

Report of the European Anti-Fraud Office

Supplementary Activity Report for the Year 2004



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Foreword by the Director of OLAF, Franz-Herman Brüner

For the first five years of its existence, the European Anti Fraud Office (OLAF) produced its annual Activity Report on the basis of the 12 months ending in June each year. This was simply because OLAF was established in the middle of the year rather than at the beginning of the year. The last such report was published in November 2004 and covered the 12 months to 30 June 2004. It is available in English, French and German on the OLAF website http://europa.eu.int/comm/anti_fraud/reports/index_en.html.

OLAF has accepted the request of the European Parliament, endorsed by the Commission and the Court of Auditors to publish future Activity Reports on a calendar year basis.

The present Supplementary Activity Report is intended to prepare the way for this change. It therefore presents the main statistical information in the 2003/2004 Annual Report on a calendar year basis, that is to say covering the whole of the year 2004. Wherever possible, data relating to earlier years has also been recalculated on a calendar year basis.

The data for all years has also been revised wherever more accurate information has become available. This should provide a solid basis for comparison now and in the future. Nevertheless, since OLAF's data management processes have evolved considerably over its first five years, consistent data is not always available for the whole of the period. In deciding which data to present, it is necessary to strike a balance between maintaining sufficient consistency between years for comparison purposes and providing the interested reader with more information as the latter becomes available.

The textual comment in this Supplementary Report is limited to a brief discussion of the main conclusions which can be drawn from the revised data, particularly where these differ from or add to the conclusions in the previous Annual Report. For a full description of OLAF's activities including case studies, the reader is therefore referred to OLAF's Annual Report for the 12 months to June 2004.

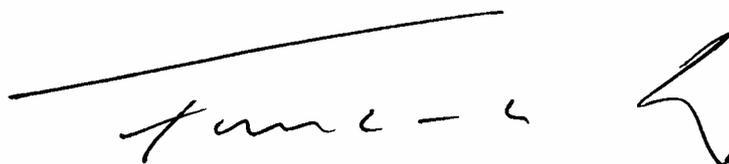
A handwritten signature in black ink, appearing to read 'Franz-Herman Brüner', with a long horizontal line above it and a stylized flourish to the right.

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Executive Summary

- The present Supplementary Report is intended to prepare the way for future reporting on a calendar year basis. Wherever possible, data relating to earlier years has also been recalculated on a calendar year basis.
- The caseload continues to increase. The 720 new case records that were created in the Case Management System (CMS) during the current reporting period constitute an increase of 20% compared to the year 2003.
- In order to allow more of OLAF's resources to be targeted on its main operational activities, OLAF has created in 2004 a new case type, the Prima Facie Non Case, which follows a lighter internal procedure¹. 109 such cases are contained in the 720 new case records created in 2004.
- OLAF has drastically reduced the duration of the assessment phase of initial information since 2001, from an average of 18.9 months for a total of 763 assessments to an average of 3.5 months for a total of 503 assessments.
- Applying stricter assessment procedures to incoming information has helped the Office to focus on the most relevant cases. While in 2000 receipt of new information almost invariably led to cases being opened, this proportion has been steadily reduced over the years and stands at 46% for the current reporting period.
- At the same time, the percentage of cases that were closed with a follow-up recommendation increased from 18% in 2000 to 47% in 2004.
- The total financial impact for all cases, UCLAF included, is estimated at € 5.8 billion².
- Operational work was completed for all but 4 UCLAF cases. However, follow-up activities related to UCLAF cases continue to take up considerable resources, both for financial and judicial follow-up. At the end of the current reporting period, 268 UCLAF cases were still in follow-up.

The major results of the current reporting period can be summarised as follows:

- OLAF concluded 503 initial assessments. 219 of these resulted in the opening of cases. A further 255 did not fall within the competence of OLAF or did not warrant investigative action. Where possible, relevant information was forwarded to the appropriate authorities. 29 cases were retained for further monitoring.
- 339 cases were closed during the reporting period, of which 159 required further follow-up. Cases in follow-up increased to 655 cases by the end of the reporting period.
- At the end of the current reporting period 195 case records registered in the CMS were in the assessment stage, 469 cases were active (i.e. internal/external investigations, assistance or coordination cases) and 655 were in follow-up. Follow-up was concluded

¹ Where information is received that clearly and unequivocally does not fall within the competence of OLAF, then the responsible Head of Unit may propose not to refer the information for assessment. A special form must be completed and countersigned by the Director B. A CMS record is created, but the case appears on the CMS as closed.

² Financial impact data as estimated by the investigators at the end of an investigation.

for 64 cases during the reporting period. Total completed follow-up stands at 121 cases.

- Financial recovery has reached a new peak in 2004 with a total of € 198 million recovered.
- The total estimated financial impact for all cases in financial follow-up at the end of the reporting period amounted to more than € 1.78 billion.
- OLAF maintained the policy of “zero tolerance”, assessing and, where appropriate, investigating all allegations of corruption within the European Institutions. During the reporting period OLAF conducted internal investigations in the majority of the European Community organs³, with 88 new case records registered in the CMS and 23 new investigations opened.
- Several judicial procedures in relation to the so-called “Eurostat Affair” are still ongoing in France and Luxembourg. It should be noted that since the opening of the OLAF investigations the European Commission has taken measures to ensure that the problems uncovered during these investigations should not occur again.
- OLAF plays an active role as member of a multi-agency Investigation Task Force (ITF) jointly staffed by the United Nations and the Italian Guardia di Finanza. A team of 6 OLAF investigators is working within ITF to investigate allegations concerning some publicly owned enterprises in Kosovo. The OLAF team is in charge of 6 active external investigations. Four cases are in assessment stage. An external investigation has been recently closed with follow-up.
- The Task Force Recovery (TFR), a joint OLAF/AGRI initiative chaired by OLAF submitted in 2004 its audit reports and proposals for financial corrections on a first package of about 450 irregularities concerning EAGGF Guarantee expenditure. These audit reports concern all cases for which the Member States communicated to the European Commission before 1999 irregularities exceeding € 500,000. The total non recovered amount is € 750 million. Based on the proposals of the TFR, DG AGRI launched in November/December 2004 the formal Clearance of Accounts procedure in application under Art 8. of Regulation (EC) 1663/95 by sending the formal proposals for defining the financial responsibility to the 9 Member States concerned.
- The Task Force “Old Cases” (TFOC) produced an additional report in October 2004, detailing the judicial results on 215 UCLAF cases that had been created between 1992 and the end of 1999. A total of 206 of these cases have led to judicial action, 50 of which were initiated by UCLAF/OLAF.
- The work on the 3rd edition of the OLAF Manual was concluded by the end of 2004.
- Further improvements were made to OLAF’s Case Management System (CMS): a Board module was developed to support the weekly meetings of the Investigations and Operations Executive Board; a full-text search module on all operational documents to enhance intelligence support was also implemented.

³ Institutions, bodies, offices and agencies.

1. OPERATIONAL ACTIVITIES

1.1. Overview of OLAF's first five years

Figure 1 gives a snapshot of all cases by stage stored in the CMS at the end of the current reporting period (31 December 2004). The total number of case records stored in the Case Management System (CMS) is 4366 cases.

Figure 1: Distribution of cases by stage

Assessment	Non-Cases	Monitoring	Opened	Closed without action	Follow-up	Follow-up complete	Total cases
195	960	85	469	1881	655	121	4366

Figure 2 shows the development of incoming information over the 5-year period. OLAF has received an average of 50 pieces of information per month.

Figure 2: Information received - new cases records created

2000	2001	2002	2003	2004	Total
367	735	571	602	720	3268

The decision to open a case or not is prepared by the Investigations and Operations Executive Board. The assessment period runs from receipt of the initial information to the decision whether or not to open the case. This procedure allows for a reliable and transparent assessment of incoming information.

Figure 3 shows the development of the average duration of the assessment phase. Due to the change from UCLAF to OLAF and to the development and implementation of new procedures that took effect only in late 2000, the first reporting period cannot be considered representative. With respect to the number of assessments, a peak of 763 assessments was completed in 2001 (including the reclassification of old cases), which reflects the major clean-up operation of the UCLAF legacy. A considerable decrease in the number of assessments can be seen in 2004. The average duration decreased from 10.6 months in 2002 to 3.5 months in 2004.

Figure 3: Duration of assessment phase

	2000	2001	2002	2003	2004
Assessments completed	77	763	656	629	503
Average duration	3.5	18.9	10.6	7.6	3.5

Applying stricter assessment procedures to incoming information has helped the Office to focus on the most relevant cases. The evolution of the number of non-case decisions is a good indicator for both stricter assessment procedures and prioritisation. Figure 4 demonstrates that in 2000 all initial information (with the exception of only 2 cases) led to the opening of a case; this statistic has steadily reduced over the years to 219 out of 474

cases for the current reporting period (not counting the 109 non-cases prima facie as these are closed without a formal assessment procedure and not counting the 29 monitoring cases as these are treated like follow-up cases without initiating an OLAF investigation).

Figure 4: Decisions taken on incoming information per calendar year

Type of decisions	2000	2001	2002	2003	2004
Co-ordination cases	8	139	107	86	84
Criminal assistance cases	4	36	49	68	28
External investigation cases	104	189	158	127	84
Internal investigation cases	32	32	50	27	23
Monitoring cases	0	0	28	39	29
IRENE ⁴ cases	85	251	78	19	0
Non-cases	2	155	178	261	255
Non-cases prima facie	0	0	0	0	109

Figure 4 also shows that the application of stricter assessment and verification criteria has led to a drop in the number of internal investigations for the last two years. There was a peak of 50 internal investigations in 2002; since then numbers have dropped to 27 in 2003 and 23 in 2004 (cases relating to the “Eurostat” affair are included). Figure 5 shows a similar picture for direct expenditure and external aid cases.

Figure 5: Number of direct expenditure and external aid cases initiated

Sector	2000	2001	2002	2003	2004
Direct expenditure	42	40	39	23	21
External aid	34	80	95	56	32

Figure 5 shows that of the 219 cases opened after assessment 53 are in direct expenditure or external aid; this is close to 25% of all active investigations. Activities are thus shifting towards areas where Member States exercise no specific responsibility and OLAF is the principal player, or even the only administrative authority engaged in the fight against fraud.

Where Member States share responsibility, more joint action with the relevant services of the Member States should be encouraged. The number of assistance, coordination and monitoring cases stored in CMS is a good and positive indicator on how cooperation with the Member States has evolved over the years.

Figure 6 below shows that cooperation with the Member States in the traditional areas, such as customs, agriculture and structural actions - as measured by the number of coordination, assistance and monitoring cases - has increased substantially over the 5-year period. While in 2000 external investigations accounted for 87% of cases in these domains today they account for only 22% of all cases. This is a promising result for the future, as these cases involve not only regular meetings with the Member States but also the participation of the Member States’ investigators in OLAF investigations and of OLAF investigators in national investigations.

⁴ IRENE is the name of the former UCLAF database.

Figure 6: Cooperation with Member States in the field of agriculture, customs (including alcohol, cigarettes, drug precursors and VAT) and structural funds

Sector	2000	2001	2002	2003	2004	Total
Coordination cases	2	88	92	86	84	352
Assistance cases	3	18	27	40	14	102
Monitoring			14	15	20	49
Total	5	106	133	141	118	503
	13%	55%	66%	69%	78%	
External cases	33	87	70	64	34	288
	87%	45%	34%	31%	22%	
Total	38	193	203	205	152	791

Figure 7 shows the development of the average duration of the investigation stage of cases. Within two years, OLAF has succeeded in reducing the average active-stage phase from 38 months to 23 months.

Figure 7: Duration of active stage⁵ of cases

	2000	2001	2002	2003	2004
Cases completed	238	615	668	501	339
Average duration (months)	30	26	38	25	23

The statistics on duration for both assessments and active stage must be interpreted with care, as they only refer to assessments/active stage closed – they do not include estimates for the assessments/active stages that were still ongoing at the end of the respective reporting period. The objective in all cases is to carry out the investigation phase effectively, and its duration will differ between sectors.

Figure 8 shows the number of cases closed with/without a follow-up recommendation. In percentage terms follow-up recommendations have increased steadily from 18% in 2000 to 47% in 2004.

Figure 8: Cases closed with/without follow-up at end of active stage

Type of closure	2000	2001	2002	2003	2004	Total
Follow-up	43	68	289	205	159	764
No Follow-up	196	629	381	289	180	1675
Total	239	697	670	494	339	2439

Figure 9 summarises the evolution of follow-up activities. It should be noted that a case in follow-up might require several different follow-up activities, for example administrative, financial and judicial follow-up, or disciplinary and judicial follow-up. There is therefore a considerable difference between the number of cases in follow-up and the number of follow-up activities. OLAF has launched a total of 1151 follow-up activities, nearly half of which are financial follow-up, another 40% concern judicial follow-up, and close to

⁵ “Active stage” comprises all internal and external investigation and coordination and assistance cases that have not yet been closed.

10% concern administrative follow-up. Internal investigations have led to 28 distinct disciplinary follow-up activities.

Figure 9: Cases closed with Follow-up by Type

Type of closure		2000	2001	2002	2003	2004	Total
Cases closed with follow-up		43	68	289	205	159	764
Related Follow-up Activity	Administrative	0	9	30	29	41	109
	Disciplinary	1	3	12	5	7	28
	Financial	34	49	231	143	94	551
	Judicial	17	32	157	131	115	452
	Legislative	0	0	2	4	2	8
	Total	52	93	432	312	259	1148

A new category of cases, the monitoring⁶ case, was introduced in 2002. In OLAF's terminology, monitoring cases are a special type of follow-up. Figure 10 summarises the evolution of the number of monitoring cases and the related follow-up activities.

Figure 10: Monitoring cases created and Type of Follow-up

Type of closure		2002	2003	2004	Total
Monitoring Cases		28	39	29	96
Related Follow-up Activity	Administrative	7	11	5	23
	Disciplinary	0	0	0	0
	Financial	16	19	8	43
	Judicial	11	21	21	53
	Legislative	0	0	1	1
Total	34	51	35	120	

Follow-up is in most cases the responsibility of the national authorities to whom the dossier was sent. Figure 11 shows the number of cases for which follow-up is completed and the type of follow-up concerned. There is an increase from 11 cases in 2002 to 87 cases in 2004 with follow-up completed.

Figure 11: Completion of Follow-up by Type

Type of closure		2002	2003	2004	Total
Cases with follow-up completed		11	23	87	121
Related Follow-up Activity	Administrative	3	2	11	16
	Disciplinary	0	0	0	0
	Financial	8	19	61	88
	Judicial	4	8	37	49
	Legislative	0	0	2	2
Total	15	29	111	155	

⁶ Monitoring cases are cases where OLAF would be competent to conduct an external investigation, but in which a Member State or other authority is in a better position to do so. Such cases are passed directly to the authority judged competent to handle them. No OLAF investigation resources are required.

Finally, Figure 12 illustrates the accumulated estimated⁷ financial impact in € million of all cases by stage⁸ and by sector.

Figure 12: OLAF cases by stage with financial impact at 31/12/2004

Sector	Open	Closed	Total
Agriculture	55.2	217.7	272.9
Alcohol	0	179.8	179.8
Anti-Corruption	6.4	226.3	232.7
Cigarettes	423.6	893.3	1,316.9
Customs	179.7	505.1	684.8
Direct Expenditure	5.6	83.7	89.3
ESTAT	2.4	3.1	5.5
External Aid	66.3	168.1	234.4
Multi Agency Investigations	3.5	0.1	3.6
Structural Funds	247.5	1,089.1	1,336.6
Trade	0	964.2	964.2
VAT	235.2	242.9	478.1
Total	1,225.1	4,573.1	5,798.8

1.2. Operational Activities in the Reporting Period

During the current reporting period OLAF received 758 reports of alleged fraudulent activity. Assessment and identification of duplicate information led to the registration in the CMS of 720 new case records. This reflects a 20% increase over last year.

Informants are generally defined as being individuals who provide information concerning a matter within the legal competence of OLAF. This category can be broken down into four further sub-sectors: witnesses; informants; anonymous, media and trade sources; whistleblowers.

At the end of the reporting period, OLAF had five active cases where the primary source of information was a whistleblower. A whistleblower is defined as an official of a Community organ who, in the course of or in connection with the performance of his duties, becomes aware of facts which indicate either possible illegal activity falling under the competence of OLAF, or serious failure by an official to comply with his professional obligations, and who then reports these facts to OLAF.

The sources of registered incoming information are displayed in Figure 13 below.

⁷ Financial impact data as estimated by the investigators at the end of an investigation.

⁸ “Open” corresponds to the number of cases at the investigation phase (admitted by the Investigations and Operations Executive Board after the assessment phase). “Closed” corresponds to the number of cases closed with or without follow-up and monitoring cases.

Figure 13: Distribution of incoming information by source

Source	Number of cases	Percentage
European Commission	232	30.6 %
Freephone	49	6.5 %
Informants	247	32.6 %
Member States	119	15.7 %
Other EU Institutions	36	4.7 %
Whistleblower	5	0.7 %
Other	70	9.2 %
Total	758	100 %

The geographical spread of fraudulent activities as determined by new case records is shown in the following figures. Towards the end of the reporting period the European Union was enlarged to 25 countries. For better comparability with past reports and because the new Member States changed their status during the current reporting period, the following 2 figures have been kept in line with last year's report. Figure 14 shows the distribution of new case records⁹ by the original 15 Member States.

Figure 14: Distribution of new case records from the reporting period by Member State

Member State	Number of cases
Austria	14
Belgium	42
Denmark	8
Finland	6
France	31
Germany	83
Greece	35
Ireland	13
Italy	85
Luxembourg	6
Netherlands	25
Portugal	8
Spain	47
Sweden	6
United Kingdom	34
Total	378

Figure 15 shows the new case records that have been created during the reporting period by new Member States and Candidate Countries.

⁹ More than one country can be concerned by the same case.

Figure 15: Distribution of new case records from the reporting period for new Member States and Candidate Countries

New Member State and Candidate Country	Number of cases
Bulgaria	11
Cyprus	4
Czech Republic	6
Estonia	8
Hungary	14
Latvia	7
Lithuania	14
Malta	2
Poland	26
Romania	47
Slovakia	7
Slovenia	3
Turkey	7
Total	156

Figure 16 shows the distribution of 215 new case records for third countries by geographical region.

Figure 16: New case records from the reporting period by geographical region

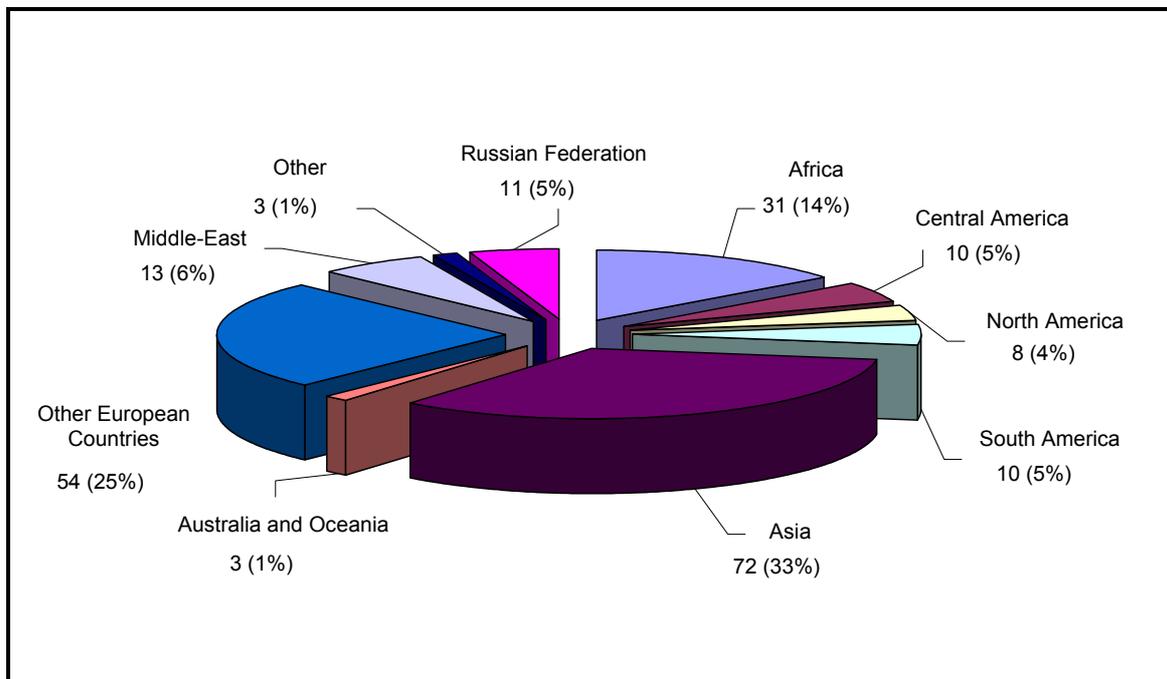
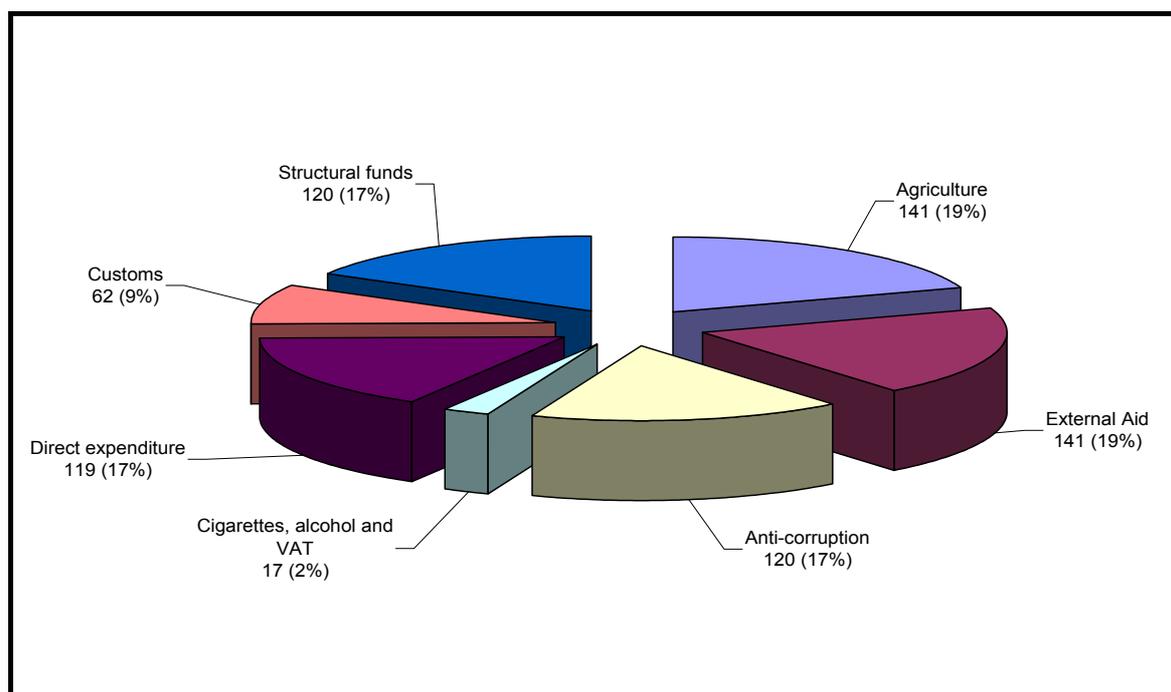


Figure 17 shows the 720 new case records by sector.

Figure 17: New case records from the reporting period by OLAF sector



The following two figures give the details of all opening and closing decisions by sector and case type. Figure 18 confirms the high percentage of coordination and assistance cases for the traditional sectors, agriculture and customs, cigarettes, alcohol and VAT. In fact, all new precursor cases and all VAT cases, half of all new customs cases and 72% of all new agriculture cases are coordination cases.

Figure 18: Opening Decisions taken during the reporting period

Major sectors	Coordination cases	Criminal Assistance Case	External investigation cases	Internal investigation cases	Total	Monitoring	Non Cases
Agriculture	46	4	14	0	64	13	48
Alcohol	0	0	0	0	0	0	1
Anti-Corruption	0	4	0	16	20	0	31
Cigarettes	8	3	1	0	12	0	0
Customs	11	2	8	0	21	2	10
Direct Expenditure	0	5	16	0	21	2	50
ESTAT	0	0	6	7	13	0	3
External Aid	0	5	27	0	32	7	64
Multi Agency Investigations	0	0	1	0	1	0	0
Precursors	11	0	0	0	11	0	0
Structural Funds	6	5	11	0	22	5	47
VAT	2	0	0	0	2	0	1
Total	84	28	84	23	219	29	255

Figure 19 shows the final result of OLAF investigations by sector. More than half¹⁰ of the investigations in agriculture, customs and VAT end with a follow-up recommendation. This figure shows also that two-thirds of internal investigations end without follow-up.

Figure 19: Cases closed during the reporting period

Major sectors	Follow-up	No follow-up	Grand Total
Agriculture	20	29	49
Alcohol	1	1	2
Anti-Corruption	17	21	38
Cigarettes	10	9	19
Customs	35	19	54
Direct Expenditure	22	14	36
ESTAT	0	4	4
External Aid	27	34	61
Multi Agency Investigations	0	1	1
Precursors	0	15	15
Structural Funds	18	22	40
Trade	2	5	7
VAT	7	6	13
Total	159	180	339

Figure 20 shows for each sector how many cases were active at the end of the current reporting period. Internal and external investigations account for almost 55% of the active caseload.

Figure 20: Active cases by type and cases in evaluation as at 31/12/2004

Major sectors	Co-ordination cases	Criminal Assistance Case	External investigation cases	Internal investigation cases	Total	Evaluation
Agriculture	55	10	30		95	14
Alcohol	1				1	
Anti-Corruption		7		41	48	28
Cigarettes	33	7	3		43	2
Customs	34		38		72	18
Direct Expenditure		8	32	1	41	35
ESTAT			7	11	18	14
External Aid		11	59		70	30
Multi Agency Investigations		1	5		6	3
Precursors	7				7	1
Structural Funds	6	12	26		44	48
Trade		1	1		2	
VAT	16	6			22	2
Total	152	63	201	53	469	195

¹⁰ Excluding monitoring cases.

1.3. Internal Investigations

At the end of 2004, 68 internal investigations (in addition to those linked to Eurostat) were open and 25 cases were under assessment. Figure 21 gives the details by EU Institution concerned. It confirms that as the Commission carries out the vast majority of financial transactions within the EU Institutions, it inevitably accounts for the large majority of initial allegations and also of internal investigations¹¹.

Figure 21: Anti-Corruption cases in evaluation and in active stage at the end of the reporting period

EU Institutions	Evaluations	Active Investigations	Grand Total
Committee of the Regions	1	0	1
Council	1	31	4
Court of Auditors	0	2	2
EU Agencies	5	2	7
Economic and Social Committee	1	1	2
European Commission	12	56	68
European Investment Bank	5	2	7
European Parliament	0	4	4
Total	25	68	93

2. OPERATIONAL SUPPORT

2.1. Operational Intelligence

Operational intelligence includes specialist support and assistance to OLAF investigators on internal and external investigations. The team is sometimes also asked to assist the Member States. Figure 22 shows the distribution of some 1200 requests for information and intelligence support that were handled within OLAF.

Figure 22: Requests for Intelligence Support by Domain

Intelligence Sector	Total
Information support	745
Operational intelligence	190
Technical Assistance	107
Evaluation cell	168
Total	1210

Since 1 April 2004, such requests have been made through the Case Management System (CMS) following the development of an intelligence module within the CMS. This

¹¹ More than one Institution may be concerned by an assessment/investigation.

module makes it easier to manage the relationship between the intelligence analyst and the investigator who requires intelligence support.

2.2. Legal advice on national criminal law

Specific in-house advice on national criminal law, investigation and judicial procedures is provided in support of investigations and follow-up matters. An increasingly important working cooperation with the national judicial authorities is also maintained. Members of the Magistrates, Judicial Advice and Follow-up Unit have been increasingly associated to on-going investigations where the facts indicated potential criminal conduct. Figure 23 shows the involvement of members of this Unit in cases created before the end of 2004.

Figure 23: Judicial advice in the course of an investigation by sector

OLAF Sector	Number of cases
Agriculture	30
Anti-corruption	65
Cigarettes	25
Customs	13
Direct expenditure	47
External aid	53
Multi-agency investigations	5
Precursors	1
Structural funds	50
Trade	8
VAT	14
Total	311

2.3. Legal advice on Community law

OLAF's legal experts provide in-house legal advice and support on horizontal and sectoral Community legislation in support of investigations. Figure 24 shows the number of cases for which advice was given both in terms of opening and closing of investigations in the areas of anti-corruption, direct expenditure and external aid.

Figure 24: Legal advice on Community law in the course of an investigation by sector

OLAF Sector	Initial information: Number of cases	Final case reports: Number of cases
Anti-corruption	3	3
Direct expenditure	54	66
External aid	33	11
Total	90	80

3. FOLLOW-UP ACTIVITY

Follow-up activity refers to action taken by OLAF once the case investigation phase is closed. This activity falls into two broad categories, as follows:

- Financial (including recovery), administrative, and legislative follow-up;
- Judicial and disciplinary follow-up.

Figure 25 shows the number of follow-up cases at the end of the reporting period by sector and that structural funds account for nearly one third of all cases in follow-up.

Figure 25: Follow-up cases by sector

Sector	Number at 31/12/2004
Agriculture	108
Alcohol	5
Anti-corruption	88
Cigarettes	45
Customs	85
Direct expenditure	136
External aid	168
Multi-agency Investigations	1
Structural funds	304
Trade	79
VAT	44
Total	1063

3.1. Administrative and Financial Follow-Up

The total financial impact of all cases that were in follow-up at the end of the reporting period as estimated at the end of the investigations amounts to more than € 1.78 billion. Figure 26 gives the details in € million by sector.

Figure 26: Cases in financial follow-up with financial impact by sector

Sector	Amounts to be recovered
Agriculture	189.8
Anti-Corruption	5.3
Cigarettes	4.3
Customs	69.2
Direct Expenditure	4.4
External Aid	21.1
Structural Funds	332.6
Trade	157.1
VAT	996.8
Total	1,780.6

Financial recovery action is often, depending on the method of implementation for the budget sector concerned, carried out by national authorities under national legislation. Several Member States may be involved in a single case. Long term civil and/or criminal proceedings may also be underway. Legislation and the arrangements for its implementation may need to be formally clarified before practical steps can be taken.

Figure 27 shows the steep increase in amounts that have been recovered over the last 3 year period by sector.

Figure 27: Amounts recovered in € million

Major Sector	Amounts recovered 2002	Amounts recovered 2003	Amounts recovered 2004 ¹²
Anti-Corruption			0.038
Customs		0.035	1.578
Direct expenditure	0.055	0.348	1.975
External aid	0.005	0.826	2.010
Structural funds	0.726	1.469	192.584
Trade			0.065
Total	0.786	2.678	198.250

3.2. Judicial and disciplinary follow-up

Figure 28 gives an overall view of the judicial and disciplinary follow-up position by sector. The Office opened 675 judicial follow up and 30 disciplinary follow-up cases.

Figure 28: Cases in judicial and disciplinary follow-up by sector

OLAF Sector	Number of cases in judicial follow-up	Number of cases in disciplinary follow-up
Agriculture	75	
Alcohol	4	
Anti-corruption	80	26
Cigarettes	40	
Customs	38	
Direct expenditure	103	2
External aid	115	2
Structural funds	141	
Trade	36	
VAT	43	
Total	675	30

¹² This amount includes € 165 million related to the financial corrections for ESF cases (programming period 1994-1999) for which the financial follow-up of the OLAF cases was closed in 2004.

ANNEX

DEFINITIONS

Assessment: The purpose of an initial assessment is to analyse the information initially received at OLAF in order to make a recommendation as to whether an investigation should be opened, and if so, which category of case.

Internal investigations: Internal investigations are administrative investigations within the Community organs for the purpose of detecting:

- fraud, corruption, and any other illegal activity affecting the financial interests of the European Community;
- serious matters relating to the discharge of professional duties that constitute a dereliction of the obligations of officials and other servants, members of the institutions and bodies, heads of offices and agencies, or members of staff, and liable to result in disciplinary or criminal proceedings. (Individuals who work inside Community organs but are not subject to the staff regulations, such as interim employees, cannot be the subject of an internal investigation.)

External investigations: External investigations are administrative investigations outside the Community organs for the purpose of detecting fraud or other irregular conduct of natural or legal persons. They may be carried out under either horizontal or sectoral legislation. Such cases are classified as external investigations where OLAF is providing the majority of the investigative input.

Coordination cases: Coordination cases are cases that could be the subject of an external investigation, but where OLAF's role is simply to facilitate the exchange of information and operational synergy among acting national and Community services; the majority of investigative resources are provided by other authorities. OLAF's role is to facilitate contacts and to encourage the responsible authorities to work together.

Assistance cases: (Criminal) assistance cases are cases within the legal competence of OLAF in which competent authorities of a Member State or Candidate Country carry out a criminal investigation and request OLAF's assistance, or OLAF offers its assistance.

Monitoring cases: Monitoring cases are cases where OLAF would be competent to conduct an external investigation, but in which a Member State or other authority is in a better position to do so (and is usually already doing so). Monitoring cases are passed directly to the authority judged competent to handle them. No OLAF investigation resources are required, but, as the interests of the EU are at stake, OLAF will follow up, via the appropriate follow-up unit, with requests for reports on developments at regular intervals.

Non-case: Non-cases are cases where there is no need for OLAF to take any investigation, coordination, assistance or monitoring action. Non-cases result from assessments that conclude, for a variety of reasons, that there is no reason to believe that EU interests are at risk from irregular activity. This process may result in the transmission to Member States of information about possible offences not related to the protection of EU interests.

Prima Facie Non-case: Where information is received that clearly and unequivocally does not fall within the competence of OLAF, then the responsible Head of Unit may propose not to refer the information for assessment. A special form must be completed and countersigned by the Director B. A CMS record is created, but the case appears on the CMS as closed.

Follow-up: Follow-up includes various activities designed to ensure that the competent Community and national authorities have executed the legislative, administrative, financial or judicial measures recommended by OLAF.

Administrative follow-up: Administrative follow-up consists of all measures taken by national administrative authorities or by the Commission services with regard to the execution of Community policies and law. It includes case-specific measures: ensuring that the authority in question has taken the necessary administrative measures to remedy the fraud, irregularities or other illegal activity at issue in a specific case; and more general measures, with wider relevance, such as ensuring that all the appropriate notifications have been made by the national authorities to the Commission services.

Legislative follow-up: Legislative follow-up involves the development of proposals for the “fraud-proofing” of draft legislation or contract provisions. Practical experience gained as a result of OLAF’s operational activities is often the basis for a legislative follow-up action, which may include proposals for: new Community legislation; amendment of existing Community legislation; to modify standard Community contract clauses; and opinions on the need to modify Member States’ legislation.

Financial follow-up and recovery: Financial follow-up activities differ significantly according to the sector involved. When recovery issues arise during the investigation, the investigator coordinates activities with the follow-up units. This includes Traditional own resources, Agricultural sector, Structural policy field and Direct expenditure.

Judicial follow-up: Judicial follow-up is where there is evidence of possible criminal acts and the case is referred to the competent national judicial authorities for further investigation and prosecution where necessary. OLAF prepares a report setting out details of the alleged criminal activity and the supporting evidence for transmission to the relevant national judicial authority; provides legal or investigative assistance as required by the competent national judicial authorities.

Disciplinary follow-up: Disciplinary follow-up concerns internal cases only where there is evidence of serious matters relating to the discharge of professional duties, such as to constitute a dereliction of the obligations of an official or other servant of the Communities, liable to result in disciplinary proceedings. OLAF would recommend that the case be referred to the appropriate EU authorities (DG ADMIN and the disciplinary services of the other Community organs) for appropriate disciplinary action. A recommendation should also be made, where appropriate, to initiate a procedure under Article 22 of the Staff Regulations for the recovery of funds from the officials/other servants guilty of deliberate misconduct (full reparation) or gross negligence (partial reparation).¹³ This includes monitoring the progress of the case from the investigation stage to disciplinary proceedings and sanctions in order to provide relevant information in relation to the status of the case.

¹³ See Guidelines for applying Article 22 of the Staff Regulations (financial liability of officials), SEC(2004)730/5, June 2004, point 4.2.

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