish a contractual base for AFIS production, development, quality assurance and control. The second phase of the restricted tendering procedure was underway at the end of 2006. The technical change for managing the AFIS system was implemented.

<sup>23</sup> "Irregularities and Mutual Assistance - Agricultural Products, Regulations (EEC) N°595/91 and (EC) N°515/97"

In addition, the permanent Operational Co-ordination Unit (OCU) aims to provide logistical and technical support for joint customs operations. Virtual-OCU is an application that allows participation in joint customs operations activities without the need for a physical presence. OLAF supported five joint customs operations using the OCU in 2006.

## 5.2.2 CIS/FIDE

### Customs Information System (CIS)

The Customs Information System (CIS), based on Council Regulation (EC) No. 515/97 and the CIS Convention, was put into full operation in 2003. The CIS was created to store information on commodities, means of transport, persons and companies in order to assist in preventing, investigating and prosecuting actions which are in breach of customs and agricultural legislation (first Pillar) or serious breaches of national laws (third Pillar). The initial level of use of the CIS by national authorities has been disappointing. From the launch of the system in March 2003 until the end of 2004, only 140 cases were registered in the Customs Information System (CIS) database.

OLAF and the customs services of a number of Member States have adopted a strategy for increasing the use of what is potentially a powerful tool for cooperation between customs administrations. This strategy has begun to produce its first benefits. By the end of 2006, 758 cases were stored in the Customs Information System (CIS) database. These cases are accessible to over 1700 users located in the main ports, airports, border posts, risk analysis units, investigation and intelligence services.

For the CIS first pillar database, to which (unlike the third pillar equivalent) the Commission (OLAF) has unlimited access, the active cases are related to the following type of fraud alert:

*Table 37: First pillar alerts to active case (historical)*

Type of Alert	Number	Percent
Counterfeit goods (including cigarettes)	576	76.0%
CITES (Endangered species of flora and fauna)	105	13.9%
Smuggling of genuine cigarettes	21	2.8%
Misdescription of goods (CN code included)	13	1.7%
False origin of goods	7	0.9%
False customs value	2	0.3%
Precursor (chemical product for drugs) / steroid	2	0.3%
Cash control (money)	2	0.3%
Others (average 1 case: transit, excise, human being, drugs)	30	4.0%
<b>Total</b>	<b>758</b>	<b>100.0%</b>

### FIDE

The European Customs File Identification Database (FIDE) will be a central European database tool containing identification data on persons and companies convicted (or suspected) having infringed customs laws. Further to the adoption in 2003 of the protocol amending the Convention adopted in 1997 on the use of information technology for customs purposes, OLAF conducted a feasibility study for the creation of this database and initiated the technical development of the system. At the time of reporting FIDE was expected to be in production by the end of 2007.

Using search and interrogation features, FIDE will be able to provide a customs authority with an overview of current or historical irregular activities by persons or companies in other Member States. If a search is successful, the customs authority will receive from FIDE all necessary information to contact the Member States' customs department(s) dealing with relevant investigations.

FIDE will bring the following overall benefits:

- Simplifying the investigation process for local and Member State customs cases;
- Reducing the time spent in searching and collating relevant information for investigating local and Member State customs cases;
- Expanding access and volume of case relevant data available to customs investigations services;
- Boosting efficiency and making effective use of investigation resources due to the larger volume of better quality data.

#### Anti-fraud Transit Information System

Following the implementation of the New Computerised Transit System (NCTS), OLAF drafted, in agreement with other Commission departments, an administrative arrangement for the introduction of the Anti-fraud Transit Information System (TIS) intended to provide important information on national and international movements of sensitive goods. The current Customs Early Warning System (EWS-C) will be retained exclusively as a fallback procedure in order to cover any periods of NCTS downtime and thus ensure the uninterrupted provision of pre-arrival information for transit movements of sensitive goods. The proposal was discussed within the EC/EFTA Working Group on Common Transit and has been approved.

### **5.3 Preparing candidate countries**

#### **5.3.1 Cooperation with candidate countries**

OLAF's activities in the area of enlargement includes contributions based on its operational work for all matters related to the development and implementation of policy towards the preparation of the candidate countries and potential candidate countries for enlargement. It includes also the key coordinating work played by the two OLAF liaison officers based in Romania and Bulgaria.

In 2006 OLAF was involved in the preparation and implementation of the screening sessions for Croatia and Turkey on chapters 24 (Justice, Security and Freedom), 29 (Customs Union) and 32 (Financial Control).

In addition, OLAF started to work from the beginning of accession negotiations in October 2005 with Croatia and Turkey to establish the necessary administrative structures for the fight against fraud and the protection of EU financial interests in both countries. Both countries have expressed their commitment to establish such structures. Croatia has informed OLAF that the Ministry of Finance will host it. Turkey designated the Prime Ministry Inspection Board (PMIB) as temporary contact point for OLAF.

Initial contact has also been made with the relevant authorities in the Former Yugoslav Republic Of Macedonia for the same purpose.

#### **5.3.2 The Bulgaria – Romania Network Agreement (BGRONA)**

The Bulgaria and Romania Networking Agreement (BGRONA) was designed to assist these two countries' preparation for accession in the area of the fight against fraud and protection of the EU financial interests.

The activities consist of a series of training seminars which were delivered mostly by framework contractors and in some instances by OLAF staff in the beneficiary countries. The Activity Plan also covered the hosting of trainees in OLAF in the investigations and operations units and a number of IT initiatives relating to AFIS and the CIS. OLAF hosted 18 trainees in 2006 under this programme.

## 5.4 Mutual administrative assistance

Implementation of the mechanisms for mutual administrative assistance in customs matters such as cooperation agreed in EC customs cooperation agreements or in protocols to trade agreements is indispensable to the defence of legitimate commercial interests.

During 2006 OLAF was the responsible Commission service for the negotiation of the Protocol on Mutual Administrative Assistance and the anti-fraud clause (protective measures) within the context of trade and customs agreements concluded with Albania, with the Gulf Arab States and with the Government of Japan, for which the signature is still pending. In addition, OLAF proposed the conclusion of a Practical Cooperation Arrangement between OLAF and the Dubai authorities for the purpose of protecting the financial interests of the parties.

An amended proposal for a new horizontal instrument on mutual administrative assistance adopted in September 2006<sup>24</sup> is aimed at establishing a more complete and multidisciplinary framework for the protection of the European Community's financial interests and fight against fraud and any other illegal activities. For this purpose, the proposed Regulation requires Member States and the Commission to cooperate and assist one another and exchange information to allow swift investigations and appropriate action in any area. The Regulation would not give the Commission any investigative powers of its own, but offers the Commission's assistance to the Member States for cases of cross border fraud such as VAT "carousel" fraud. The proposal aims to optimise the use of information available, for example by using financial information from the anti-money laundering sector for the fight against fraud harmful to Community financial interests.

More specifically, on 22 December 2006 the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 515/97 on mutual administrative assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters<sup>25</sup> was adopted. The main reason for this proposal is the strengthening of cooperation between the Member States and between them and the Commission, the accent being put more strongly on the operational dimension.

## 5.5 The Philip Morris International Agreement (PMI)

In 2006 six Member States joined the Agreement concluded in 2004 between the European Commission, ten Member States and Philip Morris International (PMI). At the end of 2006 twenty-four Member States participated in this Agreement (the exception being the United Kingdom). The Agreement envisages an efficient system to fight smuggling and counterfeiting of cigarettes. It improves the exchange of information between the participants in the areas of seizure, smuggling and counterfeiting.

Under the Agreement, PMI agreed to pay around 1 billion dollars over a period of 12 years to the European Community and the Member States who had joined the Agreement by July 2004. By the end of 2006 PMI had already paid around 425 million dollars. In October 2006 the ten Member States which signed the Agreement in 2004 and the Commission confirmed their agreement on the sharing of these payments. The amount allocated to the Community budget accounts for 9.70% of the total sums paid by PMI. In the context of the implementation of this Agreement the Commission proposed to add €44 million to the amount granted to the Hercule II programme<sup>26</sup> in the period 2007-2013 (of which €6 million in 2007). These additional amounts will finance training activities and equipment aiming at combating smuggling and counterfeiting of cigarettes.

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<sup>24</sup> COM(2006)473.

<sup>25</sup> COM (2006) 866.

<sup>26</sup> §5.9

Among the main elements of the Agreement there are the Protocols for control and follow-up regarding the cooperation between OLAF and the Member States on the one hand and Philip Morris on the other hand. This cooperation includes the “tracking and tracing” of cigarettes to identify where they have left the legitimate supply chain to fall into the hands of smugglers.

## **5.6 Cooperation with third countries and international bodies and fight against corruption**

OLAF has direct contacts with investigation and enforcement authorities of third countries, including customs, police and judicial authorities, and international organizations with parallel interests. OLAF may transmit case-related information to the competent authorities of third countries subject to professional secrecy and compliance with data protection legislation.

In 2006 cooperation has been further enhanced through the International Investigators' Conference which attracted nearly 100 participants from over 30 institutions. In the context of these international fora OLAF provided its expertise in the fight against corruption in other groups such as the Inter Agency Group for Anti-Corruption (IGAC), the Interpol Group of Experts on Corruption (IGEC) and the OECD working group for anti-corruption measures in transition economies.

OLAF is also strengthening its relations with international donor institutions other than the EU in order to exchange experience and enhance cooperation.

Following the Oil-for-Food enquiry in the United Nations (UN), a variety of problems was detected in UN procurement services. In order to investigate suspected fraud and corruption in this sector the United Nations sought the assistance of OLAF. OLAF responded by seconding an experienced investigator to New York to set up and lead a specialised Task Force. This investigator is the former Head of Unit who was in charge of the multi-agency investigations within OLAF. The United Nations have expressed considerable satisfaction with this measure as a number of investigations were completed leading to both criminal referrals and disciplinary hearings.

Additional cooperation has been requested from OLAF following a decision by the World Bank to conduct a review of the Office of Institutional Integrity within the Bank. Once again OLAF agreed to this request by seconding the same experienced officer as counsel to the Panel of experts conducting this review.

## **5.7 Cooperation with bodies in charge of police and judicial cooperation**

### **5.7.1 Eurojust**

OLAF has continued to work in 2006 towards making its cooperation with Eurojust more efficient. The Decision establishing Eurojust 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, either on the initiative of Eurojust or at the request of OLAF where the competent national authorities concerned do not oppose such participation”.

At the end of 2004 Eurojust and OLAF set up a joint Liaison Working Group to enhance further cooperation in relation to cases of common interest. The Memorandum of Understanding signed in April 2003 came into effect in 2005. The main idea is to select cases of common interest and to discuss them on a regular and planned basis. This pragmatic approach enables OLAF and Eurojust to find better solutions for working together.

A number of contacts were made to reinforce the cooperation with the European Judicial Network and with Eurojust. The President of Eurojust and the Director General of OLAF met in May 2006 to discuss developing the cooperation system.

In 2006, Eurojust took the initiative to bring heads of EU organisations working in the EU area of Justice, Freedom and Security together. The “EU JHA agencies” participating comprise Eurojust, Europol, OLAF, the EU Joint Situation Centre, Frontex (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU) and CEPOL (the European Police College), as well as Council working groups, such as the Police Chief Tasks Force (PCTF) and the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA).

On 14 July 2006, Eurojust organised a meeting of “Heads of EU JHA agencies” with a view to gathering all EU players concerned with the European policies in the field of justice and police co-operation. OLAF’s Director participated in the meeting, although OLAF is not an EU JHA, because of the relevance to the meeting of OLAF’s independent investigative role in the protection of EC financial interests. The “Heads of EU JHA agencies” underlined their commitment to better cooperation to ensure that Member States’ authorities can take full advantage of the tools established at a European level.

As a follow-up, OLAF agreed to organise a working group on legal challenges to the exchange of information. On 6 December 2006, OLAF hosted a first technical meeting of the legal and data protection officers from CEPOL, Eurojust, Europol, Frontex and PCTF.

### **5.7.2 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.

OLAF and Europol have begun working together on combating cigarette smuggling. The analytical means of Europol combined with the established operational experience of OLAF should ensure the best possible service to the Member States and should avoid the unnecessary duplication of efforts.

Two other meetings were held in 2006 between OLAF and Europol. These dealt with the counterfeiting of currency and were organised by the Forgery of Money Unit at Europol in The Hague. The meetings bring together the heads of the National Central Offices for combating currency counterfeiting in the Member States and in some third states, Interpol, the ECB and the European Commission. The main items on the agenda were the Euro counterfeiting situation in the states represented and technical and operational issues relating to Euro counterfeiting.

### **5.8 Protection of the Euro**

OLAF continues to coordinate Member State efforts to protect the Euro against counterfeiting in close cooperation with Europol and the European Central Bank (ECB). The ECB has underlined the importance of this cooperation in the fight against counterfeiting of the euro.

Quarterly meetings of the Euro Counterfeiting Experts Group, in the framework of the Anti-Fraud Advisory Committee (COCOLAF) bring together experts from the competent national authorities, judiciary, financial authorities and central banks of the Member States and candidate countries, as well as European institutions and bodies and Interpol.

During the reporting period, OLAF continued to manage the Pericles programme which provides funding for the protection of the euro against counterfeiting. The challenge for 2006 was to respond appropriately to requests for assistance; information and knowledge exchange and training; also considering that new Member States were showing increasing interest in the activities provided under the Pericles Programme as they approach inclusion in the Euro zone. Five Pericles actions were registered on activities that focussed on the protection of the euro for acceding and candidate countries.

Nine projects from Member States (Germany, Spain, Poland, Hungary and Belgium) were formally submitted and approved by the Pericles Evaluation Committee. The entire budget allocation (€1 000 000) was committed in 2006.

The Commission (OLAF) promoted a number of legal initiatives for the protection of the Euro. Based on the Commission Decision of 29 October 2004 which established the European Technical and Scientific Centre (ETSC) within OLAF, for the analysis and classification of counterfeit coins, an exchange of letters in December 2006 between the Commission and the French Ministry of Finance confirmed the use by the ETSC of equipment belonging to the French mint for its analysis work. In 2006 the ETSC identified 70 new types and sub-types of counterfeit Euro coins.

## **5.9 External activities**

### *5.9.1 OLAF Conferences*

OLAF itself organised five conferences and seminars in 2006 for training purposes to cover priority areas such as cooperation with candidate countries, investigations in cooperation with national services, communication and cooperation with national Prosecutors.

### *5.9.2 Hercule programme*

The Hercule programme, managed by OLAF, provides the possibility to part-finance actions in the area of the fight against fraud for which Member States ask for grants.<sup>27</sup> These grants are allocated for technical assistance, training, seminars and conferences in relation to fraud prevention.

In 2006 three major types of action were part-financed by the Hercule programme:

- 1) The fight against fraud supported by training actions;
- 2) Various activities of European legal associations devoted to the protection of the financial interests of the Communities and;
- 3) Technical and operational support for fraud investigators.

Eleven training events were part-financed at a total cost of about € 550,000, including international seminars and workshops and some IT-related training. These funds were distributed to the most cost-efficient projects, bearing also in mind the need for geographical balance and the distribution of assistance in earlier years.

In the legislative sector five seminars and one comparative law study were selected to reinforce cooperation between the different departments responsible and to promote legal research in the area of the protection of the Communities' financial interests. The actions were selected in line with the criteria set out in the annual work programme, and on the basis of the priority topics, such as "Legal aspects of cooperation between OLAF and all national anti-fraud agencies", and "Law and administrative practices in the field of fraud prevention, in particular blacklisting and early warning system procedures, and sanctions". Around €375 000 was allocated.

In the field of technical and operational support for fraud investigations, 23 grants were awarded out of 27 requests made. A total of €2 963 000 was allocated under the Technical Assistance part of the Hercule programme out of a total budget of €3 000 000.

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<sup>27</sup> [http://ec.europa/anti-fraud/programmes/index\\_fr.html](http://ec.europa/anti-fraud/programmes/index_fr.html).

Table 38: Number of actions selected

Area	Number of activities
Training	11
Legislative area	6
Technical and operational support	23

## 5.10 Information and communication

### 5.10.1 Data protection officer

Compliance with Regulation (EC) 45/2001 on data protection<sup>28</sup> is a comprehensive and challenging aspect of OLAF's operational work, in particular as the requirements of data protection have to be balanced with the fulfilment of OLAF's investigative and operational tasks.

OLAF staff will at all times respect the rules on the protection of personal data established in Regulation (EC) 45/2001, in particular the requirements with respect to 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 a right of access to the personal data related to himself 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 structures and activities and has provided training for its staff. Data processing operations presenting specific risks have been sent for prior checking to the EDPS.

### 5.10.2 Ombudsman

In 2006, seven new complaints were filed with the European Ombudsman concerning OLAF, most of them alleging that OLAF had not replied to correspondence sent to it. OLAF submitted replies to all complaints and requests for information from the Ombudsman on time.

### 5.10.3 Spokesman, communication and public relations

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 has to 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

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<sup>28</sup> 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

the framework prescribed by international, Community and national law. During the reporting period, the Office maintained its firm line of balancing these interests.

### **Case Study: Legality of an OLAF press release**

On 4 October 2006 the European Court of First Instance delivered a judgement (T-193/04) concerning, among other things, an OLAF press release.

In 2002, a journalist employed by a German magazine published two articles in which he described irregularities within the European institutions to which attention had been drawn by an official of the European Commission. After having opened an investigation to identify the officials or servants of the European Commission at the source of the leak of the memorandum written by that official and two internal OLAF notes, OLAF stated in a press release dated 27 March 2002 that an investigation had been opened and that it could not be ruled out that payment may have been made to somebody within OLAF (or possibly another EU institution) for those documents.

The journalist brought the matter of this OLAF press release before the European Ombudsman, who stated that making allegations of bribery without a factual basis constituted an instance of maladministration.

In 2004, OLAF forwarded information concerning suspicions of breach of professional secrecy and bribery to the public prosecutor in Brussels and Hamburg. An investigation into alleged corruption and for breach of professional secrecy was opened in Belgium where a search was carried out by the national authorities at the journalist's home and office and documents were seized.

The journalist then requested the Court of First Instance of the European Communities to annul the act by which OLAF had forwarded information to the public prosecutor in Brussels and Hamburg and to order compensation for the harm suffered, including that caused by the press release. The journalist pointed out that the public allegations by OLAF not only constituted an act of maladministration but also an infringement of the principles of sound administration, the presumption of innocence and the right to a fair trial. According to him, the publication of press releases about ongoing investigations constituted a breach of Article 8 of Regulation No 1073/1999, since information forwarded or obtained in the course of internal investigations was subject to professional secrecy.

In its ruling, the Court dismissed the action for annulment of the act by which OLAF forwarded information to the German and Belgian judicial authorities. It further dismissed the action for damages allegedly caused by this forwarding of information.

Finally, the Court also dismissed the action brought against the press release: concerning OLAF press releases in general, the Court stated that, in view of the autonomy granted to OLAF by Regulation No 1073/1999 and of the general objective of press releases of providing information to the public, OLAF enjoys discretion as regards the appropriateness and content of its press releases in respect of its investigatory activities.

On the specific OLAF press release in question, the Court points out that the allegations contained therein, formulated in a hypothetical way, without indicating the journalist's name or the name of the magazine for which he worked, do not constitute a manifest and grave disregard, by OLAF, of the limits of its discretion. The Court adds that, in particular, the classification as an "act of maladministration" by the Ombudsman does not mean, in itself, that OLAF's conduct constitutes a sufficiently serious breach of a rule of law.

As the journalist has lodged no appeal against the ruling it has become definitive.

In a more recent ruling which also refers to an OLAF press release (F-23/05 of 2 May 2007) the Court has further elaborated on the need to inform the public about the fight against irregularities and fraud stating that a culture of responsibility had grown inside the Community institutions, which responds in particular to the wish of the public to be informed and reassured that dysfunctions and cases of fraud are being identified and, if that is the case, duly eradicated and sanctioned. The Court further states that this requirement carries the consequence that officials and other agents holding management posts in an

administration like the Commission have to take into account the possible existence of a well justified need to communicate certain information to the public.

OLAF launched various information and communication activities to provide a reliable image of the Office.

One such activity was the organisation of two Anti-Fraud Communicators' Network (OAFCN) meetings and of an OAFCN seminar on "Transparency and Media Relations as a Means of Fighting Fraud and Corruption Affecting the EU Financial Interests" that was co-chaired by the International Federation of Journalists (IFJ) and hosted by the Bulgarian Ministry in Sofia. OLAF issued 22 press releases and two press briefings were held, jointly with the Commission, on the OLAF Activity Report and the Commission report on the protection of the EU's financial interests.

OLAF registered 523 responses to media requests (i.e. interviews, press conferences briefings). OLAF participated in 157 anti-fraud training activities which were not organised or financed by the Office.

In 2005 a total of 62 visits to the Office were organised, involving 848 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.

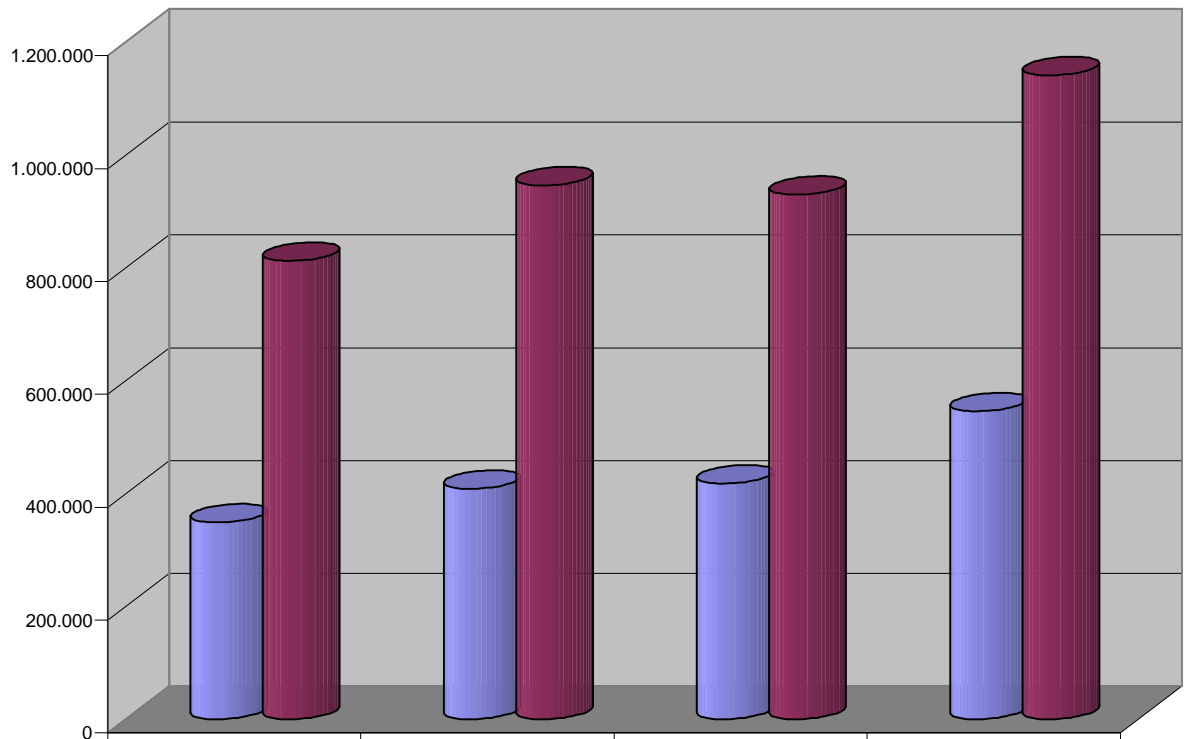
The OLAF Website continued to be the basic tool of the Office's communication and information policy. The number of hits has constantly risen since its first installation. The main pages of the OLAF site are available in all official languages. The site was improved in 2006 by the creation of new sections relating to the presentation of OLAF (functions, management, organisation, independence, communication, and so forth) and the new Supervisory Committee as well as press, cooperation with journalist associations, relations with the European Parliament, the image bank and conferences. The site has also been made more accessible to handicapped persons thanks to special blind software according to international standards (OLAF website: [http://ec.europa.eu/dgs/olaf/index\\_en.html](http://ec.europa.eu/dgs/olaf/index_en.html)).

The OLAF website registered over 545 000 visits in 2006. At the end of the year the OLAF Internet site comprised 2 385 pages and the OLAF Intranet 60 pages. The sections most visited are the press room, mission and reports.

*Figure 8: Number of visits to the OLAF Website<sup>29</sup>*

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<sup>29</sup> The number of visits differs from what was published in previous reports as the methodology used to reckon the figures has been revisited. Visits from search engines and other 'non significant' visitors had been removed from the statistics



Number of visits	348,158	407,804	417,092	545,041
Number of pages viewed	811,644	945,399	929,008	1,140,440

## 6 BUDGET

Table 39 outlines the areas of expenditure within this budget. OLAF's administrative budget<sup>30</sup> is over € 50 million in 2007. The personnel heading accounts for over 60% of total administrative expenditure.

Table 39: Development of the OLAF administrative budget, 2002 to 2006

Item	Budget 2002 (€million)	Budget 2003 (€million)	Budget 2004 (€million)	Budget 2005 (€million)	Budget 2006 (€million)
<b>Personnel</b>	19.3	23.4	26.7	30.4	32.09
<b>External personnel</b>	4.7	4.6	5.0	2.8	2.6
<b>Management expenditure</b>				2.2	2.6
<b>Furniture/infrastructure</b>	7.8	7.7	8.6	9.8	10.9
<b>Anti-fraud actions</b>	1.7	1.9	2.0	1.7	1.7
<b>Supervisory Committee</b>	0.2	0.2	0.2	0.2	0.2
<b>Lawyers associations</b>	0.4	0.4	n/a	n/a	n/a
<b>Total</b>	<b>34.1</b>	<b>38.2</b>	<b>42.5</b>	<b>47.1</b>	<b>50.1</b>
<b>Percentage committed</b>	95%	97%	93%	92%	93%

Table 40 shows OLAF's operational budget for the last five calendar years<sup>31</sup>. It was over €13 million in 2006. The distribution of expenditure is as follows:

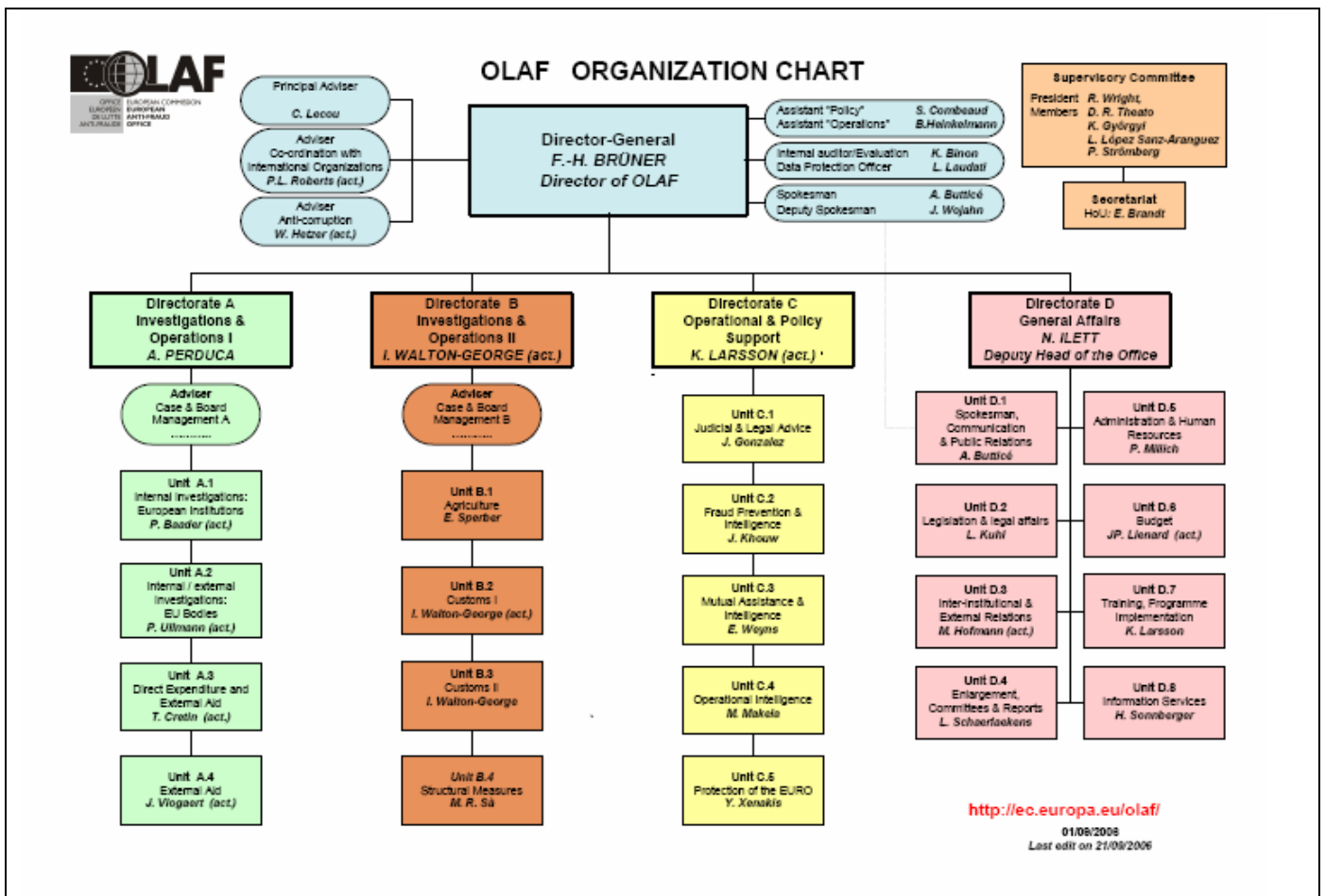
Table 40: Development of the OLAF operational budget, 2002 to 2006

Budgetary line	Budget 2002	Budget 2003	Budget 2004	Budget 2005	Budget 2006
	(€million)	(€million)	(€million)	(€million)	(€million)
<b>24.0201 General anti-fraud measures</b>	5.5	5.1	3.3	2.4	3.8
<b>24.0202 Pericles</b>	0.6	0.9	1	1	1
<b>24.0203 Anti-fraud Information System (AFIS)</b>	2.6	3.8	4.3	4.8	4.8
<b>24.0204 Hercule (lawyers associations included from 2004 on)</b>	n/a	n/a	3.9	3.9	3.9
<b>Total</b>	<b>8.7</b>	<b>9.8</b>	<b>12.5</b>	<b>12.1</b>	<b>13.5</b>
<b>Percentage committed</b>	97%	95%	92%	94%	94%

<sup>30</sup> While title 24 of the European Commission's budget includes OLAF total Budget, OLAF's administrative budget is described in annex COM III to the budget

<sup>31</sup> Since 2004, OLAF's operational budget has been allocated in Title 24 of the European Commission's budget.

# Annexe I: OLAF's new Organisation chart



# OLAF Manual - Operational Procedures

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## **FOREWORD BY THE DIRECTOR-GENERAL OF OLAF**

After eight years of existence of the European Anti-Fraud Office (hereinafter referred to as “OLAF” or “the Office”), it is now time to provide OLAF staff with an updated set of rules and procedures. This also responds to the Commission's call for OLAF to update its working procedures and to the comments formulated by the Court of Auditors in its special report No 1/2005 on the management of OLAF. Consequently, I have decided to draw on our experience of these past eight years and to reform the old OLAF Manual. The new rules meet the standards underlying the Principles and Guidelines of the Uniform Framework for Preventing and Combating Fraud and Corruption agreed by the International Financial Institutions.<sup>32</sup> However, certain differences are necessary given the distinct legal environment in which OLAF operates.

This document, Manual – Operational Procedures, is a short and concise set of basic instructions for OLAF staff, focusing primarily on the conduct of investigations. It is intended to provide OLAF investigators with a summary of the basic principles and rules which, in line with OLAF's mandate, will enable them to produce results that can be used by Community bodies or in national administrative and judicial procedures. This set of rules also gives an overview to third parties, Community bodies, national authorities and individuals of their rights and obligations within OLAF investigations and operations. It increases transparency and legal certainty. However, it is purely explanatory in nature and is not intended to produce any legal effects that are contrary to the applicable legal framework.

The Manual – Operational Procedures will become the core part of a longer and comprehensive version of the Manual containing all of the Office's internal procedures, which will be available internally to OLAF staff.

The Manual – Operational Procedures (hereinafter referred to simply as the “Manual”) is divided into three parts. Part 1 contains the introduction to OLAF and its mandate and the general principles of its operational activities. Part 2 sets out the basic rules and instructions to be applied during investigations and operations from the time initial information is received and assessed to the transfer of the case to other Community or national authorities for follow-up proceedings and during the follow-up phase. Part 3 is devoted to the rights of individuals, which the investigators are obliged to respect during their activities.<sup>33</sup>

I am confident that the new Manual will help to consolidate OLAF's investigative practice, increase its operational efficiency and ensure full compliance of its investigative procedures with legal requirements and fundamental freedoms.

More information on OLAF's activities and procedures can be found on OLAF's website:

<http://ec.europa.eu/dgs/olaf/index.htm>

*Franz-Hermann Brüner*

*Director-General*

Brussels, May 2007

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<sup>32</sup> International Financial Institutions Anti-Corruption Task Force, September 2006.

<sup>33</sup> Basic terms used in the text are defined in a Glossary at the end. For convenience, pronouns appear throughout the Manual in masculine gender. However, these references are meant to apply to both men and women.

## 1) STATUTORY AND PROCEDURAL PRINCIPLES

### 1.1. OLAF's mandate

The mission of the European Anti-Fraud Office (OLAF) is to protect the financial interests of the European Union (EU) and therefore of its citizens, and the reputation of the European Institutions. It achieves this by investigating fraud, corruption and any other illegal activity affecting those interests, including misconduct within the European Community (EC) bodies; by assisting Community and National Authorities in their fight against fraud; and by means of deterrence, prevention and strengthening legislation, making it more difficult for fraud and irregularities to occur and thereby contributing to public trust in the European project.

OLAF's mandate covers in principle all Community revenues and expenditures. 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. Finally, it covers other, non-financial interests, and concerns all activities designed to safeguard Community interests against serious irregular conduct liable to result in administrative or criminal proceedings, including investigations in areas other than the protection of the Communities' financial interests.

### 1.2. OLAF's powers and legal framework

OLAF achieves its mission by conducting fully independent internal and external administrative investigations as defined in Regulation (EC) No 1073/99 and Regulation (EURATOM) 1074/99.<sup>34</sup> The Community legal basis for action against fraud is Article 280 of the EC Treaty.

- OLAF is empowered to conduct internal investigations under Regulation (EC) No 1073/99 and the internal decisions adopted by Community bodies in accordance with the Model Decision<sup>35</sup> contained in the Interinstitutional Agreement concerning the terms and conditions for internal investigations conducted by OLAF. The purpose of internal investigations is to fight fraud, corruption and serious misconduct within the Community bodies and to bring to light any serious matters concerning the discharge of professional duties by the staff of the Communities that may be detrimental to the interests of the Communities and liable to result in disciplinary or criminal proceedings.
- OLAF is empowered to conduct external investigations based on Regulation (EC) No 1073/99 in conjunction with Regulation (EC, EURATOM) No 2185/96,<sup>36</sup> Regulation (EC, EURATOM) No 2988/95<sup>37</sup> and the relevant sectoral rules that permit on-the-spot checks and inspections on the premises of economic operators who may have been involved in, or concerned by, an irregularity or fraud. OLAF's investigators also comply with the national procedural rules of the Member State in which they conduct an investigation. They work in close cooperation with the authorities of the Member State in question. The purpose of external investigations is to detect irregularities and to fight fraud and corruption detrimental to the EU's financial interests committed by economic operators in the Member States or third countries.

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<sup>34</sup> OJ L 136, 31. 5. 1999, pp. 1 and 8. Where reference is made to Regulation (EC) 1073/99, it also refers to Regulation (EURATOM) 1074/99.

<sup>35</sup> OJ L 136, 31. 5. 1999, p. 15.

<sup>36</sup> OJ L 292, 15. 11. 1996, p. 2.

<sup>37</sup> OJ L 312, 23. 12. 1995, p. 1.

The specific legal basis will always be identified in the decision formally opening an investigation.

- OLAF also organises close cooperation among the competent authorities of the Member States and third countries in order to coordinate their investigative activities. OLAF supplies Member States and third countries with the necessary support and technical know-how to help them in their anti-fraud activities, and cooperates closely with international organisations with parallel interests. These activities, other than internal or external investigations, are described as operations or operational activities.

Integral to these investigative and operational processes are the information, intelligence and technical support functions of the Office.

This Manual describes the features common to operations and to internal and external investigations. Where the rules differ, the differences are pointed out.

### **1.3. Independence and the Supervisory Committee**

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

On the other hand, as regards operational investigative activities, OLAF staff act as agents of an independent investigative body. The opening, conduct and closing of an investigation is a matter under the exclusive competence of the Director-General. OLAF investigators act under his direction, delegated authority and control.

The Director-General is appointed by the Commission following consultation with the European Parliament and the Council for a term of five years. In performance of his duties with regard to the opening and carrying out of investigations, the Director-General does not seek or take any instructions from any government, Community body or anybody else.

In order to ensure independent monitoring of the implementation of OLAF's operational function, a Supervisory Committee was established. It is composed of five independent experts appointed by common accord of the European Parliament, the Council and the Commission. The Supervisory Committee carries out its function without interfering with investigations and operations in progress. OLAF cooperates with the Committee under the authority of its Director-General.

The Director-General keeps the Supervisory Committee regularly informed of the Office's activities, investigations, the results thereof and the action taken on them. Where an investigation has been in progress for more than nine months, the Committee is to be informed of the reasons and the expected time for completion. The Committee is also to be informed where a Community body has failed to act on the recommendations made by OLAF and of the cases requiring information to be forwarded to the judicial authorities of a Member State.

### **1.4. General principles**

OLAF investigators must perform their activities in accordance with the principles of legality, integrity and proportionality. They must act impartially, handle case work within a reasonable time span, respect the authority of the hierarchy, comply with the procedures relating to the protection of Community

privileges and immunities, and observe professional secrecy and confidentiality, as indicated below. OLAF staff must respect the fundamental rights and freedoms of individuals at all times. More detailed rules are set out in Section 3 of this Manual.

### *Legality and integrity*

All activities must be carried out in full compliance with the applicable legal rules. In addition, OLAF staff must adhere to the highest standards of ethics as provided for in the Commission's codes of conduct and Code of Good Administrative Behaviour.

### *Proportionality*

When fulfilling their tasks, investigators must take into consideration the seriousness of risks for the Community and its citizens, the rights of others, the overall interests and mission of the Communities as well as the limited resources of the Office. They must conduct their cases in an efficient and effective manner.

### *Impartiality*

The impartiality of investigative and operational activities presupposes the absence of any potential conflict of interest that might occur on the part of the investigator. In accordance with Article 11a of the Staff Regulations,<sup>38</sup> an OLAF official must not, in the performance of his duties, deal with a matter in which, directly or indirectly, he has any personal interest (in particular family or financial interests) such as to impair or appear to impair his independence.

During investigations and operations OLAF investigators gather and take into account any relevant information, both *inculpatory* and *exculpatory*.

### *Reasonable duration of cases*

OLAF investigators must always conduct investigations and operations continuously within a reasonable time span, taking into account the complexity of the case, the division of responsibilities between national and Community authorities and any other relevant circumstances. If the case is still ongoing nine months after being opened, the investigator prepares a report for the Supervisory Committee summarising the allegations, the status of the case, the reasons for the delay and the estimated time for completion.

### *Authority*

All staff undertaking an investigation or an operation must be duly empowered. When carrying out their tasks, they must produce written authorisation showing their identity and their capacity. They must be equipped for each intervention with written authority indicating the subject matter of the investigation.

### *Immunities*

Internal investigations are conducted in accordance with, *inter alia*, the EC Protocol on Privileges and Immunities and the Staff Regulations. In relation to national authorities OLAF stipulates that the protocol requires each Community body to waive its own immunity wherever it considers that the waiver of such immunity is not contrary to the interests of the Community.

In a case where OLAF considers that immunity has to be lifted, it advises the national authority accordingly on required requests to be addressed to the relevant Community body.

### *Professional secrecy and confidentiality*

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<sup>38</sup> OJ P 45, 14. 6. 1962, p. 1385.

The information obtained during an investigation or operation is subject to professional secrecy, which must be observed at all times. It is based on Article 287 of the EC Treaty, Article 17 of the Staff Regulations, Article 8 of Regulation (EC) No 1073/99, Article 8 of Regulation (EC, EURATOM) No 2185/96 and on the sectoral regulations.

Information obtained during the course of an investigation or operation is provided only to persons and bodies whose professional duties require them to know that information (need to know principle) and the use that can be made of the information is limited to preventing fraud, corruption or any other illegal activity.

## **2) CASE PROCEDURES**

### **a) Assessment**

#### *i) Sources of initial information*

OLAF may receive information from any source, including Community bodies, Member State and third-country authorities, international organisations, informants, whistle-blowers, witnesses, anonymous sources, etc. OLAF also uses its own intelligence resources to search for indications of fraud.

In compliance with the Commission's Code of Good Administrative Behaviour, whenever the information originates from an identifiable person, OLAF investigators acknowledge receipt of such information. Equally, whenever either a non-case or a closure decision has been agreed, this individual or body will be notified in writing of the decision.

Information from anonymous sources is assessed according to the same standard as any other information received. Members of the public can contact OLAF to provide information of investigative interest. Appropriate communication tools will be made accessible on OLAF's website.

#### *ii) Assessment of initial information*

All information received by OLAF relating to a possible irregularity or fraud is to be made available to the Office, and not withheld by any individual member of its staff. It should be registered and assessed, irrespective of whether it is anonymous or not. The purpose of the assessment is to evaluate first of all whether the matter falls within the competence of OLAF, and then whether the information received appears to be reliable and whether the suspicions are sufficiently serious. The assessment is undertaken in order to decide whether to recommend to the Director-General that a case should be opened. If the assessment is positive, a report is submitted for management's consideration. Where the issue falls outside the competence of OLAF, the information can be referred to another national or international authority.

During the assessment phase, OLAF evaluators make all appropriate enquiries in order to clarify or corroborate initial information. In general, the assessment phase does not exceed 2 months from the date the information is registered; it can, however, be extended by an additional 6 months and, in exceptional cases, even further.

At this point, a case has not yet been formally opened. Investigators must therefore limit their action only to clarifying the initial information with the source and with other Community bodies and authorities involved in Member States or third countries, and to evaluating and verifying the accuracy of information against other information and intelligence resources.

#### *Executive Board*

The Board assists the Director-General by giving advice on the handling of cases. Board members include representatives of the relevant Directorates. On the basis of the evaluation report, the Board may

recommend that a case be opened or that the incoming information be classified as a non-case if there are no grounds for further action. The Director-General or one of the Directors acting on his behalf decides whether to accept the recommendation.

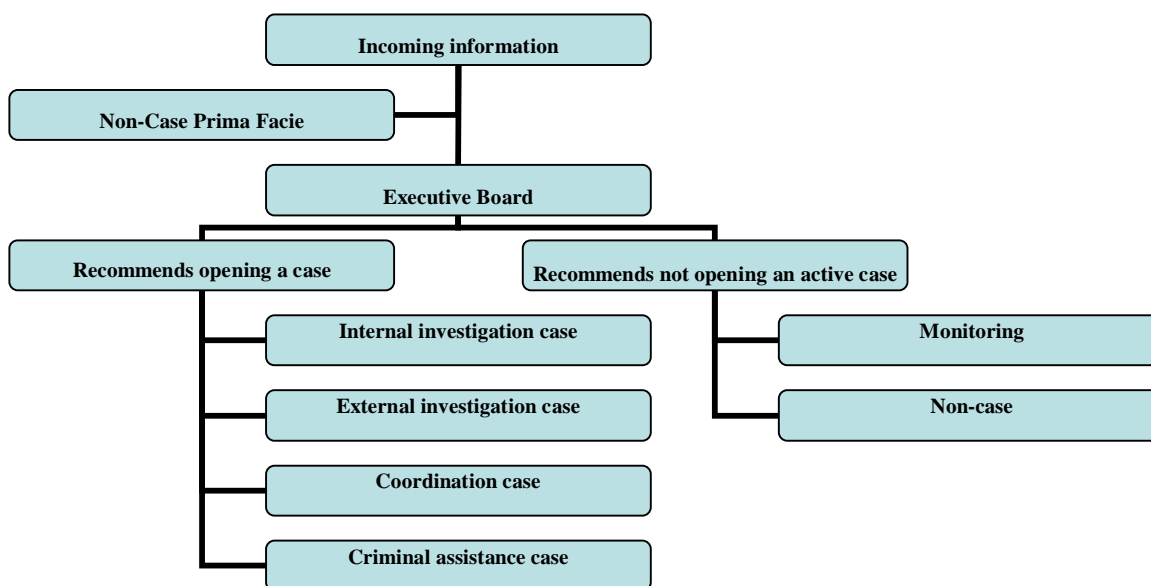
## b) Investigations and operations

The purpose of investigations is to collect the evidence needed to establish the facts of the case in order to verify whether an irregularity, fraud, corruption or serious misconduct detrimental to the EU's financial interests has occurred. OLAF investigators carry out their mandate to investigate by collecting information, reviewing documents, and carrying out on-the-spot checks, inspections and interviews. The purpose of operations is to assist or coordinate with other national administrative and judicial authorities in their investigations and other related activities.

### *Monitoring*

OLAF may undertake monitoring activities with regard to action undertaken by other Community, international or national authorities. In this context, Member States' authorities may be requested to provide information.

#### *i) Types of cases*



This section summarises the investigative tools and means used by OLAF investigators in the different types of cases.

### *Internal investigations*

OLAF investigators may use the following means, in particular, within an internal investigation:

- collecting documents and information in any format which can be used as evidence after technical and / or forensic examination;
- conducting operational meetings with the departments and parties concerned;
- conducting interviews with any person who is able to provide information relating to an investigation;

- carrying out checks on the premises of the Community body concerned. Members and staff of the bodies concerned are required to cooperate fully with and supply assistance, information and explanations to OLAF.

#### *External investigations*

Within an external investigation OLAF investigators may use the following means, in particular:

- collecting documents and information in any format which can be used as evidence after technical and / or forensic examination;
- conducting operational meetings with the departments and parties concerned;
- conducting interviews with any person who is able to provide information relating to an investigation;
- taking statements from any person who is able to provide information relating to an investigation;
- carrying out on-the-spot checks and inspections;
- carrying out control missions in third countries under the terms of sectoral legislation or mutual assistance provisions;
- taking samples for scientific examination.

#### *Coordination and criminal assistance*

In addition, OLAF conducts coordination activities in order to facilitate and target operations undertaken by other administrative or judicial authorities and provides assistance to judicial authorities.

OLAF staff help to maintain the operational platform for mutual administrative assistance (MAA) to facilitate investigations and operations in the customs and agricultural sectors (Regulation (EC) No 515/97<sup>39</sup>). This functions at three levels:

- between the competent authorities of Member States;
- between the competent authorities of Member States and the Commission (OLAF); and
- between the competent authorities of Member States, the Commission (OLAF) and the designated authorities of third countries.

OLAF investigators may take part in national checks subject to sector-specific legal rules. Where OLAF intends to conduct investigations of its own, an external or internal investigation needs to be opened. Where OLAF investigators need to conduct checks in third countries, the case becomes an external investigation.

#### *Changing the scope of a case; opening a supplementary case*

When a case is opened, the subject matter must always be defined. Whenever the subject matter changes, OLAF must change the scope of the case or open a separate case.

#### *ii) Specific conditions for conducting investigations and operations*

##### *Authority*

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<sup>39</sup> OJ L 82, 22. 3. 1997, p. 1.

When conducting investigations vis-à-vis other parties, bodies or authorities:

- OLAF investigators must produce written authorisation showing their identity and their capacity.
- For each intervention they must produce a written authority showing the subject matter and details of certain investigation activities to be undertaken. Specific mention must be made of all access to premises, access to computers and other storage media and on-the-spot checks if any.

#### *Duty of Member State authorities and Community bodies to provide assistance*

The Director-General may submit a written request to the Commission, a Member of the Commission or an official or other member of staff of the Commission to provide all the information needed to carry out the duties assigned to OLAF. When requesting such information, OLAF should state the purpose of the request, what information is required, and the time limit within which the information is to be provided.

Where useful, OLAF investigators may point out to the competent authorities that Article 6(6) of Regulation (EC) No 1073/99 establishes that the competent authorities of the Member States and Community bodies are obliged to provide the necessary support to enable OLAF to carry out its investigative functions.

#### *iii) On-the-spot checks and other inspections and their recording*

##### *Internal investigations*

As part of an internal investigation, OLAF investigators have the power of immediate and unannounced access to the premises of a Community body for the purpose of gathering any relevant information. This includes the right to enter the premises, inspect, take a copy and/or obtain extracts from any document (including accounts) or data medium, and, if necessary, to take custody of such document or data medium to ensure it is preserved for future use; and to request oral information from members and staff of Community bodies.

##### *External investigations*

As part of an external investigation, based on Regulation (EC) No 1073/99 in conjunction with Regulation (EC, EURATOM) No 2185/96 and other relevant sector-specific legal rules, OLAF investigators can conduct an inspection of the premises of an economic operator in search of information and documentation on the operations concerned, under the same conditions as national administrative inspectors and in compliance with national legislation.

These inspections can serve the following purposes:

- detecting serious or transnational irregularities or irregularities that may involve economic operators acting in several Member States;
- consolidating an inspection to improve the effectiveness of the protection of financial interests and to ensure equivalent protection in the Community; or
- complying with a request of the Member State authority concerned.

Copies of documents and storage media may be seized and economic operators and their representatives may be asked for explanations. Where persons, including representatives of public authorities or entities, are interviewed, the standard rules must be applied. Statements may be taken from the representatives of economic operators under conditions that satisfy the individual rights specified in Section 3.

The premises, land, means of transport or other areas used for business purposes of any economic operator suspected of committing an infringement of Community law harmful to the Community's financial interests can be checked. Economic operators may be individuals, firms, and other entities, including public enterprises (but not the competent authorities of the Member States). The premises of an economic operator with whom a person concerned has had contact may also be checked if this is deemed necessary to establish whether or not an irregularity or other suspected or actual infringement has occurred. If a private dwelling is used for business purposes, access must be granted. Refusal to grant access is a breach of Community law.

Only the Member State concerned can ensure that entry can be effected in accordance with national legal provisions, and it has a duty to help OLAF investigators gain entry if this is necessary. Should a Member State not provide such assistance, the Commission can initiate an infringement procedure.

While conducting the check, investigators must comply with national procedural rules at all times. If necessary, they should consult the national authorities before carrying out the check. OLAF informs the national authorities that they may take part in the check.

A comprehensive and complete report of the on-the-spot check has to be drafted and the information submitted to the national authorities in accordance with the rules applicable under Regulation (EC, EURATOM) No 2185/96.

*iv) Interviews and their recording*

During investigations, investigators may invite persons able to provide relevant information and persons who are directly concerned by the allegations to an interview.

(a) Person able to provide relevant information

*A person able to assist OLAF with its enquiries by providing relevant information has to be invited in writing to attend an interview on an agreed date. When the circumstances require swift communication, the invitation may be conveyed by any other means accepted by the interviewee, such as e-mail, fax or phone call. The interviewee must be informed of his rights as specified below.*

(b) Person concerned

The person concerned has to be invited in writing to attend the interview no later than ten working days before the date of the interview. In agreement with the person concerned, this notification may be shorter. The notification states the reasons for the interview, the legal basis for the case and the rights of the person concerned.

The interview must be conducted in compliance with the rights of defence and the local requirements of the relevant jurisdiction(s). The person concerned must be informed that the investigation may lead to one or more of the following outcomes: no further action; financial recovery; or referral of the matter to the relevant Community body concerned and/or to the competent national administrative or judicial authorities. The investigator must advise the person concerned that:

- a legal counsel may assist him during the interview;
- he has a right not to make self-incriminating declarations;
- *he has the right to be interviewed in any one of the official Community languages of his choice. In the letter of invitation, interviewees are requested to inform the investigator of their choice of language for the interview. Whenever appropriate, investigators may use an interpreter. This is entered in the interview record;*
- an official written record of the interview will be drawn up;

- he may request that the documents he has produced be annexed to the interview record and sent with the case documents to the judicial authorities or to the disciplinary unit of the relevant EC body;
- before signing the record he has the right to read and add to it;
- he may request that his declaration be recorded as a statement. He may also ask to annex documents in his possession to the statement;
- the official record of the interview may be used as evidence in disciplinary or court proceedings;
- he will receive a paper copy of the interview record as soon as practicable.

An interview may also be carried out by videoconference.

Investigators record the interview in writing. The record of the interview is signed at once by all present; it indicates the identity of all persons present, the place and date, starting and finishing time of the interview and details of any interruption to the interview.

If the interviewee refuses to cooperate, either by failing to appear or refusing to answer questions, OLAF may refer the matter to a Member State judicial/prosecuting authority.

In addition, in internal investigations, members and staff of Community bodies are also informed of their duty to cooperate fully with OLAF, to lend any assistance required to the investigation, and to provide OLAF with any relevant information and explanations unless this would infringe their right against self-incrimination. If an EC official refuses to cooperate, he must be reminded that refusal to cooperate can result in disciplinary proceedings. The assistance of the Community body concerned can also be sought.

*v) Forensic and technical examination*

Forensic and technical examination may be carried out as part of an external investigation in accordance with Article 7(1) of Regulation (EC, EURATOM) No 2185/96. This includes the right to copy the contents of the computer's storage devices.

In internal investigations, investigators may access documents and information in any format and any data medium. Investigators have immediate and unannounced access to the contents of any computer or other data medium belonging to a Community body that has been made available to an official exclusively for the performance of his duties. This includes the right to seize the computer or to copy the contents of the computer's storage devices.

*vi) Transmission of information during investigations*

OLAF may refer any information obtained in the course of an external investigation to the competent authority at any time, as appropriate. OLAF may refer any information obtained in the course of an internal investigation to the relevant Community body. Transmission of information to a competent authority must be under the authority of the Director-General. It must observe the rules on professional secrecy, and be on a need to know basis and in full compliance with the following rules, in particular:

The Community body concerned will be informed of the opening of an internal investigation.

OLAF investigators notify the Community body in advance whenever they carry out investigative acts on the premises of a Community body. If the circumstances of the investigation so require, they may delay notification until the time of the visit, at the latest.

*When it becomes apparent that an EC official or other staff member is involved in the matter subject to investigation, OLAF informs the respective Community body, giving the following information:*

- *the identity of the person concerned;*

- *a summary of the facts;*
- *information as to whether the person has already been notified of the evidence against him or, where appropriate, on the need to postpone such notification to avoid jeopardising the investigation.*

The Community body will be informed where the internal investigation shows that the Community body should take appropriate steps to safeguard its interests.

OLAF refers information obtained during investigations into matters liable to result in criminal proceedings to a national judicial or prosecuting authority. When such referral is made within an internal investigation, OLAF informs the Community body concerned.

The information to the Community body concerned might be deferred in exceptional cases where absolute secrecy is required and transmission of the information could jeopardise the objective of the investigation, or if so requested by the national judicial authority.

#### *Third countries and international organisations*

OLAF investigators and other staff should be aware of the need to consider relations with third-country authorities and international organisations as an integral aspect of OLAF's work, while taking into account the Community interests, including the Community's political and financial commitments to third countries in relation to Community expenditure and international protocols relating to Community revenue. OLAF has direct contacts with the competent investigation and enforcement authorities of third countries, including customs, police and judicial authorities, and international organisations with parallel interests.

OLAF may transmit case-related information directly to the competent authorities of third countries subject to professional secrecy and in compliance with data protection legislation. This transmission is needed to ensure appropriate follow-up and thus to maximise the protection of the Community's financial interests.

When informing the relevant authorities, OLAF presents its conclusions and may suggest measures to be taken such as orders to allow the seizure of evidence, compensation orders and orders for the freezing of assets. However, it cannot require national authorities to take any specific action.

#### *Member States' courts*

In the course of handling a matter concerning Community law, the courts of a Member State may ask OLAF to provide operational information or documents. In such cases, Community bodies are under obligation to lend their active assistance to national legal proceedings on the infringement of Community rules. Thus, Member States' courts should normally be provided with such information unless there are imperative reasons not to do so relating to the need to avoid any interference with the functioning and independence of the Communities or to the protection of the rights of third parties.

### **c) Closing a case**

#### *i) Final case report*

At the conclusion of a case, a final case report is prepared and submitted to the Board, presenting the findings and conclusions. The final case report gives an objective account of the facts as they emerged from the investigation or other operations, and an analysis of the findings; it presents conclusions and, where appropriate, makes recommendations for appropriate action to be taken by the competent national, Community or international authorities. Where appropriate, it should also record any "lessons learned"

that can be implemented at a later stage. On the basis of the draft final case report, the Board may recommend closing a case with or without recommendations (follow-up). Where appropriate, the Board may amend the draft final case report.

The report should have the status of admissible evidence in administrative and judicial proceedings.

OLAF performs the administrative, disciplinary, financial, judicial and legislative follow-up of its investigations and operations according to the specific requirements of each individual case, in close consultation with other Commission departments and/or competent authorities in the Member States, as appropriate. In the direct expenditure sector this may also involve civil actions in national courts.

*ii) Transmission of information once a case is closed*

Transmission of the final case report and other documents regarding the outcome of OLAF's investigations and operations is under the authority of the Director-General.

In internal investigations, the Director-General informs the Community body concerned when a case or follow-up is closed and forwards the final case report and any relevant documents.

In external investigations or operations, the final case report and relevant documentation are forwarded to the competent authorities of the Member State responsible for taking follow-up action.

OLAF also reports to the European Parliament, the Council, the Commission and the Court of Auditors on the results of investigations and operations. This reporting is carried out in compliance with the confidentiality of these investigations and operations, the legitimate rights of the persons concerned, data protection rules and national provisions concerning judicial proceedings.

*iii) Re-opening cases*

A closed case may only be re-opened if new material evidence appears that could challenge the previous conclusions.

When a case is closed with follow-up, the new facts are also referred to the authority or Community body dealing with the case.

Cases closed with no follow-up or with follow-up completed are only to be re-opened when new facts of a nature likely to alter the outcome of the previous investigation have come to OLAF's attention. A decision to re-open a case can only be taken after an assessment of the new facts in accordance with the established procedures for opening new cases.

### **3) INDIVIDUAL RIGHTS AND INFORMATION DUTIES**

Investigations and operations undertaken by OLAF are administrative in nature but nevertheless must be undertaken with full respect for the rights of persons and fundamental freedoms, in particular the principle of fairness, the right of the person concerned to express his views on all the facts which concern him, and the principle that conclusions of a case may be based solely on facts which have evidential value.

#### **a) Rights and obligations of persons concerned**

OLAF staff must respect the rights of persons directly implicated in a case (persons concerned).

The internal decisions of each Community body setting out the terms and conditions under which internal investigations may be conducted are applied as appropriate.

##### *i) Right to be informed (notification duties)*

###### *Internal investigations*

OLAF must notify the person concerned at various stages of an internal investigation: at the initial stage, to arrange an interview, and at the closure of the case.

Where an internal investigation requires absolute secrecy, or at the request of a national judicial authority subject to national law, notification of the person concerned may be deferred, on the basis of a reasoned written decision. In this case, OLAF may ask the Community body not yet to inform the person concerned. As soon as the reasons for the deferral cease to apply, the information will be forwarded to the person concerned.

If the case is closed and no further action taken, the person concerned is informed in writing. If the case is closed with follow-up, the person concerned is informed in writing to which authority the case has been passed on, unless this would be detrimental to the follow-up action.

###### *External investigations*

In external investigations, OLAF investigators inform the person subject to the investigation, as long as this would not be harmful to the investigation. OLAF investigators also inform the person concerned when the investigation has been closed as long as this would not be harmful to any further action.

##### *ii) Contradictory procedure*

###### *Internal investigations*

OLAF investigators must take into due consideration that members, officials and servants of Community bodies are required to cooperate with OLAF in its investigative efforts. This duty extends not only to an obligation to provide information, but also to cooperate in any other aspect as required by OLAF in the conduct of an internal investigation.

Conclusions cannot be drawn referring by name to a member, official or servant of a Community body once the investigation has been completed, without first giving the person concerned the opportunity to express his views on all the facts which concern him. Thus, the person concerned is invited to an interview before conclusions which refer to him by name in a final case report are drawn. At the interview, OLAF staff may only disclose the information necessary to reach conclusions affecting the interviewee directly.

## *External investigations*

In external investigations, OLAF investigators enable the person concerned to express his views on all the facts that concern him before drawing any final conclusions. Whenever the person cannot be heard, the investigator records what steps were taken to meet this requirement. Compliance with the obligation to invite the person concerned may be deferred in cases necessitating the maintenance of absolute secrecy for the purpose of the investigation or at the request of a judicial authority.

### *iii) Defence rights*

*Investigators inform the person concerned of the following defence rights:*

- *the right not to make any declarations which might be self-incriminating;*
- *the right to be assisted by a legal counsel of his choice;*
- *the right to be interviewed in any one of the official Community languages of his choice. In the letter of invitation, interviewees are requested to inform the investigator of their choice of language for the interview. Whenever appropriate, investigators may use an interpreter, which is noted in the interview record;*
- *the right to provide their statements in any one of the official Community languages of his choice.*

## Access to files

Without prejudice to the rules on transparency of the European public administration, in particular the right to request public disclosure of documents under Regulation (EC) No 1049/2001,<sup>40</sup> and the rules on the protection of personal data under Regulation (EC) No 45/2001,<sup>41</sup> throughout OLAF's operational activities the person concerned (or his legal counsel) has no specific right of direct access to the OLAF investigation file. OLAF files can however be accessed indirectly, during follow-up proceedings conducted by the Community or national authorities, through these authorities, subject to applicable procedural rules. This can be, for example, in the context of disciplinary proceedings or sanctions before other Community body or national administrative or judicial proceedings. In disciplinary proceedings, the person concerned has the right of access to "all documents directly related to the allegations made against him" (Articles 90-91, Article 2 of Annex IX to the Staff Regulations).

### *iv) Review and remedies*

OLAF applies high standards of ethical behaviour. All persons concerned have the right at any time to complain to the Director-General about the manner in which an investigation or operation is conducted. The Director-General will appoint an OLAF senior agent who was not involved in that activity to act as an independent expert and to review the complaint. The Director-General will inform the person concerned of the findings and any action taken to remedy such a situation.

This review is without prejudice to complaints made under Article 90a of the Staff Regulations and to the general right to bring an action before the Court of Justice of the European Communities. In cases of alleged maladministration, any person may also refer the issue to the Ombudsman.

## **b) Other rights**

### *i) Informants and whistle-blowers*

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<sup>40</sup> OJ L 145, 31.5.2001, p. 43.

<sup>41</sup> OJ L 8, 12.1.2001, p. 1.

An informant may contact Community bodies and/or OLAF officials directly by phone or correspondence. A whistle-blower may use the dedicated phone line operated by OLAF.

An informant or a whistle-blower may wish to remain anonymous. Any OLAF official having contact with an informant or a whistle-blower must inform the latter that, while the Office will make every effort to respect his desire for anonymity, it cannot guarantee anonymity once the case is referred to judicial or administrative authorities.

As a matter of policy, OLAF does not offer any reward to informants.

All informants or whistle-blowers with an interest in the outcome of the case are advised of the outcome when the case is closed, unless this would be detrimental to any follow-up action.

#### *ii) Witnesses*

Witnesses in principle do not request or require anonymity. However, general rules on confidentiality and data protection apply.

#### *iii) Public access to documents*

Subject to the applicable rules on data protection, professional secrecy and confidentiality, OLAF staff help to implement European rules on transparency, in particular with respect to public access to documents. Any EU citizen or legal entity registered in the EU can request public disclosure of a document produced or held by OLAF in accordance with Regulation (EC) No 1049/2001. The specific nature of such disclosure is that the document, once disclosed, is provided in the same form to anyone and possibly published on the internet. Therefore, such disclosure should not be confused with access to a file by any person concerned. When providing an applicant with access to a document, the investigator or any other member of the staff may not disclose any information that cannot be disclosed to the wider public.

#### *iv) Protection of personal data*

OLAF staff must at all times abide by the rules on the protection of personal data established under Regulation (EC) No 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 any personal data contained in the file relating to himself. However, this right of access may be deferred where 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.”

Any data subject may lodge a complaint with the European Data Protection Supervisor where he considers that his rights have been infringed as a result of the processing of personal data by a Community body.

## **GLOSSARY OF BASIC TERMS**

- Case

A case is an operational file covering an investigation or another kind of operation as described in Section 2.2.1, opened by decision of the Director-General, or by a Director with delegated power, to launch an action following an assessment.

- Declaration

A declaration is formally recorded oral information about factual elements relevant to an OLAF case.

- External investigation

An external investigation is a case in which investigative activities are conducted based on Regulation (EC) No 1073/99 in conjunction with Regulation (EC, EURATOM) No 2185/96, Regulation (EC, EURATOM) No 2988/95 and the relevant sectoral rules and cooperation agreements that permit on-the-spot checks and inspections on the premises of economic operators in the Member States and third countries.

- Informant

An informant is a natural person who voluntarily discloses factual information to OLAF concerning a matter within the competence of the Office. He can be a whistle-blower or another person.

- Internal investigation

An internal investigation is a case in which investigative activities are conducted within Community bodies on the basis of Regulation (EC) No 1073/99 and the rules and regulations set out in the internal decisions adopted by Community bodies.

- Interview

An interview is a formalised dialogue guaranteeing due application of the rights of defence within a specific procedure.

- Legal counsel

A legal counsel is a qualified lawyer or any other person who gives advice and assists the person in formal contacts with OLAF.

- Operation and operational activity

An operation is a case in which neither an internal nor an external investigation is conducted by OLAF, but relevant assistance and/or coordination is provided as described in Section 2.2.1.

- Community body

A Community body is a European Community institution, office or agency.

- Person concerned

A person concerned is the individual or entity to whom facts under an OLAF investigation or operation may be directly attributable. He is an individual or an economic operator who is suspected of having committed an irregularity or fraud.

- Statement

A statement, as distinguished from a formal interview, is a written deposition by a person or an entity within the framework of an OLAF investigation. A statement is always signed by the person providing it.

- Third party

A third party is a person or entity, but not a Community body or national authority, which is related to an OLAF case and has certain rights. He can be a person concerned, a witness, an informant, a whistleblower, etc.

- Whistle-blower

A whistleblower is an EC official or other member of EC staff who is under a statutory obligation (Article 22a of the Staff Regulations) to come forward with the relevant information. As long as he complies with the rules, he is protected from adverse consequences on the part of the Community body.

- Witness

A witness is an individual who is not a person concerned but provides information concerning a matter within the competence of OLAF.

## Glossary

AFCOS	Anti-Fraud Coordination Service
AFIS	Anti-Fraud Information System
BGRONA	Bulgaria and Romania Network Agreement
CEPOL	European Police College
CIS	Customs Information System
CMS	Case Management System
COCOLAF	Advisory Committee for the Coordination of Fraud Prevention
ECA	European Court of Auditors
ECB	European Central Bank
EFTA	European Free Trade Association
ERDF	European Regional Development Fund
ESF	European Social Fund
FIDE	European Customs File Identification Database
FIFG	Financial Instrument for Fisheries Guidance
FRONTEX	European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the EU
IGAC	Inter Agency Group for Anti-Corruption
IGEC	Interpol Group of Experts on Corruption
IMF	International Monetary Fund
ISPA	Instrument for Structural Policies for pre-Accession
JHA	Justice and Home Affairs
NCTS	New Computerised Transit System
OAFCN	OLAF Anti-Fraud Communication Network
OCU	Operational Coordination Unit
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-Fraud Office
PCTF	Police Chief Tasks Force
PHARE	Poland and Hungary Action for Restructuring the Economy
PMI	Phillips Morris International agreement
SAPARD	Special Accession Programme for Agricultural and Rural Development
SCIFA	Strategic Committee on Immigration, Frontiers and Asylum
UCLAF	Unit for the Coordination and Fraud Prevention
UN	United Nations
TFR	Task Force Recovery
VAT	Value Added Tax