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FOLLOW-UP OF SPECIAL REPORT No 1/2005
CONCERNING THE MANAGEMENT OF THE
EUROPEAN ANTI-FRAUD OFFICE



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(pursuant to Article 287(4), second subparagraph, TFEU)

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EXECUTIVE SUMMARY

I.

The European Anti-Fraud Office (OLAF) is charged with fighting fraud and other illegal activities detrimental to the EU budget. The Office, which belongs to the Commission but has investigative autonomy, employs in the order of 500 staff, and annual expenditure amounts to some 50 million euro. In 2005 the Court of Auditors' Special Report No 1/2005 concerning the management of OLAF identified weaknesses in the management of investigations and made 17 recommendations to refocus activities on the investigative function, improve efficiency and demonstrate effectiveness (see paragraphs 1 to 5).

II.

OLAF now makes more use of its powers to carry out on-the-spot checks, examine witnesses and question suspects. In order to refocus on the investigative function OLAF created two investigation directorates to replace the one existing previously. However, the Commission considers that OLAF is most effective as an all-round anti-fraud authority rather than a service concentrated on investigations and so did not divest OLAF of its non-investigative activities such as anti-fraud strategy and funding programmes. Consequently, the rate of increase in staff in the investigation directorates (32 %) has not kept pace with growth in the rest of the Office (43 %). In 2009 investigative casework accounted for 37 % of the time of the Office as a whole (see paragraphs 7 to 18).

III.

OLAF has taken a number of steps to improve the efficiency of investigations. It has made fuller use of its electronic case management system (CMS), carried out more focused training, introduced targets to focus on more serious and complex cases, reduced the proportion of temporary staff and introduced a Time Management System (TMS). However, the TMS is not used for planning purposes and workplans do not include estimates of the time required and deadlines for investigations. There is a need to improve the management of cases in progress in order to resolve problems faster and avoid long periods of inactivity: the average case duration remains over two years. In addition, OLAF now receives 50 % more initial information on possible frauds and irregularities than in 2004 and the average duration of the initial assessment of this information has doubled from 3,5 months to 7 months. Although there are 32 % more investigators than in 2004, the number of cases under investigation has not increased. This reflects the focus on more serious cases, the increasing proportion of OLAF's own investigations and the redirection of investigative resources to carrying out initial assessments (see paragraphs 19 to 37).

EXECUTIVE SUMMARY

IV.

The legal framework¹ has not changed since the Court's last report. There is still no independent control of investigative acts in progress, nor is there a code guaranteeing that investigative acts follow a predictable course. A Practical Agreement for cooperation with Eurojust has so far had limited impact (see paragraphs 38 to 44).

V.

OLAF sets clear objectives for the Office in its Annual Management Plan. Investigations have resulted in the identification of significant sums for recovery, judicial and disciplinary action, and closure of investigations where initial allegations were shown to be unfounded. Information on OLAF's performance is available in CMS concerning activity, potential results and real results. However, OLAF does not report this information in a single document which would enable reliable comparisons to be made of its performance over time and across sectors (see paragraphs 45 to 57).

VI.

The Supervisory Committee has revised its rules of procedure and has produced a number of reports and opinions concerning the management of OLAF. A procedure has been introduced to consult the Supervisory Committee before forwarding information to national judicial authorities although this does not yet adequately protect the rights of individuals concerned (see paragraphs 58 to 65).

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

VII.

On the basis of these observations the Court's main recommendations are that OLAF should (see paragraphs 66 to 76):

- (a) Increase the number and speed of investigations by increasing the proportion of time spent on them and revising the legal framework.
- (b) Improve efficiency by including estimates of resources required and deadlines in plans for investigations. Plans should be monitored and updated. The Executive Board should play a role in ensuring that the overall duration of assessments and investigations is reduced.
- (c) Provide reliable information on effectiveness by publishing in a single document performance statistics on activity, potential and real results.
- (d) Better define a procedure for consulting the Supervisory Committee before transmitting information to national judicial authorities.

INTRODUCTION

1. In 2005 the Court of Auditors published Special Report No 1/2005 concerning the management of the European Anti-Fraud Office (OLAF)². The audit identified weaknesses in OLAF's management of investigations and made 17 recommendations to refocus activities on the investigative function, improve efficiency and demonstrate effectiveness. OLAF produced an action plan for the implementation of the accepted recommendations and in 2007 reported on progress to the Audit Progress Committee of the Commission³. An outline of OLAF's role and tasks is set out in **Box 1**.

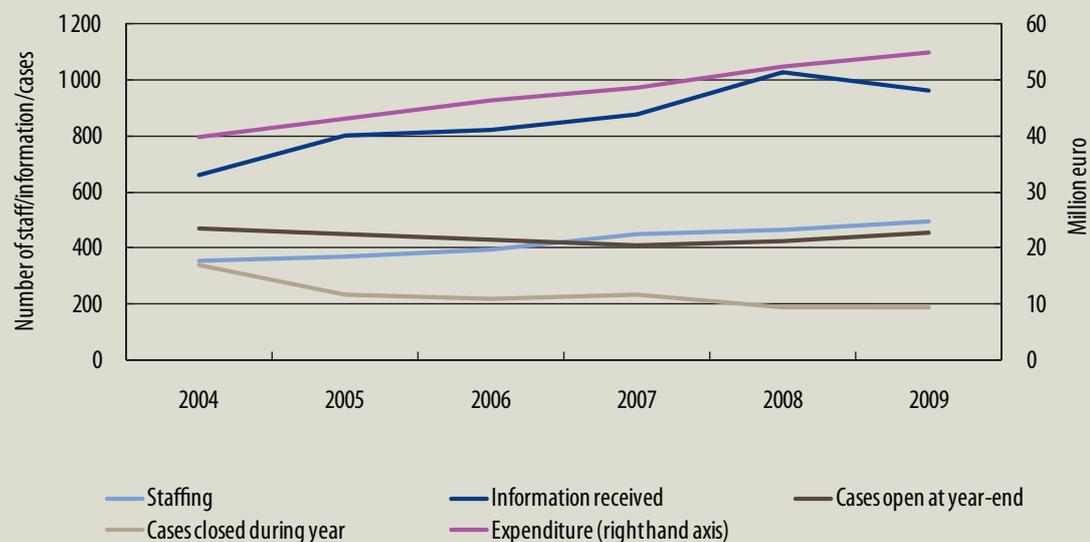
² OJ C 202, 18.8.2005, p. 1.

³ Audit Progress Committee meeting on 5 July 2007 - Progress report by OLAF on the implementation of the recommendations of the Court of Auditors' Special Report No 1/2005.

2. **Figure 1** illustrates the evolution of activity in OLAF since 2004 in terms of expenditure, staffing, information received and cases handled. The number of cases under investigation at any one time has remained at some 400, each lasting on average two years, and in the order of 200 cases are closed each year. The amount of initial information received has increased considerably and OLAF now receives approximately 1 000 different communications from various sources each year.

FIGURE 1

OLAF EXPENDITURE, STAFFING AND CASELOAD 2004 TO 2009



Source: OLAF.

OLAF'S ROLE AND TASKS

Key objectives and activities

OLAF was set-up in 1999⁴ with the aim of increasing the effectiveness of the fight against illegal activities detrimental to the Union's financial interests. OLAF is responsible for a range of activities including carrying out administrative investigations for fighting fraud, assisting Member States in fraud prevention and collecting and analysing information.

OLAF has investigative independence, which is reinforced by a Supervisory Committee made up of five independent persons from outside the EU institutions.

Types of case

The Office divides its cases into the following categories:

- (a) Investigations
 - internal investigations (investigations within the EU institutions and bodies);
 - external investigations (investigations into economic operators involving EU funds).
- (b) Coordination and assistance operations
 - coordination of Member States in investigations concerning more than one country;
 - support for national judicial authorities in the context of criminal proceedings.

The key stages of investigations

- (a) OLAF receives denunciations from within or outside the EU institutions;
- (b) OLAF assesses the initial information and the Director decides whether or not to open a case;
- (c) OLAF investigators gather evidence e.g. through interviews and on-the-spot checks;
- (d) The investigators report to the Board the results of the investigative activities. The Director decides what follow-up action to initiate, if any. Follow-up action may include transmission of case information to the competent national or EU authorities with a view to launching judicial or disciplinary proceedings or recovering funds;
- (e) OLAF verifies whether the responsible authorities have taken the recommended follow-up action.

The outcome of OLAF's work can take the form of four types of follow-up: financial, administrative, judicial and disciplinary.

⁴ Commission Decision 1999/352/EC, ECSC, Euratom (OJ L 136, 31.5.1999, p. 20); Regulation (EC) No 1073/1999.

STATUS OF RECOMMENDATIONS

3. **Table 1** lists the original 17 recommendations made in Special Report No 1/2005. The Court notes that 13 of its recommendations were followed up by OLAF, three others (recommendations 2, 14, 15) were not accepted by the Commission, while recommendation 16 on the role of the Supervisory Committee needs to be seen in the light of a judgment of the Court of First Instance in July 2008⁵.

⁵ Case T-48/05 of 8 July 2008 (OJ C 209, 15.8.2008, p. 44).

TABLE 1

STATUS OF ECA RECOMMENDATIONS MADE IN SPECIAL REPORT NO 1/2005 ON OLAF

Recommendation	Status
1. Specify results to be achieved by investigations and introduce performance indicators to assess success	Accepted
2. Consider creating a separate unit dedicated to coordination and assistance operations to improve management of resources	Not accepted
3. Establish smaller groupings on the Executive Board with the aim of setting clear plans and objectives for investigations	Accepted
4. Supervise the investigation process to focus on priorities and on the search for evidence by making better use of the investigation means available	Accepted
5. Introduce a time recording system linked to work plans with estimates of time to be spent on investigations to align workload with resources and to avoid delays	Accepted
6. Establish a maximum duration for investigations	Partially accepted
7. Remove follow-up activities (involvement in judicial proceedings and recovery of funds) that can be performed by authorising officers	Partially accepted
8. Codify and publish procedures to protect the rights of individuals at all stages of the investigation and to provide controls on the legality of the investigative acts in progress	Accepted
9. Formalise arrangements for cooperation between OLAF and the Member States through legislation or the conclusion of agreements with national investigation services	Accepted
10. Convert CMS into a system of investigation management and increase training of investigators in investigation techniques, legislation and report-writing skills	Accepted
11. Produce reliable and relevant reports on performance, based on real rather than potential results	Accepted
12. Implement a masterplan for personnel management to resolve structural problems	Accepted
13. Strategic analysis services should seek improvement in the data forwarded by Member States and create databases which can be used to identify anomalies and launch investigations	Accepted
14. Transfer responsibility for anti-fraud strategy to other Commission services	Not accepted
15. Give responsibility for managing funding programmes (e.g. Pericles and Hercules) to other Commission services	Not accepted
16. Clarify the role of the Supervisory Committee to ensure that there is no interference in ongoing investigations	Accepted
17. Refocus activities on the investigative function, accompanied by changes in governance and regulations	Partially accepted

Note: The recommendations made in Special Report No 1/2005 were not numbered. They are presented here, in summary form, in the order in which they appeared in the report.

AUDIT SCOPE AND APPROACH

4. The follow-up audit set out to establish the action taken to implement the recommendations of Special Report No 1/2005. The audit aimed to answer the following four questions which group together the different recommendations (see **Annex I**):

- (a) Have the activities of OLAF been refocused on its investigative function? (recommendations 2, 7, 13, 14, 15, 17)
- (b) Has OLAF improved the efficiency of its investigations? (recommendations 3, 4, 5, 6, 8, 9, 10, 12)
- (c) Can OLAF demonstrate the effectiveness of its investigations? (recommendations 1 and 11)
- (d) Has the role of the Supervisory Committee been clarified? (recommendation 16).

5. The audit comprised:

- (a) an analysis of policy, planning, procedural, staffing and financial documentation and statistics obtained from OLAF including its action plan to address the recommendations of Special Report No 1/2005;
- (b) interviews with OLAF Directors, Heads of Unit and investigators; meetings with the OLAF Supervisory Committee and its Secretariat to discuss their reports and opinions; interviews with other relevant bodies (Investigation and Disciplinary Office of the Commission (IDOC), Eurojust);
- (c) an assessment of a random selection of 30 investigations out of the 332 internal and external investigations open on 1 July 2008⁶. The assessment was based on an analysis of the case-related documentation held on the computerised Case Management System (CMS) and interviews with the investigators concerned.

⁶ The audit selected cases which were open on 1 July 2008 in order to review all stages of the procedure up to April 2010 (initial assessment, active investigation, final decision and follow-up where applicable).

OBSERVATIONS

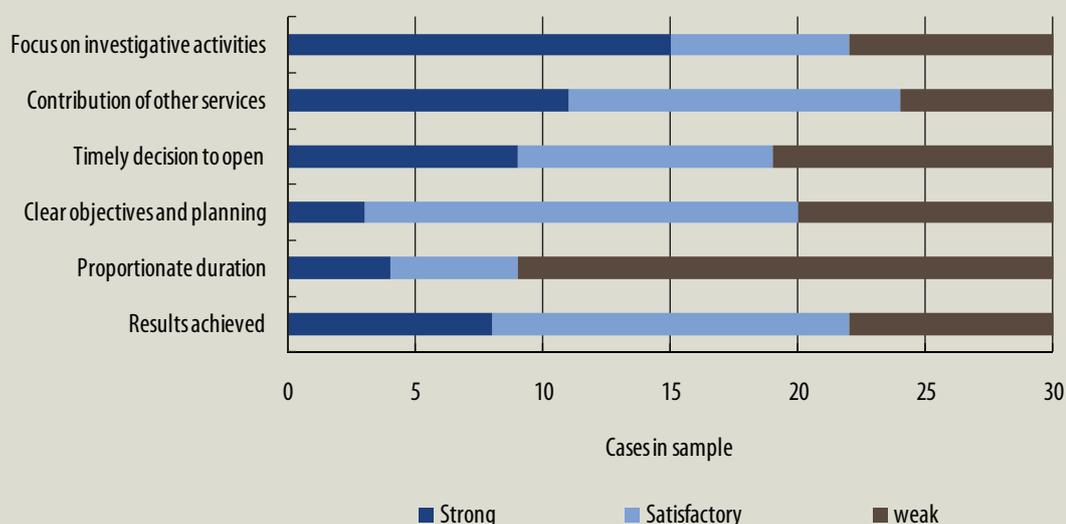
6. Findings emerging from the examination of the sample of 30 cases are summarised in **Figure 2**. Each investigation was assessed as strong, satisfactory or weak against the following criteria: the focus on investigative activity, contribution of other OLAF services to the case, timeliness of decisions to open the case, clarity of objectives and planning, proportionate duration, and results achieved. The findings are examined further in the relevant sections of the report.

REFOCUSING ON THE INVESTIGATIVE FUNCTION

7. The Court followed up the recommendations of Special Report No 1/2005 that OLAF should divest or separate certain non-investigative activities and improve the contribution of strategic services to the investigative function. OLAF reorganised its directorates in 2006 and the new organisation structure (see **Annex II**) was intended to put more focus on OLAF's investigative function.

FIGURE 2

ASSESSMENT OF CRITERIA IN 30 CASES EXAMINED



Source: Examination of 30 cases.

NON-INVESTIGATIVE ACTIVITIES HAVE NOT BEEN DIVESTED

8. The Court made four recommendations to divest or separate activities. The recommendation to transfer follow-up activities (recommendation 7) was partially accepted. As the Commission continued to insist on maintaining OLAF as an all-round anti-fraud authority rather than a service concentrated on investigations, the other three recommendations were not accepted: the transfer of responsibility for anti-fraud strategy to other Commission services (recommendation 14); the transfer of responsibility for managing funding programmes to other Commission services (recommendation 15); and the separation of coordination and assistance operations from investigations (recommendation 2).
9. Concerning recommendation 7 to transfer follow-up activities, action has been taken to give primary responsibility to Commission services for follow-up activities⁷. OLAF remains involved in judicial and disciplinary follow-up (Unit C1, see organisation chart in *Annex II*) and financial follow-up (Units C2 and C3). OLAF's role is to optimise conditions for follow-up and to verify whether Commission services and national authorities have taken the necessary measures.

⁷ Commission Decision – Communication C(2007) 5709 of 27.11.2007 clarifying the respective responsibilities of OLAF and the Commission's authorising officers for financial follow-up of irregular expenditure.

TABLE 2

STAFF DISTRIBUTION 2004–09¹

Date	Investigations and operations (directorates A and B)			Other (directorates C and D, Director-General and Supervisory Committee)			Total OLAF	% Investigations and operations
	Officials and temporary	Contract staff	Total	Officials and temporary	Contract staff	Total		
end 2004	100	25	125	165	65	230	355	35,2 %
end 2005	107	22	129	174	67	241	370	34,9 %
end 2006	110	25	135	180	77	257	392	34,4 %
end 2007	126	21	147	205	100	305	452	32,5 %
end 2008	140	20	160	212	93	305	465	34,4 %
end 2009	143	22	165	217	111	328	493	33,5 %

¹ The table shows the actual number of staff employed.

Source: OLAF.

10. The proportion of staff working in investigations and operations directorates is on average 34 % (2004–09) as shown in **Table 2**.
11. Some of the staff in Directorates C (Operational and Policy Support) and D (General Affairs) are also involved in the investigative process. OLAF introduced a Time Management System (TMS) in 2007 which records time spent by all OLAF staff on casework and on other activities⁸. The TMS shows that not all of the time of the staff in investigation directorates is spent on casework. In 2009 they allocated 63 % of their time to casework, 27 % to management and administration and 10 % to policy and resources. Conversely, staff working in other directorates spent 25 % of their time directly supporting casework. The resulting total amount of time spent on casework by staff in all directorates amounts to 37 % as shown in **Figure 3**⁹. Only just over half of this was allocated to specific cases¹⁰.

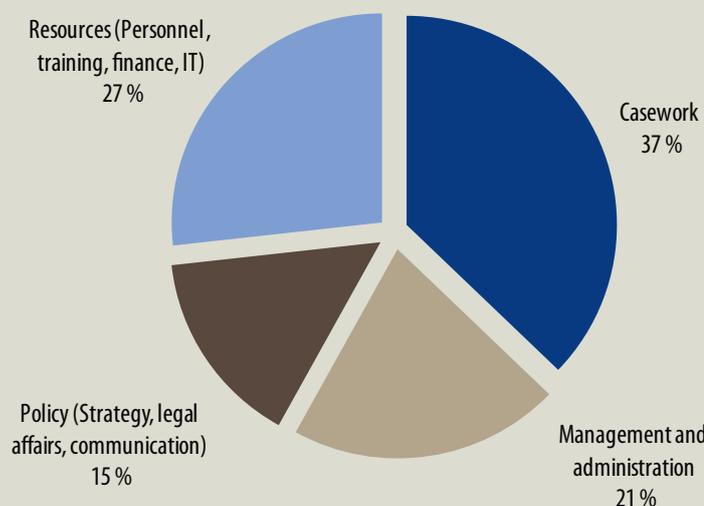
⁸ In 2009 over 98 % of all hours available were recorded in the time management system.

⁹ The workload of staff in the investigation directorates also covers assessments and co-ordination and assistance cases.

¹⁰ An investigator or Head of Unit working on a large number of cases would allocate time to casework without indicating specific cases.

FIGURE 3

USE OF STAFF TIME RECORDED IN TMS IN 2009



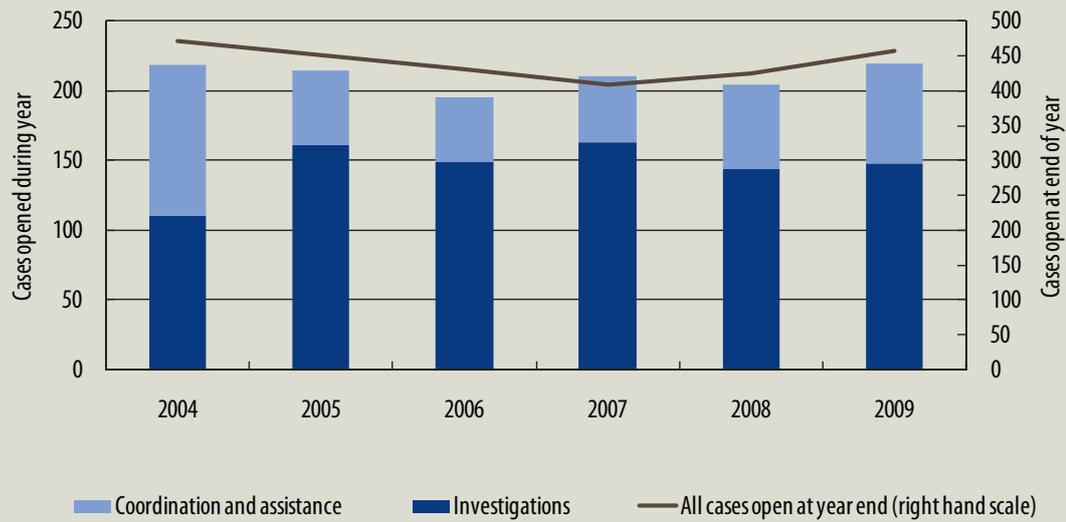
Source: OLAF Time Management System.

GREATER FOCUS ON INVESTIGATIVE ACTIVITIES

12. The Court recommended that OLAF should refocus on the investigative function accompanied by changes in the regulations while leaving other services with the responsibility for preventive or legislative acts (recommendation 17).
13. In September 2006 two investigations and operations directorates (Directorates A and B) were created to replace the one existing previously (Directorate B). The new organisation (see *Annex II*) was intended to put more focus on OLAF's investigative function. The Court's recommendation to accompany the refocusing on the investigative function with modifications to the governance of the Office through changes in the regulations has not been implemented (see paragraph 38).
14. The examination of a sample of 30 cases indicated an increased focus on investigative activities such as interviews or on-the-spot checks. It also showed the contribution of OLAF services, other than Directorates A and B, which are integrated in the investigative process and provide support when necessary such as the provision of judicial advice and forensic data analysis (*Figure 2*).
15. Another indicator of refocusing is the increase in the proportion of OLAF's own investigations compared with coordination and assistance cases. The proportion of OLAF's casework represented by investigations has increased from 50 % in 2004 to 67 % in 2009 (*Figure 4*).

FIGURE 4

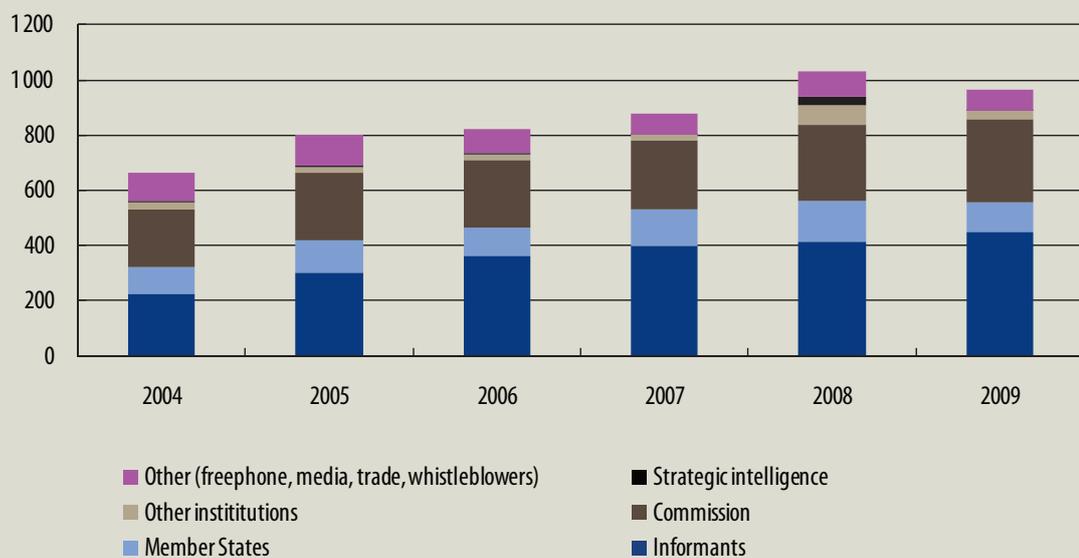
ANALYSIS OF CASES OPENED



Source: OLAF.

FIGURE 5

SOURCE OF INITIAL INFORMATION RECEIVED 2004-09



Source: OLAF.

CONTRIBUTION OF STRATEGIC SERVICES TO THE INVESTIGATIVE FUNCTION REMAINS LIMITED

16. The Court recommended that strategic analysis services should aim to identify anomalies which can be used to launch investigations (recommendation 13).
17. OLAF's strategic intelligence (Units C2 and C3) has improved systems to manage the reliability of data obtained from Member States, concerning, in particular, irregularities in the agricultural and structural funds areas. It now delivers products which are used by the investigation directorates and also by the relevant services in the Commission and in Member States.
18. Strategic intelligence provides general guidance relevant to policy development and operational strategy by identifying risk areas and patterns of fraud. It may also lead to the opening of specific cases¹¹, either directly or indirectly. Of the 332 investigations open on 1 July 2008, six (i.e. 2 %) were the direct result of strategic intelligence. **Figure 5** shows the source of all initial information received from 2004 to 2009, of which 0,7 % came from strategic intelligence.

IMPROVING THE EFFICIENCY OF INVESTIGATIONS

19. The Court followed-up the recommendations of Special Report No 1/2005 which aimed to improve the planning and supervision of investigations and to ensure they were implemented in a timely manner in compliance with a clear legal and procedural framework.

¹¹ OLAF Manual of Operational Procedures, 1 December 2009 section 3.1.9.

PLANNING DOES NOT INCLUDE MANPOWER AND DEADLINES

- 20.** Concerning planning, the Court recommended that smaller groupings should be established on the Executive Board, consisting of directors and heads of unit, in order to set clear plans and objectives for individual investigations (recommendation 3) and that a time recording system should be introduced linked to work plans with estimates of time to be spent on investigations (recommendation 5).
- 21.** Concerning the recommendation for smaller board groupings, the Board now meets on alternate weeks as Board A and Board B, composed according to the respective competencies of the two new Directorates A and B. This split should have allowed a more thorough analysis of case proposals. However, the Court's examination of a sample of investigations showed that for one third of cases plans and objectives were still not clear (**Figure 2**).
- 22.** Concerning recommendation 5, a time management system (TMS) was introduced from October 2007. All OLAF staff, with the exception of Supervisory Committee staff, are required to record the use of their time by tasks. In 2009 over 98 % of all hours available were recorded in the time management system. It is currently a system for recording time. The data in the system is not used to manage casework.
- 23.** The initial assessment of information received (see paragraph 32) includes a workplan which indicates the first steps of the investigation and is reviewed in the nine month report to the Supervisory Committee. Although the workplan indicates the number of investigators and specific skills required there is no estimation of the time required and deadlines. TMS is not used for planning purposes. Outside TMS, Unit B2 (which deals with customs cases) does produce time charts in order to plan the work of investigators. Plans may need to be reassessed once investigative activities are underway because recommendations to open a case are based on the information available at the time and no investigative activities can be carried out during the initial assessment phase¹².

¹² OLAF Manual 1 December 2009 section 3.2.1. However, in two cases from the Court's sample, investigative activities started following a board recommendation but before a formal decision to open a case had been taken by the Director. In one of these cases all investigative steps had been completed before the decision to open an investigation was taken.

MEASURES TAKEN TO FOCUS ON PRIORITIES

- 24.** The Court recommended that investigations should focus on priorities in order to make the most of the means available (recommendation 4).
- 25.** A de minimis¹³ approach has been introduced for external investigations based on indicative financial thresholds¹⁴ and other criteria such as reputational risk, indications of systematic fraud and whether there are other competent investigative bodies.
- 26.** Since 2004 OLAF has grown by 39 % from 355 to 493 staff, whilst the number of staff in the investigations and operations directorates has increased by 32 % from 125 to 165 staff (see **Table 2**). The increase in the number of staff in the investigations and operations directorates has not been accompanied by an equivalent increase in the number of cases (see **Figures 1** and **4**). In 2009 OLAF carried out fewer cases per person in investigations and operations than in 2004 (2,8 open cases instead of 3,7). This development reflects:
- the focus on more serious complex cases resulting from the de minimis policy;
 - the increasing proportion of OLAF's own investigations (see **Figure 4**);
 - the deployment of more investigative resources to assessing the increasing amount of information received (see **Figure 5**). The quantity of initial information analysed which did not lead to the opening of a case doubled from 364 such 'non-cases' in 2004 (including 108 prima facie non-cases¹⁵) to 755 in 2009 (including 267 prima facie non-cases).

¹³ An abbreviated form of the Latin maxim de minimis non curat lex, 'the law cares not for small things.' The Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995, p. 49) stipulates that, for the purpose of criminal prosecution, fraud involving an amount exceeding 50 000 euro shall be considered in any event as serious fraud.

¹⁴ 1 million euro in the customs, cigarettes and trade sectors; 100 000 euro in the agriculture and structural funds sectors; 50 000 euro in direct expenditure and external aid cases. (See page 5 of the Annual Activity Report of OLAF for 2009 — http://ec.europa.eu/atwork/synthesis/aar/doc/olaf_aar.pdf)

¹⁵ Prima facie non-cases relate to information received which clearly does not fall within the competence of OLAF or clearly does not justify the use of OLAF resources.

DURATION OF INVESTIGATIONS HAS NOT IMPROVED

- 27.** The Court recommended that a maximum duration for investigations be established (recommendation 6). The Commission accepted the idea of imposing maximum time limits for conducting investigations and made a legislative proposal¹⁶ to introduce a standard duration of 12 months which was extendable by up to six months at a time on the basis of a decision taken by the Director of the Office after consulting the Supervisory Committee. However, no changes to the legal framework have yet been adopted.
- 28.** OLAF's Annual Management Plan for 2010 has a minimum target of closing 75 % of cases within 24 months, 10 % of which in less than nine months. Regulation (EC) No 1073/1999 states that where an investigation has been in progress for more than nine months, the Director shall inform the Supervisory Committee of the reasons for which it has not yet been possible to complete it. The duration of investigations is an important issue not only because of the risk of time-barring, but also for the efficiency of OLAF and for persons concerned by such investigations.
- 29.** Duration is monitored through day-to-day supervision by Heads of Units, monthly operational reports and, in Directorate B, case reports drawn up every three months. The Board is only involved at the opening and closing stages of cases. For cases which last longer than nine months the investigator prepares a report for the Supervisory Committee summarising the status of the case, the reasons for the delay and the estimated time for completion. The new manual also requires 18 month reports to be prepared for internal purposes only¹⁷. No further reporting of this nature is required although most investigations last longer than 18 months. There is a need to improve the management of cases in progress in order to resolve problems faster and avoid long periods of inactivity.

¹⁶ See COM(2004) 103 final, proposed new Article 6(7) p. 10.

¹⁷ OLAF Manual of Operational Procedures 1 December 2009 Section 1.4.7 states: 'If the case is still ongoing nine months after being opened, the investigator prepares a report for the Supervisory Committee summarising the allegations, the status of the case and the reasons for the delay and the estimated time for completion. Another report following a similar internal procedure must be prepared for the management 18 months after the opening of the investigation.'

- 30.** *Table 3* shows the actual number of cases closed in nine months from 2004 to 2009 is generally just over 10 %, in line with the target in the Annual Management Plan.
- 31.** Although between 2004 and 2009 the number of cases per person in investigations and operations has decreased (see paragraph 26), this has not had an impact on the duration of cases. The average duration of all cases (external and internal investigations, criminal assistance and coordination cases) from 2004 to 2009 has varied little and remains at over two years (25 months) as shown in *Figure 6*. Many investigations take considerably longer to complete than the average of two years. At the end of 2009, 125 of 457 cases in progress (27 %) had been open for more than two years. Of these, 33 had been open for more than three years and a further 21 for more than four years. The examination of the 30 cases showed that long duration is sometimes due to outside factors, but more often due to internal factors such as lack of resources assigned to cases or shifts in priorities.

TABLE 3

CASES CLOSED IN NINE MONTHS

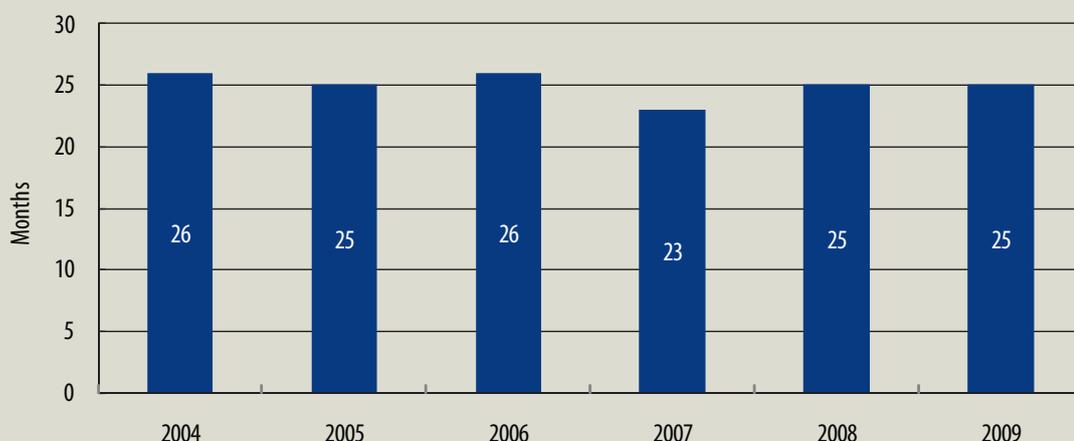
Year of closure	Total cases closed	Total closed in 9 months	%
2004	339	60	18 %
2005	233	27	12 %
2006	217	24	11 %
2007	232	21	9 %
2008	187	21	11 %
2009	188	20	11 %

Source: OLAF.

- 32.** The issue of long duration applies not only to investigations but also to initial assessments. When OLAF first receives or generates information concerning a possible fraud, it carries out an evaluation of this initial information to decide whether or not to open a case. The volume of this incoming information has increased considerably from 662 items in 2004 to 965 in 2009 (see **Figure 5**). The duration of assessments is affected by the need to gather information from outside organisations, the workload of investigators and also the policy to focus on more serious and complex cases (see paragraph 25). Consequently, many evaluations take considerably longer to complete than the two months envisaged in the OLAF manual¹⁸. The average duration of evaluations has doubled from 3,5 months in 2004 to 7,1 months in 2009. At the end of 2009, 72 cases had been in assessment for more than 12 months, representing 16 % of the total of 459.
- 33.** The results of the Court's examination of 30 cases (summarised in **Figure 2**) showed that the decision to open an investigation was not made in a timely manner in 11 cases. The average duration of the evaluations for the 30 cases examined was six months.

¹⁸ Section 3.2.2 of the OLAF manual states that the initial assessment of a case should be completed within two months of receiving the initial information. If this is not possible, the investigator must request an extension to the deadline from the responsible Head of Unit. The initial assessment must then be completed within a period authorised by the responsible Head of Unit, which shall not be more than six months after receipt of the initial information. If the information required for completing the assessment is still not available after six months a prolongation has to be authorised by the line Director.

FIGURE 6

AVERAGE DURATION OF CASES 2004 TO 2009¹

¹ Based on the ratio of cases open at the end of the year to cases opened during the year.

Source: OLAF.

INCREASED SUPPORT FROM CASE MANAGEMENT SYSTEM (CMS) AND PERSONNEL FUNCTION

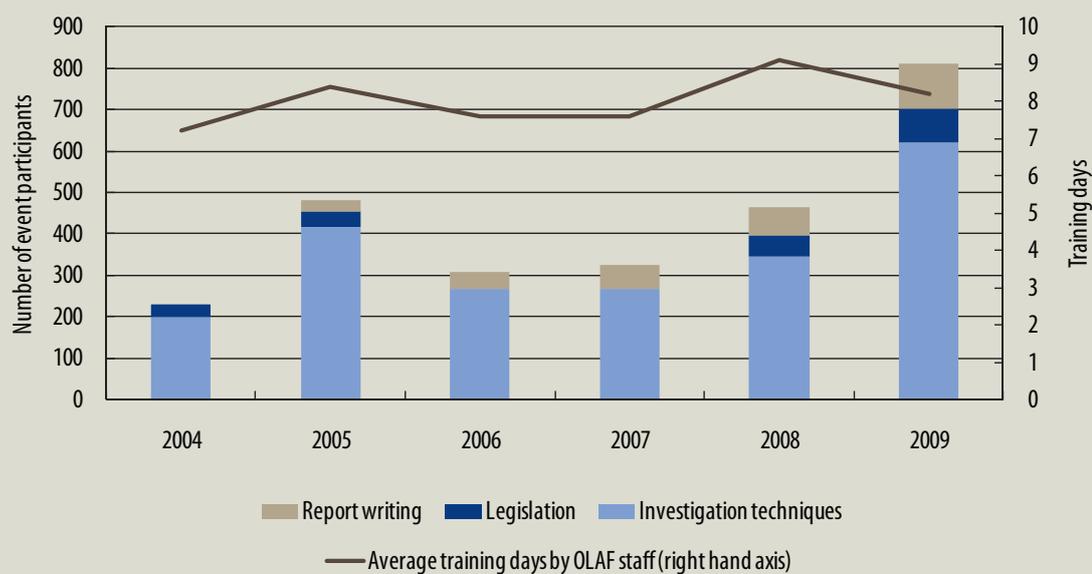
- 34.** The Court made recommendations to develop the case management system (CMS) as a management tool, to increase training of investigators in investigation techniques, legislation and report-writing skills (recommendation 10) and to implement a masterplan for personnel management in order to resolve structural problems (recommendation 12).
- 35.** CMS is now better used and all key documents are recorded in the system. However, data protection information is not systematically completed. In accordance with Regulation (EC) No 45/2001¹⁹, a decision should be taken either to inform natural persons that their personal data are stored and treated by OLAF (recorded as 'provided' on CMS) or else to defer informing them (recorded as 'deferred' on CMS), because, for example, to do so could jeopardise the investigation. However, in five of the 30 investigations examined, a decision whether or not to inform the suspect had not been taken. Furthermore, the Court recalls that the data protection regulation requires personal data to be accurate and, where necessary, kept up to date²⁰. In this respect, the Court notes that when an investigation is closed without follow-up and the initial allegations could not be substantiated, the CMS does not reflect such a development in the categorisation of the person concerned. The advice of the European Data Protection Supervisor (EDPS) is needed on the matter.
- 36.** Concerning training, **Figure 7** illustrates the number of OLAF staff attending training events on investigation techniques, legislation and report-writing skills since 2004 and shows an increase in the number of participants at training events in 2009. The January 2009 report on training by OLAF's Internal Audit Capability reinforced the messages of Special Report No 1/2005 and stressed the need to improve the analysis of training needs.
- 37.** Structural problems in staffing have been addressed by obtaining additional permanent posts and thus reducing the number and proportion of temporary staff (see **Table 4**).

¹⁹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

²⁰ Article 4(1) of Regulation (EC) No 45/2001.

FIGURE 7

TRAINING EVENTS ATTENDED BY OLAF STAFF



Source: OLAF.

TABLE 4

REDUCTION IN PROPORTION OF TEMPORARY POSTS¹

Year	Permanent posts	Temporary posts	Total posts	% temporary posts
2004	183	146	329	44 %
2005	201	146	347	42 %
2006	238	119	357	33 %
2007	252	116	368	32 %
2008	261	116	377	31 %
2009	270	114	384	30 %
2010	282	102	384	27 %

¹ In addition to the establishment of 384 posts there were also 131 contract staff in March 2010, including 65 working in Information Services in Directorate D.

Source: OLAF.

REVISION OF THE LEGAL AND PROCEDURAL FRAMEWORK STILL PENDING

- 38.** Regarding the legal and procedural framework, the Court made a recommendation to codify and publish procedures to protect the rights of individuals at all stages of the investigation and to provide controls on the legality of investigative acts in progress (recommendation 8).
- 39.** In December 2009, the Director of OLAF adopted a new Manual of Operational Procedures which was published in May 2010. The legal framework, however, has not changed since the Court's last report, as the instructions contained in the Manual are not intended to have any legal force²¹ and as Regulation (EC) No 1073/1999 concerning investigations conducted by OLAF has not been amended²². There is still no independent control of the legality of investigative acts in progress²³ nor is there a code guaranteeing 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 the right of access to the file²⁴.

DIFFICULTIES IN COOPERATION WITH EUROJUST AND MEMBER STATES

- 40.** The Court made a recommendation to clarify arrangements for cooperation with Member States' authorities by adopting a specific regulation or through agreements with national investigation services (recommendation 9).

²¹ See the foreword to the Manual which is available on OLAF's website.

²² The Commission proposal (COM(2006) 244 final of 24.5.2006) for amending Regulation (EC) No 1073/1999 has not yet been adopted. On this proposal, the Court issued Opinion No 7/2006 (OJ C 8, 12.1.2007, p. 1).

²³ See paragraph 83 of SR No 1/2005.

²⁴ Opinion No 5/2010 of the OLAF Supervisory Committee on the respect for fundamental rights and procedural guarantees in investigations.

- 41.** In 2006, the Commission made a revised proposal for a regulation on mutual administrative assistance²⁵ which has not yet been adopted by Parliament and Council. OLAF has signed administrative cooperation arrangements with authorities in 10 Member States and negotiations are currently underway with four others²⁶. However, several Member States have not communicated to OLAF which national authority or investigation service is in charge of cooperation with OLAF in the field of direct expenditure or have not set up the necessary national and judiciary authorities with competences for the field of direct expenditure. Therefore, OLAF continues to encounter difficulties and lack of support when carrying out on-the-spot checks and inspections in certain Member States, notably where national inspectors do not have the control competences referred to in Regulation (Euratom, EC) No 2185/96²⁷.
- 42.** The audit confirmed the observations of the Court in its Opinion No 8/2005 that the existing legal framework for combating fraud and irregularities is complicated and difficult to implement and that weaknesses persist in cooperation between the Commission and Member States²⁸. The audit also confirmed that given the limitations of OLAF's powers to investigate, the response of Member States to the Office's requests remain weak²⁹.
- 43.** Difficulties may also arise when allegations under investigation by OLAF involve economic operators from several Member States. In such cases, cooperation with Eurojust becomes important, as Eurojust is responsible for coordinating national criminal investigations and prosecution procedures. To make cooperation as efficient as possible, a Practical Agreement on arrangements of cooperation between Eurojust and OLAF was signed on 24 September 2008³⁰. The Practical Agreement requires OLAF to inform Eurojust as soon as possible of the existence of any case where it appears that it directly involves judicial cooperation between the competent national authorities of two or more Member States, or where the case concerns a Member State and the Community. On the basis of the Court's sample, some 20 % of investigations fall into these categories. Although quarterly meetings take place between OLAF and Eurojust as required by the agreement, practical cooperation in the form of transmission of information on cases has been limited. In 2008 information on five cases was transmitted from OLAF to Eurojust and in 2009 on just one case.

²⁵ COM(2006) 473 final of 14.9.2006.

²⁶ Arrangements are in place with authorities in the following Member States: Belgium, Bulgaria, Czech Republic, Estonia, Spain, Italy, Lithuania, Malta, Romania, Slovak Republic. Negotiations are ongoing with authorities in Denmark, Latvia, Germany and the United Kingdom.

²⁷ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

²⁸ See paragraphs 34–36 of Opinion No 8/2005 (OJ C 313, 9.12.2005, p. 1)

²⁹ See paragraph 15 of SR No 1/2005.

³⁰ OJ C 314, 9.12.2008, p. 3.

- 44.** Article 85 of the TFEU provides for an extension of the role of Eurojust to initiating investigations. In this regard, the Court notes the recommendations adopted by the European Council in December 2009 on the possibility of furthering the powers of Eurojust national members, reinforcing of the powers of the Eurojust College or the setting-up of a European Public Prosecutor³¹. More effective cooperation between OLAF and Eurojust is necessary in view of developments in this direction.

REPORTING ON THE EFFECTIVENESS OF INVESTIGATIONS

- 45.** The audit assessed whether the action taken by OLAF had resulted in clear objectives for investigations and relevant and reliable reports on performance.

TARGETS ARE SET AND MONITORED BUT DO NOT FOCUS ON RESULTS

- 46.** The Court made a recommendation to specify results to be achieved by investigations and to introduce performance indicators (recommendation 1).
- 47.** For the Office as a whole, certain sectors and geographical areas, OLAF now sets objectives in the Annual Management Plan with clearly quantified targets. These targets are monitored in monthly updates of the Annual Management Plan³² and further information is provided in monthly management reports³³.
- 48.** Concerning individual investigations, the initial assessment did not systematically identify clear financial objectives for investigations. Although the amounts affected are not always the key concern, the initial assessment of information received should identify the possible financial impact and recovery.

³¹ See Stockholm Programme adopted by the European Council in December 2009 Council document 17024/09, p. 24.

³² The monthly updates of the annual management plan show the percentage of cases opened in certain sectors and geographical areas, follow-up cases with an impact over certain amounts, percentage of cases closed with follow-up, clearance rate (cases opened/cases closed), percentage of cases closed in a certain time and number of cases per investigator.

³³ Monthly management reports show results for the current year to date and four previous years in terms of prison sentences and amounts recovered and also show the duration of assessments, investigations and follow-up.

REPORTS ON PERFORMANCE DO NOT FULLY EXPLOIT THE INFORMATION AVAILABLE

- 49.** The Court made a recommendation that reports on OLAF's performance should be based on relevant and reliable data. They should enable comparisons over time and include indicators based on real results (recommendation 11).
- 50.** OLAF produces the following reports and follow-up documents on performance: annual management plan monthly update, monthly management reports, annual activity report, annual operational report, and ad hoc reports (such as the 2008 report concerning on-the-spot checks).
- 51.** At the end of an investigation, a final case report is submitted to the Board. The Board recommends whether the case should be closed with or without follow-up. Follow-up action includes recovering funds and opening criminal proceedings³⁴. The responsibility for follow-up action does not lie with OLAF, but rather with Commission DGs and national authorities. OLAF's role is to optimise conditions for follow-up and to verify whether action has been taken.
- 52.** *Table 5* shows how information is reported in different documents which are produced at different times (monthly, annually or ad hoc) and for different readers (internal or external).

³⁴ The OLAF Manual identifies four kinds of follow-up: administrative, financial, judicial and disciplinary.

53. It is difficult to form an overview of OLAF's performance. The information provided is to be found in different documents, which are prepared for different purposes and addressed to different audiences. Additional, more comprehensive information available in CMS is not presented. The Annual Activity Report does not enable the reader to make comparisons of OLAF's performance over time because there is no summary of key statistics for previous years. The Annual Operational Report provides comparisons with previous years for a number of indicators relating to activity (information received, initial evaluations carried out, opening decisions and average duration of cases), potential results (% of cases closed with follow-up) and real results (funds actually recovered). However, it does not make the important link between OLAF's activity (number of cases closed in a year) and the ensuing results, both potential (e.g. amounts identified for recovery) and real (e.g. amounts actually recovered).

TABLE 5

AVAILABILITY OF PERFORMANCE INDICATORS

	Internal		Public		
	Monthly reports		Annual reports		One-off reports
	Annual management plan monthly update	Monthly management reports	Annual activity report	Annual operational report	2008 report concerning on-the-spot checks
Activity					
Number of investigations closed	√	√	√	√	
Potential results					
% of investigations closed with follow-up	√		√	√	
Amounts identified for recovery from investigations					√
Stakeholder satisfaction¹					
Views of Commission DGs					
Real results					
Actual recovery resulting from investigations					√
Actual recovery resulting from all cases		√		√	

¹ In 2007 OLAF launched a user satisfaction survey which was unsuccessful due to the low response rate (only six replies were received to the 45 questionnaires sent). OLAF has introduced operational conferences with Commission DGs.

Source: OLAF reports.

54. Relevant indicators are those which measure the link between OLAF's investigations, its potential results (for example, funds identified for recovery, recommendations to open criminal proceedings) and its real results (for example, funds actually recovered, cases resulting in a penalty or sentence). Although these are largely outside OLAF's control, they do also depend on the quality and timeliness of OLAF's investigations.
55. In order to be reliable, indicators should be based on accurate data and presented consistently in order to enable comparisons between years and across sectors (e.g. agriculture, customs, external aid) or types of investigation (internal, external, coordination and assistance).
56. CMS contains information on financial, judicial and disciplinary results. It also records cases closed without follow-up where OLAF has disproved, or been unable to prove, the initial allegations. The type of information which is available in the CMS and which could be reported annually is shown in **Annex III**. The indicators relate to three dimensions of OLAF outcomes: financial, judicial and outcomes by area or sector. For the financial and judicial outcomes, the tables outline the following:
- (a) activity (number of investigations closed);
 - (b) potential results (investigations closed with follow-up, recommendations to recover funds or open criminal or disciplinary proceedings);
 - (c) real results (actual amounts recovered or sentences passed).
57. The tables in **Annex III** complement information available in current reports. They link the real results to the year in which the cases were closed. The information is presented to demonstrate ways in which indicators available in CMS may be reported, enabling reliable comparisons over time and between sectors and types of investigation. With additional analysis and explanation by OLAF, this information may provide a more complete picture of the activity trends and performance in its reports.

CLARIFYING THE ROLE OF THE SUPERVISORY COMMITTEE

- 58.** The Court followed up the recommendation of Special Report No 1/2005 to clarify the role of the Supervisory Committee.

UPDATING PROCEDURES NOT YET COMPLETED

- 59.** The recommendation of the Court, was to clarify the role of the Supervisory Committee to ensure that there was no interference in investigations (recommendation 16).

- 60.** The Supervisory Committee revised its rules of procedure³⁵ in 2006 and produced a number of reports and opinions concerning the management of OLAF with the aim of reinforcing the independence of the Office.

- 61.** However, a judgment of the Court of First Instance in July 2008³⁶ held that an important function of the Supervisory Committee was to protect the rights of persons who are the subject of OLAF investigations³⁷. After the judgment was pronounced, a practical working arrangement had to be found to consult the Supervisory Committee before forwarding information to the national judicial authorities.

- 62.** The new manual requires the information to be provided at least five working days before transmission³⁸. In June 2010 a new procedure has been agreed between OLAF and the Supervisory Committee to ensure that the letter transmitting cases to national judicial authorities is signed at least five working days after the note informing the Supervisory Committee about the envisaged transmission³⁹. OLAF committed itself to take any advice of the Supervisory Committee into account and react on a case-by-case basis.

³⁵ Rules of Procedure of the OLAF Supervisory Committee, 24 August 2006 (OJ L 33, 7.2.2007, p. 7).

³⁶ Case T-48/05 of 8 July 2008.

³⁷ The judgment of the Court further stipulates that 'it cannot be disputed that the requirement to consult that committee before forwarding information to the national judicial authorities is intended to confer rights on the persons concerned' (para 168).

³⁸ OLAF Manual of Operational Procedures, 1 December 2009, Sections 3.3.6.1.1 and 3.4.3.2.1.

³⁹ OLAF also provides the Committee with a summary note indicating whether the person concerned has been informed and been given the right to reply and whether the case is within the time limits set by the national authorities.

- 63.** However, in consideration of the decision of the Court of First Instance, this procedure puts at risk the rights of individuals concerned since it does not describe the steps to be taken in the event that the Supervisory Committee decides to issue an opinion. The absence of binding procedures in this regard makes it more difficult to ascertain that the Supervisory Committee has not interfered with the conduct of investigations in progress.
- 64.** Furthermore, OLAF applies a policy of transmitting information to the national authorities without informing the Supervisory Committee where OLAF is aware that a case is already being dealt with by the national judicial authorities. In 2009 OLAF recorded nine such cases where information was transmitted to national authorities without informing the Supervisory Committee in contrast to the position of the Court of First Instance, whereby the obligation to inform the Supervisory Committee is 'unconditional and leaves no margin of discretion'⁴⁰.
- 65.** The members of the Supervisory Committee are appointed by common accord of the European Parliament, the Council and the Commission (see Article 11 of OLAF regulation). The term of office of the members of the Supervisory Committee is three years and is renewable once. On expiry of their term of office, members shall remain in office until their appointments are renewed or until they are replaced. The members of the current Supervisory Committee took office on 30 November 2005. Their term of office expired on 29 November 2008. The Court notes that more than two years later, a decision to renew their term of office or to replace them is still pending. Such a situation is unsatisfactory.

⁴⁰ The decision stipulates 'that the Committee must be informed before the information is forwarded to the national judicial authorities' (paragraph 164) and 'that the obligation to inform the Supervisory Committee is unconditional and leaves no margin of discretion' (paragraph 170).

CONCLUSIONS AND RECOMMENDATIONS

REFOCUSING ON THE INVESTIGATIVE FUNCTION

- 66.** The Court's previous report made six recommendations to refocus activities on OLAF's investigative function. Three of these recommendations, concerning the divestment or separation of activities (recommendations 2, 14 and 15), were not accepted, and the other three have been partially implemented (recommendations 7, 17 and 13). Consequently, all six recommendations for OLAF to refocus on its investigative function are still valid.
- 67.** In terms of the allocation of its resources, OLAF has not refocused on its investigative function. The Commission considers OLAF as an all-round anti-fraud authority rather than a service concentrated on investigations. Consequently it did not accept the recommendations of the Court's previous report to divest activities such as anti-fraud strategy and funding programmes. The number of staff in investigation directorates as a proportion of all staff amounted to 34 % in January 2010. The Time Management System showed that the Office as a whole allocated 37 % of its time to casework in 2009 (see paragraphs 8 to 11).
- 68.** When carrying out investigations, OLAF now makes more use of its investigative powers, for example to carry out on-the-spot checks and interviews. OLAF support services contribute to investigations where appropriate and in 2009 spent 25 % of their time in this way. In this context, the strategic intelligence units identify areas of risk, but their work rarely triggers investigations (see paragraphs 12 to 18).

FOLLOW-UP RECOMMENDATION 1

OLAF should increase the number and speed of investigations by increasing the proportion of time spent on its core investigative function.

FOLLOW-UP RECOMMENDATION 2

The contribution the intelligence units make to investigative work should be enhanced.

IMPROVING THE EFFICIENCY OF INVESTIGATIONS

- 69.** The Court's previous report made eight recommendations to improve the efficiency of investigations (recommendations 3, 4, 5, 6, 8, 9, 10 and 12). Except for recommendations 3 and 12, the other recommendations are not yet fully implemented and therefore still valid.
- 70.** The Court's previous report made recommendations to ensure a clear procedural framework for investigations and to improve planning and supervision so that investigations were implemented in a timely and efficient manner. OLAF has taken measures to clarify the procedural framework through the introduction of a new manual in December 2009 and a Practical Agreement for cooperation with Eurojust in 2008. Other measures taken by OLAF to improve efficiency were the introduction of a time management system, the development of a de minimis policy to focus on serious and complex cases, better use of CMS (though it is still not fully used), more focused training, a reduction in temporary staff, and splitting the Board into smaller groupings.
- 71.** Despite the steps taken by OLAF to improve efficiency, progress has been slow and remains incomplete. The new manual was not introduced until December 2009 and the legal framework has not changed since the Court's last report. Although OLAF entered into an agreement for cooperation with Eurojust, information on only one case was transmitted from OLAF to Eurojust in 2009. Although TMS is used to record time spent, the information it contains is not used to plan and supervise investigations. The volume of initial information to be assessed has increased considerably and the duration of these assessments has doubled. The duration of investigations remains long, sometimes due to outside factors, but more generally due to internal factors such as other priorities or lack of resources (see paragraphs 19 to 44).

FOLLOW-UP RECOMMENDATION 3

The legal framework for combating fraud and irregularities should be revised to simplify and consolidate the anti-fraud legislation. Such an overhaul should address weaknesses in OLAF's current powers and procedures, in particular concerning cooperation between OLAF and the competent services in Member States.

FOLLOW-UP RECOMMENDATION 4

OLAF should strengthen its cooperation and partnership with Eurojust, which, under Article 85 of the TFEU, is tasked with coordinating criminal investigations and prosecutions relating to offences against the financial interests of the Union. To this end, OLAF should put in place procedures to identify all relevant cases, communicate information on them to Eurojust on a timely basis, and report on the results of its cooperation with Eurojust on a regular basis.

FOLLOW-UP RECOMMENDATION 5

The provisional plans for investigations should include estimates of resources required and deadlines. These plans should be monitored and updated once investigative activities are underway. Information from the Time Management System (TMS) should be used to provide more effective support to investigators and managers.

FOLLOW-UP RECOMMENDATION 6

The overall duration of assessments and investigations should be better controlled to improve the impact of investigations and make better use of resources available. To this end, the Board should play a role in monitoring long and complex investigations, to ensure appropriate action is taken.

REPORTING ON THE EFFECTIVENESS OF INVESTIGATIONS

- 72.** The Court's previous report made two recommendations concerning the demonstration of the effectiveness of investigations (recommendations 1 and 11). Although these have been partially implemented, the recommendations are still valid.
- 73.** The Annual Management Plan establishes clearly quantified targets for the Office which are regularly monitored. However, clear financial objectives are not systematically identified for individual investigations (see paragraphs 45 to 48).
- 74.** There is considerable information available in CMS which enables OLAF's performance to be compared over time and across different sectors. These statistics concern activity (investigations closed), potential results (investigations closed with follow-up; recoverable amount) and real results (actual amount recovered). However, the information is not currently reported in a single document which would enable the reader to assess OLAF's performance. The 696 external investigations closed in the period 2004 to 2009 identified 656 million euros for recovery, of which 180 million euros had actually been recovered at the time of the audit in April 2010 (see paragraphs 49 to 57).

FOLLOW-UP RECOMMENDATION 7

Clear objectives for individual investigations should be systematically set and updated, and results should be reported in terms of objectives achieved.

FOLLOW-UP RECOMMENDATION 8

CMS should be used more extensively in management decision-making and to produce better reports. Performance statistics on OLAF's activity, potential and real results should be made available in a single report, including comparisons over time.

CLARIFYING THE ROLE OF THE SUPERVISORY COMMITTEE

- 75.** The Court's previous report made one recommendation to clarify the role of the Supervisory Committee (recommendation 16). Some action has been taken, but implementation remains incomplete.
- 76.** Following the July 2008 judgment of the Court of First Instance, OLAF applies a new procedure to consult the Supervisory Committee before transmitting information to national judicial authorities. However, this procedure does not define the steps to be taken if the Supervisory Committee decides to issue an opinion. Apart from case law, the legal framework to protect the rights of persons being investigated has not changed since the Court's last report (see paragraphs 58 to 65).

FOLLOW-UP RECOMMENDATION 9

In agreement with OLAF, the Supervisory Committee should define a formal procedure to outline the steps to be taken if it decides to issue an opinion on a case on which it is consulted. The legal framework should be revised in order better to protect the rights of persons being investigated.

This Report was adopted by Chamber IV, headed by Mr Igors LUDBORŽS, Member of the Court of Auditors, in Luxembourg at its meeting of 8 February 2011.

For the Court of Auditors



Vítor Manuel da SILVA CALDEIRA
President

STATUS OF IMPLEMENTATION OF RECOMMENDATIONS (SPECIAL REPORT No 1/2005)¹

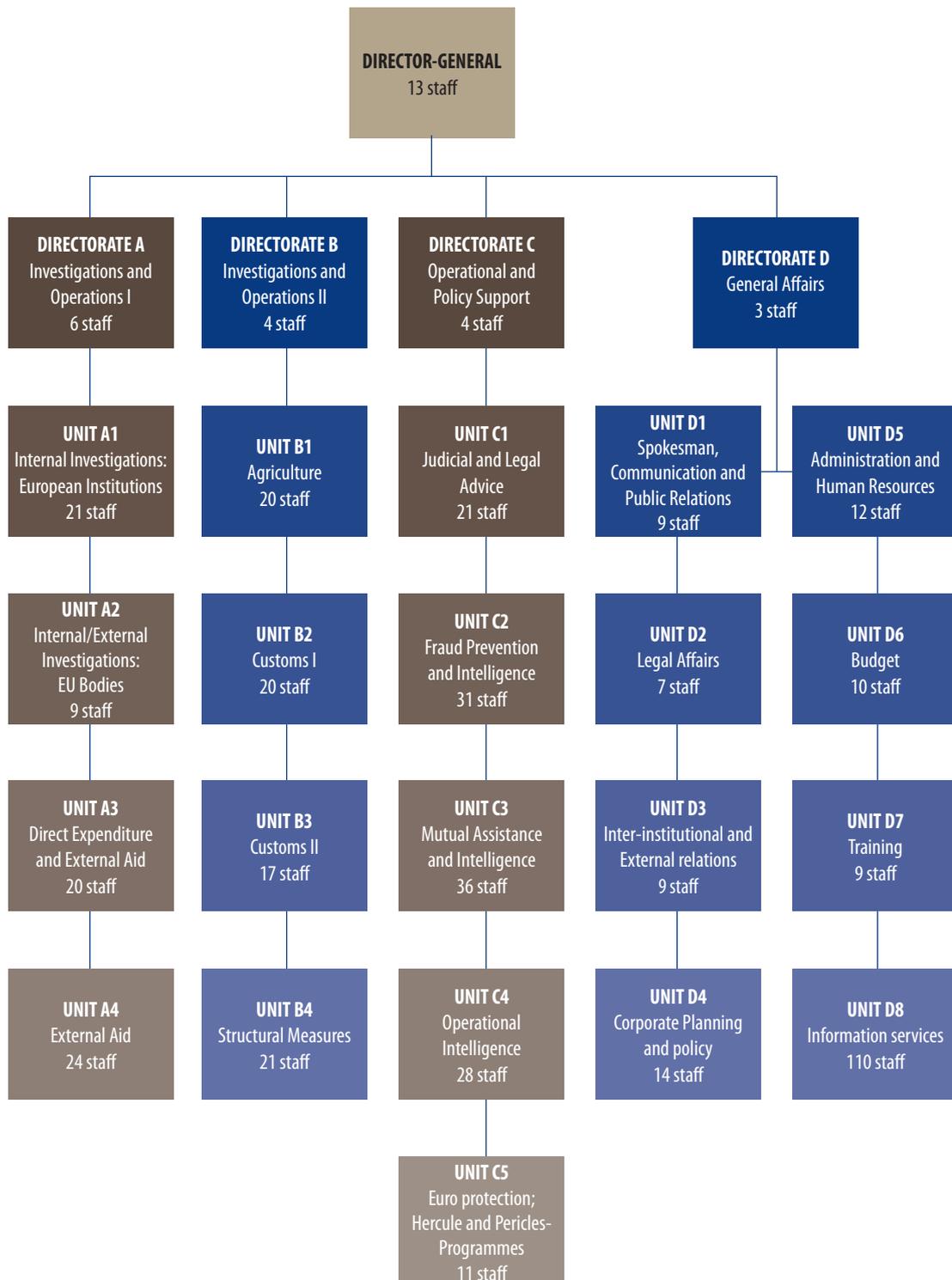
Recommendations	Accepted	Implemented ²
Recommendations to refocus activities on OLAF's investigative function		
Divest or separate non-core activities		
7. Remove follow-up activities (involvement in judicial proceedings and recovery of funds) that can be performed by authorising officers	Partially	Partially
14. Transfer responsibility for anti-fraud strategy to other Commission services	Not accepted	No
15. Give responsibility for managing funding programmes (e.g. Pericles and Hercules) to other Commission services	Not accepted	No
2. Consider creating a separate unit dedicated to coordination and assistance operations to improve management of resources	Not accepted	No
Improve contribution of strategic services to the investigative function		
17. Refocus activities on the investigative function, accompanied by changes in governance and regulations	Partially	Partially
13. Strategic analysis services should seek improvement in the data forwarded by Member States and create databases which can be used to identify anomalies and launch investigations	Accepted	Partially
Recommendations to improve the efficiency of investigations		
Legal and procedural framework		
8. Codify and publish procedures to protect the rights of individuals at all stages of the investigation and to provide controls on the legality of the investigative acts in progress	Accepted	Partially
Cooperation with Member States		
9. Formalise arrangements for cooperation between OLAF and the Member States through legislation or the conclusion of agreements with national investigation services	Accepted	Partially
Planning		
3. Establish smaller groupings on the Executive Board with the aim of setting clear plans and objectives for investigations	Accepted	Yes
5. Introduce a time recording system linked to work plans with estimates of time to be spent on investigations to align workload with resources and to avoid delays	Accepted	Partially
Focus on priorities		
4. Supervise the investigation process to focus on priorities and on the search for evidence by making better use of the investigation means available	Accepted	Partially
Timely completion		
6. Establish a maximum duration for investigations	Partially ³	Partially ⁴
Support from IT systems and personnel function		
10. Convert CMS into a true system of investigation management and increase training of investigators in investigation techniques, legislation and report-writing skills	Accepted	Partially
12. Implement a masterplan for personnel management to resolve structural problems	Accepted	Yes
Recommendations to demonstrate the effectiveness of investigations		
1. Specify results to be achieved by investigations and introduce performance indicators to assess success	Accepted	Partially
11. Produce reliable and relevant reports on performance, based on real rather than potential results	Accepted	Partially
Recommendation for the Supervisory Committee to reinforce OLAF's independence		
16. Clarify the role of the Supervisory Committee to ensure that there is no interference in ongoing investigations	Accepted	Partially

¹ The recommendations made in Special Report No 1/2005 were not numbered. They are numbered here according to the order they appeared in the report.

² Yes – recommendation implemented; No – recommendation not implemented and still valid; Partially – varying degrees of implementation and further action recommended.

³ The Commission replied that it proposed to amend Regulation (EC) No 1073/1999 and introduce a duration of 12 months with the possibility of extending investigations by up to six months at a time.

⁴ The legal framework has not yet been amended.

OLAF ORGANISATION CHART¹

¹ The chart shows the actual number of staff employed in March 2010.

POTENTIAL INDICATORS

TABLE A — Indicators of activity, potential and real financial results¹

		2004	2005	2006	2007	2008	2009	Total
External investigations	Activity							
	External investigations closed	151	104	100	117	121	103	696
	Potential results							
	With financial follow-up	59	52	60	66	67	52	356
	Recoverable amount (million euro)	183,7	43,8	54,7	122,6	121,0	130,6	656,4
	Real results							
	Amount recovered (million euro)	73,0	8,8	9,2	43,8	28,3	16,6	179,7
	Amount written off (million euro)	5,7	0,3	1,9	1,8	0,0	15,4	25,1
	Amount outstanding (million euro)	105,0	34,7	43,6	77,0	92,7	98,6	451,6

¹ The financial amounts in the table are attributed to the year in which follow-up commenced regardless of the year in which the money was actually received. The table therefore does not show amounts recovered relating to cases closed in 2003.

Source: OLAF as at April 2010.

Table A shows CMS data on external investigations concerning activity (number of investigations closed), potential results (closed with follow-up and amounts identified for recovery) and real results (actual recovery).

Over the six year period between 2004 and 2009, of the 696 external investigations closed, 356 (51 %) cases involved potential financial follow-up.

Over the same six year period the total amount identified for recovery was 656,4 million euro. The total actual amount recovered (over the same six years) up to the time of the audit in April 2010 was 179,7 million euro (27 %).

TABLE B — Indicators of activity, potential and real judicial results

	Year of follow-up recommendation						Total	
	2004	2005	2006	2007	2008	2009		
External investigations	Activity							
	Investigations closed	151	104	100	117	121	103	696
	Potential results							
	With judicial follow-up	33	46	32	42	55	32	240
	Related actions	112	91	48	67	66	22	406
	Real results							
	Cases dismissed	63	24	17	11	9	0	124
Cases outstanding	26	55	28	51	57	16	233	
Penalty or sentence	23	12	3	5	0	6	49	
Internal investigations	Investigations closed	39	30	31	34	25	37	196
	Penalty or sentence	1	2	2	0	0	0	5
Coordination and assistance	Cases closed	149	99	86	81	41	48	504
	Penalty or sentence	182	63	17	39	19	2	322
Total all cases	Cases closed	339	233	217	232	187	188	1 396
	Penalty or sentence	206	77	22	44	19	8	376
Internal investigations	Disciplinary actions triggered	8	12	13	19	12	1	65

Source: OLAF as at April 2010 (One case may lead to a number of actions and subsequent penalties and sentences).

Table B shows CMS data on activity, potential and real results in the judicial sphere. Over the six year period between 2004 and 2009, the following observations can be made:

- External Investigations: out of the 696 external investigations closed, 240 (34 %) have been with judicial follow-up, leading to 406 related actions. Of these, 49 (12 %) have resulted in judicial decisions (including four acquittals and 11 rulings under appeal), 124 actions (30 %) have been dismissed while the results of 233 actions remain outstanding. Of the 124 cases dismissed, 76 (61 %) were due to lack of evidence whilst nine (7 %) were due to prescription.
- Internal investigations: the number of final rulings by judicial authorities in respect of internal investigations is extremely limited, amounting to five rulings for a total of 196 cases closed with 45 judicial paths opened and 62 related actions, 16 of which were dismissed. Internal investigations closed during the period also triggered disciplinary proceedings against 65 persons.

ANNEX III

- Coordination and assistance cases: these are considerably more successful than internal and external investigations in terms of achieving final rulings by judicial authorities for cases closed with follow-up during the period 2004 to 2009¹.

The table shows how judicial results vary between the different categories of cases. Judicial follow-up takes on average 3,5 years to complete, which explains in part why the number of penalties or sentences are lower in recent years.

¹ In coordination and assistance cases national judicial authorities have already taken a decision to deal with a case which explains the higher success rate of these cases.

TABLE C — Financial results in different areas

		Cases closed 2004–09	Closed with financial follow-up	Recoverable (million euro)	Recovered to date		Recovery per case closed with financial follow-up (million euro)
					(million euro)	%	
External Investigations	Agriculture	92	49	136,8	5,5	1,7 %	0,11
	Customs	102	69	306,6	112,9	35,4 %	1,64
	External Aid	225	101	74,9	10,9	3,4 %	0,11
	Structural Funds	124	76	124,2	46,6	14,6 %	0,61
	Other ¹	153	61	13,9	3,8	1,2 %	0,06
	Sub total	696	356	656,4	179,7	56,4 %	0,50
Internal investigations		196	33	3,0	0,5	0,2 %	0,02
Coordination and assistance		504	201	877,0	138,3	43,4 %	0,69
Total		1 396	590	1 536,4	318,5	100,0 %	0,54

¹ Other consists of direct expenditure, EU bodies and agencies and trade.

Source: OLAF as at April 2010.

Table C compares financial results in different sectors. For external investigations, the customs area represented the highest proportion of recoverable amounts (20 %) and of actual recoveries (35 %). The financial results from other areas were lower.

Over the six year period (2004 to 2009), coordination and assistance cases account for 57 % (877 million euro out of 1 536 million euro) of potentially recoverable amounts for the Office as a whole, and 43 % (138 million euro out of 319 million euro) of actual recoveries.

The recovery per investigation shows the average amount recovered per case closed with financial follow-up in each sector (for example in the case of agriculture, 5,5 million euro was recovered, from a total of 49 cases, resulting in an average recovery per case of 0,11 million euro).

Whilst the different sectors are not directly comparable because they manage different types of cases, the table shows the variation in average amounts recovered per case, across sectors.

REPLY OF THE COMMISSION

EXECUTIVE SUMMARY

I.-II.

The Commission would like to point out that OLAF's development over the past 11 years has proven that OLAF is best placed as an all-round anti-fraud service in order to protect the financial interests of the EU. This overall mission comprises three complementary tasks, i.e. conducting administrative investigations in full independence, assisting Member States by organising close and regular cooperation between their competent authorities, and by contributing to the design of the Commission's anti-fraud regulatory activity and strategy. OLAF's policy work benefits from its investigative experience and vice versa.

Nearly 75 % of staff are operational in the sense that they are either conducting or supporting investigations, both in the investigation directorates and the supporting directorates.

III.

The Commission shares the Court's overall assessment of the progress made by OLAF, in particular with the efficiency of its investigations. OLAF's line management supervises investigations on the basis of workplans which are regularly updated in the Case Management System (CMS). OLAF is committed to improving its management tools on a continuous basis.

REPLY OF THE COMMISSION

IV.

The Commission is currently preparing a revised proposal to amend Regulation 1073/1999. It is envisaged that the proposal will strengthen the rights of the persons concerned and also comprise provisions on a review procedure and on cooperation with Eurojust and Europol.

The Commission considers that, even under the existing legal framework, the rights of individuals concerned are protected and that an independent control of investigative acts exists, to which the case law of the Court of Justice has been increasingly contributing since the Court made its statement in 2005.

V.

OLAF's reports are under constant development in order to improve their practical use as a management tool. OLAF will examine whether a statistical annex can be appended to the annual operational report in the future which would ensure a better comparison of performance indicators.

VI.

The proposal for the reform of Regulation 1073/1999 will consolidate the rights of individuals concerned and make them more visible.

The rights of individuals concerned are already protected in the existing legal framework, as well as by national courts and by the rapidly developing case law of the Court of Justice.

VII.

(a) The Commission agrees that the speed of investigations is an area that could be further improved.

OLAF will make every effort to increase the efficiency and effectiveness of its investigative work, which remains its core task. Furthermore, OLAF will look into the possibility of increasing the proportion of its time spent on its investigative function.

In order to use its resources efficiently, OLAF is primarily committed to dealing with serious cases and is progressively applying minimum financial thresholds.

(b) OLAF already has initial workplans in place, which it is committed to develop further so as to improve overall planning.

The Commission agrees that OLAF should endeavour to reduce the overall duration of assessments and investigations. Duration is a key performance indicator for OLAF, which OLAF is committed to reducing wherever possible, particularly through improved monitoring of complex investigations.

Under the existing governance framework, the Board delivers recommendations on fundamental decisions relating to the treatment of cases. But it is the role of line management to examine investigation plans regularly, guide their development and take decisions in order to respect timeframes and speed up investigations wherever possible. OLAF considers that the Board involvement in the monitoring process would dilute responsibility of OLAF's line management.

REPLY OF THE COMMISSION

- (c) OLAF's various reports are intended for different audiences, including internal management and external stakeholders. OLAF will try to improve these reports further.
- (d) An adequate procedure has been defined and implemented by OLAF and the Supervisory Committee that takes account of the requirement for OLAF to inform the Supervisory Committee before transmitting cases to national judicial authorities as well as of the investigative independence of the OLAF Director. OLAF will take any advice of the Supervisory Committee into account and react on a case-by-case basis. Any formal procedure for the Supervisory Committee to intervene in ongoing cases could be seen as an interference with the investigative independence of the OLAF Director.

INTRODUCTION

Box 1 — OLAF's role and tasks ***Key objectives and activities***

It is envisaged that the draft revised proposal to amend Regulation 1073/1999 will further underline OLAF's role to promote and coordinate a more intensive sharing of operational experience and best procedural practices, as well as to support joint anti-fraud actions.

OBSERVATIONS

- 6.** The Commission notes that OLAF has expressed different views regarding the gradings of a number of cases.
- 9.** OLAF has focussed its financial follow-up activities on important cases where the financial impact meets specific thresholds defined for the respective sectors and types of procedures.
- 10.** The 34 % figure in isolation does not reflect the proportion of OLAF resources devoted to investigation. In terms of staff allocation to investigative activities, nearly 75 % are involved in operational casework, i.e. including providing support to investigations. The split by directorates does not thus reflect the proportion of staff involved in investigations.
- 11.** Even though the figure of 37 % is generated from the Time Management System (TMS), it does not entirely reflect the real situation. In particular, investigators in Directorates A & B regularly use the 'Management and administration' category when they are dealing with administrative tasks e.g. reports which are purely case-related. Also middle and senior management and secretaries in the investigative units often use this category for case-related paperwork. OLAF will examine how to improve the use of the TMS to better reflect the division of work.

REPLY OF THE COMMISSION

13.

In order to improve the governance framework, the revised proposal for amending Regulation 1073/1999 will inter alia comprise a provision on the 'exchange of views' between the EU institutions (European Commission, European Parliament and Council) and OLAF on relevant questions concerning its strategic working priorities.

17.

OLAF has issued specific recommendations to several Commission services to improve fraud prevention following analysis of its operational cases.

18.

According to the jurisprudence of the Court of Justice¹, 'sufficiently serious suspicion' is required for opening a case. This means that OLAF is not allowed to conduct investigative activities based solely on risk assessments without serious levels of suspicion being attained. Since 2007, OLAF has produced more than 10 strategic intelligence analyses for Commission services and Member States, which contain specific recommendations to substantially reduce the risks and impact of irregularities and fraud.

21.

It is primarily the role of line management to ensure that clear case plans and objectives are set and regularly monitored.

The Board delivers recommendations on fundamental decisions relating to the treatment of cases.

OLAF considers that involvement of the Board in the monitoring process would be likely to result in a dilution of responsibility of OLAF's line management.

22.

The TMS was designed to provide management with a global view of how much time is spent on a set of 20 pre-defined activities, such as investigation, follow-up, intelligence, administration, etc. This information is compiled in a monthly TMS report for each organisational entity, which allows managers to review resource allocation within their area of responsibility and senior management to initiate resource allocation across the Office. The existing case management features of CMS will be reviewed with a view to strengthening its case planning capabilities.

23.

The Commission agrees that workplans contribute to the efficiency of investigations. OLAF's Manual already outlines the basic elements of initial workplans which should describe the scope and investigative steps insofar as they can be anticipated at that stage. However, when an investigation starts, it is difficult to know where it will lead. Circumstances can change for reasons outside OLAF's control, so investigators and their managers are in constant touch, and revise the workplans when needed.

The initial workplan and subsequent updates are all registered in the CMS.

¹ C-11/00 Commission v. ECB; C-15/00 Commission v. EIB, 10 July 2003

REPLY OF THE COMMISSION

In the light of the Court's comments:

- OLAF will ensure that initial workplans always include the objectives and scope of the investigation, and estimated financial impact. If it is possible at such an early stage, the plans will also include an initial estimate of resources required, possible missions and a likely timeframe.
- OLAF is committed to improving the monitoring and updating of workplans on a regular basis.
- As regards the TMS, see reply to paragraph 22².

26.

It should be emphasised that OLAF's overall objective is the protection of the financial interests of the EU. The number of cases is not an adequate parameter by which to judge OLAF's performance. Given that OLAF's policy is to focus on the more serious and complex cases where its involvement clearly adds value, the fact that the number and duration of investigations has remained largely stable should be considered as an achievement.

² As regards the two cases mentioned in footnote 10, these were exceptional cases and OLAF will review its procedures in this regard.

27.

The Commission does not consider that a maximum duration for investigations, in the sense of an absolute limit, would be appropriate. Because of the very nature of an investigation and its uncertainties, a fixed maximum duration cannot be set. Taking into account its operational experience and the various factors influencing the course of an investigation, OLAF set a realistic target in its 2010 Annual Management Plan (AMP) of closing 75 % of cases within 24 months. This is not a maximum duration, but a target allowing for a necessary amount of flexibility.

It is envisaged that the proposal for the reform of Regulation 1073/1999 will contain provisions for improving the monitoring of the duration of investigations.

28.

The Commission shares the Court's view that the duration of investigations is a key performance indicator in terms of OLAF's operational procedures. It is recognised as such in OLAF's AMP. On the other hand, targets need to be realistic and have to reflect actual operational circumstances.

The Commission recalls that the provision on 9-month reports in Regulation 1073/1999 is not a target deadline for the completion of an investigation³.

³ The obligation to report to the Supervisory Committee on cases that are still open after nine months should be considered in the context of the Supervisory Committee's role of reinforcing the independence of the Office. Historically, the purpose of this reporting was to prevent an interference by the Institutions in OLAF's independent case work.

REPLY OF THE COMMISSION

The 24 months target set in OLAF's AMP is realistic taking into consideration OLAF's operational experience and the various factors influencing the course of investigations (such as OLAF's dependence on cooperation from Member States or third countries). However, one size does not fit all, and in recognition of these factors, OLAF is assessing the possibility of making a clear distinction between the duration targets for different types of case, whilst still retaining the average duration target of 24 months.

29–30.

In addition to the 9- and 18-month reports, there is continuous supervision of duration by line management.

On a monthly basis, statistics are produced for management drawing attention to longer cases. These are regularly discussed at Directors' meetings.

Regarding the role of the Board, see reply to paragraph 21.

The revised proposal to amend Regulation 1073/1999 will foresee reinforced controls of the duration of investigations, including informing the Supervisory Committee in a timely manner.

31.

Even though the number of cases per investigator in Investigations and Operations Directorates may have decreased, the amount of incoming information needing to be evaluated has considerably increased, which has a significant impact on the overall workload of investigators.

Due to OLAF's policy to focus on the more serious cases, their duration tends to be in line with their increased complexity.

OLAF is fully committed to controlling the duration of cases through their efficient management. See also reply to paragraphs 29–30.

32.

As already mentioned, the volume of incoming information has increased considerably and OLAF intends to put in place a procedure for a more efficient and accurate processing of the information during the evaluation period. This will include an upstream filtering and where necessary an analysis of information.

33.

In many cases where initial information needs to be verified with external bodies, Member States and third country authorities, OLAF depends on its external partners to respond in a timely manner and relies upon their goodwill and cooperation. Although OLAF is investing heavily in improving these relationships in order to reduce delays in communication of information, this remains a factor largely outside its control.

The two- and six-month guidelines for assessments have been set by OLAF itself for work monitoring purposes. They are not regulatory deadlines as such. Moreover, the progressive application of the de minimis guidelines (as laid down in an annex to the OLAF Manual) should facilitate progress in reducing assessment duration in the medium to longer term.

REPLY OF THE COMMISSION

35.

OLAF has made considerable progress in ensuring that data subjects are informed of its investigations, in accordance with Regulation (EC) No 45/2001. This was achieved in a transparent way following a plan agreed with the European Data Protection Supervisor (EDPS). OLAF has completed a data protection backlog exercise covering specified groups of investigations that were opened prior to the existence of the data protection module, therefore the five outstanding cases have been dealt with accordingly.

Although the EDPS was consulted on all the aspects referred to by the Court in the context of the prior checks on OLAF investigations and follow-up, OLAF is willing to consult the EDPS again on the specific issue raised.

37.

As of 1 January 2011, OLAF has achieved its goal and reduced the number of its temporary agents to 21 %.

39.

It is envisaged that the proposal for the reform of Regulation 1073/1999 will consolidate the rights of the individual concerned and make them more visible. Additionally, it will introduce an independent review mechanism/procedure for dealing with complaints by persons concerned by investigations, who consider that their procedural rights have not been respected by OLAF.

The Commission considers that, even under the existing legal framework, the rights of individuals concerned are protected and that an independent control of investigative acts exists, to which the case law of the Court of Justice has been increasingly contributing since the Court made its statement in 2005. Even though it considers that OLAF's investigative actions (including the Final Case Reports) cannot be challenged for annulment⁴, the Court of Justice contributes to an independent control notably of these by means of possible actions for damages⁵. Evidence must be collected in a lawful manner in order to ensure that national administrative and judicial authorities can make use of it in their respective procedures. The same is valid for administrative and recovery procedures to be initiated by the authorising officers. In addition to this, the OLAF Manual provides clear internal guidelines for investigators concerning the conducting of an investigation.

41.

OLAF has no powers to force its partners to react in a timely manner and relies upon their goodwill and cooperation. Although OLAF is investing heavily in improving these relationships, this remains a factor largely outside its control.

⁴ Refer to cases T-193/04 Tillack v. Commission dated 4 October 2006 and T-261/09P Violetti et Schmit dated 20 May 2010.

⁵ Refer to cases T-48/05 Franchet et Byk v. Commission dated 8 July 2008 and F-5/07 and 7/05 Violetti v. Commission dated 28 April 2009 and F-72/06 Verheyden v. Commission dated 28 April 2009.

REPLY OF THE COMMISSION

With regard to cooperation with Member States in the field of direct expenditure, steps towards solving this problem have already been taken by the Commission. In 2009, as part of the questionnaire for the 2008 Annual Commission Report on the protection of the EU's financial interests - fight against fraud, most Member States communicated to OLAF the complete contact details of national authorities for all expenditure fields, including direct expenditure, thus enabling OLAF investigators to identify and contact the competent authority in good time of the check. OLAF will remain in close contact with Member States for the continuous updating of this information. In the 2009 report, the Commission strongly recommends all Member States to set up national and judicial authorities with competences for the field of direct expenditure, as the same level of protection of financial interests must be ensured for all areas of the EU budget. It is envisaged that the reformed Regulation 1073/1999 addresses this issue by proposing an Anti-fraud Coordination Service (AFCOS) for each Member State.

43.

The Practical Agreement provides for a framework for the respective cooperation. There is a common understanding between OLAF and Eurojust that, in order to ensure sound management, the text is not in practice interpreted in a literal way but cooperation is focused on complex and sensitive criminal cases, and where it brings added value. This cooperation is handled by the OLAF-Eurojust liaison team which meets regularly. Additionally, OLAF and Eurojust organise regular exchange visits to further improve understanding of their respective tasks.

44.

The Commission is paying close attention to the possibilities offered by the Lisbon Treaty in terms of the further development of Eurojust and the setting up of a European Public Prosecutor's Office (EPPO). The Commission is planning to issue a Communication on the establishment of an EPPO from Eurojust and to further reflect on the cooperation with all actors involved, including OLAF. OLAF is fully aware of this perspective and will further improve cooperation. It is envisaged that the reformed Regulation 1073/1999 will lay down rules for closer cooperation between Eurojust and OLAF. It will provide a legal basis for OLAF to conclude cooperation arrangements with both Europol and Eurojust. An information exchange between OLAF and Eurojust will be reinforced in the new proposal.

See also reply to paragraph 43.

48.

OLAF makes every possible effort to evaluate and quantify the financial impact of fraudulent activity. Nevertheless, the amounts to be recovered are not always possible to quantify at the outset and therefore the potential financial impact cannot always be considered as a clear 'objective' for an investigation.

REPLY OF THE COMMISSION

The effectiveness of OLAF investigations cannot be assessed simply in financial terms. OLAF gathers evidence both against and in favour of persons concerned, so a conclusion that a person concerned does not have a case to answer is also to be considered a positive result. Also, a case which has limited immediate financial impact may have substantial longer term financial implications once lessons learnt have been reflected in improved procedures.

51.

Indeed, OLAF fulfils its role to optimise conditions for follow-up. In many instances, without OLAF's assistance, follow-up would not have been successful.

52.

Table 5 in the ECA report compares internal information available for management purposes and annual reports. Management information is necessarily more detailed to enable managers to carry out their function. OLAF agrees that the public should have access to comparable information over time, in order to give results greater visibility, but reserves the right to produce more detailed information for management purposes only.

53.

OLAF will examine how to further improve its annual operational report, where it has a certain leeway as opposed to its other reports.

56.–57.

The Commission appreciates the idea of further improving OLAF's reporting, allowing for reliable comparisons over time.

The proposal will be carefully examined. However, difficult technical issues have to be taken into account and resolved, in particular with respect to time lags and quality of data.

60.

The Commission agrees with the findings of the Court. It should also be noted that the relations between OLAF and the Supervisory Committee have become much more fruitful since the previous audit.

63.

The rights of individuals concerned are already protected in the existing legal framework. Any formal procedure on the part of OLAF or the Supervisory Committee for an intervention of the Supervisory Committee on this issue in ongoing individual cases could be seen as an interference with the investigative independence of the OLAF Director.

REPLY OF THE COMMISSION

CONCLUSIONS AND RECOMMENDATIONS

64.

As regards the question whether the Supervisory Committee has to be informed when OLAF transmits information to national judicial authorities in cases which are already dealt with by the national judicial authorities, no definitive answer to this question is to be found in Art. 11(7) of Regulation 1073/1999. The provision could be interpreted strictly, limited only to internal cases, or in a broader sense. OLAF is willing to apply an extensive interpretation, i.e. including external cases, as this would facilitate the monitoring work of the Supervisory Committee. Concerning already ongoing criminal cases at national level, OLAF considers it appropriate to inform the Committee of these cases if an external or internal investigation has been opened and investigative action taken by OLAF.

OLAF has already adapted its practice according to this interpretation.

65.

With the Decision of the European Parliament, the Council and the Commission of 15 February 2011, the mandate of the present Supervisory Committee Members will be extended until 30 November 2011.

67.

The Commission reiterates its opinion that OLAF should continue to contribute to the establishment of its anti-fraud policy and strategy. OLAF's policy work benefits from its investigative experience and vice versa.

The 34 % figure in isolation does not reflect the proportion of OLAF resources devoted to investigation. In terms of staff allocation to investigative activities, nearly 75 % are involved in operational casework, i.e. including providing support to investigations. The split by directorates does not thus reflect the proportion of staff involved in investigations.

Even though the figure of 37 % is generated from the TMS, it does not entirely reflect the real situation. See also reply to paragraph 11.

68.

The Commission appreciates the Court's findings that OLAF is making more use of its investigative powers.

Concerning strategic intelligence, its main concern is to understand the patterns of fraud and to identify (sectoral and other) risks which support operational activities and fraud prevention.

REPLY OF THE COMMISSION

In addition to the assistance OLAF's strategic intelligence offers to Member States, OLAF contributes significantly to the anti-fraud policy of the Commission. For example, OLAF has issued specific recommendations to several Commission services to improve fraud prevention following an analysis of its operational cases.

Follow-up recommendation 1

This recommendation is partially accepted. The speed of investigations is an area that could be further improved (see also replies to paragraphs 27–29). However, as OLAF is committed to dealing with the more serious cases and is progressively applying financial thresholds when deciding whether or not to open a case, increased time spent on investigations may not necessarily imply an increase in the number of investigations. Moreover, the number of cases is not the only indicator by which to judge OLAF's performance.

OLAF will make every effort to increase the efficiency and effectiveness of its investigative work, which remains its core task. Furthermore, OLAF will look into the possibility of increasing the proportion of its time spent on its investigative function.

Follow-up recommendation 2

This recommendation is accepted.

71.

The Commission is of the view that OLAF has made considerable progress since the audit of 2005, in particular:

- From 2005 until the introduction of the 4th edition of the Manual in December 2009, the previous version of the Manual served as a valuable tool for investigators;
- Cooperation with Eurojust has improved based on the agreement which entered into force in 2008 (see reply to paragraph 43);
- The CMS, (and not the TMS,) was designed as a tool for case management and further developed;
- The duration of investigations has remained stable in recent years even though cases have become more serious and complex. However, further efforts will be made to improve investigation planning and therefore contribute to reducing the duration of cases (see reply to paragraph 23).

Changes to improve the legal framework are underway and expected by the end of 2011. These will consolidate the rights of persons concerned by an investigation and make them more visible. They will also comprise provisions on a review procedure and on cooperation with Eurojust and Europol.

REPLY OF THE COMMISSION

Follow-up recommendation 3

This recommendation is partially accepted.

The reform of Regulation 1073/1999, which is currently underway, already addresses the issue of OLAF's competences and procedures. It will also consolidate relations between OLAF and the Member States' competent authorities. Furthermore, the reform foresees that Member States will designate an authority to ensure good cooperation with OLAF.

The Commission is generally in favour of an overall consolidation of the anti-fraud legislation. However, given that this is a very complex issue involving different pieces of legislation, it is not envisaged in the framework of the ongoing reform of Regulation 1073/1999, but is considered as a longer term objective.

Follow-up recommendation 4

This recommendation is partially accepted. The cooperation between OLAF and Eurojust has developed considerably in recent years, based on the new Eurojust Decision and the Practical Agreement on the Arrangement of Cooperation with Eurojust of September 2008. The exchange of case-related information and the follow-up of ongoing cases have been facilitated and now occur on a more regular basis.

OLAF has already put in place procedures regarding the transmission of information regarding relevant cases to Eurojust⁶. Furthermore, in 2011 a new secure information exchange system will be installed in order to further facilitate information exchange.

⁶ The transmission of information on cases to Eurojust has increased compared to 2008 and 2009. In 2010 OLAF has already transmitted four cases to Eurojust; Eurojust has transmitted one case to OLAF.

It is envisaged that the revised proposal to amend Regulation 1073/1999 will comprise provisions on cooperation with Eurojust, taking into consideration the respective scopes of competence of OLAF and Eurojust.

Follow-up recommendation 5

This recommendation is accepted.

OLAF already uses initial workplans and is committed to develop these further in order to improve its planning system.

These workplans are revised when necessary in the course of the continuous dialogue between investigators and management.

Depending on the different types of investigation, monitoring may take different forms. However, in all cases, both the initial workplan and its updates are already registered in the CMS in the form of reports or notes.

OLAF will work on further improvements in terms of investigation planning:

- OLAF will ensure that initial workplans always include the objectives and scope of the investigation, and the estimated financial impact. If it is possible at such an early stage, the plans will also include estimates of resources required, possible missions and a likely time-frame.
- OLAF is committed to improving the monitoring and updating of workplans on a regular basis.

REPLY OF THE COMMISSION

Follow-up recommendation 6

This recommendation is partially accepted. Monitoring long and complex investigations should be further improved.

Within the existing governance framework, the Board delivers recommendations on fundamental decisions relating to the treatment of cases. But it is the role of line management to examine investigation plans regularly, guide their development and take decisions in order to respect timeframes and speed up investigations wherever possible.

OLAF is of the opinion that an involvement of the Board in the monitoring process would be likely to result in a dilution of responsibility of OLAF's line management.

The duration of investigations is indeed a key performance indicator in terms of OLAF's operational procedures. It is recognised as such in OLAF's AMP. On the other hand, targets need to be realistic and have to reflect actual operational circumstances.

OLAF is alert as regards the duration of cases and is committed to continue monitoring developments in this field and to reduce duration wherever possible. See also replies to paragraphs 27–29.

73.

OLAF makes every possible effort to evaluate and quantify the financial impact of fraudulent activity, but the amounts to be recovered are not always possible to quantify at the outset. Financial implications are taken into account for reasons of prioritisation, rather than serving as 'objectives' as such. See also reply to paragraph 48.

74.

The spending Commission Directorates-General (DGs) (as authorising DGs) and Member States' services are responsible for financial recovery on the basis of OLAF's findings. Therefore, the amounts recovered are only an indicator in a broader context, i.e. with regard to stakeholders and, in particular, the spending Commission DGs and Member States.

Follow-up recommendation 7

This recommendation is partially accepted.

OLAF already sets objectives for investigations and updates them regularly via workplans. OLAF agrees that some improvements could be made to the current arrangements. However, substantial changes are not required.

OLAF's objective is to gather evidence both for and against and to identify amounts for recovery as accurately as possible.

REPLY OF THE COMMISSION

Follow-up recommendation 8

This recommendation is partially accepted.

The CMS should be further developed for these purposes. However, there will always be factors outside the CMS to be taken into account. OLAF will examine the possibilities for further improvement in its reporting, including in relation to comparisons over time.

75.

The role of the Supervisory Committee will be further clarified by the reform of Regulation 1073/1999.

76.

The new procedure of informing the Supervisory Committee before transmitting a case to national judicial authorities entered into force with the 4th edition of the OLAF Manual in December 2009. The Supervisory Committee is informed five working days before the transmission of information to national judicial authorities. OLAF will take any advice of the Supervisory Committee into account and react on a case-by-case basis. Any formal procedure on the part of OLAF or the Supervisory Committee could be seen as an interference with the investigative independence of the OLAF Director concerning ongoing investigations, as an element of his independence includes deciding whether and when a case shall be transmitted to national judicial authorities. Concerning the protection of the rights of persons being investigated, see reply to paragraph 39.

Follow-up recommendation 9

The first sentence regarding the Supervisory Committee is rejected. Any formal procedure on the part of OLAF or the Supervisory Committee could be seen as an interference with the investigative independence of the OLAF Director. The second sentence is partially accepted. The proposal for the reform of Regulation 1073/1999 will consolidate the rights of individuals concerned and make them more visible.

The rights of individuals concerned are already protected in the existing legal framework. Even though it does not consider OLAF's investigative actions (including the Final Case Reports) as acts adversely affecting the persons concerned⁷, the Court of Justice contributes to an independent control of these. See also reply to paragraph 39.

Additionally, the OLAF Manual provides clear internal guidelines for investigators concerning the conduct of investigations.

⁷ Refer to cases T-193/04 Tillack v. Commission dated 4 October 2006 and T-261/09P Violetti et Schmit dated 20 May 2010.

REPLY OF THE OLAF SUPERVISORY COMMITTEE

The Supervisory Committee takes note of the observations of the Court of Auditors in the follow-up of the Special Report 1/2005 concerning the management of the European Anti-fraud Office and would make the following responses:

1. The role of the Supervisory Committee following the *Franchet and Byk* ruling (paragraphs 58–63 and 75–76 of the Court of Auditors observations)

(a) Action to be taken by the SC where fundamental rights and procedural guarantees are at stake (paragraphs 58–63, 75–76 and first part of the follow-up recommendation 9)

Current situation

Currently, OLAF forwards the case reports to the SC five working days before transmission to national judicial authorities (NJA). These case reports are accompanied by a special report detailing its handling of fundamental rights.

Following examination of these reports the SC may request, where appropriate, access to the entire file. The SC then arranges for a discussion on substantive and procedural aspects of cases with OLAF staff who regularly participate in the SC's plenary meetings. This discussion is focused, in particular, on respect for fundamental rights and procedural guarantees of the persons concerned in the investigation. The SC pays particular attention to the duration of the investigation and to the question of time barring.

Position of the SC

The SC considers that respect for fundamental rights is both a safeguard for persons under investigation and a criterion for assessing the effectiveness of OLAF's investigations. The SC is aware and confirms that it shall not interfere in the conduct of ongoing investigations, as stipulated by Regulation No 1073/99. That is why, in order to fulfil its role of assisting the Director General of OLAF in discharging his responsibilities¹, the SC can, and does, draw general observations from the analysis of an individual case with a view to improving OLAF's practices in future investigations. However, the SC shall not give directions or recommendations to the Director-General of OLAF on the subsequent course of the individual investigation.

The SC can also be consulted by the Director-General of OLAF on a specific case.

The SC is currently working to adapt its rules of procedure to formally take into account the ruling of the Court of First Instance in the *Franchet and Byk* case.

The SC considers in particular, that before the information is sent to NJAs, it should be entitled to request access to relevant case files to ascertain whether fundamental rights and procedural guarantees are being complied with. The SC secretariat shall be afforded access to the documents within a time limit sufficient to guarantee compliance with this function. Corresponding working arrangements shall be agreed with OLAF.

¹ The ECA's Special Report No 1/2005 concluded that 'the Supervisory Committee does not provide the Office's Director with all necessary support' (see paragraph 93).

REPLY OF THE OLAF SUPERVISORY COMMITTEE

In conformity with the current practice, the SC may also appoint a rapporteur to examine the cases and participate in their presentation at the Committee's plenary session. The management of OLAF shall be invited to this session.

If necessary, the SC can issue an opinion.

(b) Legal framework protecting the persons being investigated (paragraph 76 and second part of the follow-up recommendation 9)

The reform of Regulation No 1073/1999 is ongoing and the SC contributed to the debate by submitting two opinions: Opinion No 3/2010 on the Reflection Paper on the reform of the European Anti-fraud Office and Opinion No 5/2010 on fundamental rights and procedural guarantees within OLAF's investigations. The SC would welcome any improvement in the legislation designed to clarify and strengthen OLAF's powers of investigation and the procedural guarantees applicable to OLAF's investigations.

2. Scope of OLAF's obligation to communicate cases to the Supervisory Committee prior to their transmission to NJAs (paragraph 64)

The European Court of Auditors notes that in 2009, the SC was not informed about nine cases which had been transmitted to NJAs. The reason for not informing the SC was that these cases were already being dealt with by the NJAs at the time of transmission of the information by OLAF.

The SC agrees with the ECA that the obligation to inform the SC of cases transmitted to the NJAs is unconditional and leaves no margin for discretion².

² See Franchet and Byk judgement, § 170.

The SC considers that it must be informed of transmission of information to NJAs both in internal and external investigations. In addition to cases where OLAF transmits information to NJAs in order to initiate judicial proceedings, OLAF shall inform the SC when transmission occurs in cases already pending before the NJAs when cases are opened and investigative action is taken by OLAF. This obligation does not apply if OLAF transmits information to national administrative authorities.

3. The term of office of the Supervisory Committee's Members (paragraph 65)

The Members of the current SC took office on 30 November 2005, on a three year mandate, renewable once. On expiry of their term of office on 29 November 2008, they remained in office, according to Article 11 (4) of Regulation No 1073/1999, since they were not renewed or replaced. The procedure for the renewal of their appointment by common accord of the European Parliament, the Council and the Commission was at its final stage at the time this response was drafted.

The SC agrees with the ECA that the SC must have a formal mandate from all three institutions. The SC regrets the lack of alacrity on the part of the institutions in concluding this matter, since the end of the SC's first term of office. Despite a long period of uncertainty, the SC has continued to fully perform its task of reinforcing OLAF's independence by regular monitoring of the implementation of the investigative function.

European Court of Auditors

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THE EUROPEAN ANTI-FRAUD OFFICE (OLAF) PROVIDES AN INDEPENDENT INVESTIGATION SERVICE IN THE FIGHT AGAINST FRAUD AND OTHER ILLEGAL ACTIVITIES DETRIMENTAL TO THE EU BUDGET. IN 2005 OLAF WAS THE SUBJECT OF A SPECIAL REPORT BY THE EUROPEAN COURT OF AUDITORS WHICH MADE A NUMBER OF RECOMMENDATIONS TO MAKE ITS INVESTIGATIVE FUNCTION MORE EFFICIENT AND EFFECTIVE. THIS FOLLOW-UP REPORT EXAMINES WHETHER THE ORIGINAL RECOMMENDATIONS HAVE BEEN IMPLEMENTED AND RECOMMENDS FURTHER MEASURES WHICH COULD HELP OLAF IMPROVE THE EFFICIENCY AND EFFECTIVENESS OF ITS INVESTIGATIONS.



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