

Eleventh **operational report** of the European Anti-fraud Office

1 January to 31 December 2010

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The Fraud Notification System (FNS) is a web-based tool available to any person who seeks to pass on information concerning potential corruption and fraud.
http://ec.europa.eu/anti_fraud/investigations/report-fraud/index_en.htm

Europe Direct is a service to help you find answers to your questions about the European Union.

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Cataloguing data can be found at the end of this publication.

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Executive Summary

- ▶ The European Anti-fraud Office, OLAF, completed 691 assessments in 2010. As a result of these assessments 225 new investigative and operational cases were opened: 150 internal and external investigations and 75 coordination and assistance cases⁽¹⁾. 189 investigative and operational cases were closed during the year.
- ▶ At the end of 2010, OLAF was handling a total of 493 live investigative and operational cases, of which 139 concerned the EU institutions and bodies and 117 related to expenditure and revenue in the agricultural sector.
- ▶ The average total duration of investigations and operations, including the assessment phase, was 27.9 months, a five-year low, in 2010.
- ▶ The average duration of OLAF investigations and operations, excluding the assessment phase, was lower than in recent years; below 23 months in 2010 compared with 25 months in 2009.
- ▶ During 2010, OLAF received 46 % of its incoming information from the public sector (at EU and Member State level). 52 % came from citizens and the private sector.
- ▶ Following up on OLAF's findings, national courts sentenced fraudsters to a cumulative 125 years' imprisonment during 2010 and imposed financial penalties totalling nearly € 1.47 billion.
- ▶ In 2010, € 67.9 million was recovered in respect of OLAF's investigative and operational cases. The highest amounts were recovered in the structural funds sector (€ 32.9 million), followed by agriculture (€ 11.9 million) and direct expenditure (€ 10.6 million). A further € 351.2 million has also been recovered to date in respect of financial follow-up cases which are still ongoing.
- ▶ OLAF welcomed its new Director General, Mr. Giovanni Kessler, in February 2011.
- ▶ A number of ongoing developments, including a new proposal to improve the legislative framework of OLAF and an internal review within OLAF, will have a major impact on the work of the Office in the years to come.

⁽¹⁾ The rest of the cases assessed (466) did not necessitate further active intervention by OLAF.

Foreword



It is with great pleasure that I present to you the Eleventh OLAF Annual Operational Report.

The results reflected in this report relate to a period during which Mr. Nicholas Ilett was acting Director-General of OLAF (from 9 January 2010 until 13 February 2011). I would like to thank him for his commitment to ensuring continuity in the work of OLAF and for the management of current affairs during this period.

2010 was a year of transition, yet it brought many positive results for OLAF in the investigative as well as in the policy sphere.

OLAF handled around 500 cases simultaneously in 2010, among them several highly complex external investigations, a number of sensitive internal investigations, as well as many high-profile multinational cases where OLAF assumed the role of coordinator or could offer its operational and financial tools.

During 2010, more than half of all incoming information items received by OLAF came from citizens and the private sector. Increasingly more information arrives at OLAF via the Internet-based Fraud Notification System, launched in 2010.

OLAF's work relies on good cooperation with our partners, including law enforcement, customs, administrative services and the judiciary. We must continue to build ever-stronger ties with our operational counterparts within the European Union and beyond to ensure a speedy information exchange and swift follow-up actions.

The average duration of investigations and operations has been relatively stable since 2006. It will remain a major challenge, however, for the coming years to keep the duration in check while increasingly focusing on the most serious cases.

OLAF is the public face of the fight against fraud and irregularities affecting the financial interests of the EU and has an important role in the fight against fraud and corruption within the EU and its institutions. Although the number of allegations of serious misconduct in EU institutions has gone down in recent years, a number of high profile cases were revealed in 2010.

In the policy sphere, the Commission presented a reflection paper in 2010 on the reform of OLAF which developed into a revised proposal amending Regulation 1073/1999 in 2011. As the Commission service in charge of the coordination of anti-fraud policies, OLAF supported Commission services in the development and implementation of such strategies, and in the fraud-proofing of legislation.

OLAF must prepare to face new challenges while our resources are unlikely to increase in the upcoming period. We must therefore allocate tasks and resources wisely.

A simplification of the investigative life cycle could contribute to a better focus on OLAF's core investigative activities. Centralising the assessment of incoming information could lead to a shorter selection phase and a coherent assessment policy.

OLAF currently devotes a significant amount of resources to following up on the recovery of misused funds by the Member States and EU institutions and bodies, as well as judicial follow-up performed by the Member States. Devising a more efficient feedback system could help OLAF free some of its resources to be used in other areas.

With all this in mind, I embark on my mandate as Director-General with the objective of making OLAF more efficient and effective and more focused on its core tasks. I count on the support of all our stakeholders but most importantly, my colleagues at OLAF, along the way. Together we will prepare OLAF for the challenges of the future and take the Office further along the path to continued success.



Giovanni Kessler
Director-General of OLAF

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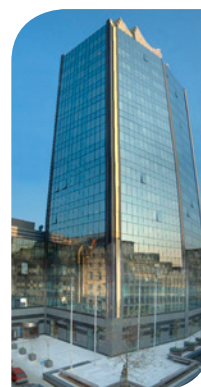
1. OLAF's **Role** and **Responsibilities**

1.1. Mission Statement

The mission of the European Anti-Fraud Office (OLAF⁽²⁾, also referred to as “the Office” in this report) is threefold:

- ▮ it protects the financial interests of the European Union by combating fraud, corruption and any other illegal activities;
- ▮ it protects the reputation of the European Institutions by investigating serious misconduct by their Members and staff that could result in disciplinary proceedings;
- ▮ it supports the European Commission in the development and implementation of fraud prevention and detection policies.

By performing its mission as effectively as possible OLAF contributes to the efforts made by the EU Institutions to guarantee that the best use is made of taxpayers' money.



OLAF: Key facts and figures

Director-General: Giovanni Kessler
(since February 2011)
Established in 1999
Homepage:
http://ec.europa.eu/anti_fraud/index_en.html
Staff (2010): 466
Budget (2010): € 57 million (administration)
Total cases completed by 31/12/2010:
Cases concluded at the end of the assessment phase: 2890
Investigation cases: 1447
Assistance and coordination cases: 812
Average duration of assessments (2010): 7.4 months
Average duration of an investigation (2010): 22.6 months
Total amounts recommended by OLAF for recovery by 31/12/2010: € 1.922 bn
Total amounts recovered by 31/12/2010: € 1.089 bn
New information items received per year: +/- 1000



My ambition is to further strengthen the performance of OLAF, ensuring that we, as an organisation, are associated with professionalism, transparency and results within the Commission and beyond, and that we continue to attract dedicated staff in the future.”

Giovanni Kessler,
Director-General of OLAF

(²) “OLAF” is the acronym of its title in French, *Office européen de Lutte Antifraude*

1.2. OLAF's Mandate

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

OLAF derives its mandate principally from Regulation (EC) No 1073/99. The legal basis for Union action against fraud is Article 325 of the Lisbon Treaty.

For investigations concerning members and staff of EU institutions, OLAF derives its powers also from the inter-institutional agreement between the European Parliament, the Council and the Commission⁽³⁾.

OLAF has a number of powers at its disposal such as the right to perform on-the-spot checks and controls in the context of its administrative investigations.

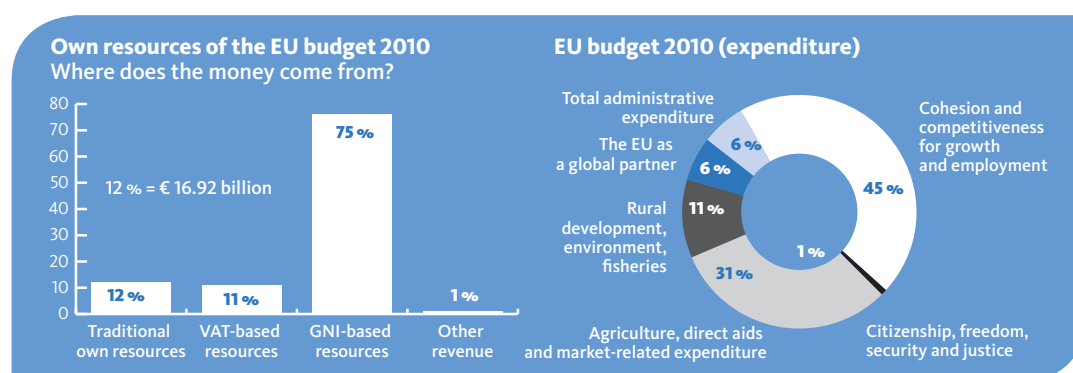
OLAF conducts, in full independence, internal investigations (inside any EU institution or body funded by the EU budget) and external investigations (outside the EU institutions and bodies) in Member States and third countries.

Furthermore, OLAF contributes to investigations carried out by national authorities by facilitating the gathering and exchange of information and contacts. The Office assists the competent authorities of a Member State or third country in conducting criminal investigations.

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

OLAF's mandate covers, in principle, all expenditure of the Union and a part of the revenue side of the budget where OLAF focuses particularly on "traditional own resources", including customs duties. It comprises the general budget, budgets administered by the Union or on its behalf and certain funds not covered by the budget but administered by Union agencies. This mandate also extends to all measures affecting or liable to affect the Union's assets.

Chart 1: EU budget commitments - own resources and expenditure



⁽³⁾ OJ L 136, 31/5/1999, p. 15-19

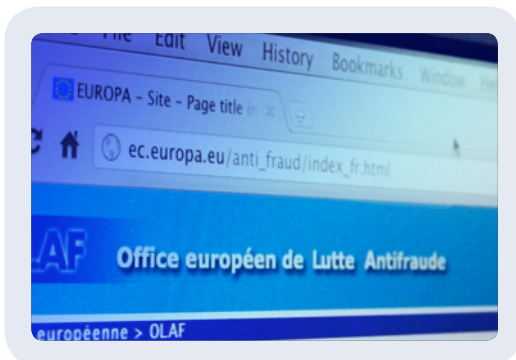
2. Focus on **Incoming Information**

OLAF receives a large quantity of information about suspected cases of fraud and irregularities. The information received varies in quality, significance and relevance and comes from a wide variety of sources. Apart from EU bodies and other institutional sources, private individuals and trade associations often provide OLAF with information. The huge quantity and variety of information received requires clear procedures to reinforce a consistent policy and criteria on the opening of investigations which fall within OLAF's investigative priorities.

OLAF continually aims to increase the volume of relevant quality information that can be acted upon from its stakeholders and the general public.

2.1. Communicating Fraud via the Internet

The Fraud Notification System (FNS) is a new, web-based tool available to any person who seeks to pass on information concerning potential corruption and fraud. It was launched in March 2010 to complement other reporting methods using e-mail, regular mail or phone. An internal and external awareness-raising campaign, including press releases, interviews and leaflets, accompanied the launch. The system is available in English, French, German and Dutch, but reports can be entered online in any EU language.



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

Steps to take:

- ▶ Submit an initial questionnaire.
- ▶ Attach documents if possible.
- ▶ Create a password-protected account.
- ▶ Communicate with an investigator via a “blind” mailbox via which both parties can ‘post’ messages.

All the information received by OLAF is carefully examined before it is decided whether or not to initiate an investigation. This system has the advantage of helping OLAF better to assess the credibility of anonymous reports of corruption and fraud. It also makes abuse of the system more difficult.

At the same time, the system enables potential informants who have so far not dared to contact OLAF to enter into a genuine dialogue with experienced investigators. Although Articles 22a and 22b of the Staff Regulations provide rules for the protection of whistleblower-

ers, some EU staff may be unsure about how allegations of corruption or fraud are assessed and may therefore hesitate to contact OLAF. The new system makes it easier to initiate contact. Whistleblower protection can, however, only be granted to EU staff who are willing to disclose their identity.

For many years OLAF operated a “free phone”, allowing individuals in each Member State to contact OLAF using a toll-free number. Although many messages were left, the system provided no possibility of a dialogue with the caller to request the further information that would be necessary to evaluate the complaint. In many instances the free phone number was abused. No investigations were opened as a result of information arriving via the free phone during the reporting period; consequently it has been decided to abolish it.

2.2. Sources and Scope of Information

In statistical terms, three sources of information (the general public, the European Commission and Member State authorities) account, collectively, for 88% of the incoming information. Informants cover a wide range of sources. In the majority of cases they are individuals connected in some way to the alleged fraud. They also include whistleblowers in the EU Institutions and bodies although there are only very few of these. OLAF also receives information from anonymous sources.

Information sources are classified here between source types: during 2010, OLAF received 46% of incoming information from official EU and Member State authority sources and 52% from the general public and private sector sources.

Table 1: Distribution of new information received by source

Source	2006	2007	2008	2009	2010	Total	As percentage
PUBLIC SECTOR SOURCES							
<i>European Commission services</i>	251	251	286	297	262	1347	29%
<i>Other EU Institutions and bodies</i>	20	20	72	31	43	186	4%
<i>Member States authorities</i>	108	133	167	109	80	597	13%
<i>Subtotal</i>	379	404	525	437	385	2130	46%
OTHER SOURCES CLASSED AS INFORMANTS/WITNESSES							
<i>Individuals/private sector sources</i>	397	419	433	456	441	2146	46%
<i>Via Fraud Notification System</i>	0	0	0	0	90	90	2%
<i>Via Free phone</i>	26	42	48	57	53	226	4%
<i>Subtotal</i>	423	461	481	513	584	2462	52%
OTHERS	20	13	22	9	14	78	2%
Total	822	878	1028	959	983	4670	100%

Looking at the distribution in terms of OLAF's sectors of activity, around two-thirds of the

incoming information relates to the expenditure side of the budget (external aid, structural funds, direct expenditure and agriculture). Information concerning the EU institutions represents the biggest sector by number of received input, but it is at its lowest for three years. Many of the information items received subsequently turn out to be prima facie non-cases.⁽⁴⁾

Table 2: Distribution of new information received by OLAF sector

Major Sector	2006	2007	2008	2009	2010	Total	As percentage
Agriculture	107	136	201	174	186	804	17%
Cigarettes	9	10	13	12	16	60	1%
Customs	65	56	54	32	57	264	6%
Direct Expenditure	50	102	150	98	106	506	11%
EU Institutions + EU Bodies	231	208	294	305	232	1270	27%
External Aid	204	205	179	145	156	889	19%
Structural Funds	156	161	137	193	230	877	19%
Total	822	878	1028	959	983	4670	100%

The geographical breakdown of incoming information, focusing on EU Member States and candidate countries, shows that a significant share of new information continues to relate to a small number of countries. In 2010, as in 2009, more than 60% of the incoming information concerned suspected fraud and other illegal activities in six Member States (Bulgaria, Germany, Italy, Poland, Romania, and Spain). The trend is consistent in most countries with marked increases in 2010 in Romania, Italy and the Czech Republic and marked decreases in Belgium, Austria and Luxembourg.

It would be wrong to assume that there is more fraud in those countries with the highest occurrence of allegations forwarded to OLAF, as better cooperation can also lead to a higher number of referrals to the Office. The majority of allegations relating to the EU institutions and bodies originate in Belgium and Luxembourg, since they are the seats of the largest European institutions. In 2010, incoming information listed as coming from these two countries dropped by nearly half.

⁽⁴⁾ Please refer to section 3.2.1. for further explanation.

Table 3: Distribution of new information received by EU Member State and candidate country authorities

Country	2006	2007	2008	2009	2010
Austria	9	11	14	15	8
Belgium	72	72	35	54	28
Bulgaria	0	55	141	94	93
Cyprus	4	3	8	2	6
Czech Republic	13	12	8	16	33
Denmark	11	3	1	1	7
Estonia	5	3	4	3	3
Finland	5	2	1	4	3
France	47	29	24	26	17
Germany	69	74	65	69	59
Greece	42	40	36	38	37
Hungary	6	14	21	18	20
Ireland	2	4	3	10	4
Italy	73	81	61	57	75
Latvia	2	2	1	4	5
Lithuania	10	9	6	7	2
Luxembourg	3	12	7	9	5
Malta	1	1	0	5	5
Netherlands	15	16	22	16	14
Poland	30	39	52	46	59
Portugal	13	14	13	9	9
Romania	0	95	87	60	83
Slovakia	10	5	8	20	28
Slovenia	7	4	4	6	4
Spain	50	44	52	55	60
Sweden	6	7	4	6	7
United Kingdom	52	34	30	31	31
SUBTOTAL FOR MS	557	685	708	681	705
Croatia	5	7	7	11	16
Iceland	0	0	0	0	2
Montenegro	0	0	0	1	2
The former Yugoslav Republic of Macedonia	2	12	2	1	2
Turkey	16	16	16	17	10
SUBTOTAL FOR CC	23	35	25	30	32
Grand total	580	720	733	711	737

2.3. Protecting Whistleblowers

Whistleblowing has a specific meaning within the EU institutions and bodies as defined by Article 22a/22b of the Staff Regulations for EU officials. Whistleblowers in this context are EU staff disclosing information in relation to possible illegal activity or professional misconduct of an official.

In order to qualify for protection as a whistleblower, EU staff must satisfy conditions concerning the type of disclosure, the timeliness of disclosure and the channels for disclosure. The person disclosing the information is under an obligation to reveal their identity and job function.

The concept of 'whistleblower' is sometimes misunderstood. Sometimes OLAF receives information that in essence amounts to no more than disagreements over policy, personal disagreements with colleagues or information already in the public domain. These are examples of disclosure that do not qualify for whistleblower status.

According to the rules, whistleblowers enjoy protection if they acted reasonably and honestly. The protection typically extends to the person's career reports, mobility and identity although the latter may become known if the case is pursued further during penal or judicial proceedings.

Within OLAF there is an initial contact point and helpdesk in place, with a dedicated telephone line, to provide whistleblowers with advice on their rights and obligations. The general procedure is that when OLAF is contacted by a whistleblower it replies to the official concerned setting out their rights and obligations and explaining that within a two-month period OLAF will decide whether to open an investigation based on the allegation.

OLAF's WHISTLEBLOWER CONTACT: Telephone: 67732

Although OLAF receives only a few contacts from whistleblowers, around 5-10 a year, most of these complaints originate in EU Agencies and EU Delegations and refer to matters which may otherwise not come to light. Allegations mainly relate to unjustified expenses, favouritism and conflicts of interest.

Whistleblowing and the protection of whistleblowers were discussed during a seminar in 2010 between OLAF and other Commission Directorates-General.

Persons who are not EU staff members and who wish to report possible illegal activity are considered by OLAF as informants, not as whistleblowers.



3. Investigations and Operations: Key Achievements in 2010

In 2010, OLAF successfully handled a number of significant investigations. The efficient conduct of complex investigations requires multidisciplinary expertise, including specialist investigative skills and analytical, IT forensic and legal / judicial support.

3.1. Key Achievements based on OLAF's involvement – Case Studies

Allegations forwarded to OLAF cover a wide range of wrongdoings from embezzlement, favouritism, fraudulent claims and misconduct in public procurement procedures, to conflicts of interest. The Office can exercise its powers to investigate these allegations, including its right of access to information held by and at the premises of the institution. Furthermore, OLAF is legally entitled to carry out on-the-spot checks on the premises of the economic operators concerned, in order to gain access to information concerning possible irregularities. In exercising these powers, OLAF takes fully into account the safeguards imposed by EU case law, ensuring that its actions are both reasonable and proportionate.

This section provides case examples grouped by the type of involvement of OLAF. These cover: (1) external investigations; (2) internal investigations; (3) coordination of investigations; (4) Joint Customs Operations; and (5) technical and operational support.

3.1.1. External Investigations

External investigations are administrative investigations outside the Union institutions and bodies for the purpose of detecting fraud or other irregular conduct by natural or legal persons. In such cases, OLAF provides most of the investigative input.

In 2010, most external investigation cases were conducted in the sectors of external aid, structural funds and direct expenditure. The examples below illustrate OLAF's work in these sectors.

● *External Aid*

The EU's spending under the heading of the 'EU as a global player' amounts to 5.7 % or € 55.9 billion of the EU budget for the 2007-13 period. The role of OLAF is paramount in preventing and detecting fraud in the field of external aid by working in partnership with other Commission departments – notably EuropeAid and the European Community Humanitarian Aid Office (ECHO) – and with partners in other international institutions and national authorities in third countries.

Case study A: OLAF exposes fraudulent hidden consultants

Background

The European Commission concludes a very large number of contracts for the delivery of goods, works and services within and beyond the EU. Both the procedures for conducting this procurement and the provisions of the individual contracts are designed to protect the financial interests of the European Union.

Companies wishing to participate in these tender procedures often rely on external consultants to help prepare their bids. Consultants have an important and generally beneficial role in these procedures as they help ensure that the proposals comply with the formal requirements and they also contribute to improving the quality of the submitted proposals.



OLAF's findings and role

In 2007 and 2008, OLAF identified a fraud scheme involving consultants who acquired inside information by illegitimate means and then sold this to clients who then bid for contracts. The consultants themselves had no contractual relationship with the Commission so their company information was not recorded in the Commission's contract databases. The "hidden consultant" had influenced the preparation of the projects and the terms of reference within the Commission, had identified experts of interest

to their clients' companies, prepared the clients' bids, and influenced the awarding of contracts, in return for a "success fee". The scheme relied on the complicity of staff involved in the preparation and implementation of EU projects.

After some time, it became clear that this was a systemic phenomenon of corruption spread over many cases already known to OLAF which had up to then been handled separately.

OLAF set up a task group in 2008 to analyse the large volume of information and to process the complex casework. This group brought together the expertise of investigators, analysts and computer forensic examiners, together with a judicial adviser whose task was to facilitate close cooperation between OLAF and the prosecuting authorities in a number of Member States. The deployment of state-of-the-art analytical tools such as text mining and computer forensic expertise made it possible to identify the EU staff members concerned, to link the hidden consultants to specific contracts, and to examine and analyse large volumes of information in a targeted manner. Subsequently OLAF staff members acting as expert witnesses

assisted national authorities in the related judicial proceedings. The group concluded its activities in 2010 once the bulk of the cases had been closed and after discussing the conclusions from these investigations with internal stakeholders within the Commission.

To date, OLAF has investigated some 30 cases with a similar fraud pattern.

Follow-up

Altogether four companies, two lobbyists, two directors of consulting companies, and three members of EU staff have been subject to judicial examination. In the case of one other staff member associated with this scheme, an administrative solution was found. Payments of € 2.1 million were stopped on three EU projects but it was too late to prevent the payment of € 4.8 million in respect of two large projects. This sum has still to be recovered.

Judicial follow-up on these cases continues in two Member States.

Lessons learnt

The information that led to the opening of the first investigation in this group of cases originated from a company that had not won a contract and which suspected a leak of confidential information to the benefit of its competitor. This suggests that the means by which communication can be made to OLAF, including the Fraud Notification System (FNS), should be publicised more so that potential informants know where to turn if they have information to share. The FNS allows informants to forward information to OLAF and to receive feedback from OLAF, while preserving the anonymity of informants if they so wish. Potential “whistleblowers” should equally be made aware of the protection to which they are entitled.

OLAF’s operational experience has revealed the need for improved enforcement of the existing administrative and legal framework, rather than for its further extension. This could be achieved by improved controls and mandatory financial training before staff are allowed to handle financial files. Ethical training for staff now covers the risks of this type of fraud and the indicators that hint at its existence (“Red Flags”). Specific, compulsory training for participants in evaluation committees is needed to increase their awareness of these risks.

To prevent further fraud of this kind, the Commission services have introduced new measures addressing the collective problem of cascading contracts and unidentified sub-contractors and other third parties. A register of lobbyists has already been set up within the framework of the European Transparency Initiative. The extension of this register to include consultants who provide advice to third parties competing for EU-funded contracts will substantially reduce this risk.

To avoid a distortion of competition and pricing, proposals have been made to ensure identification in the Commission procurement system of all layers of sub-contractors and of their geographical location.

● *Structural Actions*

Funding for regional and cohesion policy amounts to € 347 billion for the period 2007-13, which is roughly 36 % of the EU budget. It is therefore not surprising that a large number of OLAF investigations concern this sector.

Case study B:

Misuse of European Regional Development Funds (ERDF) in Calabria, Italy

Background

In 2010 OLAF adopted its case report into the alleged irregular use of the EU funds provided for 48 environmental projects operated under the Regional Operational Programme for Calabria 2000-2006. These projects, which were supposed to deal with particular aspects of what was termed an “environmental emergency”, were approved and operated under the auspices of the “Provisional Administrator of Environmental Emergency Measures” in Calabria. OLAF’s investigation had been launched following an analysis of information received in connection with ongoing judicial investigations by the office of the Public Prosecutor in Catanzaro, Italy into environmental funding matters.

OLAF’s findings

In the course of its investigation OLAF discovered serious irregularities and possible fraud in all phases of the implementation of the projects concerned.

In particular OLAF noted the following breaches of EU and national law:

- public procurement rules and procedures were not fully respected;
- insufficiencies in the accounting system, notably in the case of projects generating resources and financed by a variety of funding sources;
- failure to comply with the rules on publicising EU projects and considerable delays in completing the work and testing the works when finished;
- failure to transfer powers relating to the waste-water treatment to the bodies normally responsible for their management;
- lack of proper checks by the national and regional authorities; and
- failure to separate the functions of the controlled and controlling bodies.

Follow-Up

In its report, OLAF recommended to the European Commission the recovery of the full amount of €57 million in funding awarded from the ERDF for the 48 projects investigated.

In addition, acting on OLAF's report, the regional authorities of Calabria then withdrew a further 21 such environmental projects from EU funding and also recovered certain other ineligible expenditure to a total additional value of €49 million. The judicial and financial follow-up of all of the cases concerned by OLAF and national enquiries into the matter are ongoing in Italy.

Lessons learnt

This case shows the important results that can be achieved through good cooperation between national control and enforcement authorities, the European Commission and OLAF. The case also underlines the need for Member States to have in place good quality control, detection and law enforcement systems to deal with such irregularities and fraud. It also reflects the principle that Member States are primarily responsible for such functions in protecting the EU Budget and that the resources available to the Member States very greatly exceed those available at EU level.

Direct Expenditure: EU-Funded Research Projects

The EU uses funding under the Seventh Framework Programme to boost its research and innovation policies. Over the 2007-13 period, the research budget amounts to € 50.5 billion. OLAF cooperates closely with the Directorates-General which disburse research funds, in order to detect fraud as early as possible.

Case study C:

Complex fraud scheme leads to OLAF improvements in its investigative practices

Background

In 2007 OLAF launched investigations into allegations of fraud concerning networks of firms participating in EU-funded research projects.

OLAF combined information collected by means of its investigations with elements gathered by the Commission's Directorate-General for Information Society and Media in the course of its audit work⁽⁵⁾.

The suspected *modus operandi* of the fraud scheme is that networks of inter-related companies operating in several Member States claim reimbursements of non-existent expenses in an organised manner, using fictitious companies as partners or sub-contractors of research project consortia.

⁽⁵⁾ There is a case pending at the European Court of Justice concerning evidence gathered in the course of an on-the-spot control (Order President, General Court, T-435/09R, GL 2006. Europe Ltd v. Commission 15 March 2010).

In the course of the investigations, OLAF has conducted on-the-spot checks on companies in the United Kingdom, Sweden, Austria, Italy, Cyprus, France and Switzerland.

OLAF's investigations are still ongoing and further developments are expected during 2011.

Evaluation

The key characteristic of these cases is their high degree of complexity. The suspected fraudulent activities have been organised in a very sophisticated manner with the intention of deceiving the Commission's control mechanisms. The organisational structures created were deliberately opaque and spanned several countries. Traditional detection approaches and standard control programmes used by the Commission services have proved inadequate to deal with such an elaborate scheme. This partially explains why the modus operandi went unnoticed for years.

The cases are particularly complex because:

- ▶ a considerable number of projects were affected;
- ▶ large amounts were unduly claimed;
- ▶ a high number of legal entities were involved;
- ▶ different legal frameworks and contractual rules for the projects were concerned;
- ▶ clean audit reports were already (being) finalised by other services of the Commission.

The individual instances of fraud were detected through the use of sophisticated control methods and close coordination between OLAF, the Directorate-General for Information Society and Media and Member State authorities.

Follow-up

The Commission has taken prompt action to protect the EU's financial interests, including the termination of the suspected fraudsters' participation in ongoing projects, recovery of unduly paid amounts, and the exclusion of the companies under investigation from new projects.

OLAF continues to investigate possible links with other cases of fraud in other Member States.

Lessons learnt

Although the investigations are still ongoing certain conclusions can already be drawn from these cases. In general terms, the lesson to be learnt is that an adequate level of ex-ante expenditure control is vital for the prevention of abuse and fraud, using risk analysis which draws on the results of previous fraud investigations. These cases have also proven that cooperation is a prerequisite for the efficient combating of fraud.

The experience gained in connection with these cases has led to a new form of cooperation between OLAF and the Commission Services which fund research projects.

Key elements in the new cooperation and investigative approach are the following:

- ▶ The Commission service concerned implements a system to make information accessible and immediately usable for their own ex-ante and ex-post control purposes and for possible investigations;
- ▶ OLAF asks for the continuous support of the staff of the Commission service concerned to carry out activities, benefitting from their specific technical competences;
- ▶ OLAF transmits information on its findings already during the investigative phase to the extent necessary to give the Commission service concerned the opportunity to take, if appropriate, administrative and financial measures (including recovery of funds, termination of projects, suspension of payments and exclusions) as soon as possible.

Cooperation with the auditors of the Directorate-General for Information Society and Media using sophisticated audit methods tailored to identified risks was crucial to the successful realisation of these investigations. Auditors provided immediate technical support to the investigations, while respecting the different roles and mandates of audit and investigation.

The lessons learnt from these cases have been transposed into training and awareness-raising sessions for officers managing research projects throughout the Commission. The guidelines for evaluation, negotiation and payments have also been updated. OLAF's advanced data-mining tools were adapted to the audit environment of the Directorate-General for Information Society and Media where they are now routinely used.

3.1.2. Internal Investigations

OLAF carries out administrative investigations within the EU institutions and bodies. The purpose is to detect fraud, corruption and other serious breaches of professional duties and obligations of officials and other servants, members of the institutions and bodies, heads of offices and agencies or members of staff, which are liable to result in disciplinary or criminal proceedings.

OLAF supports the enforcement of a zero tolerance policy towards misconduct inside the EU bodies and institutions. To ensure zero tolerance, less serious allegations are referred to the competent disciplinary authority of the EU body or institution concerned. One such body is IDOC (the Disciplinary Unit of the European Commission). In 2010, OLAF and IDOC worked closely together and their respective, complementary competences were better defined. OLAF and IDOC aim to continue their cooperation in the operational and policy spheres.

The Office has also been involved in building a working relationship with the recently established European External Action Service.

**Case study D:****Financial recovery decision concerning an MEP confirmed by the Court****Background**

An investigation by OLAF revealed that an MEP had misused parts of his parliamentary assistance allowance (PAA). The PAA is intended to employ assistants and to pay for service providers who support the parliamentary work of the Member. It was administered by an accountant under the instruction and responsibility of the Member.

OLAF's final case report was passed to the national judicial authorities to consider possible criminal investigation and to the European Parliament with a recommendation to recover the misused sums from the MEP. The Secretary General of the European Parliament decided to recover over €163,000 plus interest. The national judicial authorities, however, decided that there was insufficient evidence for a criminal prosecution.

Evaluation

Contrary to the rules, the MEP had transferred amounts from one budget year to another instead of returning the funds to Parliament. He also failed to report the names of his employees, which is a prerequisite for granting the allowance. Furthermore, he had cancelled the contracts of three assistants without informing the EP, which had continued paying the allowance to the account of the Member's accountant.

The MEP publicly described his failures as "formalities". OLAF and the EP considered the matter as a substantial infringement of the rules which had been put in place by Parliament in order to avoid fraud and to ensure transparency towards the taxpayer.

Follow-up

The MEP contested the recovery order in the General Court. However, in the court hearing the MEP did not challenge the amounts and findings established by OLAF. In its ruling of 16 December 2010, the Court upheld the recovery decision of the Secretary General of the European Parliament and underlined that the Member had infringed the regulation in force.

Lessons learnt

This case was a demonstration of the need for OLAF and the European Parliament to further reinforce their cooperation in combating serious wrongdoing.

In the meantime the rules on the employment of parliamentary assistants have been changed.

3.1.3. Coordination of investigations into cigarette smuggling

In certain cases, the main investigative input is provided by other authorities. OLAF's role is then to facilitate the collection and exchange of information and ensure operational synergy among the relevant national and Union departments.

● *Illegal Tobacco Trade*



The illegal tobacco trade has been growing in Europe since the global economic crisis hit in 2008. Smugglers have been quick to exploit the demand for cheap tobacco products. The European Commission has concluded cooperation agreements with four of the world's largest tobacco manufacturers in order to tackle this trade. OLAF is reinforcing its cooperation with national and international authorities to counteract activities which cost European taxpayers an estimated € 10 billion each year and flood the market with illicit tobacco products which generates vast profits for serious organised crime groups.

Case study E:

OLAF supports Spanish Customs in dismantling the largest ever counterfeit cigarette network uncovered in the EU

Background

OLAF had received requests for assistance from the Member States involved to coordinate their investigations in a series of cigarette smuggling cases with significant impact on the EU and Member State budgets, and with complex international links.

Evaluation

Spanish Customs launched Operation "BALMAN" in February 2010 when specific intelligence about suspicious imports of cigarettes from China was received by OLAF and the Customs Service of the Czech Republic. Fast and accurate exchanges of information between OLAF and national authorities allowed investigators to track containers of counterfeit cigarettes from

China to ports on the east coast of Spain, where they were diverted onto the illegal market. OLAF's involvement contributed to the seizure of six containers with more than 40 million cigarettes in Spain and Portugal, preventing financial losses to the EU budget and Member States of more than € 6 million.

Follow-up

Further investigations, including searches in private companies and properties in Alicante, Valencia, Barcelona and Badajoz, led to the arrest in October 2010 of six suspects in connection with the case. Chinese, Polish, and Spanish nationals were among those arrested and charged with smuggling. They may also face charges relating to money-laundering and infringement of intellectual property rights. The case is currently ongoing as investigators analyse documents and computers confiscated during the raids. OLAF will continue to make information and resources available to assist the Spanish authorities in their enquiries.

Lessons learnt

This case shows the importance of international cooperation and coordination between different law enforcement agencies. Cigarette smuggling is a global phenomenon that can only be tackled with a common approach. The case highlights how organised crime groups are using different ports in different EU countries to illegally import cigarettes.

3.1.4. Joint Customs Operations

Joint Customs Operations (JCOs) are carried out with the aim of specifically targeting smuggling and fraud in certain risk areas and/or on identified trade routes. JCOs help a real-time exchange of information required to improve the practical cooperation in customs between the countries involved in tackling smuggling and fraud. They also help to develop greater insight into where the risks lie on specific trade routes. JCOs not only safeguard the EU's financial interests, but also protect citizens and legitimate businesses by intercepting illegal products trying to enter or leave the EU.

Case study F:

OLAF coordinates large-scale international customs action

Background

In June 2010 the joint customs operation "SIROCCO" focused on deep-sea containers loaded in China or the United Arab Emirates and arriving in the Mediterranean area. The objective was to identify consignments suspected of containing counterfeit or smuggled genuine cigarettes, as well as other counterfeit and illegal goods. It is estimated that the seizure of cigarettes alone prevented a potential loss of approximately € 8 million in customs duties and taxes in the EU.

The Operation was launched in the framework of the Union for the Mediterranean (also known as the Barcelona Process), a partnership including all 27 Member States of the European Union, along with 16 partners across the Southern Mediterranean and the Middle East (Albania, Algeria, Bosnia and Herzegovina, Croatia, Egypt, Jordan, Israel, Lebanon, Libya, the Palestinian Authority, Mauritania, Montenegro, Morocco, Syria, Tunisia and Turkey).

The European Commission, OLAF and the Commission's Directorate-General for Taxation and Customs Union, volunteered to organize the JCO with the support of the World Customs Organization, EUROPOL and INTERPOL.



Evaluation

Around 40 million cigarettes, 1.2 tonnes of hand-rolled tobacco, 7,000 litres of alcohol and 8 million other counterfeit items including clothing, shoes, toys and electronics, were seized during the JCO. Three suspected cigarette traffickers were arrested.

OLAF provided logistical and technical support throughout the operation. It coordinated the operation from a Permanent Operational Coordination Unit based within OLAF's premises in Brussels. The unit was staffed by customs liaison officers from nine EU Member States (Belgium, Denmark, Germany, Italy, the Netherlands, Poland, Portugal, Spain and Romania), Egypt, Morocco and Turkey, as well as a liaison officer from Europol.

Follow-up

The national authorities deal with seized counterfeit goods. These are usually destroyed, for example by burning (cigarettes) or recycling (- counterfeit sport shoes might be recycled into synthetic surfaces for football pitches).

Penalties for smugglers and traffickers are determined at national level, and so depend on the Member State in which the suspect was caught.

Lessons learnt

Operation SIROCCO shows the results OLAF can achieve by working in cooperation with its international partners to combat smuggling and fraud. The outcome of this operation highlights the importance of strengthening mutual administrative assistance and operational customs co-operation of the partner countries involved in the framework of the Union for the Mediterranean.

3.1.5. Technical and operational support related to agricultural imports

The evasion of customs duties by importers is detrimental to the EU budget and can also negatively impact on smaller-scale EU producers. To help uphold the applicable customs regulations OLAF places its operational and financial tools as well as EU-wide and international contacts at the disposal of Member States in need. In certain cases, OLAF's actions lead to improvements to applicable EU legislation.

● Importing garlic into the EU

Importers of fresh garlic of the species *Allium Sativum* must pay 9.4% in ad valorem customs duty plus a specific duty of € 1200 per ton. *Allium Sativum* is the species that the general public commonly considers “garlic”. The fresh version of other garlic-like species, for instance *Allium Ampeloprasum*, only attracts a 10.4% ad valorem customs duty, with no specific duty in addition. Subsequently, by misdescribing fresh garlic, the importer can avoid paying nearly €1200 per ton or € 30 000 per container.

Case study G: OLAF helps to identify misdeclared garlic

Background

OLAF received information from Austrian Customs that fresh garlic of the species *Allium Sativum* was suspected to have been misdeclared as *Allium Ampeloprasum*, which implied the evasion of about € 1.20 in customs duties per kilo.

The garlic in question was described as single-bulb garlic, as opposed to the commonly-known garlic with many cloves.

Evaluation

The Austrian customs authorities provided samples of the imported garlic. OLAF arranged for two independent DNA laboratory tests in an Italian and a German laboratory. Both analyses confirmed that the garlic had been falsely declared.

At the time of import, only three laboratories in Europe were identified as able to undertake the DNA testing necessary to determine the species of the garlic. Suspecting that the misdeclaration of garlic could have also occurred elsewhere, OLAF made a call for interest to enable additional analysis. This resulted in an agreement with a German laboratory to analyse a total of 30 garlic samples.

OLAF then informed all Member States that it could arrange for and finance the testing of garlic samples in other instances.

In cooperation with the Directorate-General for Agriculture and Rural Development, OLAF monitors applications to import garlic coming from Member States. Based on this monitoring, and in close cooperation with the Member States, Finland, Germany, Slovenia, Belgium and the Netherlands were requested to send samples of garlic declared as single-bulb garlic for testing to the German laboratory.

All the samples analysed were confirmed to be *Allium Sativum* which had been misclassified as *Allium Ampeloprasum* in order to evade customs duties.

Follow-up

As a result of the analyses carried out on OLAF's initiative, it was established that more than 1,200 tons of fresh garlic had been misdeclared using this *modus operandi* at an estimated cost of € 1.6 million to the EU budget. Recovery of the evaded customs duties in the Member States concerned is in progress.

Separately, the Italian authorities informed OLAF that they had established that a total of 160 tons of fresh garlic had been misclassified in Italy and that the evaded customs duties had been recovered.

On the basis of this experience, OLAF recommended to the Commission's Directorate-General for Taxation and Customs Union a change to the Explanatory Notes to the Combined (Customs) Nomenclature. The amendment clarifies notably that *Allium Sativum* can come in a single-bulb variety; explains that *Allium Ampeloprasum* falls under another sub-heading; and confirms that there are differences in the gene pools between the two species. This amendment was agreed and came into effect in July 2010.

Lessons learnt

The case demonstrates the importance of OLAF's assistance in making available specific technical investigative devices and actively monitoring of products sensitive to irregularities, as well as the importance of a network which ensures the rapid and efficient flow of information. This case has also shown that effective cooperation between Commission services can pave the way for rapid improvements to EU legislation.



3.1.6. Summary

The case studies highlight the primary importance of cooperation with a broad range of internal and external operational partners in the area of OLAF's activities including partners responsible for fraud prevention and detection at the level of management of funds and audit capabilities.

OLAF's operational activities sometimes reveal loopholes in existing legislation and can subsequently lead to improvements in the rules and regulations.

At other times, OLAF's investigations reveal weaknesses in the enforcement of legislation. In such instances, OLAF recommends improved training for concerned staff to enhance fraud prevention and detection.

Member States need to have in place better quality control, detection and enforcement systems to deal with irregularities and fraud to protect the EU budget.

OLAF must make a marked effort to publicise its contact information for potential informants and whistleblowers.

OLAF is an organisation that is 'learning by doing'. Practical experience with specific investigations needs to be systematically analysed for adopting improvements in general investigative practices.

3.2. Statistical analysis

3.2.1. Opening of investigative and operational cases

Incoming information is assessed with a view to opening a limited number of cases in respect of which OLAF can add real value through its mandate, powers and expertise.

Once a new information item is received by OLAF it goes through a preliminary review to verify whether it is a matter that OLAF can and should handle. If the information clearly does not fall within the competence of OLAF, or if it obviously does not justify the use of OLAF resources, it is classified as a *prima facie* non-case.

If the information item passes the first check, it then proceeds to the assessment stage. Within a period of two months the evaluator assesses whether the information received appears to be reliable and whether the suspicions are sufficiently serious to recommend to the Director General that a case be opened. At this point, as a case has not yet been opened, the evaluator has only limited means to conduct the assessment because investigative actions, such as interviewing witnesses, cannot be undertaken at this stage. The initial two-month assessment period can be extended to six months and beyond where justified.

As table 4 below shows, nearly a quarter of the information items the Office receives consist of allegations which the Office does not process further. OLAF forwards such information to other EU departments or national or international authorities, as appropriate.

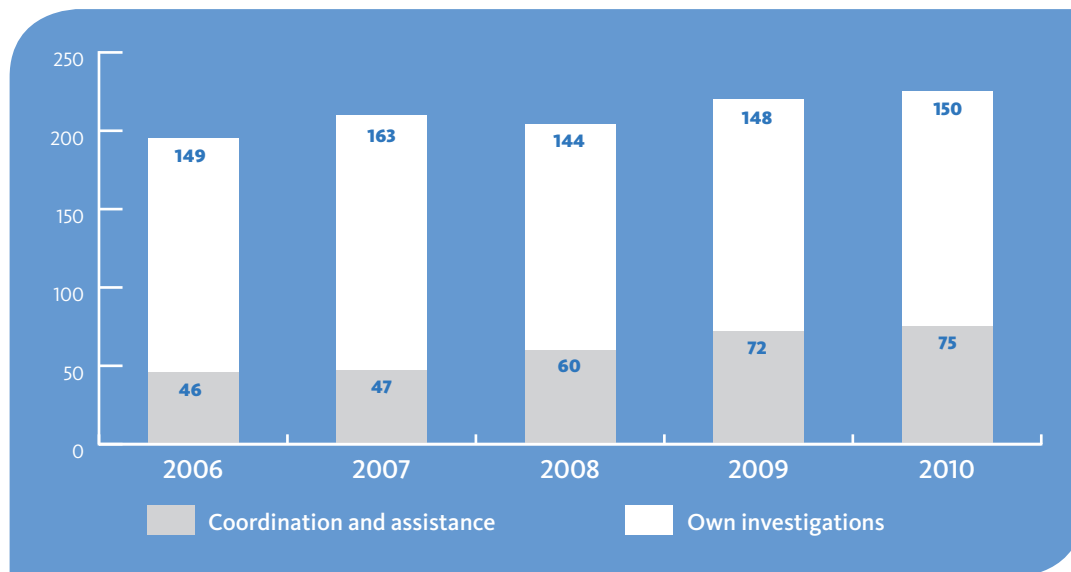
The average length of standard assessments fell from 10.6 months in 2002 to 5.2 months by 2006 thanks to the introduction of the non-case *prima facie* system in 2004, but has shown a steady increase since then, to reach 7.4 months in 2010.

Table 4: Duration of assessments and instances of assessments and preliminary review completed in each calendar year

	2006	2007	2008	2009	2010
Assessments completed	462	543	645	740	691*
<i>Average duration (months)</i>	5.2	6.2	6.2	7.1	7.4
Prima facie non-case after preliminary review	300	259	243	267	197
Total (assessments + preliminary review)	762	802	888	1007	888

*
A further 548 cases were in the process of being assessed at the end of 2010.

While it remains a priority to assess incoming information thoroughly to ascertain whether OLAF has the mandate to act and to determine whether the potential case justifies the commitment of OLAF resources, OLAF intends to take steps to reduce the duration of this selection period.

Chart.2: Number of opening decisions by year and nature of the case

During the course of 2010, 225 new investigative and operational cases were opened: 150 internal and external investigations and 75 coordination and assistance cases. 39 monitoring actions were also launched. OLAF initiates a monitoring action without active involvement in the investigation where it would be competent to carry out an external investigation but another authority is in a better position to conduct this. On 427 occasions, assessment resulted in a decision not to pursue the case further; these are recorded as “non-cases”.

Table 5: Decisions taken at the end of the assessment stage in each calendar year

Type of decisions	2006	2007	2008	2009	2010
Co-ordination case	26	37	29	35	44
Criminal Assistance Case	20	10	31	37	17
External Investigation Case	112	128	102	101	98
Internal Investigation Case	37	35	42	47	52
Mutual Assistance Case	0	0	0	0	14
Total cases opened	195	210	204	220	225
Monitoring Action	58	66	67	32	39
Non case	209	267	374	488	427
Total decisions	462	543	645	740	691

3.2.2. Investigative and operational cases

OLAF was handling a total of 493 investigative and operational cases at the end of 2010. The overall spread between the different types of case indicates that two-thirds of the active cases were OLAF's own investigations in which the Office may exercise its special powers, notably conducting interviews and on-the-spot checks.

At the end of 2010, the number of active external investigation cases was the highest in the external aid sector, followed by structural funds and direct expenditure. The internal investigations, by definition, took place within the EU Institutions and bodies. In the agricultural sector, where Member State authorities collect funds (agricultural duties and sugar levies) and disburse funds (for example, direct payments or export refunds), OLAF was mainly involved in providing assistance to criminal investigations and facilitating operational synergy among the relevant national and Union departments.

Table 6: Investigations and operations by sector and type, and cases under assessment at the end of 2010

Major sector	Co-ordination Case	Criminal Assistance Case	External Investigation Case	Internal Investigation Case	Mutual Assistance Case	Total	Assessment
Agriculture (expenditure + revenue)	37	44	29	0	7	117	101
Cigarettes	16	9	0	0	0	25	4
Customs	17	1	13	0	6	37	8
Direct Expenditure	0	2	43	0	0	45	58
EU Institutions + EU Bodies	0	7	24	108	0	139	94
External Aid	0	3	74	0	0	77	82
Structural Funds	2	5	46	0	0	53	201
Total	72	71	229	108	13	493	548

Table 7 provides a snapshot of the involvement of the different Member States and candidate countries in investigative and operational cases ongoing at the end of 2010. One case record may relate to more than one country, as cases can have a transnational dimension. It is important to note that the totals for Belgium, and to a lesser extent Luxembourg, are disproportionate because of the presence of EU Institutions on their territory.

Table 7: Investigations and operations at the end of 2010 in Member States and candidate countries

Country involved	Agriculture	Cigarettes	Customs	Direct Expenditure	EU Bodies	EU Institutions	External Aid	Precursors	Structural Funds	Trade	Total
Austria	0	0	1	3	0	0	0	0	0	2	6
Belgium	0	1	4	6	1	19	1	1	2	2	37
Bulgaria	61	3	0	0	0	1	9	0	6	1	81
Cyprus	0	1	0	2	0	0	0	0	0	0	3
Czech Republic	0	1	2	1	0	1	0	0	3	2	10
Denmark	0	0	0	0	0	0	0	0	0	0	0
Estonia	0	0	0	0	0	0	0	0	1	0	1
Finland	0	1	0	0	0	0	0	0	0	0	1
France	0	0	4	7	0	3	1	1	1	3	20
Germany	1	11	2	5	1	0	2	1	6	5	34
Greece	2	2	0	9	1	4	0	0	4	1	23
Hungary	1	2	1	1	0	0	0	0	1	1	7
Ireland	0	3	1	0	0	0	1	0	0	0	5
Italy	4	7	4	7	2	5	1	0	7	4	41
Latvia	0	0	0	0	0	1	1	0	0	0	2
Lithuania	0	1	0	1	0	0	0	0	1	2	5
Luxembourg	0	0	0	3	0	4	0	0	0	0	7
Malta	0	0	1	2	0	1	1	0	0	0	5
Netherlands	0	0	3	1	3	1	0	1	1	3	13
Poland	2	4	1	1	0	1	0	0	5	3	17
Portugal	1	0	1	2	0	0	0	0	3	1	8
Romania	17	1	0	2	3	0	9	0	2	2	36
Slovakia	0	0	0	0	0	0	0	0	5	1	6
Slovenia	0	1	1	1	0	0	0	0	0	0	3
Spain	1	3	2	8	1	0	0	0	5	2	22
Sweden	0	0	2	1	0	0	0	0	0	0	3
United Kingdom	0	0	4	4	1	3	3	1	1	6	23
SUB TOTAL MS	90	42	34	67	13	44	29	5	54	41	419
Croatia	0	0	0	1	0	0	0	0	0	0	1
Iceland	0	0	0	0	0	0	0	0	0	0	0
Montenegro	0	0	0	0	1	0	1	0	0	0	2
FYRO Macedonia	0	0	0	0	2	0	1	0	0	0	3
Turkey	0	0	0	0	0	4	2	0	0	2	8
SUB TOTAL CC	0	0	0	1	3	4	4	0	0	2	14
Grand Total	90	42	34	68	16	48	33	5	54	43	433

3.2.3. Closing of investigative and operational cases

OLAF cases are concluded by adopting a final report. In 2010, OLAF closed a total of 189 cases, which is almost identical to the figures for 2009 and 2008.

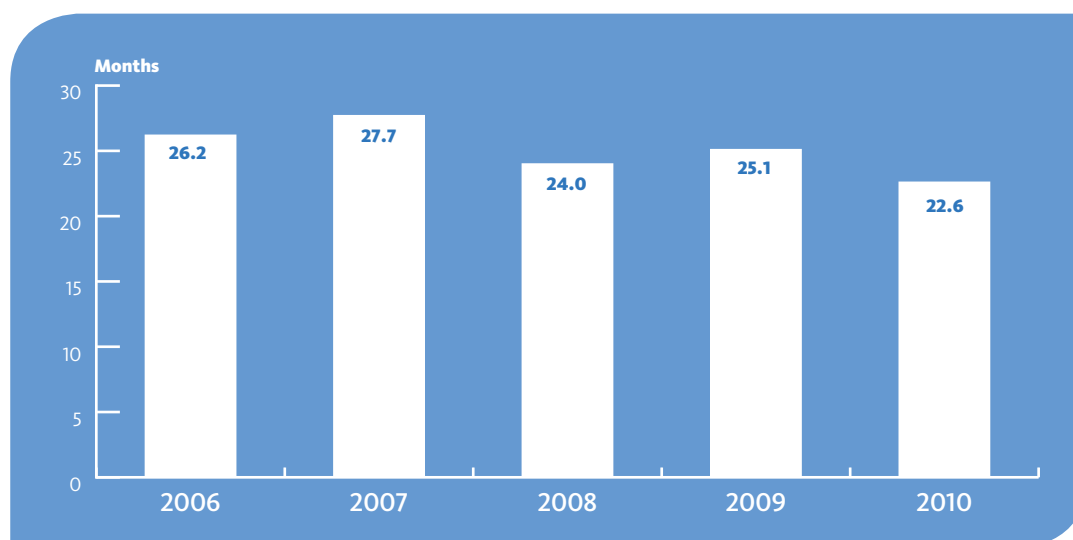
Table 8: Clearance rate

	2006	2007	2008	2009	2010
Total cases opened	195	210	204	220	225
Total cases closed	217	232	187	188	189
CLEARANCE RATE	0.90	0.91	1.09	1.17	1.19

OLAF aims to secure the long-term sustainability of its case-load by ensuring that the number of cases it opens each year is closely matched by the number of cases closed (clearance rate close to one). For the third year running the gap between the number of cases opened and those closed has been on the increase. In 2010, OLAF opened a total of 225 cases and closed 189, bringing the clearance rate to 1.19 compared with 1.17 in 2009.

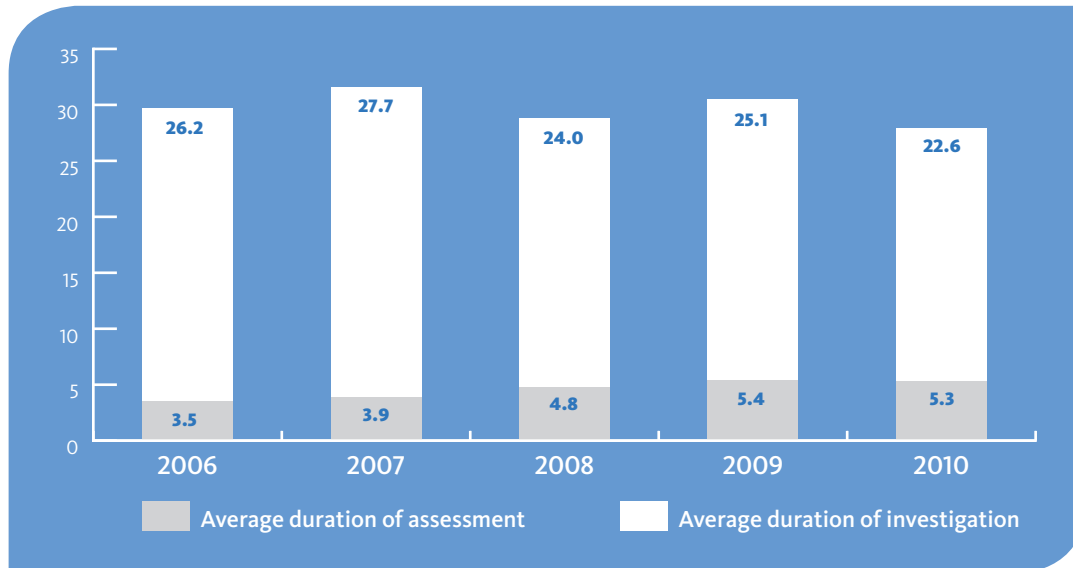
As the chart below shows, the average duration of investigations and operations is lower than in recent years: below 23 months in 2010 compared to just above 25 months in 2009.

Chart 3: Average duration of investigative and operational cases completed in 2010 (in months; measured at closure of investigation)



Adding the assessment phase we find that the total average length of investigations and operations has remained relatively stable with values between 27.9 months and 31.6 months since 2006. The average total duration of investigative and operational cases including the assessment phase was the lowest in 2010 in the last five years.

Chart 4: Average duration of investigations and operations including the assessment phase in 2010 (in months, measured at the closure of a case)



4. Focus on **Follow-Up** to OLAF's Investigations

Once a case has been concluded OLAF may issue recommendations for administrative, disciplinary, financial and/or judicial measures to be taken by the competent EU and national authorities. The time it takes to implement follow-up recommendations varies from one case to another. It can be longer if financial recovery or judicial actions are involved. This is particularly so when investigations relate to serious fraud cases involving organised crime groups which use methods such as planned bankruptcies and intelligent disposal of criminally obtained assets in order to prevent recovery.

The Member States have primary responsibility for implementing around 80% of the European Union budget as well as for the collection of traditional own resources. In other instances, it is the Commission's authorising DGs rather than OLAF that have responsibility for recovering misused funds.

If follow-up is required after the closure of a case, OLAF verifies that the competent EU institution and/or Member State authorities have taken into account the measures recommended by OLAF and supports them in this process if necessary. OLAF works closely with national authorities (including law enforcement, customs, administrative services and courts) and other EU institutions and bodies in the follow-up phase.

Table 9: Investigations and operations closed with or without follow-up by OLAF in each calendar year

	2006	2007	2008	2009	2010
Follow-up	133	153	125	106	98
No Follow-up	84	79	62	82	91
Total	217	232	187	188	189

Nearly half of all cases closed by OLAF investigators were closed without follow-up during 2010. This can partially be explained by the fact that OLAF adopted certain minimum monetary thresholds for referrals to financial follow-up. However, this does not at all exclude successful recovery actually taking place in respect of the cases concerned because Member States and Commission Authorising Services have responsibility for pursuing the appropriate recovery action in respect of the established debts.

One individual case often leads to several follow-up actions. For instance, the 98 cases closed with follow-up in 2010 have triggered 172 follow-up proceedings, of which 62 were financial, 67 judicial, 33 administrative and 10 disciplinary.

In verifying whether the competent EU or national authorities have implemented OLAF's recommendations, OLAF carries out four types of follow-up actions/

- *Administrative* follow-up means that OLAF verifies whether all necessary case-specific and / or more general measures have been taken by national authorities or EU institutions and bodies in relation to the implementation of EU legal and policy requirements.
- *Financial* follow-up means that OLAF helps to optimise the conditions and define the appropriate approach for the successful recovery of unduly paid amounts or evaded own resources from the EU budget or the European Development Fund.-Judicial follow-up means that OLAF verifies whether the competent national authorities have acted on the recommendations of OLAF to open criminal proceedings. OLAF then monitors these proceedings and collects the final results.
- *Disciplinary* follow-up means that OLAF checks whether the relevant EU authorities have acted on the recommendations of OLAF to open disciplinary proceedings. OLAF then monitors these proceedings and collects the final results of these cases.

Table 10: Investigative and operational cases closed with follow-up in 2010 showing type(s) of follow-up opened

Type of closure	2006	2007	2008	2009	2010	Total
Active investigations Closed with Follow-Up	133	153	125	106	98	615
Related Follow-up Activity						
<i>Administrative</i>	55	52	46	39	33	225
<i>Disciplinary</i>	10	14	11	18	10	63
<i>Financial</i>	103	113	90	76	62	444
<i>Judicial</i>	76	91	84	62	67	380
Total	244	270	231	195	172	1112

The follow-up phase can sometimes be protracted due to periods of standby in which OLAF has to wait for the results of action taken by other parties. This is especially true for court or administrative tribunal procedures. Sometimes the same case is sent to more than one body (for instance, both to judicial and disciplinary authorities).

Table 11: Cases at the follow-up stage at the end of the year

Major Sector	2006	2007	2008	2009	2010
Agriculture	172	192	191	185	177
Cigarettes	31	33	33	34	36
Customs	140	167	183	173	159
Direct Expenditure	94	91	90	78	70
EU Institutions + EU Bodies	79	91	93	112	123
External Aid	109	126	140	135	129
Structural Funds	214	189	167	150	143
Total	839	889	897	867	837

Some sectors have a higher number of follow-up actions opened than others but this alone is not a sufficient indicator for concluding that these sectors are actually subject to a higher level of fraud. A single case concerning, for instance, agricultural import duty or customs could in theory require the creation of up to 27 financial follow-up actions, depending on the number of Member States involved.

4.1. Financial Follow-Up

OLAF does not carry out any recovery of funds itself. This is done exclusively by Member States and by EU Institutions and bodies.

Table 12 shows the annual breakdown of financial recovery cases completed in the last five calendar years. € 67.9 million was recovered in respect of financial follow-up cases closed in 2010. A further € 351.2 million has also been recovered to date in respect of financial follow-up cases which were still ongoing as at the end of 2010. The recovery amounts constituting this latter figure will be definitively allocated to the respective future year(s) in which the cases concerned are actually closed. The large fluctuations from year to year are due to the fact that a few high-profile, high value cases account for the bulk of recoveries in certain years.

Table 12: Amounts recovered from closed financial follow-up in € million in each calendar year

Major Sector	2006	2007	2008	2009	2010	Open FU
Agriculture	1.2	0.9	2.0	148.2	11.9	58.4
Customs	0.1	3.3	14.7	43.1	7.1	186.9
Direct Expenditure	0.2	0.5	0.5	0.9	10.6	0.9
EU Institutions + EU Bodies	2.2	0.1	0.2	0.2	0.1	2.5
External Aid	3.7	0.9	2.3	7.5	5.3	15.8
Structural Funds	17.2	197.7	128.0	51.4	32.9	86.7
Total	24.6	203.4	147.7	251.3	67.9	351.2

Analysis of the period 1999-2010 period suggests an overall average recovery rate approaching 40% of the amounts due, with substantial variations between sectors.

In general terms, recovery rates appear higher on the expenditure side of the budget than on the revenue side. This reflects, in part, differing circumstances in the respective budget sectors. It is generally very difficult to recover more than a tiny proportion, if any, of the customs duty due on smuggled cigarettes (sector recovery rate 0.6%). In contrast, the recovery of misspent external aid funds is much less difficult (sector recovery rate 55%). This also partly reflects differences in control and recovery mechanisms.

On the expenditure side of the EU Budget, in particular, financial recovery mechanisms vary between sectors. A key distinction is whether the responsibility for recovery is the exclusive competence of the Commission (and agencies), or a shared competence between Member States and the Commission. On the revenue side of the budget, recovery is normally the exclusive competence of Member States.

Whilst the data is not complete, it appears that, on average, the greater the degree of control by the Commission, with its wider range of financial recovery and correction options, the better the chances are of successful financial recovery. Concretely, it is in the sectors where the Commission has exclusive competence, such as external aid, that the recovery rate is the highest. The lowest recovery rates for OLAF cases tend to occur in those sectors (e.g. agricultural import duty) where front-line responsibility rests with Member States alone.

In areas where the responsibility for recovery is shared between Member States and the Commission, the specific mechanisms by which recovery may be carried out are of major importance. For example, in the structural actions sector, the responsibility for recovery lies with the Member States but financial corrections, following the establishment of irregularities, can be performed either by the Member State concerned or by the Commission directly, and by a variety of technical means. This breadth of options may in part explain the relatively high rate of recovery in the structural actions sector.

4.2. Judicial Follow-Up

The judicial follow-up to OLAF cases is carried out by the national judiciary according to the national criminal legal framework of each Member State. It can therefore differ significantly between Member States.

Table 13 provides an overview of the recorded court decisions since 2006. The values covering court decisions concerning the length of suspended sentence and imprisonment, as well as financial penalty issued were the highest in 2010. National courts sentenced fraudsters to a cumulative 125 years' imprisonment during 2010 and imposed financial penalties totalling nearly € 1.5 billion.

Table 13: Judicial operational results by year (in months or € million)

Recorded Court Decisions	2006		2007		2008		2009		2010	
	Cases	Values	Cases	Values	Cases	Values	Cases	Values	Cases	Values
Suspended Sentence (months)	2	20	12	246	10	380	9	331	15	1201
Imprisonment (months)	5	326	8	316	14	748	13	1210	22	1503
Financial Penalty (€ million)	41	1.0	53	1.8	96	175.0	76	17.3	133	1467.7

4.2.1. Overview of judicial action by Member States

Table 14 provides an overview of progress, at national level, of judicial actions in the Member States concerning OLAF cases and monitoring actions. The figures relate to a period of nearly 12 years, since OLAF commenced active cooperation with national judicial authorities.

An action represents a criminal action pursued against a single natural or legal person in one country's jurisdiction. Each case may contain multiple actions in a number of countries.

The total number of actions by Member State varies greatly. The statistics are influenced by the size of Member States and the length of time they have been in the EU. The figures also show a wide variation regarding the percentages recorded at different stages. This is partly due to different national practices in opening criminal investigations. Some national judicial authorities open proceedings more extensively, while others do so more restrictively. The figures show very substantial differences between countries with respect to their capacity to bring EU budget-related judicial investigations and prosecutions to a conviction within a reasonable time. It may be that some results are less representative because they are based on a very small number of actions: nine of the Member States have ten or fewer actions recorded. However, even excluding those small Member States which have dismissed either all or none of the small number of proceedings in their jurisdictions, the proportion of actions that are dismissed before trial varies between 10% and 89%.

The general level of activities suggests that the number of actions in which no judicial decision has yet been taken is relatively high and represents about 34% of the actions in the Member States. In about 66% of the actions a judicial decision has been taken. But the figures differ widely from one Member State to another. This gives an indication of the speed of judicial proceedings in different Member States.

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At the trial phase, the results at national level also differ greatly, ranging from an acquittal rate of zero to one of 50%. The average conviction rate is 41 % for all cases in which concrete judicial action was taken (that is, some form of action other than the simple closing of the case). But the conviction rate once again varies greatly from one Member State to another with rates of between 14% and 80%.

Table 14: Overview of progress on judicial actions concerning cases forwarded to Member States by OLAF⁽⁶⁾

Country	All actions			Actions with judicial decisions					
	Actions transferred to MS	Actions pending judicial decision	Actions with judicial decision	Dismissed before trial	Dismissals as % of results	Acquittal	Acquittal as % of results	Convictions	Convictions as % of results
Austria	34	6	28	7	25.0%	5	17.9%	16	57.1%
Belgium	157	54	103	32	31.1%	32	31.1%	39	37.9%
Bulgaria	10	8	2	0	0.0%	0	0.0%	2	100.0%
Cyprus	0	0	0	0	NA	0	NA	0	NA
Czech Republic	27	13	14	8	57.1%	1	7.1%	5	35.7%
Denmark	16	1	15	8	53.3%	4	26.7%	3	20.0%
Estonia	4	2	2	1	50.0%	0	0.0%	1	50.0%
Finland	21	1	20	2	10.0%	2	10.0%	16	80.0%
France	98	27	71	23	32.4%	6	8.5%	42	59.2%
Germany	392	37	355	152	42.8%	17	4.8%	186	52.4%
Greece	174	75	99	45	45.5%	40	40.4%	14	14.1%
Hungary	8	6	2	1	50.0%	0	0.0%	1	50.0%
Ireland	4	0	4	3	75.0%	0	0.0%	1	25.0%
Italy	392	185	207	116	56.0%	49	23.7%	42	20.3%
Latvia	7	4	3	3	100.0%	0	0.0%	0	0.0%
Lithuania	17	3	14	3	21.4%	0	0.0%	11	78.6%
Luxembourg	8	4	4	1	25.0%	2	50.0%	1	25.0%
Malta	5	5	0	0	NA	0	NA	0	NA
Netherlands	83	25	58	32	55.2%	1	1.7%	25	43.1%
Poland	32	11	21	11	52.4%	2	9.5%	8	38.1%
Portugal	113	40	73	13	17.8%	17	23.3%	43	58.9%
Romania	256	107	149	115	77.2%	4	2.7%	30	20.1%
Slovakia	12	3	9	8	88.9%	1	11.1%	0	0.0%
Slovenia	0	0	0	0	NA	0	NA	0	NA
Spain	296	125	171	43	25.1%	30	17.5%	98	57.3%
Sweden	22	1	21	6	28.6%	2	9.5%	13	61.9%
United Kingdom	44	16	28	14	50.0%	1	3.6%	13	46.4%
Total	2232	759	1473	647	43.9%	216	14.7%	610	41.4%

Note: Actions are included from follow-up in active investigations, closed cases (in follow-up stage) and monitoring actions.

⁽⁶⁾ Date of extraction: 1st February 2011.

It is difficult to draw far-reaching conclusions since the available data does not allow precise comparisons between the judicial results of OLAF cases concerning crimes against the EU budget and the judicial results of purely “national” cases concerning crimes affecting national budgets. Many Member States do not maintain central national statistics in relation to criminal offences or do not distinguish between various types of criminal activity. Any comparison is further complicated by the fact that all the OLAF cases are grouped together. They therefore include such diverse types of offences as customs offences, trade offences, forgery, fraud, theft and corruption which is not the case with statistics relating to offences against the finances of Member States. In addition, as already discussed, there are differences in the criteria used by Member States when deciding whether an offence should be investigated or prosecuted.

However, OLAF judicial follow-up records shows that there remain important differences and further efforts are needed before a level of protection which maybe considered effective proportionate, dissuasive and last but not least equivalent, is achieved.

5. Supervisory Committee

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



In 2010, the members of the Committee were the following (starting from the left in the picture): Mr. Kálmán Györgyi, Ms. Rosalind Wright, Mr. Peter Strömberg, Ms. Diemut Theato and Mr. Luis López Sanz - Aranguez.

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

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

In 2010, the Supervisory Committee, in addition to its annual report covering the period June 2009 - May 2010, provided several opinions, notably concerning Investigation Planning and the Respect for Fundamental Rights and Procedural Guarantees in Investigations by OLAF. The Committee's Opinion on the Reflection Paper on the Reform of the European Anti-Fraud Office was taken into consideration for the amended Commission proposal for the revision of Regulation 1073/1999⁽⁷⁾.

OLAF provided detailed replies to the Supervisory Committee on how OLAF would implement the Opinions on Investigation Planning and on the Respect for Fundamental Rights and Procedural Guarantees.

In order to implement some of the Supervisory Committee's recommendations, OLAF revised its Operational Procedures on a number of points in 2010. For example a set of modifications to the OLAF Manual will reinforce the work planning, requiring the objectives of the investigation to be outlined in initial work plans.

Furthermore, in response to improvements recommended by the Supervisory Committee, OLAF initiated changes to the Case Management System, updated working practices and, in certain respects, postponed action until the entry into force of the revised Regulation 1073/1999.

⁽⁷⁾ COM (2011) 135

6. Policy for **Fraud Prevention** and **Detection**

OLAF channels its experience from investigations and other operational activities into fraud prevention and fraud-proofing initiatives and into the preparation of the Commission's legislative proposals.

6.1. Outreach Activities – a contribution to anti-fraud training and awareness-raising

OLAF launched a number of information and communication activities in 2010 in order to raise awareness of the Office's role in the fight against fraud and corruption.

Eleven international conferences were held in Member States and non-EU countries, drawing more than a thousand participants. The objective of these events was to reinforce international partnerships and to strengthen the fight against fraud.



The tenth seminar of OLAF's Anti-Fraud Communicators' Network, gathering press officers and journalists in Budapest, focused on the theme of "Proactive media strategies to promote EU-wide anti-fraud messages" (October 2010).

The eighth OLAF fraud prosecutors' conference, hosted by OLAF in Paris in collaboration with the French Court of Cassation and the French Ministry of Justice, dealt with administrative investigations and fundamental rights (November 2010).

A three-day international conference on mutual administrative assistance in customs matters was hosted by OLAF and French Customs in Marseille, focusing on the fight against international trade in contraband and counterfeit cigarettes (October 2010). A three-day regional conference for potential Latin-American partners in Panama (October 2010) and a three-week traineeship for African partners in Brussels (November-December 2010) both concentrated on promoting good financial governance and fighting fraud and corruption affecting public funds.

6.2. Compendium of Anonymised cases – A contribution to Risk Analysis



When the Commission introduced a new approach to fraud-proofing legislation, contracts, and management and control systems in 2007, it made a commitment to make more use of the lessons learnt from OLAF's investigative and other operational activities

As part of these efforts OLAF has produced compendia of anonymised cases, based on the results of investigations and on intelligence analysis. One such Compendium covers structural actions as part of the Joint fraud Prevention Strategy in this field. A description of fraud and irregularity patterns, the modus operandi, vulnerabilities detected and red flags have been compiled based on actual but anonymised cases.

The following “clusters” of irregular conduct are covered by this Compendium: ‘False declaration – False or falsified documents’, ‘Double Funding’, ‘Conflict of interest’, ‘Infringement of public procurement rules’, ‘Action not implemented or not completed’ and ‘Infringement with regard to the co-financing system’.

The Compendium will be taken into account when drafting new legislation under the Multiannual Financial Framework covering the area of structural actions. The Compendium is used in internal and external training and awareness-raising activities.

6.3. OLAF contributes to EU-wide efforts to improve the protection of the euro against counterfeiting through training and legislation

A coherent framework of rules and measures has ensured efficient protection of the euro against counterfeiting. Repressive action enables a continuous flow of arrests and the dismantling of illegal criminal groups. Consequently, the number of counterfeit euro banknotes and coins remains at low levels. In 2010, 751,000 counterfeit euro banknotes were removed from circulation, down from 860,000 the year before. In the same year, 186,000 counterfeit euro coins were discovered, a total below 200,000 for the third consecutive year.

Table 15: Counterfeit euro coins detected in circulation, 2007 – 2010

Year	50-cent	1-euro	2-euro	Total
2010	24 900	30 800	130 300	186 000
2009	18 100	26 500	127 500	172 100
2008	16 600	24 500	154 800	195 900
2007	13 000	16 200	181 900	211 100

OLAF contributes to the efficient protection of the euro banknotes and coins with proposals for improvements to the legal framework and structure, training and assistance to competent authorities in the EU and other priority areas throughout the world, as well as in the specific area of analysis of euro coins.

In 2010, the Commission/OLAF carried out 17 projects for the protection of euro banknotes and coins against counterfeiting, including conferences and seminars organised by either the Member States or the Commission/OLAF under the Pericles programme, in collaboration with Europol and the ECB.

Since 2001 the Pericles programme has provided training and technical assistance to national authorities for the protection of euro banknotes and coins against counterfeiting.

In December 2010, the Council adopted a Commission proposal concerning the authentication of euro coins and the handling of euro coins unfit for circulation⁽⁸⁾. This is a decisive step in guaranteeing the authenticity of euro coins in circulation.

OLAF maintains continuous cooperation with the competent national authorities for the protection of currency, as well as Europol, Interpol and the European Central Bank. In 2010, OLAF organised and chaired three meetings of the Euro Counterfeiting Experts Group and two meetings of the Counterfeit Coin Experts Group.

⁽⁸⁾ Regulation 1210/2010, OJ L 339/1, 22/12/2010

7. Resource Management

7.1. Budget

OLAF had in 2010 a total budget of € 77.645 million. It consisted of two parts: administration (€ 57.145 million) and operational (€ 20.500 million). The operational parts finance the Hercule II, Pericles, and Anti-Fraud Information System (AFIS) programmes.

The OLAF budget is under direct management, that is to say there is no involvement of Member States or non-member countries in which the recipients of the expenditure reside. More than 98% of the 2010 budget was deployed.

7.2. Human Resources

Table 16: Overview of OLAF personnel on 31 December 2010

	Permanent and Temporary Personnel	External Personnel	Total
Fight against fraud	311	37	348
Administrative support for the European Anti-fraud Office	40	15	55
Policy strategy and coordination for the European Anti-fraud Office	55	8	63
Total	406*	60	466

* This figure includes 20 temporary (empty) posts exchanged for permanent posts which are also included and 2 borrowed posts that OLAF had to return as of 1/1/2011.

OLAF continues to have difficulty in recruiting operational staff with an appropriate mix of qualifications and experience and remains under significant staffing constraints as it is confronted with an ever-increasing workload. Nevertheless, the situation has improved due to dedicated external and internal competitions in 2008 and 2009. In 2010 OLAF further stabilised and retained the staff required to fulfil its mission and increased this with 51 new recruits, including a significant number of temporary agents taking up permanent posts and ensuring continuity of OLAF's experienced staff. The vacancy rate was quite low at 7.0% in 2010.

7.3. Training

An important aspect of OLAF quality management is training. The training budget for 2010 was €200,000. This budget covers all internal and external training activities for OLAF staff, specialist training for analysts, and training provided by OLAF for its operational partners and for other Directorates-General, Member States and EU Bodies.

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

Training sessions were also organised for other parts of the European Commission, for example on fraud prevention in the field of Structural Funds. In 2010 the following courses were organised:

- ▶ *“Operational Cooperation between OLAF and other Directorates General”* with officials from all Directorates-General;
- ▶ *“OLAF-Irregularity Management system training for Structural Funds DGs”* for officials from Directorates-General Regional Policy, Agriculture and Rural Development, Employment, Social Affairs and Inclusion and Maritime Affairs and Fisheries;
- ▶ *“AFIS and MAB MAIL training”* with representatives from Europol and Eurojust;
- ▶ *“OLAF training on Fraud Prevention and detection for research area – Passing the grey zone»* for representatives from Directorate-General Research and Innovation.

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

8. Outlook: 2011 and Beyond

A number of significant events in 2011 will have an impact on the work of the Office for many years to come.

Further to a reflection process carried out during 2010, the Commission has forwarded an amended proposal to improve the legislative framework governing the work of OLAF⁽⁹⁾ to the co-legislators, the European Parliament and the Council. The proposed amended Regulation envisages significant changes affecting investigative procedures and procedural guarantees and requires the establishment of Investigation Policy Priorities.

As part of its policy mandate, OLAF plays a key role in the development of comprehensive anti-fraud policies. The Commission has proposed a new Anti-Fraud Strategy⁽¹⁰⁾ which is directed primarily at the Commission Services and provides for the development of sectoral strategies in each policy area. In this context, OLAF has been mandated to set up a Fraud Prevention and Detection Network involving all Commission services and executive agencies to provide support and advice on anti-fraud matters, including fraud risk management.

The Commission has issued a Communication on the protection of the financial interests of the European Union by criminal law and by administrative investigations⁽¹¹⁾. The Communication envisages the possibility of new legislative measures in the light of the Lisbon Treaty. These initiatives could concern improvements to criminal and administrative procedures, development of the substantive criminal legal framework and enhancement of institutional arrangements.

As a follow-up to its *Special Report No 1/2005*, the European Court of Auditors published on 2 May 2011 its *Special Report No 2/2011 concerning the management of the European Anti-Fraud Office* in which the Court makes nine key recommendations. OLAF will draw up an action plan in response to the Court's recommendations

Taking into account the ongoing legislative and policy developments as well as the recommendations of the Court of Auditors, in March 2011, the Director-General launched an internal review to improve the performance of the Office. This review is also necessary in the light of the budgetary constraints that the Commission is currently facing.

As a result, changes are planned in the handling of incoming information, the selection of cases and their review, as well as in the follow-up activities by OLAF.

⁽⁹⁾ COM (2011) 135 of 17 March 2011

⁽¹⁰⁾ COM (2011) 376 of 24 June 2011

⁽¹¹⁾ COM (2011) 293 of 26 May 2011

The key objectives of the review are to

- ▶ Simplify the procedures for investigations;
- ▶ Shorten the duration of investigations;
- ▶ Reduce the administrative burden and make better use of resources;
- ▶ Review the internal structure of OLAF to clarify responsibilities.

These changes, to be introduced in 2012, will also require a reorganisation of the Office.

Further information on the above items will be included in the 2012 OLAF Operational Report which will be published during the first half of 2012.

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