

I

(Information)

COURT OF AUDITORS

SPECIAL REPORT No 1/2005**concerning the management of the European Anti-Fraud Office (OLAF),
together with the Commission's replies***(pursuant to the second subparagraph of Article 248(4) of the EC Treaty)**(2005/C 202/01)***CONTENTS**

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LIST OF ABBREVIATIONS

AFIS	Anti-fraud information system
CMS	Case management system
DG	Directorate-General
ECR	Electronic case register
EIB	European Investment Bank
END	Seconded national experts
EU	European Union
IDOC	Investigation and Discipline Office of the Commission
OLAF	European Anti-Fraud Office
UCLAF	Unit for the Coordination of Fraud Prevention

SUMMARY

- I. The European Anti-Fraud Office (OLAF) succeeded the Unit for the Coordination of Fraud Prevention (UCLAF) in April 1999 with enhanced status and a mandate extended to cover all the institutions and bodies of the European Union. Setting up the Office was a laborious process, in particular because of the disorganised nature of the files that it inherited. It was only towards the end of 2003 that the effects of its restructuring began to make themselves felt. As at mid-2004, however, improvements were still necessary in many areas of the management of investigations.
- II. The hybrid status of the Office, which has investigative autonomy but reports to the Commission for its other duties, has not adversely affected the independence of its investigative function. Being part of the Commission, the Office has been able not only to benefit from substantial administrative and logistical support, but also to take advantage of the anti-fraud legislation that is available to Commission departments. Consequently, it does not appear appropriate to consider amending the Office's status ⁽¹⁾.
- III. The Office has sufficient resources to deal with all justified denunciations that it receives. This being so, the priorities that it establishes as part of its investigation policy continue to be theoretical ones.
- IV. OLAF makes too little distinction between investigations (internal or external) on the one hand, and assistance and coordination operations on the other. As the nature of the work in each case is markedly different, lumping them together hinders the management of resources.
- V. While the introduction of a registry and a computerised system for managing investigation files have improved record keeping for operations and clarified responsibilities, managerial supervision has remained inadequate and results in serious delays in the processing of files, the lodging of inconclusive reports and results that are difficult to identify. In order to eliminate unnecessary delays, imperative deadlines should be set when investigations are opened.
- VI. All too frequently, the preparation and follow-up of investigations is rudimentary. The objectives pursued by investigators have remained vague in terms of the evidence that is to be supplied and the use of resources. The customs sector apart, there is a need for more effective cooperation with the Member States, both in areas of direct management and in areas where management is shared with Member States.
- VII. Although the procedures for reporting on the Office's work have recently been improved, the information relates to the volume of operations undertaken rather than to the results actually achieved, either in terms of the actual recovery of misappropriated funds or in terms of the disciplinary or criminal sanctions imposed on persons convicted of fraud. The system for assessing results, which is based on relevant indicators, needs to be further strengthened.
- VIII. The measures adopted in 2001 to provide the Office with staff competent to perform the duties of investigators have achieved all they can. The large number of staff on contracts that cannot be renewed beyond a certain duration (between six and eight years) is now hindering any further consolidation of expertise. In these circumstances, the training measures introduced by the Office remain insufficient.
- IX. There is no independent guarantee of the legality of investigative procedures in progress or that the fundamental rights of persons under investigation are safeguarded. For want of a clear codification of investigative procedures, the situation is prone to litigation. The relevant regulatory provisions have proved unsatisfactory.

⁽¹⁾ See the evaluation report on OLAF's activities (Article 15), COM(2003) 154 final of 2 April 2003.

X. Relations between the Office and its Supervisory Committee are difficult. There is a need for a serious re-examination of the regulatory provisions concerning the governance of the Office.

XI. To avoid dissipating the Office's work on activities which, although related to fraud prevention, are not directly concerned with investigations, and in order to guarantee that all resources are directed towards effectively combating fraud detrimental to the European Union's financial interests, the tasks assigned to the Office ought to be re-examined in detail. Refocusing its activities on its investigative function would make it possible to mobilise its resources more effectively, particularly as regards the launching of targeted investigations in areas where the risks of fraud are considered the most serious.

INTRODUCTION

The mission of the Anti-Fraud Office (OLAF)

1. By setting up the European Anti-Fraud Office (OLAF) ⁽¹⁾, the European institutions aimed to increase the effectiveness of the fight against illegal activities detrimental to the Union's financial interests. The Office was thus given new powers as compared with those of its predecessors ⁽²⁾. In particular, it was given the task of carrying out administrative investigations within all the institutions and bodies of the European Union. The investigative function was strengthened by a guarantee of independence in the performance of this activity. That independence was, in turn, to be strengthened by the establishment of a Supervisory Committee made up of important figures from outside the Community institutions. The Director of the Office, who took up his post in March 2000, was invested with the power to appoint OLAF staff, which should enable him to respond more effectively to the Office's specific investigative needs.

2. While emphasising the importance of OLAF's investigative function (see paragraph 12), the Commission also entrusted the Office with a wide range of activities related to the protection of the European Union's financial interests ⁽³⁾. These activities, which are partly grouped into what the Office calls a 'service platform', cover:

- (a) the assistance that the Commission gives the Member States in the fight against fraud;
- (b) the development of a strategy for fighting fraud within the framework of its policy on the protection of financial interests (Article 280 of the Treaty);

⁽¹⁾ Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 (OJ L 136, 31.5.1999, p. 20); Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 (OJ L 136, 31.5.1999, p. 1).

⁽²⁾ Task force for the Coordination of Fraud Prevention (until 1987), Unit for the Coordination of Fraud Prevention (UCLAF — 1987-1999). In this connection, see the Court's Special Report No 8/98 (OJ C 230, 22.7.1998) the conclusions of which contributed to the debate that led to the creation of OLAF.

⁽³⁾ Decision 1999/352/EC, ECSC, Euratom, Article 2(3) to (7). In the context of activities related to the protection of the financial interests of the European Union, the Commission has appointed OLAF to the position of lead manager for 31 of the 37 actions set out in its 2004-2005 action plan.

(c) the preparation of the Commission's legislative and regulatory anti-fraud initiatives;

(d) the development of the necessary means to tackle fraud;

(e) the collection and analysis of information;

(f) technical assistance, especially in the field of training, to the other Community bodies and institutions and to the national authorities concerned with the protection of the Community's financial interests.

The legislation does not prioritise these tasks.

3. The Office operates within a complex institutional framework and is at the centre of a group of bodies concerned either directly or indirectly with fraud prevention. It is not always clear how responsibilities are divided among these bodies, which results in risks of both duplication of effort and omissions. These bodies fall into three subgroups:

(a) those located in the Member States or third countries, such as police forces, judicial authorities and administrative anti-fraud authorities;

(b) Community bodies, such as the Investigation and Discipline Office of the Commission (IDOC) ⁽⁴⁾, each institution's internal audit service, the European Ombudsman, the audit capabilities of the Commission's operational departments and OLAF's own Supervisory Committee;

(c) other intergovernmental crime prevention bodies, such as Eurojust and Europol.

⁽⁴⁾ Set up in February 2002 to conduct investigations and organise the Commission's disciplinary proceedings. Relations between the Office and IDOC were to be the subject of an agreement that has still not been finalised.

4. As the Member States are responsible for managing around 80 % of European Union expenditure, it is necessary, for obvious reasons of effectiveness, for the Office to work closely with national authorities (police, customs, the courts, etc.). This requirement adds to the complexity of its task. Furthermore, it is the Member States that are responsible for bringing criminal proceedings where appropriate, and the diversity of their judicial systems renders the Office's task still more complex.

5. Although OLAF is a new body, it has been obliged to continue the operations begun by its predecessor, UCLAF. It thus took on around 1 400 active files ⁽¹⁾, a very burdensome legacy owing to the disorganised way in which many of these investigations had been managed ⁽²⁾. At the same time, UCLAF's staff were reassigned *en bloc* to the Office, which, until the 2001 overhaul of the establishment plan, limited the new Director's room for manoeuvre ⁽³⁾.

Organisation of OLAF

6. The Office enjoys an ambivalent status, according to which it has investigative autonomy but is answerable to the Commission as regards its other duties. This hybrid structure has not adversely affected the independence of its investigative function and brings certain advantages. From the legal point of view, for example, as a part of the Commission the Office has been able to make use of powers conferred on that institution, in particular the power to carry out on-the-spot checks in the Member States pursuant to a variety of general and sectoral regulations ⁽⁴⁾. The Commission connection has also been useful for OLAF's day-to-day operations, enabling it to draw on the administrative support of the Commission's general services.

7. The Office's organisation chart as at May 2004 is presented in *Annex I*. Since 2001, the Office's establishment plan has been made up of around 300 posts, twice as many as were available to UCLAF ⁽⁵⁾. In 2004, the Investigations Directorate (Directorate B) comprised 126 investigators ⁽⁶⁾ and 13 administrative staff. The remaining 193 posts were divided among the Office's other departments (Directorate A 'Policy, legislation and legal affairs' and Directorate C 'Intelligence, operational strategy and information services').

⁽¹⁾ See Table 3 in the Complementary Evaluation Report on the Activities of OLAF, SEC(2004) 1370 of 26 October 2004. Nine cases were still open on 30 June 2004 and 280 cases were in the follow-up phase.

⁽²⁾ See Special Report No 8/98, paragraph 1.6 (OJ C 230, 22.7.1998).

⁽³⁾ See paragraph 7.42 of the Court's Annual Report concerning the financial year 2000 (OJ C 359, 15.12.2001).

⁽⁴⁾ For example, Council Regulation (EC, Euratom) No 2988/95 concerning administrative penalties in the case of irregularities (OJ L 312, 23.12.1995, p. 1), Council Regulation (Euratom, EC) No 2185/96 concerning on-the-spot checks and inspections (OJ L 292, 15.11.1996, p. 2), or specific regulations on own resources, the Structural Funds, the European Development Fund, etc.

⁽⁵⁾ At the beginning of 1999, the UCLAF establishment plan contained 149 posts.

⁽⁶⁾ Including 13 seconded national experts (END).

The Court's audit

8. The aim of the audit was to appraise the quality of OLAF's investigations management. This was done by assessing:

- (a) how the Office had discharged its investigative duties;
- (b) the contribution made by each OLAF department to the investigative function.

The final effectiveness of the Office's work could not be evaluated due to the insufficient reliability of the data on the follow-up of investigations.

9. The Court's report complements the evaluation produced by the Commission in April 2003, which essentially focused on the legal framework of the Office's activities ⁽⁷⁾, as well as a second more quantitative evaluation submitted by the Commission in October 2004 ⁽⁸⁾.

10. As far as investigations are concerned, the audit carried out between April and October 2004 had as its starting point previous observations made by the Court ⁽⁹⁾. It focused on systems, structures and staff measures. There was also a review of the activity of the OLAF departments that are not directly responsible for investigations. Although the Office's recent organisation was analysed, along with a sample of 117 operations conducted or closed towards the end of 2003, it became clear that, at that time, the Office was still engaged on clearing numerous operations begun by its predecessor, and that the reorganisation measures introduced during the 2002-2003 period were just starting to have an effect. The deficiencies found in the audit are summarised in *Annex II*.

11. This report was produced at the same time as the Commission proposed an amendment to the Regulation concerning investigations conducted by OLAF ⁽¹⁰⁾. The Court has submitted an opinion on this proposal in which it takes account of the conclusions and recommendations of the audit.

⁽⁷⁾ Evaluation submitted pursuant to the provisions of Article 15 of Regulation (EC) No 1073/1999 of 25 May 1999.

⁽⁸⁾ Complementary Evaluation Report of the Activities of OLAF, SEC(2004) 1370 of 26 October 2004.

⁽⁹⁾ In particular Special Report No 8/98 (OJ C 230, 22.7.1998) and observations in Chapter 7 of the Court's Annual Report concerning the financial year 2000 (OJ C 359, 15.12.2001).

⁽¹⁰⁾ COM(2004) 103 final of 10 February 2004.

OLAF INVESTIGATIONS

Investigative procedures

12. Apart from coordination operations, Regulation (EC) No 1073/1999 distinguishes between external investigations (Article 3) and internal investigations (Article 4). The Office itself divides its cases into five categories:

- (a) internal investigations (investigations of corruption within the institutions and assimilated bodies);
- (b) external investigations (direct investigations of third parties involved in activities related to Community budget transactions);
- (c) judicial support (support for national authorities in the context of criminal proceedings);
- (d) coordination (support for the Member States in the context of investigations concerning more than one country);
- (e) monitoring cases (the aim is to allow the Office, where important cases are concerned, to check whether the Member States are fulfilling their obligations under Article 280 of the Treaty).

13. Cases at the active investigation stage (475 as at 30 September 2004) include actual investigations (252) and coordination and assistance operations (223). Coordination operations are particularly common in the field of revenue and shared-management expenditure. Consequently, out of the 23 cases examined during the audit of the customs and trade sectors, four were investigations led by the Office.

14. This lumping-together of investigations with coordination and assistance operations within the same units of the Investigations Directorate hinders the management of resources. In fact, the Office plays a substantially different role in each of these two fields. For investigations, each step must be formally recorded, filed and justified so that the dossier can be used by a prosecutor. For coordination and assistance cases, OLAF needs to be able to provide the national authorities with quick and effective support without being subject to severe procedural constraints. In these cases the use of investigation procedures is not always appropriate. It uses up resources which could have been assigned to investigations and leads to the risk of overlap with some of the responsibilities of the follow-up units.

15. The Office is only authorised to conduct administrative investigations. It cannot therefore undertake all of the tasks for which police powers are required. Although it can, for example, make copies of documents it finds on the premises of economic operators, it is not authorised to search the homes of their

owners or staff, even if important evidence may be found there. Neither is it authorised to demand access to the bank accounts of economic operators or private citizens, even where the latter are employed by a Community institution. There are therefore clear limits to the investigative acts that the Office can perform, and these affect the scope of its conclusions. Moreover, the practical effectiveness of the investigation stage may be reduced if the Member States do not respond to the Office's requests for support.

16. The Office generally launches its investigations in response to information received from third parties. This takes the form of denunciations forwarded by the Commission services, other EU institutions, authorities in the Member States as well as private citizens or commercial undertakings. When information of this kind is received, a new file is opened in the Office records ⁽¹⁾. The work of investigation then falls into three main stages:

- (a) an assessment stage leading to a summary report ⁽²⁾ by the Investigations Directorate proposing, if there is sufficient substance to the allegations received ⁽³⁾, that an investigation be launched. The assessment report is submitted for the opinion of an Executive Board composed of representatives of the units that are associated with the Office's investigations. The Director of the Office then decides whether to open an investigation. As at 30 September 2004, 194 cases were in assessment (see *Table 1*);
- (b) an investigative stage during which the case is prepared. In principle, as required by the procedures laid down in the OLAF manual, evidence is gathered both for and against the allegations. The investigators conclude their work by submitting a draft report to the Executive Board, which assesses whether the file should be forwarded to the courts or disciplinary authorities, whether follow-up should be initiated with a view to recovery or whether the case should be shelved. The Director rules on the basis of the Executive Board's opinion. As at 30 September 2004, 475 cases were in active investigation;
- (c) a third stage, conducted outside the Investigation Directorate, is dedicated to the follow-up of cases transmitted to the judicial authorities and those requiring recovery of funds. Many cases are closed without follow-up. As at 30 September 2004, 649 cases were at the follow-up stage.

⁽¹⁾ Case management system (CMS).

⁽²⁾ The model headings for assessment reports are as follows: 1. Background; 2. Allegations; 3. Reliability, source and credibility of the information; 4. Competence of OLAF; 5. Approach to be considered; 6. Financial impact and prospects of recovery; 7. Degree of priority; 8. Proposed work plan; 9. Allocation of resources.

⁽³⁾ When an allegation is so poorly substantiated that it is not worth even going on to the assessment stage, the case is immediately dropped and no further action is taken (*prima facie* non-case).

Table 1

Number of cases at each stage at the end of September 2004

Sector	Stages of processing	Number of cases being assessed	Number of cases being investigated	Number of cases being followed up
Anti-corruption		28	57	48
Direct expenditure		33	42	78
External aid		53	81	84
Agriculture		21	86	59
Structural Funds		41	48	202
Customs		18	161	178
	Total	194	475	649

Source: OLAF case management system, data as at 30.9.2004.

17. The introduction of the case management system (CMS) by the Office in 2002 made it easier for it to log investigations ⁽¹⁾. Although improvements were made in 2003, information from this system must be approached very cautiously, as the audit revealed that there are often delays in the processing or updating of files and that the financial data in the system are neither consistent nor always verified. There have in fact been cases categorised as ongoing investigations although, in the absence of further investigative acts, the cases concerned should have been closed either with or without follow-up. Other cases have been closed, without calculation of the sums involved. In other cases the investigators had deferred closure so that they themselves could follow the cases up, although in principle this is not their responsibility.

Setting of priorities for OLAF's investigative function

18. The policy announced by OLAF is to give priority to internal investigations and direct expenditure investigations, especially in the context of enlargement.

19. In reality, OLAF has sufficient resources to deal with all the reliable denunciations that it receives so the question of making choices between possible investigations does not arise. The frequency of denunciations for each sector is indicated in Table 2.

⁽¹⁾ See paragraphs 1.5 and 1.6 of the Court of Auditors' Special Report No 8/98 (OJ C 230, 22.7.1998).

Table 2

Denunciations received by the Office between August 2003 and September 2004

Sector	Average number of denunciations per month	Proportion of denunciations per month
Anti-corruption	5	9 %
Direct expenditure	8	15 %
External aid	12	23 %
Agriculture	12	23 %
Structural Funds	7	13 %
Customs	9	17 %
Total	53	100 %

Source: OLAF case management system, data as at 30.9.2004.

The assessment stage

20. Broadly speaking, the Office has substantially reduced the time spent on assessment by applying a standard deadline of 15 days counting from the assessor's appointment. Although between October 2002 and September 2004 the proportion of assessments already in progress for more than four months fell significantly, from 62 % to 35 %, they still numbered 68. Where the documentation necessary for the assessment report has to be obtained outside the Community institutions, the standard 15-day deadline is clearly too short ⁽²⁾. For most of the assessments examined, the decision to open an investigation appeared

⁽²⁾ The Structural Funds are particularly problematic because documentation and detailed financial data are only available regionally, and not at Community or national level.

to be justified in the light of the criteria adopted by the Office. Nonetheless, the audit revealed certain practices (see *Annex II*) that could be improved. For example:

- (a) in one third of the assessments examined, the objectives selected for the investigation remained vague;
- (b) in one third of the assessments examined, supervision by the management proved to have been deficient;
- (c) half of the assessments examined had experienced significant unexplained delays.

21. Although the Office is supposed to focus primarily on financial fraud, preference has in practice often been given to the criminal aspect. The likely financial impact, that would have made it possible to establish the direction in which the investigation should go, such as the calculation of the sums misappropriated, has been given secondary status.

22. While it is true that, by their very nature, OLAF investigations make it impossible to foresee all aspects of every stage, it is nonetheless instructive to attempt to outline how investigations are organised and planned so as to eliminate the risk of waste of resources. In this regard, assessment reports often contained nothing more than the rudiments of planning, and this was not compensated for by more detailed work plans at a later stage of the investigation. It also became clear that certain assessments could have benefited from consultation with follow-up units and the Magistrates Unit from the outset about the objectives, the options to be chosen and the resources that would be needed for the investigation. In some cases, consultation with Directorate C (Analysis and intelligence) would also have enabled the assessors to make better use of the available information tools (see *Annex II*).

The investigation stage

23. In October 2002 some 51 % of investigations had been ongoing for more than 12 months. By September 2004, however, this figure had risen to 62 %, even though the average duration of investigations had been reduced following the clearance of old cases from the time of UCLAF. As with assessments, the time needed by the Member States to respond to the Office's requests for documentation often led to delays ⁽¹⁾ (see *Annex II*). Other delays were caused by the fact that, in common with other Commission services, OLAF has adopted an approach to communication that is often bureaucratic, with the result that there are extensive lulls in activity which would have been avoided by visits to the authorities concerned. The audit showed that some delays could be attributed to a certain dilatoriness on the part of the investigators, despite the fact that Regulation (EC) No 1073/1999 requires, in Article 6(5), that the Office's investigations be conducted 'continuously'.

⁽¹⁾ The forwarding of information by the Member States is an explicit provision of Article 7 of Regulation (EC) No 1073/1999.

24. The Office's management exercised little control over the duration of investigations. One would have expected the various investigation files to explain and justify delays, but this was not the case. Although the reports that the Office is obliged to send to the Supervisory Committee on investigations open for more than nine months contain some information, there is no further obligation after that time to explain delays, of whatever duration, or even to report regularly to the Executive Board. In many cases the delays cannot be explained.

25. In principle, the assessment reports classify the investigations by degree of priority. It is not clear whether this classification has an impact on subsequent work. There are in fact no criteria concerning the resources to be assigned to an investigation or the deadlines for concluding work of a given degree of priority.

26. The keeping of records of investigators' time is an essential management tool for monitoring the progress of investigations. Although the Court has already recommended such a system ⁽²⁾, the Office has still not set one up. Furthermore, there is no general tool for analysing the workload of investigators at the level of Directorate B.

27. The Office's investigations have suffered from the absence of a system for codifying investigative procedures, although such a system is essential both for the investigators and for those being investigated ⁽³⁾, especially in the case of internal investigations. The lack of codification brings a twofold risk: that procedural conflicts will arise in the course of an investigation with the subjects of the investigation, and that court proceedings brought after an investigation will collapse owing to non-compliance with the formalities introduced to guarantee the application of the principles of transparency and the adversarial procedure ⁽⁴⁾.

28. More generally, as with the assessments, the sample of investigations examined showed that OLAF's actual investigative activity was often rather limited. The use by the Office of its powers to carry out on-the-spot investigations, examine witnesses and question suspects is the exception rather than the rule. These specific investigative acts were most common in the customs sector. On the other hand, the Office often requests information from the investigative agencies of certain Member States, notably Italy. For example, when investigating shared-management expenditure the Office usually asks for the documentation it needs

⁽²⁾ Annual Report concerning the financial year 2000, paragraph 7.49 (OJ C 359, 15.12.2001).

⁽³⁾ The provisions governing investigative procedure are scattered among a number of texts and could usefully be consolidated (Regulation (EC) No 1073/1999, Regulation (Euratom, EC) No 2185/96, Regulation (EC, Euratom) No 2988/95, interinstitutional agreements, the IDOC Memorandum and the Staff Regulations).

⁽⁴⁾ The second recommendation in the Commission's October 2003 evaluation report concerns the establishment of a corpus of administrative rules for the implementation of investigative measures.

to be submitted for it to study and analyse before, if appropriate, carrying out an on-the-spot visit ⁽¹⁾. Even when investigating direct-management expenditure, a field in which the Office has the lead role, it often limits itself to examining documents obtained from the managing departments at the Commission, and in particular the reports of the independent auditors appointed in the context of financing agreements. In such cases the Office assembles and comments on the evidence to be submitted to the judicial authorities in the Member States, but it does not provide any evidence beyond that which was already available to the managing departments. The work of preparing files is most usually carried out with the help of the Magistrates Unit.

29. While the Office must be able to produce its final reports on investigations in the context of judicial proceedings, in the case of shared-management operations these are addressed to the managing authorities in the Member States (customs services, paying agencies, etc.). For that reason they need to be clearly argued and must contain relevant, precise and balanced conclusions. The final reports on many of the cases examined as part of the sample were clearly of insufficient quality. The most common inadequacy was failure to quantify the fraud, even though investigations usually related to the misappropriation of funds.

The follow-up stage

30. OLAF distinguishes between five kinds of follow-up:

- (a) financial follow-up, which is intended to ensure the recovery of funds misappropriated from the Community budget;
- (b) administrative follow-up, which aims to improve the procedures for the management of budgetary revenue and expenditure;
- (c) judicial follow-up, which aims to provide information on the progress of criminal proceedings and the presentation, where appropriate, of claims for damages by the institutions concerned;
- (d) disciplinary follow-up, which takes the form of determining what action the institutions intend to take in response to the Office's recommendations ⁽²⁾;
- (e) legislative follow-up, the purpose of which is to amend Community legislation in order to render it less susceptible to fraud.

31. It was difficult to determine how much time is really spent on follow-up. However, the information obtained shows that it is not the main activity of the units concerned. In general, the Office's follow-up activity has provided little added value, especially where coordination and assistance were concerned (see *Annex II*). The Office's role in financial follow-up should be limited to calculating the amounts of the sums to be recovered. Once they are known, it is for the authorising officers in the operational Directorates-General and the authorities in the Member States to issue recovery orders and to ensure that payment is received on the due date. For its part, DG Budget must ensure that recovery orders are registered as soon as they are issued and that the authorising officers observe the timetable for recoveries. Cases of negligence on the part of the authorising officers are to be referred to IDOC by DG Budget. Mobilising OLAF staff after the stage of calculating the amounts of the sums to be recovered is thus a duplication of effort already undertaken by the authorising officers.

32. In the special case of the mutual assistance procedure in the customs and agriculture sectors there is no systematic follow-up by the Office ⁽³⁾. The Office has established no rules for the continuous and consistent monitoring of progress within the framework of the procedures for requesting mutual assistance from the Member States, and the results of such requests are not clearly recorded.

Quality control procedures

33. The weaknesses identified in the preceding paragraphs raise the question of the effectiveness of the Office's quality control systems.

The OLAF manual

34. The OLAF manual describes the work of every OLAF department and most of the current administrative procedures. Investigative activities are only dealt with in a small section giving details of existing practices, by reference in particular to the stages of the CMS. There is a disproportionate emphasis on the purely legal aspects of operations, to the detriment of the practical aspects of organising and conducting investigations and the

⁽¹⁾ Article 7 of Regulation (EC) No 1073/1999 explicitly provides for the communication of the information necessary for OLAF investigations.

⁽²⁾ Article 9(4) of Regulation No (EC) 1073/1999 on the Office's investigations requires the Community institutions and bodies to inform the Office of disciplinary action taken in response to the Office's recommendations.

⁽³⁾ Council Regulation (EC) No 515/97 of 13 March 1997 (OJ L 82, 22.3.1997, p. 1).

contribution expected from the different parties concerned, in particular the authorities in the Member States and especially the Office's management. The role of the Executive Board, which is a crucial element in the management of investigations, should be explained in greater detail.

Supervision of the management of investigations

35. OLAF inherited the organisational culture of UCLAF, under which the investigators conducted most of their investigations in isolation and without real supervision. While it is true that investigative confidentiality is necessary to avoid pressures that may impede the process of investigation, it is nonetheless essential that the management of an investigation office should check not only that the investigators do not stray from their objectives, but also that they carry out their duties with due diligence. This was not always the case. Management supervision of this sort is also indispensable for guaranteeing the sound use of resources.

36. While the CMS and the establishment of a registry have now brought the necessary order to the record-keeping, physical location and structure of investigation files, this system has yet to be transformed into a real management tool to enable the responsible officers in the Investigations Directorate to be better informed of the progress of the operations for which they are responsible, to prepare the necessary actions and to ensure that they are carried out within the stipulated deadlines. In this connection, the practice of monthly progress reports that certain units have set up on an experimental basis to monitor not only the investigators' workload but also the real financial impact of closed investigations should be extended to all the units of the Investigations Directorate.

37. Investigation results are still poorly interpreted. Just because follow-up is initiated, it does not follow that there will be a concrete result ⁽¹⁾ (recovery or criminal/disciplinary penalty). In other words, initiating follow-up is not a relevant indicator of success. Nor is the fact that files have been forwarded to the judicial authorities significant. This is because the evidence presented by the Office may not be deemed sufficient by the national authorities, while the acts constituting an offence may be time-barred. As regards internal investigations, when the Office has managed to assemble evidence concerning offences committed by staff of the Community institutions, it has often been very difficult to get cases taken up by the judicial authorities in the countries where the institutions concerned by the offences are located ⁽²⁾, either because those authorities lack clear procedures for transferring

these cases to their own courts or because they do not assign to them the priority desired by the Office ⁽³⁾. In Brussels and Luxembourg, the principal workplaces of the institutions, the Office should clarify once again with the judicial authorities concerned the practical steps to be taken so that cases transferred to them no longer disappear from view. Moreover, the Office's recommendations regarding disciplinary action are not always taken up by the institutions or bodies concerned.

Internal audit

38. The Internal Audit Unit, which comprises two temporary members of staff, reports directly to the Director of the Office. Its main task is to keep the Director informed of the effectiveness of the internal control procedures. Since it was set up in 2001, its work has essentially concerned the Office's administrative management and non-investigative activities. It has also been required to perform a variety of tasks in support of the management and to back up the task force that was created in July 2003 to handle the Eurostat case files.

39. The Internal Audit Unit has submitted no reports on the work of investigation. In particular, it has not assessed the correct functioning of the CMS or the reliability and relevance of the results indicators. As at the end of 2004, despite its own risk analyses, the Internal Audit Unit had still not contributed in any significant way to improving the systems for managing investigations.

The OLAF Executive Board

40. An Executive Board comprising most of the heads of units directly or indirectly responsible for investigations was set up in 2002 under the chairmanship of the Director of Investigations. It meets once a week to examine the reports that are filed at each stage of an investigation (evaluation, closure, and post-follow-up). It was established to meet two major objectives:

- (a) to improve the quality of reports by drawing on the experience of the various services;
- (b) to ensure the consistency of the decisions proposed to the Director of the Office by the various investigation teams.

⁽¹⁾ See the Judgment of the Court of Justice of the European Communities of 10 July 2003, *Commission v EIB*, paragraph 164.

⁽²⁾ Specifically, Belgium and Luxembourg.

⁽³⁾ In this connection, see the Office's analysis in Section 1.3.2 of its Complementary Evaluation Report, SEC(2004) 1370 of 26 October 2004.

41. While this new feature undeniably constitutes an advance in the way cases are handled, its success as a means of controlling the management of investigations is still limited, in particular because of the limited time the Board Members have to examine all the files. Thus, despite the intervention of the Board, investigations have been started on the basis of inadequate assessment, delays in carrying them out have not been monitored beyond the stage of informing the Supervisory Committee, and investigations may be passed on to follow-up units before the work of finding evidence has been completed.

Activity reports

42. Anti-fraud operations are the subject of various reports, all of which are part of OLAF's external supervision since they are addressed to the Council and the European Parliament. The Office submits an annual activity report, the Commission presents an annual report on the implementation of its policy for the protection of its financial interests, OLAF's Supervisory Committee draws up an annual report and Article 15 of Regulation (EC) No 1073/1999 requires an evaluation of the Office's activities after three years of existence.

43. The presentation of the Office's activity reports has improved over the years. Reporting has gained in clarity now that it is supported by CMS statistical data and the analyses are less focused on questions of law and investigation policy and more on case studies. The reliability of the statistical data must be enhanced still further by recording operations in greater detail and updating files more quickly. Similarly, the most recent reports could be improved upon, in the sense that activity is analysed in terms of its volume rather than by results obtained. In this connection, the second paragraph of Article 12(3) of Regulation (EC) No 1073/1999 asks the Director to 'report ... on the findings of investigations carried out by the Office'. With regard to amounts recovered, the information is not very reliable because the data coming from the Member States lack consistency and are not corroborated⁽¹⁾. With regard to judicial consequences, the time available is not enough to allow any assessment of the effectiveness of the Office's work, while the number of disciplinary proceedings relating to internal investigations is still very small. In order to account for its activities in a way that is both transparent and relevant, the Office should identify and regularly update indicators which focus not just on the volume of its activity but also on the results (success or failure) of its investigations⁽²⁾ (see paragraph 39), including those conducted in collaboration with

(1) In its Annual Report concerning the financial year 2000, the Court indicated (paragraph 7.49) that there was no system for the overall recording of the results of the various enquiries and amounts recovered.

(2) In this respect, a distinction should be drawn between the recommendations in investigation reports and the disciplinary or legal consequences which are actually attributable to them. Similarly a distinction should be made between recoveries requested and funds eventually recovered.

the competent authorities in the Member States. It is still difficult to determine what the effective results of investigations have been.

THE CONTRIBUTION MADE BY OLAF DEPARTMENTS TO ITS INVESTIGATIVE FUNCTION

Introduction

44. The aim of this second section is to assess the effectiveness of the contribution made by the Office's services to its investigative function. In this connection, it is worth remembering that in November 2003 the President of the Commission spoke of refocusing OLAF's activities on its investigative role⁽³⁾.

Intelligence, operational strategy and information services

45. Directorate C is made up of three units (see *Annex I*). The first deals with anti-fraud strategy issues, analysis of trends and long-term risks and the databases of irregularities reported by Member States. The second is responsible for information and case-recording technology. In particular, this unit has set up and kept the case management system (CMS) running (see paragraph 17). The third unit supplies software and technical tools to support investigations carried out by Investigations Directorate staff. It can also provide operational assistance⁽⁴⁾ to enquiry services in the Member States.

46. The unit responsible for strategic analysis ought to enable the Office not just to follow up denunciations, but to initiate enquiries based on targeted risk analyses carried out by the Office itself, in collaboration, where appropriate, with its counterparts in the Member States. Although this unit has been in existence for two years, its interventions to date have had no direct impact on investigation activity⁽⁵⁾.

47. Areas examined by the unit which could have resulted in new investigations included information given by Member States pursuant to Regulations (EEC) No 595/91⁽⁶⁾ and (EC) No 1681/94 on irregularities found in the fields of agriculture and the Structural Funds. The unit concluded that the quality of the data was generally inadequate for them to be used.

(3) President Prodi's speech to the European Parliament's Committee on Budgetary Control on 18 November 2003.

(4) Assistance delivered through managing the systems for recording and communicating instances of fraud detected by the Member States (AFIS, ECR, etc.).

(5) Fifth report of the Anti-Fraud Office (July 2003-June 2004) paragraph 3.1.1.

(6) See Special Report No 3/2004 of 10 June 2004 (OJ C 269, 4.11.2004).

48. As regards strategic analyses, the unit faces problems of access to various databases belonging to Community institutions. The fact is that their departments say they are concerned about the use which the Office might make of general access to databases to which provisions relating to the security of personal data apply (Regulation (EC) No 45/2001). There has been no in-depth discussion of this sensitive issue with the Supervisory Committee, whereas discussion is crucial if the Office is to adopt a more systematic and proactive approach to opening internal investigations.

49. Though this is a recent development, there has been a regular increase in requests for assistance from the investigative services with regard to operational intelligence, consisting in particular of interrogation of databases. In mid-2004 the Operational Intelligence Unit was chiefly working on investigations concerning agriculture and customs, which are not among OLAF's investigative priorities as established by the Director.

50. Within what the Office calls its service platform, the Operational Intelligence Unit devotes a significant share of its resources to supporting Member States in the fields of customs and agriculture. The following two activities would be better placed in other Commission services:

- (a) operation of the anti-fraud information system (AFIS), which allows Member States as well as OLAF to receive and disseminate information about fraud ⁽¹⁾;
- (b) management of programmes financed by the general budget of the European Union and aimed at reinforcing the infrastructure of customs services in the Member States.

Policy, legislation and legal affairs

51. Directorate A comprises six units (see *Annex I*). Three of these units deal with follow-up operations (see paragraphs 30-32) and support to the investigators on issues concerning sectoral legislation. Although the precise role of these three units varies according to the sectors for which they are responsible, they have two functions, one linked to investigations and the other supporting the Commission's operational Directorates-General in the context of the policy on the protection of financial interests.

52. As regards investigations, these three units provide analyses relating to sectoral rules and regulations. They also follow up irregularities notified to the Commission by the Member States. The opinions given by these units on legal or financial matters, in particular those given on cases at the assessment stage, have contributed to an improvement in the quality of the investigations, particularly in the areas of direct expenditure and external activity.

⁽¹⁾ Unit C.2 is involved in the technical management of the AFIS system, to which the Office would need access even if it was managed by another Commission service.

53. As regards supporting the Commission's operational Directorates-General, they participate in the scrutiny of legislation from a 'fraud-proofing' perspective. Their role consists of proposing preventive measures, making use of the experience that the Office has accumulated during its investigations.

54. In paragraph 53 of its Special Report on the recovery of irregular payments under the common agricultural policy ⁽²⁾, the Court concluded that there was still confusion over OLAF's role in following up irregularities notified by Member States, because the division of responsibilities between the Office and DG Agriculture is not very clear. This has diminished the effectiveness of the mechanisms for recovering amounts wrongly charged to the Community budget. Although the Court's audit only briefly looked at the follow-up of irregularities notified in respect of customs and the Structural Funds, the same questions about the division of responsibilities also arise in those areas. In general, follow-up operations tend to divert the Office's resources, to the detriment of its investigative role, and to the benefit of the Commission's operational Directorates-General.

55. Of the three other units in Directorate A, about one third of the resources in the Legal Affairs Unit (12 staff) are employed in providing general (non-sectoral) legal opinions to the Investigations Directorate. This is a useful function since it complements the sectoral opinions which the follow-up units provide. Nevertheless, it is less clear whether the other tasks carried out by this unit, particularly those devoted to the strategy for the protection of financial interests, are part of the Office's core mission and indeed whether OLAF is best placed to deal with them. The same applies to the two other units (Protection of the euro and Support for consultative committees on the protection of financial interests).

Units reporting directly to the Director of OLAF

56. In addition to the internal audit service, four units report directly to the Director of the Office (see *Annex I*).

Magistrates Unit

57. Although reporting to the Director of the Office, this unit is supposed to play two roles closely linked to the investigative function:

- (a) to support investigations in matters relating to specific features of the judicial systems in Member States;
- (b) to ensure, when cases are transferred to national judicial authorities, a smooth transfer of the Office's files to public prosecutors in the countries concerned.

⁽²⁾ See Special Report No 3/2004.

58. The Magistrates Unit has had little involvement in evaluation and investigation work. The unit's action has often been late, which has not always allowed full advantage to be taken of the powers available to it, and this has affected the quality of some investigation reports. In the field of direct expenditure, magistrates have been involved from the start with the investigators' work on investigations from the second half of 2003 onwards. If this practice were extended to all the areas in which the Office is involved, it would be easier to determine whether the evidence available is adequate or what additional evidence is needed to allow an investigation to be concluded by the transfer of the file to the appropriate disciplinary or judicial authorities with good prospects of success.

Training and support for candidate countries unit

59. As part of the enlargement of the Union, a special unit was given responsibility for implementing a 15 million euro programme financed by the PHARE programme. This activity is scheduled to continue in principle until 2006. In 2004, it was given responsibility for a further support programme for new Member States (the Hercules programme, with funding of 11,7 million euro). As with anti-counterfeiting initiatives, it is not the Office's role to become a manager of expenditure programmes.

60. The unit also has in principle responsibility for lifelong training within the Office. It seems however that this activity has been neglected. The mission of this unit should therefore be reassessed.

Human Resources and Budget Unit

61. The size of this unit, and OLAF's administrative expenditure in general, is less than it would be if the Office were not attached administratively to the Commission. As a result, OLAF derives significant economies by using the services of a large number of departments in the Administration Directorate-General of the Commission, without prejudicing the independence of its investigative function.

Human resources

62. The sharp increase in the number of posts since 1999 reflects the budgetary authority's determination to strengthen the Office's investigative function. Nevertheless, the number of new posts is not based on any targeted study to determine the Office's staffing needs in relation to its adopted strategy and its workload.

63. A large proportion of the increase in staff numbers has been by way of temporary posts. As a result, the number of temporary posts in categories A and B rose from 12 in 1999 to 127 in 2001. In the list of posts for 2004, these posts accounted for 55 % of the total for categories A and B. The large number of temporary posts was a consequence of the budgetary procedure for the financial year 2001, when the aim at the time was to replace senior investigations staff coming from UCLAF⁽¹⁾. Now that this objective has been achieved, the present situation poses more problems than it offers advantages:

- (a) as many investigators had been recruited from surveillance services in the Member States, a large proportion of them had to familiarise themselves with the judicial and institutional framework, as well as the implementation procedures, applicable to the Community budget. This exercise was all the more difficult as, unlike the practice at DG Competition and DG Trade⁽²⁾, the Office provides only limited initial training to the investigators it recruits;
- (b) most of the temporary contracts now in progress will come to the end of their second and final three-year term between 2007 and 2009⁽³⁾. Since the staff members concerned will then have to leave the Office, there is a high risk that all this accumulated knowledge and experience will disappear within a short period.

64. Because of the complexity of the Community context, investigators are required to show versatility and adaptability. Since it is not easy to find this combination of qualities, this is a serious reason for giving greater priority to stability in recruitment and training programmes. This being so, it would be appropriate to look again at the list of posts so as to provide investigators with less precarious employment situations and real career possibilities. That can be achieved gradually by converting some posts as future budgetary procedures permit.

65. At the same time, the administrations most exposed to the problems of fraud and the protection of the European Union's financial interests should be encouraged to make available to the Office's analytical (intelligence) services a greater number of seconded national experts. A particular effort in this direction may be made as regards the services of Member States called on to collaborate with the Office.

⁽¹⁾ The number of permanent posts in categories A and B moreover increased from 107 in 1999 to 143 in 2000 and then was cut back to 109 in 2001.

⁽²⁾ These Commission Directorates-General make considerable use of high-level investigative teams.

⁽³⁾ In Special Report No 8/98 the Court had already indicated that the high proportion of temporary staff was leading to a lack of continuity in the organisation.

THE SUPERVISORY COMMITTEE

66. The Supervisory Committee was established by OLAF's founding acts ⁽¹⁾. 'Through its regular control of the implementation of investigations it strengthens the Office's independence' ⁽²⁾. It was also supposed, in response to requests from the Director or on its own initiative, 'to deliver opinions to the Director concerning the activities of the Office without, however, interfering with the conduct of investigations in progress' ⁽²⁾. In practice, using recital 10 of Regulation (EC) No 1073/1999 as a basis, the Committee has concentrated its attention on one of its own rules of procedure, under which it states that it will ensure that the Office respects the principles of individual rights and fundamental freedoms, particularly with regard to internal investigations ⁽³⁾.

67. The discharge of the mandate of the Supervisory Committee is delicate on several counts. The Committee is required to be the guarantor of both the Office's independence and the rights of persons under investigation. The legislation gives it no decision-taking power to do this. By restricting its pronouncements to issues of principle, it is laying down a doctrine which has no real effects on investigations. Finally, as the Committee cannot intervene during the course of investigations, it in no way constitutes a mechanism to monitor the legality of investigations while they are in progress.

68. With regard to monitoring the procedure followed in investigations, several recent cases demonstrate the existence of overlaps between the roles of the Supervisory Committee and the European Ombudsman. For example, between September 2003 and May 2004, the Committee debated the Ombudsman's interventions in connection with individual investigations by the Office during seven of its meetings. Moreover, the Committee does not deal with complaints which persons under investigation address to the Director of the Office, who remains free to deal with them as he sees fit.

69. Whilst the Committee may not interfere in the management of the Office, that is, it may intervene neither in the Office's non-investigative activities nor in the conduct of investigations:

- (a) it must be informed of any investigations not completed within nine months of their start; in practice, when such information is communicated to the Committee it usually has no practical consequences;

- (b) each year it has to examine the Office's draft budget in detail ⁽⁴⁾, although this budget also covers activities other than investigations. In practice this examination is largely a formality since the Committee, which is not an arm of the budgetary authority, has no responsibility in this regard;
- (c) it has asked to be informed in advance of cases for referral to national judicial authorities ⁽⁵⁾. Nevertheless, since informing the judicial authorities is often a stage in an investigation which continues with these authorities' support, and since informing them is a sovereign act by the Director of the Office, prior communication to the Committee may be a source of interference;
- (d) in its Rules of Procedure the Committee asks the Director to grant it rights which go beyond those provided for in its legal constitution (communication of complaints received by the Director ⁽⁶⁾, communication of the Office's legislative initiatives concerning the fight against fraud and the protection of financial interests ⁽⁷⁾, access to all OLAF's documents and files ⁽⁸⁾, its own budgetary resources ⁽⁹⁾, appointment of secretariat staff ⁽¹⁰⁾, determining the secretariat's place of work ⁽¹¹⁾, etc.).

70. Since the Director of the Office was appointed, his independence has never been under any real threat ⁽¹²⁾. In practice, the Committee has largely focused its attention on questions relating to the Office's observance of individual rights in internal investigations and has deplored the absence of a code of procedure to give a firm framework for investigative actions. The Committee's focus of attention on internal investigations and individual rights has affected the relationship between the Director of the Office and the Committee.

71. Following the policy adopted by the Office, the Supervisory Committee has given priority to the criminal destination of internal investigations, to the detriment of external investigations, in spite of the fact that fighting fraud against the Communities' financial interests goes well beyond the confines of the institutions, and that numerous frauds are committed without any

⁽¹⁾ Decision 1999/352/EC, ECSC, Euratom, Article 4.

⁽²⁾ Regulation (EC) No 1073/1999, Article 11(1).

⁽³⁾ Rules of Procedure of 17 November 1999, Article 2 (OJ L 41, 15.2.2000).

⁽⁴⁾ Consultation of the Committee by the Director under Article 6(2) of Decision 1999/352/EC, ECSC, Euratom, which does not require a formal opinion.

⁽⁵⁾ Whilst Regulation (EC) No 1073/1999 says that the Committee must be informed of cases which the Director of the Office transfers to the judicial authorities but does not specify when this information is to be given, the Committee's Rules of Procedure (Article 22(5)) establish the principle of information in advance.

⁽⁶⁾ Article 22(6).

⁽⁷⁾ Article 22(7).

⁽⁸⁾ Article 3(b).

⁽⁹⁾ Articles 4(5), 19(7) and 25.

⁽¹⁰⁾ Articles 19(1) and 19(2).

⁽¹¹⁾ Article 19(4).

⁽¹²⁾ Even at the height of the Eurostat crisis in 2003, the Commission was careful not to interfere in the conduct of investigations.

collusion with staff from the institutions or its related bodies. Though Articles 7(1) and 7(3) of Regulation (EC) No 1073/1999 require that 'the institutions, bodies, offices and agencies shall forward to the Office without delay any information relating to possible cases of fraud or corruption' and that 'Member States shall also send ... any other document or information considered pertinent ... relating to the fight against fraud ... and any other illegal activity affecting the Communities' financial interests', the Supervisory Committee has never studied the conditions in which the agencies or Member States have discharged this duty, although it is essential to the Office's investigative activities ⁽¹⁾.

72. To allow it to discuss questions relating to the conduct of enquiries in full knowledge of the facts, the Committee secretariat examines closed investigation files which it selects on the basis of criteria determined in consultation with the Chairman. The number of files examined recently was 17 ⁽²⁾ in 2003 and seven in the first six months of 2004. These examinations are the subject of detailed evaluation records which often include pertinent recommendations or important matters of principle. These records are not communicated to the Office. An attitude of greater openness would not only benefit relations between services but would also allow all parties to benefit from best practice, which would thus contribute to strengthening the investigative function.

CONCLUSIONS AND RECOMMENDATIONS

73. The Office undertook substantial reorganisation measures in November 2003. At the time of the audit, it was evident that at the beginning of 2004 it was still engaged in clearing the burden of the past inherited from UCLAF, its predecessor, and that the new measures were just beginning to have an effect (see paragraph 10).

Efficiency and effectiveness of investigations

74. The Office's investigations policy is still uncertain, whether with regard to the question of acting on its own initiative, the management of priorities, procedures for collaboration with the authorities of Member States or checking deadlines. Similarly, guidelines on the results to be achieved are still vague because the disciplinary or financial aspects may be overlooked in favour of judicial processes, the outcome of which is often remote and uncertain (see paragraphs 19, 20 and 25).

Once the guiding principles of its investigations have been specified in terms of results to be achieved instead of simply the areas on which it wishes to concentrate its activities, the introduction of performance indicators (rather than mere activity indicators) should make it possible to assess the extent to which the Office's choices are justified.

75. The decision-making system governing the various stages of the investigations has become more transparent (see paragraph 16). This is largely due to the intervention of the Executive Board and the introduction of standardised reports (see paragraph 41).

76. The fact that coordination and assistance operations are treated as equivalent to investigations makes control of resources difficult and results in time-consuming use of the CMS system, even though the Office has no obligation, in coordination and assistance cases, to collect and produce evidence itself (see paragraphs 13 and 14).

It would be worth reconsidering the organisation of the Office with regard to coordination and assistance operations and investigating the possibility of creating a special unit dedicated to these operations, as part of the service platform.

77. With regard to preliminary work (assessments), analyses are still rudimentary. The support units (magistrates, follow-up and operational analysis) have taken little part in defining objectives and planning the strategy to be adopted in each investigation. The Executive Board has not insisted strongly enough on the need for clear formulation of the objectives and expected results of investigations (see paragraphs 20 and 22).

Some investigation acts still need to be justified more convincingly, the objectives set for the investigators in each case need to be clarified and there must be more insistence on work programmes to support proposed decisions. Regarding the Executive Board, it would be worth considering smaller groupings each of which would bring together managers working on files that have common features ⁽³⁾. This kind of approach would reduce the participants' burden of work on examining files and would encourage more rational and more thorough analysis of draft decisions. It would also allow coordinated follow-up of the portfolio of current cases and the introduction of a system of prioritisation. Nothing would prevent all the subgroups of the Executive Board from coming together, if the need arose, to deal with matters of principle in which all the services have an interest.

⁽¹⁾ See also the provisions of Article 9 of Council Regulation (EC, Euratom) No 2988/95 which obliges Member States to give the Commission every assistance necessary, as part of the protection of financial interests.

⁽²⁾ Including 14 internal investigations.

⁽³⁾ For example revenue and shared-management expenditure, direct-management expenditure, internal investigations, etc.

78. Supervision of investigations by the Office's management has generally proved inadequate (see paragraphs 28, 35 and 36). The duration of investigations has not been brought under control (see paragraph 24).

Heads of unit must ensure that priorities are as far as possible respected and must both be aware of and control investigators' actual workload. In the course of an investigation, the search for evidence must take precedence over mere collation of information already available. From this point of view, the Office must make better use of the means it has available (witness hearings, on-the-spot visits to collect documents, operational analyses, etc.).

79. There is no system in place to measure investigators' actual workload or the time they spend on investigations (see paragraph 26).

A time-recording system, linked to work plans which include estimates of time to be spent on investigations, would supply a basis for better alignment of the workload with the resources available in the various units of the Investigations Directorate, and would allow delays to be avoided.

80. The obligation to report investigations that are more than nine months old to the Supervisory Committee has had no notable effect (see paragraph 24).

Taking into account the time-barring periods laid down in national (criminal) and Community legislation (e.g. Article 3 of Regulation (EC, Euratom) No 2988/95), establishing a maximum duration for enquiries would be likely to increase their effectiveness.

81. It is still difficult to determine the actual results of investigations. In the area of internal investigations, little progress has been achieved since 1988 with regard to sanctions imposed. Judicial and legal routes have in the main proved ineffective (see paragraph 37).

82. The Office's financial follow-up operations use up a lot of its resources (see paragraphs 31 and 54). Judicial follow-up adds little value to the conclusions submitted (see paragraph 43).

Financial follow-up should not be part of the Office's remit. It is up to authorising departments in the Commission and Member States to organise the recovery of amounts identified as a result of investigations. Authorising officers and Member States should notify OLAF promptly of any sums recovered or amounts written off. Judicial follow-up should be limited solely to cases where, after criminal proceedings, the officer who authorised the original expenditure is required to start civil proceedings for recovery. Legislative follow-up ought to remain the responsibility of the operational Directorates-General on the basis of summaries addressed to them by the Office.

83. There is no independent control of the legality of investigative actions ⁽¹⁾. The procedural measures concerning investigations are still imperfectly codified (see paragraph 27).

Codifying the procedures should guarantee that investigative acts follow a predictable course, that there is certainty about the timing of hearings and that, at each key stage of the enquiry, the rights to a fair hearing of the person under investigation are protected along with his right of access to the file. The code should also reinforce the principle of investigative secrecy and provide controls on the legality of investigative acts still in progress. Such a code should have legal force, be published and allow the fundamental principles governing OLAF's investigations, in particular transparency and the adversarial principle, to be applied transparently.

84. In the field of direct expenditure, OLAF is dependent on cooperation with national departments. Some Member States give their support to the Office more willingly than others, even though the Office does not have all the means at its disposal to identify certain facts (see paragraphs 15 and 37).

85. In the areas of own resources and shared-management expenditure, cooperation with Member States under ad hoc rules and mutual assistance procedures (Regulation (Euratom, EC) No 2185/96) is often mediocre (see paragraphs 15 and 32).

In order to clarify arrangements for cooperation with the authorities of Member States, it would be useful to consider either the adoption of a specific Council Regulation setting out detailed arrangements for such cooperation (see proposed amendments to Regulation (EC) No 1073/1999), or the conclusion of agreements with national investigation services best placed to assist the Office ⁽²⁾.

86. The case management system (CMS and registry) established by the Office represents distinct progress in the control of documentation and investigation files (see paragraph 17).

87. The CMS databases are not used to their best advantage to create a genuine system of investigation management and a decision-making aid, although such an instrument is needed to manage and direct investigations (see paragraphs 34 and 36).

⁽¹⁾ See Article 14 of Regulation (EC) No 1073/1999. Article 90a of the new Staff Regulations does not resolve the matter of the independence of pre-litigation appeals concerning the Office's investigative acts.

⁽²⁾ An agreement of this nature has already been concluded with the Italian Guardia di finanza.

The CMS databases should be used to convert the documentation system into a true system of investigation management and a decision-making aid. If combined with a clarification of the role of management responsibility for investigators, this would reinforce the effectiveness of investigations and prevent delays. These points should be added to the OLAF manual and details of management responsibilities included. To make the manual more operationally useful, all instructions relating to the organisation, conduct and supervision of investigations should be collated in a single volume. A special effort must also be made with regard to the training of investigators (in investigation techniques; sectoral, national and Community legislation, report-writing skills, etc.).

88. Considerable resources are invested in producing reports which do not always result in sufficiently clear information to judge the Office's effectiveness in the absence of relevant performance indicators (see paragraphs 37, 39 and 43).

The number of reports should be cut and greater attention should be paid to their information value. Statistical data should be made more reliable and relevant so that comparisons can be established over time. In this regard, the introduction of performance indicators based on real rather than potential results should bring greater clarity.

Deployment of resources in support of investigations

89. The Office's reactive investigation policy does not allow it to form an overview of its future workload and to organise its investigative teams accordingly (see paragraphs 26 and 62). The process of allocating staff between units in the Investigations Directorate is not transparent. Staff management is complicated by the disproportionate number of temporary posts, which results in instability (see paragraphs 63 and 64).

The workload of the various services should be monitored and a genuine master plan for personnel management implemented so as to resolve structural problems in staff management. Sound management of the investigation teams would moreover militate in favour of more balanced units in terms of staff numbers, allowing heads of unit to supervise investigations more closely.

90. The impact of the strategic analysis services on the Investigations Directorate is still insignificant. With regard to risk analyses, their contributions have remained limited (see paragraph 46).

The mission of the strategic analysis services must be redefined so that they can contribute effectively to the identification of situations which would lead to external investigations being initiated in sectors at greatest risk. In this regard, they should seek improvement in the presentation, the nature and the accuracy of data forwarded by the Member States allowing the creation of databases which could be used to look for anomalies and launch investigations.

91. Judicial support is useful in view of the difficulties posed by some Community legislation. In this sector, support to the investigation services is regular. It is legitimate on the other hand to question the contribution which work related to the strategy for the protection of financial interests makes to the Office's investigations (see paragraphs 53 and 55).

Since work in relation to the strategy for the protection of financial interests has had no direct impact on the conduct of investigations, other Commission services could be better placed to undertake such work.

92. Assistance activities are useful when concrete support to Member States with coordination or analysis in the field of cross-border investigations is required. The Office's peripheral activities, particularly those associated with the policy on the protection of financial interests in the broad sense, distract management from its role of surveillance and support for the investigative function. When such activities involve taking on responsibilities which are normally carried out by the operational services of the Commission (programme management, for example) mobilisation of the Office's resources does not constitute the best solution (see paragraphs 55 and 59).

Programme management work should be the responsibility of the operational services of the Commission, which are better equipped than the Office to deal with them.

Relations between OLAF and the Supervisory Committee

93. A body like the Office needs clear lines of management responsibility and clear arrangements for supervision. The terms of reference of the Supervisory Committee have become unclear. Moreover, the Supervisory Committee does not provide the Office's Director with all necessary support (see paragraph 70).

The role of the Supervisory Committee should be re-examined in order to avoid all risks of interference in ongoing investigations.

Refocusing the Office on its investigative function

94. The fact that OLAF is attached to the Commission has not endangered the independence of the Office's investigative function, even if some difficulties in communication were noted. It does not appear, therefore, that the status of the Office should be called into question. On the other hand, executive management of the investigative function should have received more sustained attention, in order to guarantee the quality of its results and avoid duplicating the work of other Commission services. The experience of the first five years of the Office's existence thus tends to show that more reflection is needed, to ensure with

greater certainty that investigations are effective in achieving concrete results, whether these be the recovery of misappropriated amounts or the effective application of disciplinary or criminal sanctions.

From the foregoing, it is clear that a refocusing of the Office's activities on its investigative function, as the President of the Commission indicated in November 2003, would tend to reinforce the effectiveness of investigations while leaving other organisations with the responsibility for preventive or legislative acts. Such refocusing should, for its part, be accompanied by modifications to the governance of the Office, necessitating changes in the regulations ⁽¹⁾.

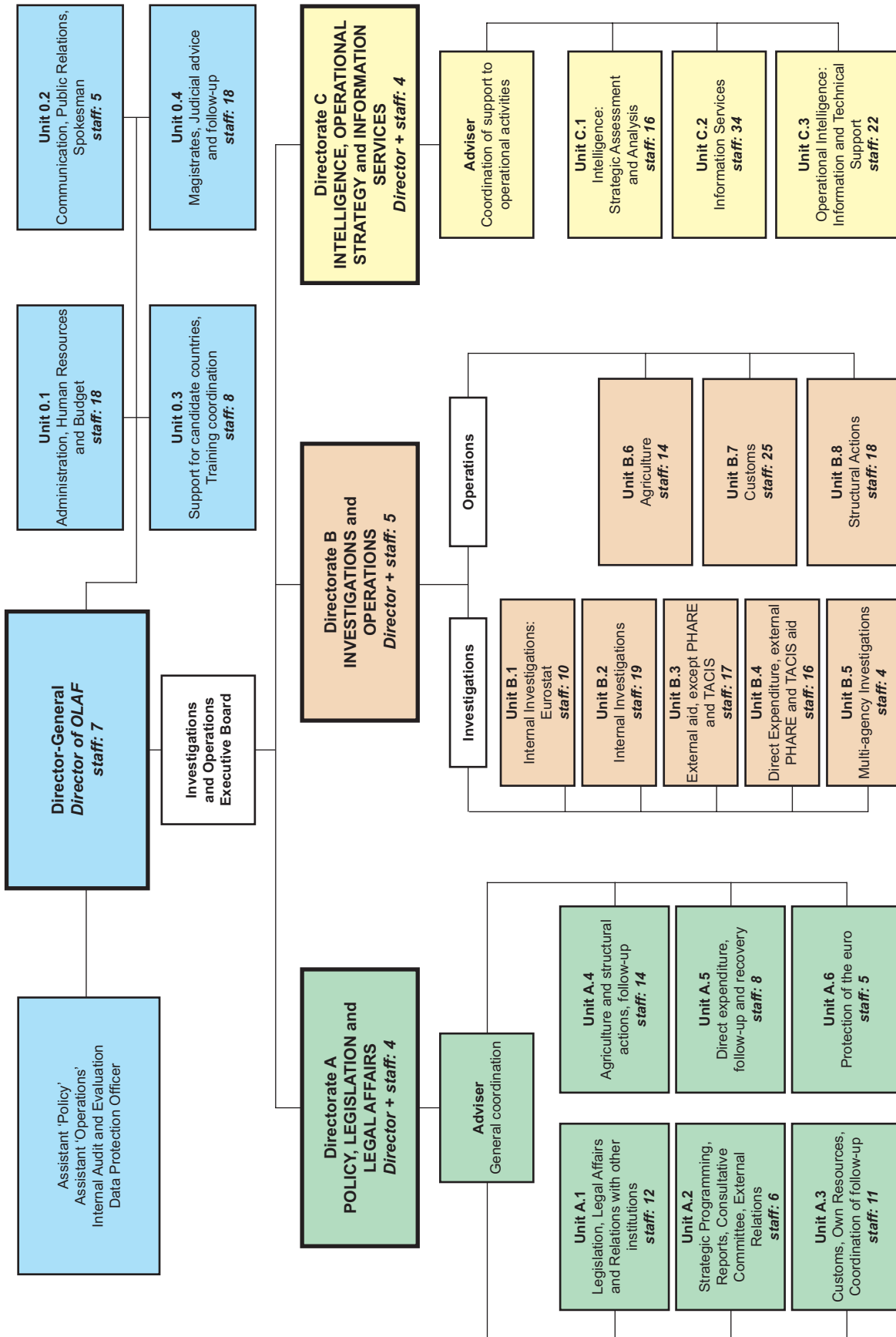
This Report was adopted by the Court of Auditors in Luxembourg at its meeting of 9 June 2005.

For the Court of Auditors
Hubert WEBER
President

⁽¹⁾ Regulation (EC) No 1073/1999 concerning investigations by the Office; Decision 1999/352/EC, ECSC, Euratom establishing the Office; Decision 1999/396/EC, ECSC, Euratom (OJ L 149, 16.6.1999, p. 57) concerning the terms and conditions for internal investigations.

ANNEX I

OLAF ORGANISATION CHART

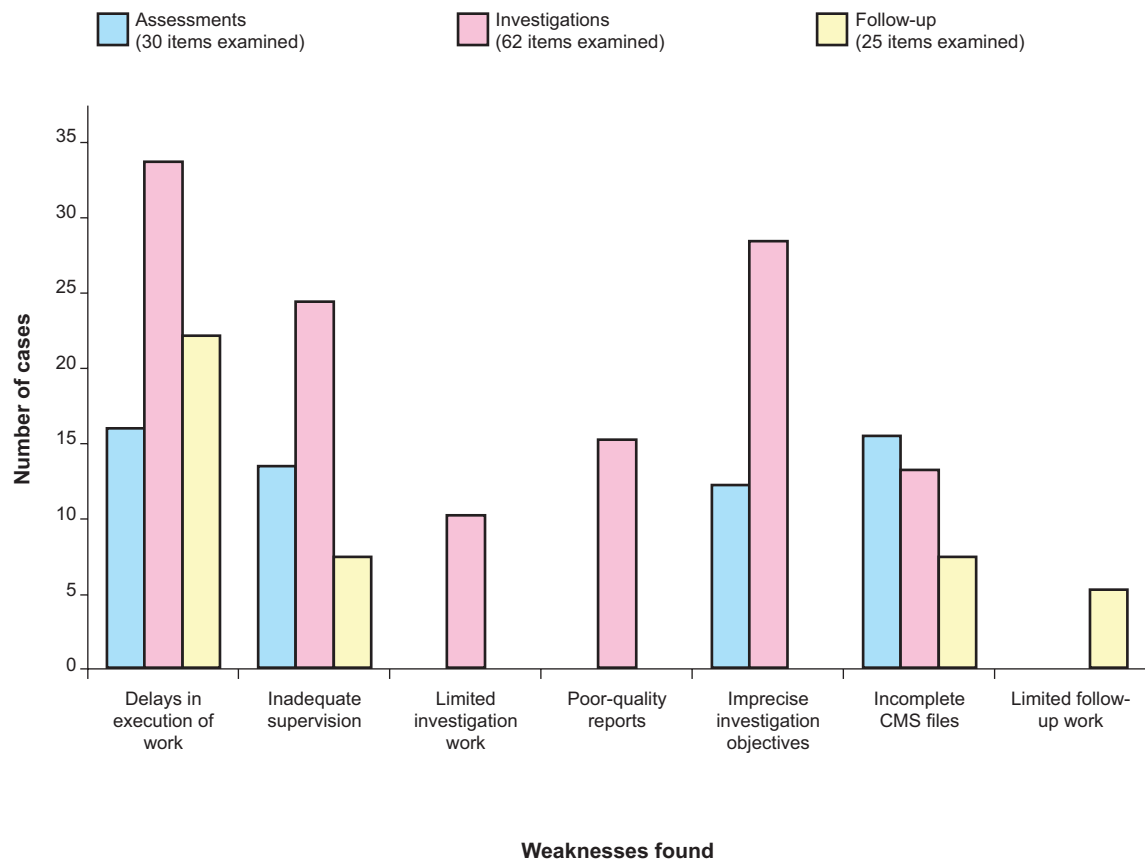


ANNEX II

MAIN WEAKNESSES NOTED IN THE INVESTIGATIONS SAMPLE EXAMINED

Assessments (30 items examined)	
Delays in execution of work	16 cases
Inadequate supervision	13 cases
Imprecise investigation objectives	12 cases
Incomplete CMS files	15 cases
Investigations (62 items examined)	
Delays in execution of work	34 cases
Inadequate supervision	24 cases
Limited investigation work	10 cases
Poor-quality reports	15 cases
Imprecise investigation objectives	28 cases
Incomplete CMS files	13 cases
Follow-up (25 items examined)	
Delays in execution of work	22 cases
Limited usefulness of the follow-up work	8 cases
Inadequate supervision	7 cases
Incomplete CMS files	6 cases
Limited follow-up work	5 cases

MAIN WEAKNESSES NOTED



THE COMMISSION'S REPLIES

In Annex to its replies, the Commission transmits the replies from the Supervisory Committee of OLAF to paragraphs 66 to 72 and 93. The Commission and OLAF point out that they do not share certain of the views expressed by the Committee.

SUMMARY

III. At present, by sifting its information ⁽¹⁾, OLAF has the capacity to follow up any serious report it receives. In future the Office intends to increase its effectiveness and the following-up of investigations by developing a more sophisticated strategic analysis that could adapt to take account of new priorities.

IV. Investigations and assistance and coordination operations share the same objective: the protection of financial interests. The distinction between the two is clear, based as it is on Regulation (EC) No 1073/1999. It is reflected in the Office's role (which is a function of its possibilities, its powers and its independence). Should decisions taken by the Institutions lead to a structural reform of the Office ⁽²⁾, thought could be given to clarifying the distinction between these different categories at organisational level.

V. The findings regarding managerial supervision relate to the sample of cases examined by the Court, the management of which does not take account of the progress made since 2003. Consequently, the Court's observation regarding the inadequacy of the supervision should be qualified (between July 2000 and June 2003 957 cases inherited from UCLAF were closed and in three years the average length of investigations dropped from 33 months to 22 months in 2004). It should also be borne in mind that the Commission's proposal would set imperative deadlines for investigations. (See the proposed amendments to Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999 ⁽³⁾).

VI. After the first stage, which is carried out by the Greffe, OLAF is now able to ensure that the quality and legality of its operations are controlled by its line managers, its Executive Board and its Magistrates and Follow-up Units. Furthermore, the Office now devotes greater attention to planning its investigative activities using work plans.

Cooperation with Member States requires continuous and sustained efforts on both sides. OLAF has defined this issue as a priority area for improvement. This cooperation is also a concern for the Commission and has been described as a platform of multidisciplinary services in recommendation 14 of the Commission report on the evaluation of the activities of OLAF ⁽⁴⁾.

VII. Activities following-up investigations, such as recovery or prosecutions, provide only a partial picture of OLAF's effectiveness. It is usually up to national authorities and, in some cases, to Community institutions, to take decisions on further steps that are beyond OLAF's control.

As developing and introducing performance indicators is a complex process, OLAF has set about studying the question in depth, looking to draw on the experience of national investigation agencies. OLAF is exploring the possibility of seeking feedback from Member States authorities on the usefulness of its reports.

⁽¹⁾ On the basis of criteria that reflect the priorities set out in OLAF's Programme of Activities.

⁽²⁾ Proposal to amend Regulation (EC) No 1073/1999 — COM(2004) 103 final, 10 February 2004.

⁽³⁾ Article 6(7) of the proposed amendment of Regulation (EC) No 1073/1999, which concerns the length of investigations; COM(2004) 103 final, 10 February 2004.

⁽⁴⁾ OLAF activities evaluation report, COM(2003) 154 final.

VIII. The fact that OLAF's establishment plan contains a large number of temporary staff enabled the Office to take on experienced investigators fairly quickly when it was setting up its organisation. While aware of the risk flagged up by the Court, the Office intends, with the agreement of the budgetary authorities, to gradually make a significant percentage of its temporary posts permanent, which should consolidate expertise. The Office also intends to focus on staff training, especially for investigators and new arrivals.

IX. OLAF's current legal framework already contains substantial provisions to protect human rights. The proposed amendments to Regulation (EC) No 1073/1999 codify defence rights ⁽¹⁾. Internal monitoring of quality and legality is currently a matter for line managers and the Executive Board; however, the question of internal controls is to be examined.

Moreover, to further ensure the legality of investigations in practice and make the Office's procedures more transparent, the new version of the OLAF manual of procedures includes a body of administrative rules (which could be developed further separately from the current manual).

X. The Commission shares the Court's view on the need to review the governance of the Office and has set out possible solutions in its proposal to amend Regulation (EC) No 1073/1999.

XI. OLAF's activities concentrate on the overall protection of financial interests. With this objective in mind, the mobilisation of resources for operations is the top priority. The Court itself points out in paragraph III that the Office currently has the resources it needs to meet the operational challenges it faces.

The Commission welcomes the Court's observations, although this is without prejudice to any future re-assessment the Commission may make concerning the division of responsibilities between its services, particularly in the framework of the evaluation of the tasks/competencies of OLAF.

INTRODUCTION

4. The Office has taken account of the fact that it needs to work together with the various authorities in the Member States if it is to accomplish its mission. To this end it has attached suitable importance to coordination and support and set about recruiting specialists from the national administrations.

7. OLAF refers to the Complementary Assessment of the European Anti-Fraud Office (2004) ⁽²⁾, which points out that operational tasks account for some 60 % of its resources. This can be explained by the fact that a significant proportion of resources allocated to units outside the Investigations and Operations Directorate (B) is closely linked to investigative activities.

8. The Commission accepts that it may be difficult at present to assess the effectiveness of OLAF's work. Initially the Office lacked the tools needed to make such an assessment, but the introduction of the case management system (CMS) has made it possible to make an inventory of OLAF's actions. This in turn has made it possible to undertake an initial description of results in terms of financial impact and cooperation with the judicial authorities

(see the Complementary Assessment of the European Anti-Fraud Office ⁽³⁾). However, the time taken by national procedures makes it impossible to establish quickly what concrete follow-up measures have been taken in response to OLAF investigations. This is why OLAF is looking to identify the most appropriate performance indicators, drawing on the experience of national bodies, to refine the evaluation of its work. It is difficult, however, to assess preventive measures and deterrence, both of which are significant outcomes of OLAF's work.

10. The Commission has already set out the impact of the need to clear operations launched previously and the delays in setting up the Office, for which there were a variety of reasons (see paragraph 7.41 in the Court's annual report for 2000). It is therefore unsurprising that the consequences were still being felt in 2004 (see paragraph 73). The deficiencies summarised in Annex II must therefore be relativised, as they primarily concern investigations opened prior to the reorganisation of the Office in November 2003.

The Office has also taken account of the Court's previous observations, and the introduction of the case management system is an example of the progress made by OLAF in response to the Court's Special Report No 8/98.

⁽¹⁾ COM(2004) 103, 10 February 2004.

⁽²⁾ Complementary Assessment of the activities of the European Anti-Fraud Office (OLAF), SEC(2004) 1370, 26 October 2004.

⁽³⁾ Complementary Assessment of the activities of the European Anti-Fraud Office (OLAF), paragraph 1.3.2, SEC(2004) 1370, 26 October 2004.

OLAF INVESTIGATIONS

13. The difference between investigations and operations is reflected in the role OLAF has to play (depending on its possibilities/powers). Within the legal framework for OLAF's activities, direct intervention in the form of an investigation conducted by the Office may be less common in the fields of customs and trade (see reply to paragraphs IV, 4 and 12).

14. Coordination and assistance are provided with a view to achieving the objective of protecting financial interests, as laid down by the legislator. The Office aims to identify the appropriate procedure for each specific case. There is no preferred form of intervention and there should be no question of mobilising resources to the detriment of the investigations. Furthermore, as these operations are often complex and involve several Member States, it is imperative to follow strict procedures. Subjecting all OLAF's operational activities to the same internal reporting procedures also ensures greater transparency (see the reply to paragraph 76). A simplified procedure could, however, be envisaged for cases of mutual assistance.

15. Collaboration with national authorities requires mutual trust that is based on and develops through the support (coordination and assistance) that the Office can give the Member States. The Office is pursuing a policy of improving its operational contacts and has made this one of its priorities for 2005.

16. (a) When the information is evaluated the Office makes sure that the suspicions raised (i) concern offences within OLAF field of activities; (ii) are sufficiently serious ⁽¹⁾, (iii) concern events covered by pre-established operational priorities ⁽²⁾. Priorities for investigations are set following a detailed study by the Office and consultation with the Supervisory Committee.

(c) A decision by the Office to close a case without follow-up is in itself a significant conclusion for both the persons and the Institution concerned, as it means that the initial allegations may be dismissed.

17. OLAF introduced a number of important modifications in the CMS in early 2003, which have resulted in a considerable improvement in its functioning and in the reliability of the information. The *ex ante* estimation of financial impact is difficult, therefore OLAF plans to establish a working group with experts to review guidelines for the estimation of the 'prejudice to the

financial interest of the European Union' at the beginning of an investigation. The amounts shown in the CMS represent the best estimate at the end of the investigation; it is up to the relevant authorising officer to determine the exact amount and issue the recovery note.

19. The proportion of cases that the Office closed without follow-up has increased significantly since 2002, following the introduction of a prioritisation system applying from the moment the reports are received (see replies to paragraphs 16(a) and III).

The true challenge is to feed OLAF quality information from the outset (concerning facts of substance that are likely to generate investigations that produce real results).

OLAF plans the development of more proactive, intelligence led investigations and operations, in accordance with the new Regulation (EC) No 1073/1999 (see reply to paragraph 74).

20. The new OLAF manual, which was adopted on 25 February 2005, has taken account of the fact that it may be impossible to produce an effective initial assessment of information in 15 days in areas where cooperation is needed with Member States. This is why the time allowed for the assessment has been set at two months ⁽³⁾, with the possibility of obtaining an extension with the approval of the Head of Unit.

(b) The Court's observations regarding management supervision must be considered in the light of the conditions in which the OLAF management has had to operate. Only after the workload from the past had been dealt with was it possible for the Office to embark on a phase of management training.

(c) Similarly, with regard to the delays cited, it must be borne in mind that significant resources were absorbed in the process of clearing up past cases (between July 2000 and June 2003 957 'UCLAF cases' were closed).

21. From the moment a case is assessed, the Office takes account of its financial impact, which is one of the criteria mentioned in the reply to paragraph 16(a). OLAF's objectives are entirely complementary, involving an approach that is both financial (geared to recovery) and concerns administrative, disciplinary or criminal penalties (geared to enforcing the law). Furthermore, on the basis of the mechanism for cooperation between the Commission and OLAF implemented in 2003 the Office supplies the information necessary for precautionary measures to be taken in the course of investigations with a view to protecting the Union's financial interests ⁽⁴⁾.

22. The aim of extending the deadline for evaluation, as laid down in the new version of the manual (see reply to paragraph 20) is to improve planning of the work.

⁽¹⁾ See paragraph 164 of Case C-15/00 *Commission v EIB* [2003] ECR I-7281.

⁽²⁾ See paragraph 3.2 of the OLAF manual.

⁽³⁾ See paragraph 3.3.3 of the OLAF manual, 25.2.2005.

⁽⁴⁾ EWS (Early Warning System) (SEC(2005) 310).

Since 2005 it has been the rule from the evaluation stage to consult the Magistrates and Follow-up Units, and the Analysis and Intelligence Units have increasingly been called on for assistance.

23. As stated in the Complementary Evaluation, the average duration of OLAF investigations has decreased from 33 months in 2002 to 22 months in 2004 (see reply to paragraph 78) ⁽¹⁾.

24. In Article 6(7) of the proposal for an amendment to Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999 the Commission suggests consolidating the management of investigations by imposing maximum time limits for conducting investigations. Moreover, in its plan of activities for 2005, OLAF plans to introduce a system for monitoring the use of its investigators' time that will reduce the time spent on investigations (see replies to paragraphs 26 and 80).

25. This monitoring of the use of staff time will also help to focus more on the urgency of the investigations.

26. To introduce a suitable system for an investigative service for monitoring the use of staff time, OLAF is studying the experience of national bodies in this area. At the same time follow-up units are testing a system for registering time spent working. It should, however, be pointed out that the CMS makes it possible to establish the number of cases being dealt with by an investigator.

27. The proposed amendments to Regulation (EC) No 1073/1999 codify defence rights. Furthermore, the new OLAF manual includes the existing internal rules in its administrative rules governing the exercise of its faculties/powers and taking account of fundamental rights in the course of its investigations. In January 2005 the Office also commissioned a comparative study involving eight Member States to determine an adequate level of guarantees to be applied to investigations.

28. With regard to the Office's powers, it is important to distinguish between powers relating to internal investigations and those relating to external investigations. In cases involving agriculture and customs, Regulation (Euratom, EC) No 2185/96 does not allow OLAF to report discussions with economic operators. For this reason, OLAF tries to draw on support from the Member States and other services that have the appropriate instruments at their disposal.

Finally, OLAF's role in arranging files prior to forwarding them to the national judicial authorities is very important as it ensures optimal handling by the authorities concerned.

⁽¹⁾ Complementary Evaluation of the activities of OLAF report — SEC(2004) 1370, 26 October 2004.

29. For 2005, OLAF has organised specialised training for investigators to improve the quality of investigation reports. The new format of the final report set out in the manual adopted in February 2005 includes a quantification of the financial impact (even if it is difficult to produce an accurate evaluation, as was pointed out in the reply to paragraph 17) and the classification of unlawful conduct in terms of its criminal, administrative or disciplinary consequences.

31. With regard to the financial follow-up, the Commission believes that the division of responsibilities between OLAF and the other Commission services concerned (authorising officers, Budget Directorate-General and Legal Service) is clear and there is no overlap (see rules on recovery ⁽²⁾). This is without prejudice to any future re-assessment the Commission may make concerning the division of responsibilities between its services, particularly in the framework of the evaluation of the tasks/competencies of OLAF.

As far as agricultural spending is concerned, a mechanism already exists according to which the follow-up of recovery of funds found to have been paid illegally is undertaken by the Directorate-General for Agriculture through the clearance of accounts process.

The follow-up units of OLAF have had other specific anti-fraud tasks assigned to them (these are related to Customs Information System, Mutual Administrative Assistance, protocols with third countries; Task Force Recovery in the agricultural sector; closure of programmes in the structural actions sector which have links to certain operational OLAF cases; debtor searches on behalf of the authorising officers).

32. Concerning Mutual Assistance, OLAF is currently developing an electronic message module which is expected to greatly improve processing and follow-up.

33. OLAF made quality control one of its priorities for 2005 and has organised training on the subject (see reply to paragraph 29). The Executive Board is increasingly controlling quality and in the future the Internal Audit Unit will be more involved in monitoring its application (see reply to paragraph 39).

34. Legal aspects of investigations are voluntarily highlighted in the manual, as failure to comply with OLAF's legal obligations would undermine any subsequent result.

⁽²⁾ For direct expenditure sector, see documents COM(2002) 671 final, SEC(2000) 2204/3 and the internal rules of the Commission on recovery related to direct expenditure C(2002)5048/4. — See paragraph 54 of this report on the agricultural, structural measures and customs sectors.

The OLAF manual is continually being updated and improved. The new OLAF manual of 25 February 2005 provides further clarification on most of the issues mentioned by the Court, including the role of the Board. A new CMS manual is currently underway, which will provide an in-depth description of the CMS separate from the OLAF manual. In the same way, OLAF will also consider putting all material related to the conduct of investigations in a separate manual.

35. Line managers are responsible for continuous case management. In 2004 the documentation of this supervision had not been standardised, but mechanisms have been developed, most notably in connection with the case management system (CMS), to homogenise and facilitate supervision using scoreboards.

36. The Office recognises that in the past, the CMS focused on proper filing and recording of information. This was OLAF's first priority due to the weaknesses identified by the Court in this respect (see Report No 8/98). Meanwhile considerable progress has been achieved. The description of the CMS in the new OLAF manual shows that many of the concerns of the Court have already been addressed. Line managers receive monthly reports which indicate cases that might require their intervention. New modules have also been developed which allow the management of requests for intelligence support. A system has been put in place for the AM Communications, and a similar module is currently under test for all requests for legal and judicial advice. The CMS system is therefore evolving from a simple file management system (as described by the Court) to a real case management system.

37. The decision that the investigation warrants further follow-up by the appropriate authorities should be taken into account when evaluating OLAF activities as the Office considers a fraud/irregularity has taken place. However, the success of follow-up depends on variables beyond OLAF's control. OLAF has already established a regular and close contact with the Belgian and Luxembourg judicial authorities, while fully respecting their decision-making autonomy. Further initiatives have been implemented with the Belgian authorities (designation of the Belgian Federal Prosecutor as contact point for OLAF cases, and adoption of a circular with the Belgian College of General Prosecutors on 22 May 2003) and training has been organised in 2005 for prosecutors specialising in economic crime who work with OLAF.

In terms of criminal investigations and penalties, the Institutions have at their disposal a wide range of decision-making options based on the new Annex IX to the Staff Regulations.

The zero tolerance policy must be applied in the light of the principle of proportionality and defence rights, with a response from the appointing authority and penalties fitting for each individual case.

39. The Internal Audit Capability of OLAF will in future audit the implementation of procedures and controls for investigations and will perform a quality review of cases (procedural aspects) on a sample basis.

41. To enable the Executive Board to monitor the quality of reports more effectively and make operational decision-taking more transparent, an electronic CMS form was introduced in January 2005. However, OLAF does exclude the possibility of reorganising the Board to make the consultation procedure more effective (see replies to paragraphs 77 and 58).

42. The Commission believes that account needs to be taken of the differing aims of the Office's activity reports as defined by their respective legal bases. The system could be rationalised, and a first step has already been taken, with the proposed alignment of dates and times of some of these reports. The Commission and the Office are willing to continue discussions on these matters with the Institutions concerned.

43. To improve its activity reports OLAF is conducting a detailed study to establish which performance indicators would be most appropriate, taking account of the experience of national investigation agencies. In the case of internal investigations, for example, one indicator of success could be based on the measures taken by the Institutions to follow up OLAF's activities (precautionary measures or measures to improve control). This would complete the indications provided by the number of disciplinary measures and their outcomes.

To provide a clearer picture of the judicial follow-up to OLAF recommendations, relevant information regarding judicial and disciplinary follow-up and their results have been reported in a coherent way at the end of the follow-up procedure in the CMS since 2004 (see also the reply to paragraph 37 regarding OLAF's absence of control on national procedures or disciplinary procedures).

The Complementary Evaluation of OLAF's activities provides an initial indication of OLAF's results in terms of operations, financial impact and cooperation with the judicial authorities ⁽¹⁾ (see reply to paragraph 8).

⁽¹⁾ See paragraph 1.3. Complementary Evaluation of the activities of OLAF report - SEC(2004) 1370, 26 October 2004.

THE CONTRIBUTION MADE BY OLAF DEPARTMENTS TO ITS INVESTIGATIVE FUNCTION

46. The main purpose of the Strategic Intelligence Unit is to increase the level of understanding of the phenomenon of fraud, particularly through risk analysis. This improves OLAF's contribution to policy-making and the legislative process. Some identification of possible new investigations is a by-product of this process. The proposal for modification of Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999, would clarify OLAF's scope to prioritise investigations based on such analysis (see reply to paragraph 90).

47. As a result of an improvement in the quality of the communication system, data related to irregularities communicated by Member States, have been exploited since 2004 for risk analysis purposes. It is to be stressed that, where Member States have identified the possibility of fraud (as opposed to the majority of irregularities which involve mistakes rather than fraud) their national services should take the necessary action.

50. (a) OLAF uses the AFIS system as a secure means of communicating with its external partners (customs or other enforcement agencies) when coordinating investigation missions in third countries under Regulation (EC) No 515/97.

(b) OLAF believes it needs to be involved in reinforcing the infrastructure of Member States customs services, as it has the necessary specialised technical expertise technique and secure environment.

54. The Commission considers the breakdown of responsibilities between Directorates-General and OLAF regarding recovery and following-up irregularities is sufficiently clear.

This is without prejudice to any future re-assessment the Commission may make concerning the division of responsibilities between its services, particularly in the framework of the evaluation of the tasks/competencies of OLAF.

In the agricultural sector (regarding CAP), responsibilities between OLAF and the Directorate-General for Agriculture are defined according to Annex 2 to the Communication of the Commission SEC(1995)249 of 10 February 1995 (see also the reply of the Commission to the Court of Auditors' Special Report No 3/2004). OLAF is presently responsible for matters of recovery related to all agricultural irregularities notified by the Member States in application of Regulation (EEC) No 595/91. Any decision to write off irrecoverable amounts has to be taken by the Commission via the EAGGF clearance of accounts procedure that is conducted by the Directorate-General for Agriculture, with assistance of OLAF throughout the various stages.

Responsibilities are also distributed clearly between departments in the fields of structural measures and customs matters. For the structural measures sector, OLAF is also responsible for the management of all irregularity notifications by the Member States in application of Regulations (EC) Nos 1681/94 and 1831/94 and OLAF works in cooperation with the authorising Directorates-General (Agriculture and Rural Development; Regional Policy; Employment, Social Affairs and Equal Opportunities; and Fisheries and Maritime Affairs). In the customs sector, Commission Decisions in 1995 and 1999 have clearly defined the responsibilities of UCLAF/OLAF and Taxation and Customs Union Directorate-General.

The functions performed by the follow-up units enable the investigators to concentrate solely on their tasks without having to deal with the administrative tasks necessary for financial, administrative or legislative follow-up (see reply to paragraph 82).

55. The Commission has entrusted OLAF with the task of developing its anti-fraud strategy. Its investigative function, which is its principal mission, makes a clear contribution to the preparation of the anti-fraud strategy. It is useful to maintain close links on the ground with the authorities responsible for combating the various forms of crime, as OLAF's activities benefits from a sound understanding of national practices. Two examples illustrate the synergy benefits of the development/investigation functions: (i) the design of Regulation (Euratom, EC) No 2185/96 concerning on-the-spot checks and inspections was followed by the development of a strategy; (ii) the reflection on the European Public Prosecutor was informed by OLAF's current practice and the need to take account of the principles underlying criminal investigations (e.g. the safeguarding of defence rights) (see reply to paragraph 91).

58. The Magistrates Unit is now involved upstream in the process of evaluating cases in all sectors where there is a likelihood of criminal proceedings ensuing (see reply to paragraph 77).

59. OLAF assists the Directorate-General for Enlargement, the administrator of the PHARE programme, by setting up anti-fraud structures and developing training programmes to assist them.

OLAF's experience is useful in assisting candidate countries to adopt in an effective way the *acquis communautaire* in the field of the protection of the Communities' financial interests, which arises from Article 280 of the EC Treaty. The Hercule and Pericles programmes, for which OLAF is responsible, do not require vast financial and human resources. Transferring them to other departments could do the Office more harm than good. While reflecting on OLAF's activities, however, the Commission could devote some thought to this matter.

60. In 2005, particular attention has been given to the training of new staff (see reply to paragraph 63(a)), but OLAF intends to place greater priority on internal training and is planning to give training a higher profile in its structure.

63. The Commission is aware of the significance of the number of temporary staff working for OLAF and has proposed making significant changes to the Office's establishment plan in its preparations of the 2006 PDB along the lines recommended by the Court.

- (a) In 2005 OLAF provided initial training for new investigators and continuous training. It consisted mainly of training on public procurement, specialised language and legal training, workshops on investigative techniques and continuous training to improve the drafting of reports. In 2005 the Heads of Unit also attended management courses organised by the Commission.
- (b) OLAF is aware of the potential damage that could be caused by temporary staff leaving at the end of their contracts and has therefore envisaged contracts with an overall maximum duration of eight years for its staff, which will give it time to organise specific competitions and alter its establishment plan (see replies to paragraphs 63 and 64).

The Commission is open to dialogue aimed at finding a balance between OLAF's specific needs and the Staff Regulations.

64. The Office is expecting to organise special internal anti-fraud competitions that will give the most highly qualified staff the chance to become officials and thereby to preserve their accumulated knowledge and experience.

65. The Office currently employs 25 national experts on secondment. While the idea of increasing this number has not been discounted, it should be pointed out that, owing to their status, there are certain sensitive functions national experts on secondment may not perform.

Moreover, OLAF's experience is that it is more appropriate to employ specialist temporary agents for intelligence purposes, as Member States are not sufficiently prepared to make staff available as seconded national experts, and the necessary expertise on direct expenditure programmes cannot be found within those Member States authorities which customarily agree to second experts. There would also be a problem of geographical balance.

THE SUPERVISORY COMMITTEE

66. Regarding the Supervisory Committee, the Commission has stated in its report on evaluation of the activities of OLAF, that 'a number of problems have emerged on the organisational front', including the implementation of administrative appropriations and the workplace of the Committee's secretariat ⁽¹⁾. The Commission will take a constructive and pragmatic attitude when discussing solutions to these problems that fully comply with the legislation with the [new] Supervisory Committee.

CONCLUSIONS AND RECOMMENDATIONS

74. The legal framework of OLAF's work and the nature of the work itself make it difficult to manage priorities and produce guidelines on results. Nevertheless, the Commission has called on the bodies concerned to consider the Office's strategic priorities (see recommendation 11 of the report on the evaluation of the activities of the European Anti-fraud Office) ⁽²⁾. This question will also be tackled by the Commission during the discussions on the reform of the Office's workings. With regard to guidelines on results, OLAF aims to encourage existing synergies between the various procedures (judicial, recovery and disciplinary procedures), while taking all the precautionary measures necessary and endeavouring to pursue the most effective policies to protect financial interests.

The Commission stresses that the subject of performance indicators to measure the Office's results is a complex question that needs detailed study, particularly as the Office does not have control over all the factors influencing success where following-up cases is a matter for the national authorities or Community Institutions concerned. OLAF has conducted an initial analysis of its results in the Complementary Evaluation of the activities of OLAF (2004). The Office intends to develop this study and consider which performance indicators would be most suitable in the light of best practice in national agencies (see replies to paragraphs VII and 8).

76. The Office believes it is necessary to subject the management of all OLAF's operational activities to the same internal procedures to ensure transparent reporting and to establish a common culture and shared practices. This will make it flexibility when it comes to switching resources from one sector to another and will avoid the compartmentalisation of the various operational sectors. Moreover, assistance and coordination operations, which are often complex, need rigorous internal procedures (see replies to paragraphs 13 and 14).

As part of the work being undertaken with a view to reforming OLAF's workings and organisation, OLAF could examine methods of developing an administrative structure that better reflects the distinction between assistance and coordination operations, on the one hand, and investigations, on the other.

⁽¹⁾ COM(2003) 154 final.

⁽²⁾ Report on the evaluation of the activities of the European Anti-fraud Office (OLAF), COM(2003) 154 final.

77. Since the end of 2003 OLAF has been encouraging the involvement of the Follow-up and Magistrates Units in the opening, execution and finalisation of investigations, as this has a positive impact on the effectiveness of the investigations and their subsequent follow-up. The CMS Board module implemented in 2005 facilitates this involvement.

OLAF has already taken account of Court's observations concerning the justification of investigation activities, and since 2005 each case assessment report has set out a work plan. With regard to the reorganisation of the Executive Board, OLAF is willing to consider smaller groupings that could target their activities more effectively (see replies to paragraphs 41 and 58).

78. Since 2004 the case management information system has made it easier for management to supervise and manage cases. The average duration of investigations has fallen steadily, to 22 months in 2004 (see replies to paragraphs V, 20(b), 23, 33, 35, 36 and 87).

To enable Heads of Unit to manage investigation priorities more effectively OLAF is studying the possibility of setting up a system for monitoring of the use of investigators' time (see replies to paragraphs 25 and 79). The Office has also launched initial training programmes for new arrivals and specialised continuous training to help investigators further improve the quality of their work by raising their awareness of tools available to them that can increase the effectiveness of their work (see replies to paragraphs 29 and 63(a)).

79. In 2004 the CMS already made it possible to establish the number of cases being dealt with by an investigator (see replies to paragraphs 26 and 14).

In 2005 OLAF will examine the experiences of national investigative services in connection with monitoring the use of investigators' time before instituting a system that will take account of the expected duration of investigations as laid down in the work plan. Moreover, a system for monitoring the use of time staff in the follow-up units is currently being tested (see replies to paragraphs 24 to 26).

80. The Commission has addressed the question of a maximum period for investigations in its proposal to amend Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999 which calls for a duration of 12 months with the possibility of extending investigations by up to six months at a time on the basis of a decision taken by the Director after consulting the Supervisory Committee ⁽¹⁾.

81. See replies to paragraphs 37 and 43.

The Office cannot be held responsible for follow-up by judicial and disciplinary authorities but OLAF is striving to improve cooperation (the creation of IDOC in 2002, with which OLAF has concluded a Memorandum of Understanding). The Commission and OLAF consider cooperation with IDOC to be satisfactory.

⁽¹⁾ See Article 6(7) of the proposal. COM(2004) 103 final, 10 February 2004.

See also the reply to paragraph 29.

82. The value added by judicial follow-up is not confined to the contribution made by the magistrates when forwarding the files to the judicial authorities; it arises in connection with all complementary matters related to the various disciplinary or judicial procedures (such as requests for waivers of immunities or the duty to exercise discretion of officials and requests for legal aid).

With regard to recovery, the Commission has chosen to add OLAF's expertise to that of the authorising officers (see replies to paragraphs 31 and 54).

This is without prejudice to any future re-assessment the Commission may make concerning the division of responsibilities between its services, particularly in the framework of the evaluation of the tasks/competencies of OLAF.

As far as agricultural spending is concerned, a mechanism already exists according to which the follow-up of recovery of funds found to have been paid illegally is undertaken by the Directorate-General for Agriculture through the clearance of accounts process.

Judicial follow-up cannot be limited solely to cases where, after criminal proceedings, the officer who authorised the original expenditure is required to start civil proceedings for recovery. The various authorities to whom the cases are forwarded ask the Office to help them communicate with the Institutions. It is also true that to evaluate and improve its work the Office needs to monitor cases forwarded to the various authorities to discover the outcome.

In the case of legislative follow-up, it is definitely up to the operational Directorates-General to take the necessary measures in their fields in response to recommendations made following OLAF investigations. The Office points out that it is involved in fraud-proofing upstream of the legislative process (see reply to paragraph 91).

83. The Office points out that it is standard practice for a complaint regarding an administrative decision to be referred to the department in question before judicial redress is sought.

The proposed amendment of Regulation (EC) No 1073/1999 codifies defence rights, including the right to a hearing and other important clarifications regarding the procedures governing OLAF's investigations ⁽²⁾.

84. The OLAF believes that it would be possible to consolidate operational relations with the Member States and third countries. Recommendation No 6 of the Commission's Article 15 report suggests guidelines on cooperation to increase the effectiveness of the advisory function and of judicial follow-up. The Office has made the improvement of operational contacts one of its priorities for 2005 (see replies to paragraphs 15 and 37).

⁽²⁾ COM(2004) 103, 10.2.2004.

85. The proposal presented by the Commission in July 2004 on mutual administrative assistance for the protection of the Community's financial interests against fraud and any other illegal activities aims to standardise relations between the Commission (OLAF) and national authorities. Regulation (Euratom, EC) No 2185/96 is of vital importance for the conduct of investigations and enables significant sums to be recovered. However, the powers granted to the Commission are not automatically the same as those conferred on comparable bodies under national law, which complicates the question of implementation.

It is OLAF's intention to improve cooperation with Member States; this requires continuous and sustained efforts on both sides. Article 3 of the proposal to amend Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999, which were presented in February 2004, and recommendation No 5 of the Commission's Article 15 report (extending memoranda of understanding concluded between OLAF and the national authorities) are steps in this direction.

87. The CMS allows ongoing management of investigations and the CMS scoreboards have been operational since 2003. Although in the past the main thrust of the CMS was to record and classify information relating to cases, the system is evolving all the time and it is now becoming a valuable case management tool (see reply to paragraph 36).

The CMS has the attributes necessary to become a valuable instrument for continuous case management but improvements need to be made in the way it is used (see reply to paragraph 17).

The version of the OLAF manual adopted in February 2005 already contains some improvements. OLAF will also consider putting all material related to the conduct of investigations in a separate document (see reply to paragraph 34).

Finally, a special effort has been made with regard to training (see reply to paragraph 63(a)).

88. To improve the quality of its activity reports and the evaluation of its effectiveness, OLAF has embarked on a study of performance indicators, drawing on the experience of national investigation agencies (see replies to paragraphs 8 and 37).

As mentioned in the reply to paragraph 42, the Office and the Commission are willing to continue discussions with the Institutions concerned on the content and a degree of rationalisation of OLAF's various reports.

89. The Office's operations are largely reactive in that, like most national investigative services, they basically respond to requests from outside they cannot always be foreseen.

To stabilise its staffing levels the Office intends to organise special internal competitions in an attempt to preserve the know-how and expertise of its most highly qualified staff and to alter the Office's establishment plan along the lines set out by the Court (see replies to paragraphs 63 and 64).

The Office has established its work plan for 2005, allocating resources to units on the basis of their expected workload. Depending on the size of their units, Heads of Unit are assisted by Head of Operations to ensure that investigations are monitored closely.

90. Today, the Intelligence Unit enables OLAF to identify areas at risk and make it easier in the long term to allocate resources to the various sectors (see reply to paragraph 19). The unit could contribute more directly to investigations in the future by supporting the management of the Office's priorities (see reply to paragraph 46).

The Commission's proposed amendment of Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999, which clarifies questions regarding whether the Office should launch investigations, will enable OLAF to give priority to areas considered high-risk by the strategic analysis departments. The Court's recommendation on this subject is in line with recommendation No 5 of the report on the evaluation of the activities of the European Anti-fraud Office ⁽¹⁾.

Regarding irregularities communicated by Member States, following a clear improvement in the quality of their communication and evaluation, this data is now being exploited for risk analysis purposes (see reply to paragraph 47).

91. On the subject of fraud-proofing the Community legislator has recognised synergies between OLAF's operational activities and its role in devising methods to combat fraud (see Regulation (EC) No 1073/1999).

The Commission Communication on fraud-proofing (SEC(2001) 2029) assigns OLAF a specific coordinating and consultative role (see reply to paragraph 55). The question of the duality of OLAF's functions will be addressed at the European Parliament public hearing on the reform of OLAF.

92. *The human resources deployed to manage programmes run by OLAF are minimal and the financial resources involved are insignificant. OLAF gives the programmes real advantages and the Office derives real benefit from them, particularly in terms of cooperation. However, the Commission could undertake a general reflection on the definition of OLAF's responsibilities with regard to these programmes.*

93. With regard to the Supervisory Committee, the Commission shares the Court's view that there is a need to review the governance of the Office.

⁽¹⁾ COM(2003) 154 final.

In the Commission's proposal for the amendment of Regulation (EC) No 1073/1999, which it has submitted to the Institutions for discussion, it has set out possible ways of defining the Supervisory Committee's role more clearly and it will devote sustained attention to this matter.

94. The implementation of the Court's recommendations will require detailed study and may result in OLAF being organised in a way that identifies its various functions more clearly and safeguards synergies between them, thereby ensuring that its principal activity, investigation, is conducted with the necessary effectiveness.

Anti-fraud strategy must be global in concept, embracing analysis and policy formulation, legislative proposals, and the development of inter-agency and international cooperation around the central core of the investigative and operational function. This is without prejudice to any future re-assessment the Commission may make concerning the division of responsibilities between its services, particularly in the framework of the evaluation of the tasks/competencies of OLAF.

ANNEX

REPLIES BY THE OLAF SUPERVISORY COMMITTEE

The role of the Supervisory Committee (paragraph 66)

The Supervisory Committee controls the method of conducting investigations 'with full respect for human rights and fundamental freedoms, in particular the principle of fairness, for the right of persons involved to express their views on the facts concerning them and for the principle that the conclusions of an investigation may be based solely on elements which have evidential value' (see recital 10 of the basic Regulation). These clear guidelines reveal some principles underlying the rules on investigation procedures. It should also be pointed out that the Committee has the task of monitoring the application of rules on confidentiality and data protection.

A. The Supervisory Committee and the independence of the Office (paragraphs 67 and 70)

The independence enjoyed by the Office, and its Director, when performing its investigative duties is one of the most significant new developments brought in by Regulation (EC) No 1073/1999. To strengthen this independence, which can be undermined far more by informal pressure and influences than by direct instructions from an institutional body, the Committee must remain vigilant, which is incidentally also the only way to prevent any attempt to undermine this independence.

B. The Supervisory Committee and the rights of persons under investigation (paragraphs 67, 68 and 70)

It is not the Committee's role to monitor the legality of the investigations.

The Ombudsman's work, although extremely important, is not enough on its own and is not a control on legality in the legal sense of the term. The Committee believes that this activity, which is intended to bring to light any 'dysfunctions', should be complemented by action on the part of the legislator. With this in mind and after exchanging views with CoCoBu, in its annual reports the Supervisory Committee has never failed to set out its proposals on the subject with a view to the creation of a European Public Prosecutor. In its 2004 report the Supervisory Committee also proposed the appointment of an individual rights lawyer (*avocat des libertés*).

The Supervisory Committee is aware that respect for fundamental rights is both a guarantee for persons under investigation and a condition for the effectiveness of OLAF's investigations.

To avoid interfering in OLAF's investigations, ever since it began its work the Supervisory Committee has refused to become involved in individual cases, and has never accepted any of the requests submitted to the Committee from persons under investigation, some of whom asked to be heard by the Committee in the presence of a lawyer. This approach has made it possible from the outset to avoid any overlaps with the work of the Ombudsman.

Nevertheless, the Supervisory Committee has made use of the individual requests to identify some general problems. The Committee has examined these problems in detail at its meetings (when it also examined the Ombudsman's decisions) and in exchanges of views with OLAF.

Numerous meetings have been held with the Director of the Office and the Director responsible for investigations on the subject of rules of procedure. Positive results were quickly achieved in certain areas, such as the introduction of records of hearings of witnesses. The question of developing a code of internal procedures for the Office remains open; the Supervisory Committee has underscored the need for such a code on several occasions. To date the Director of the Office has not expressed any desire to adopt such a code, even on a purely internal basis.

C. *The Supervisory Committee and the regular monitoring of investigations (paragraph 69)*

Initially — and there can be no doubt that this took too long — the Committee had to devote an inordinate amount of its time to developing new structures and working methods for OLAF. Only then was it able to look at operational questions and exercise its powers to monitor the investigative function (see Chapter 1 of the latest annual report).

1. *The setting up of new structures (paragraph 69(b))*

In response to a recommendation made by the Court of Auditors, a comprehensive file *registration system*, a '**case management system**', which is constantly being improved, and a registry (*greffe*) have been in place since the first half of 2001.

2. *Information on investigation not completed within nine months (paragraph 69(a))*

Information from the Director of OLAF concerning investigations not completed within nine months, as required by Article 11(7) of the Regulation, has proved an extremely useful source of information for the Committee and a valuable monitoring tool. In practice, the provision of the information has given rise to exchanges of views regarding investigative activity and general matters with the Director responsible for investigations of the situation.

3. *Prior notification of cases to be referred to a Member State's judicial authorities (paragraph 69(c) and (d))*

The final sentence of Article 11(7) of the Regulation states that '[t]he Director shall inform the committee of cases requiring information to be forwarded to the judicial authorities of a Member State'. In Article 22(5) of its Rules of Procedure (published in OJ L 41 on 15 February 2000 and adopted on the basis of a text drafted by Mr Da Cunha Rodrigues, who was a member of the Committee at the time and was subsequently appointed as judge at the European Court of Justice) the Supervisory Committee interpreted the word 'requiring' as implying prior notification.

This interpretation has been consistently employed and has never given rise to disputes or problems.

In one sensitive case, without referring to the dossier concerned, the Director responsible for investigations asked the Supervisory Committee if OLAF could notify the Committee after the information had been forwarded to the national judicial authorities. The Committee gave its consent.

4. *Internal and external investigations (paragraph 71)*

At the time of the events that led to the resignation of the Santer Commission the Institutions focused particularly on internal investigations. Recitals 1 and 7 and Article 1(3) of the basic Regulation reflect this concern. It should also be pointed out that external investigations are in the hands of the Member States, as they actually conduct the investigations while the Office confines itself to providing material support and organising coordination meetings.

However, having examined all the files and the CMS, it is certainly not the case that in practice the Office or the Supervisory Committee, which bases its work on the investigations conducted by the Office, have given priority to the criminal aspect of internal investigations, to the detriment of external investigations. The fact that the Office, the Supervisory Committee (as can be seen from the minutes of its meetings) and even the press have often focused on internal investigations, which are by their very nature sensitive, in no way means that external investigations have been put on the backburner. It should indeed be noted that, apart from the external investigations, the Office has provided important assistance to the Member States, support much appreciated by the Committee (see Chapter II of the annual report).

5. *The examination of closed files and evaluation records (paragraph 72)*

The Supervisory Committee devoted particular attention to the question of closed files, instructing its secretariat to examine as many files as possible and, in significant cases, to prepare evaluation records. The decision to deal solely with closed cases avoided any risk of interfering with ongoing investigations. As the records drawn up by the Committee secretariat are purely for internal use, it was possible to use them to point up any problems encountered and they were studied at length by the Committee. The Supervisory Committee and the Director of the Office or the director responsible for investigations held very fruitful discussions on any underlying problems detected, such as procedural problems and problems relating to the examination of the outcomes of criminal proceedings in the Member States. The Supervisory Committee minutes do not always reflect the full range of observations made during the Committee's meetings, as some cases closed by OLAF were under investigation in the Member States.

D. Conclusions (paragraph 93)

It can be concluded the Supervisory Committee has adopted a totally supportive attitude towards the Office, encouraging where necessary the introduction of new structures or methods. This approach has produced real results with regard to the *greffe*, the file registration system and the CMS, although so far the Director of the Office has not followed up the urgent and repeated recommendation made by the Supervisory Committee regarding the adoption of a proper code of procedure.

There are no cases where the Supervisory Committee might have interfered with an ongoing investigation. The monthly meetings with the Director of the Office and the Directors of the various Directorates have provided the perfect occasion for examining underlying general matters that could be brought to the attention of the Supervisory Committee.
