

Annual Report 2009

European Anti-Fraud Office

Summary version

**Ninth Activity Report
for the period 1 January 2008 to 31 December 2008**



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Note to the reader: The Summary version of the Ninth Activity Report of the European Anti-Fraud Office, which is available in all official languages of the European Union, is an abridged version of the full Report, which is available in English, French and German.

Executive Summary



- OLAF again experienced a significant increase in the amount of information received (up 85% since 2003), in particular from Member States and individual informants, which confirms public confidence in OLAF.
- A significant share of OLAF's active investigations relates to a limited number of countries: approximately 55% of all the ongoing investigations in 2008 were linked to six member states (Belgium, Bulgaria, Italy, Germany, Romania, and the UK).
- OLAF continued to prioritise its resources to focus increasingly on serious cases; this is demonstrated by the fact that 68% of cases were closed with follow-up in 2008, compared to less than 45% only five years ago.
- €450 million were recovered in 2008 in respect of OLAF cases.
- The general caseload of the Office is under control, thus avoiding the build-up of a backlog of cases. The clearance rate – the ratio between the numbers of cases opened and closed - is close to 1 over time, in line with OLAF's operational strategy.
- Cases assessed and opened by OLAF are becoming increasingly complex. However, in 2008, the Office managed to bring down the average duration of the "active stage" from 28 months to just over 24 months, while about 60% of all cases are closed in less than 2 years.
- Cooperation with the Member States, other institutions and third countries remains essential to ensuring the success of investigations and has continued to be a key concern to OLAF, which strengthened its ties with operational partners on numerous occasions.
- In 2008, OLAF coordinated or provided assistance to four joint customs operations (JCO), during which the customs authorities of the participating Member States brought to light a large number of serious offences.
- Following the signature of a second agreement with a cigarette manufacturer, a first OLAF overseas liaison officer was posted in Beijing in order to combat cigarette smuggling and prevent loss of revenues for the European Budget.
- Relations with Eurojust and Europol have strengthened, reflected in part by the finalisation of an administrative agreement with Eurojust and the initiation of negotiations for a similar agreement with Europol.
- In 2008, OLAF's networking efforts remained mainly focused on Africa, with events such as the second Conference on the "protection and optimisation of public funds", being held in Cape Town, South Africa.
- At the end of 2008, 475 persons were working in OLAF.
- OLAF's administrative budget was €53 million.
- The process of ensuring that OLAF can recruit and retain sufficient qualified and experienced staff continued with the launch of specialist recruitment competitions for officials in 2008.
- OLAF's Annual Report 2009 provides extended focus on the **judicial follow-up of OLAF's investigations (section 2.4)**, on OLAF activities in the area of **"External Aid investigations and External Relations" (section 3.3)**, and on the consequences of **recent European case-law (section 5.5.4)**.

Foreword



The European Anti-Fraud Office celebrates its 10th anniversary this year. This is an opportunity for us to look back with pride at the achievements of the Office and to reflect upon how we move forward and continue to improve and adapt our activities to the ever changing threats to the financial interests of the European Union.

This ninth annual activity report shows clearly that decisions taken to-date have led to measurable improvements in OLAF's effectiveness; increased volume and quality of the information received, improved visibility and public confidence in OLAF; greater emphasis on operational activities in areas of high financial risk and where the reputation of the European Union is threatened, and a greater proportion of cases with significant recommendations for follow-up. I am happy to report that OLAF's activities have led to recoveries in excess of €1 billion of European taxpayer's money since 1999. The estimated financial impact of cases handled by the Office has reached an average €1.5 million.

In terms of efficiency, the total workload and the duration of investigations are under control. The long-term target of an average duration of investigations of 24-months was within reach in 2008. The backlog of old cases is now behind us. No two cases are the same; they differ greatly in scope and complexity. Whereas the majority of allegations forwarded to OLAF are processed within months, more complex cases involving cooperation with law enforcement and judicial authorities may take several years to reach a final outcome. OLAF is confronted with challenges related to accessing information from its partners. For example, OLAF encounters difficulties in obtaining direct access to several critical Commission databases in the framework of its investigative activities, in particular for evaluation purposes. OLAF will continue to liaise with the Secretariat-General of the Commission and the Directorates-General concerned to tackle this issue.

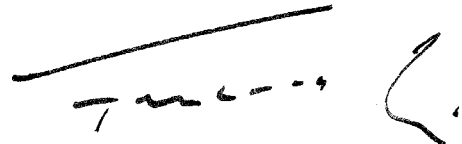
However, these achievements would not have been possible without the cooperation of OLAF's many partners, be it within the European Institutions, in Member States, or in third countries and international organisations. I trust the dedicated section in this report will provide a good overview of the network of partners that the Office is building to protect EU funds in Europe and around the world. A second regional conference in Cape Town, South Africa led to several arrangements that will facilitate OLAF's operational work on the ground. Concrete results of this cooperation have already been seen in the successful outcome of some prominent cases highlighted in this report.

Our cooperation with Member States authorities remains critical to make real progress in the fight against fraud. Much media attention has been directed at the situation in Bulgaria in recent months. OLAF has invested significant resources in assisting Bulgaria and will continue to cooperate closely with the Bulgarian national authorities and intensify its existing activities in the country. 2008 also saw the conclusion of a Practical Arrangement on further improved co-ordination and co-operation in the fight against financial fraud between OLAF and Eurojust. I am confident OLAF will be able to conclude a similar arrangement with Europol in the near future.

Within OLAF further steps were taken to ensure stability and continuity for the functioning of the Office. An important part of the political agreement on staffing between Vice President Kallas, OLAF and staff representatives has been implemented or is underway; most temporary staff have been granted indefinite contracts, external competitions have been finalised and internal competitions are underway. Following these competitions, OLAF will request to the budgetary authority the

transformation and regrading of temporary posts into permanent posts. More work remains to be done with regard to stabilisation of existing staff and retention and development of know-how and expertise and I am fully committed to continue in my efforts to further improve OLAF management of human resources to achieve this goal.

OLAF's successes are due to the hard work and commitment of its staff; drawn from a broad range of academic and professional backgrounds they ensure a multidisciplinary and global response in the fight against fraud. I am confident that they, along with the continued support of other stakeholders, will enable the Office to build on our achievements and continue to strengthen efforts to protect the EU's financial interests.

A handwritten signature in black ink, appearing to read 'Franz-H. Brüner', with a stylized flourish at the end.

Franz-H. Brüner
Director-General, July 2009

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1 OLAF's mission and working methods

1.1 Mission statement

The mission of the European Anti-Fraud Office¹ is to protect the financial interests of the European Union, and therefore of its citizens, and the reputation of the European Institutions. OLAF performs its activities with integrity, impartiality and professionalism respecting individuals' rights and freedoms.

OLAF's general objective remains **“To protect the financial interests of the European Union against fraud, corruption and any other illegal activities and to protect the reputation of the European institutions.”**

OLAF achieves its objectives by investigating fraud, corruption and any other illegal activity affecting those interests, and misconduct within the European institutions; assisting Community and National Authorities in their fight against fraud; promoting means of deterrence and prevention; strengthening legislation to make it more difficult for fraud and irregularities to occur and thereby contributing to public trust in the European project; and monitoring how its recommendations for judicial, disciplinary, administrative and financial follow-up are implemented by the competent authorities, and providing the necessary support whenever necessary

1.2 The main competencies of OLAF

- OLAF is empowered to conduct in full independence:
 - **internal investigations**, i.e. inside any European institution or body funded by the EU budget.
 - **external investigations**, i.e. at national level, wherever the EU budget is involved. For this purpose, OLAF may conduct on-the-spot checks and inspections on the premises of economic operators, in close cooperation with the competent Member State and third-country authorities.
- OLAF has budgetary and administrative autonomy, designed to make it operationally independent. The legal framework includes guarantees associated with the post of Director General, and a Supervisory Committee composed of five outside experts providing independent oversight of OLAF's operational activities.
- While OLAF is operationally independent, its staff are also agents of the European Commission and are subject to its internal rules and powers. This concerns activities such as general administration, participation in the Commission's legislative and policy initiatives and international cooperation.

1.3 OLAF's resources

On 31 December 2008 there were 475 persons working in OLAF of whom 355 were statutory staff. Most people are deployed on OLAF's core remit: investigations and operational activity. Three-quarters of OLAF staff² are occupied with tasks related to the Office's operational activity including administrative support for operational activity.

OLAF's administrative budget in 2008 was €53 million. Its operational budget, which funds anti-fraud activities, almost doubled compared to €21.3 million in 2006. This increase is mainly due to the entry into force of the Hercule II Programme.

¹ Commonly known under its French abbreviation OLAF which stands for *Office européen de Lutte Anti-Fraude*

² Approximate figure based on an estimate of the time devoted by each member of staff to a task associated with the Office's operational activity.

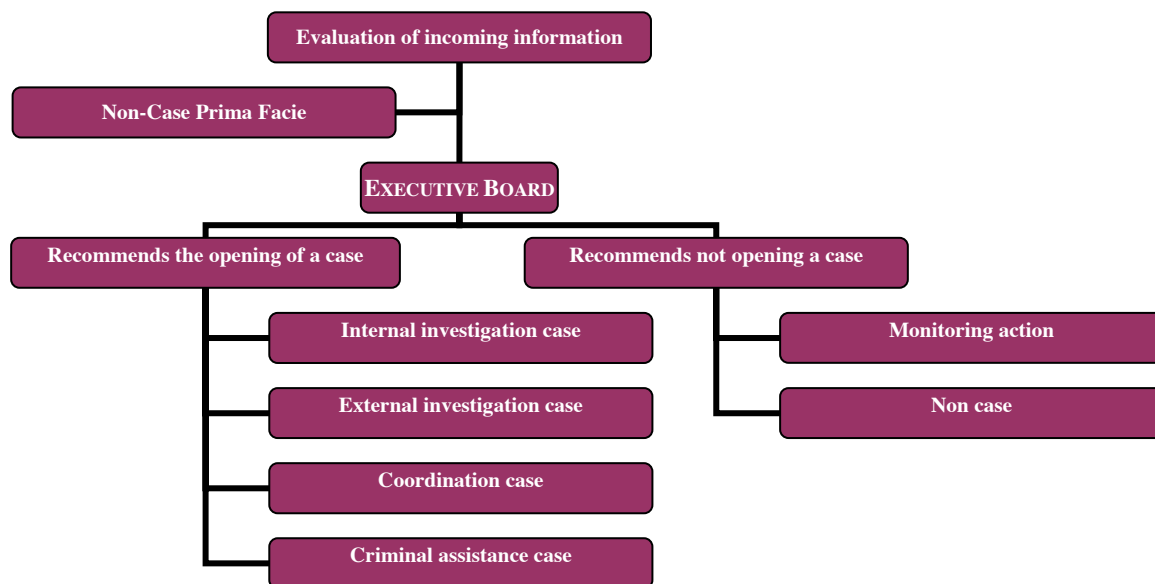
1.4 The Investigations and Operations Executive Board

The Investigations and Operations Executive Board (“the Board”) assists the Director General by giving advice on the handling of cases.

The Board advises the Director General on each major stage in the lifecycle of cases:

- opening decision, *i.e.* internal, external investigation, coordination or criminal assistance case;
- decisions on “non-cases”;
- changing case types; closure;
- opening new follow-up paths; and
- closing follow-up.

Where relevant the Board is informed of the activities of external investigative, judicial and other partners associated with a case.



Once the operational activity has been completed in an open case in accordance with formal procedures and has been approved by the Board, the case moves to the **follow-up stage**³ if necessary. Follow-up includes various activities designed to ensure that the competent Community and national authorities have carried out the administrative, financial, legislative, judicial and disciplinary measures recommended by OLAF.

³ In some circumstances follow-up activities may take place before the formal closure of the investigation stage.

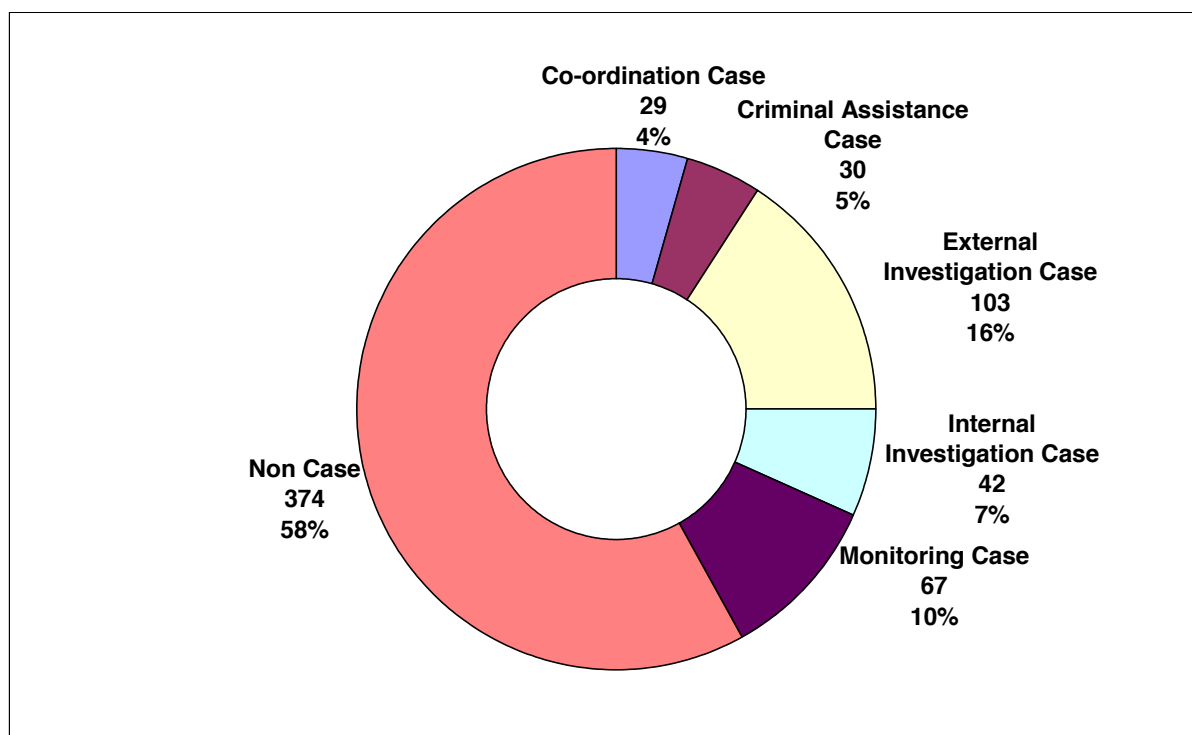
2 OLAF's workload

2.1 More incoming information confirms public confidence in OLAF

OLAF is becoming increasingly known and trusted to make effective use of information it receives. The volume of information received has risen steadily from 529 new items of information in 2002 to 1035 new items in 2008.

In 2008, 645 decisions (up 18% compared to 2007) were taken on the basis of new incoming information. A detailed breakdown by type of case or action is set out below in **Chart A**.

Chart A: Decisions taken in 2008



2.2 Operational activity: prioritising and focusing on core business

Out of 645 decisions taken, 204 - or 31% - resulted in the opening of a case⁴, a slight decrease compared to 2007 (during which 210 cases were opened). In addition, the proportion of cases closed with follow-up continued to increase, and represented more than 65% of all cases closed in 2008, compared with less than 45% before 2004⁵. These data confirm OLAF's policy to use its resources to investigate the most serious cases. Priority also continues to be given to assessing information in respect of which OLAF has a clear mandate.

Since 2004, the number of OLAF's own investigations has caught up with and has now overtaken the number of cases in which OLAF assists national authorities (**Chart B**). The trend demonstrates that OLAF's activity has gradually moved towards a 75% share of "own investigations", with only a 25% share of "coordination and assistance cases".

⁴ Cases include co-ordination cases, criminal assistance case, external and internal investigations.

⁵ See **Chart 11** in the full report

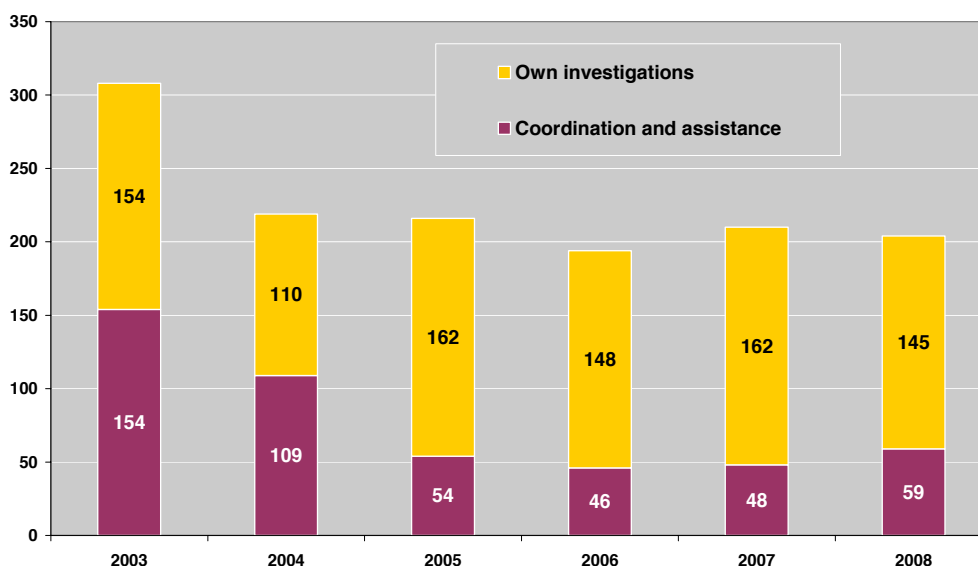
Chart B: Number of opening decisions by year and nature of the investigation

Chart C gives a breakdown of the 204 opening decisions adopted in 2008. *Internal EU Policies* and *External Aid* cases (30%), together with *Internal investigations* (25%) where OLAF is the only authority in charge of the preliminary administrative investigation, represent more than half of the total opening decisions.

The complete version of the 2008 report provides for a detailed analysis of operational activities by domain, this year highlighting in particular the area of external aid and external relations.

Chart C: Opening decisions taken in 2008 by area and type of decision

Major Area	Coordination case	Criminal Assistance case	External Investigation case ¹	Internal Investigation case	Total
Agriculture	11	17	12	0	40
Internal Investigations	0	3	8	42	53
Cigarettes	2	1	0	0	3
Customs	13	3	7	0	23
Internal EU Policies	0	1	21	0	22
External Aid	0	2	36	0	38
Structural Actions	3	3	19	0	25
Total	29	30	103	42	204

(1) External investigations cases in the area of “EU institutions and bodies” relate to cases in which third parties, e.g. contractors, are involved.

At the end of 2008, 425 OLAF investigations were active, out of which 351 in the EU and candidate countries. A significant share of the latter relates to a limited number of countries: approximately 55% of the active investigations in the EU were linked to six member states (Belgium, Bulgaria, Italy, Germany, Romania, and the UK) as illustrated by **Chart D**. **This does not necessarily imply that more fraud occur in the countries with the highest number of OLAF investigations, as a better cooperation with local authorities can also lead to a higher number of referrals to the Office.**

A proportionally higher occurrence is to be expected in Luxemburg and Belgium relative to their size, population and receipts from the EC budget, given that they are the seats of the largest European institutions. The vast majority of the allegations regarding the EU Institutions and bodies are therefore undertaken in these countries.

Chart D: Active investigations at the end of 2008 in Member States and Candidate Countries

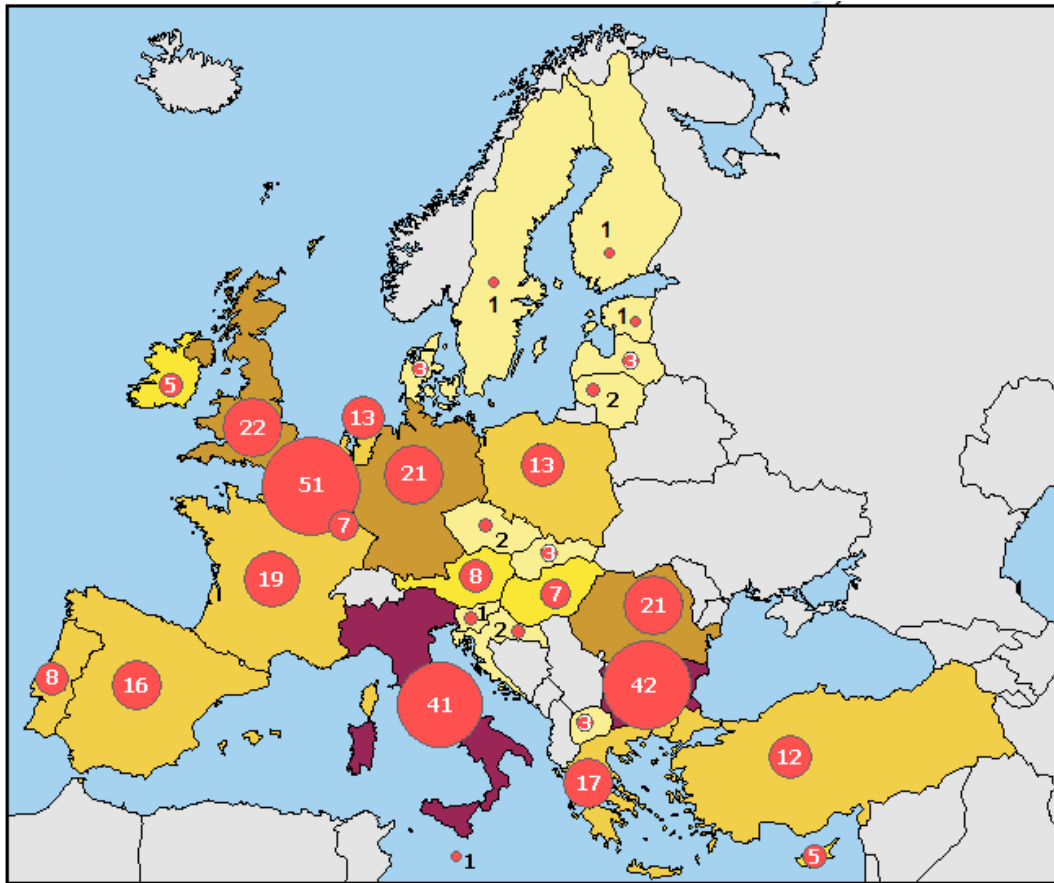


Chart E shows the number of cases opened and closed annually in the period 2003-2008. It illustrates that the clearance rate is remaining close to 1 over time. A clearance rate – the ratio between the numbers of cases opened and closed - of 1 has been set as a medium-term target in order to adapt the workload to the resources available and to avoid an excessive backlog of cases.

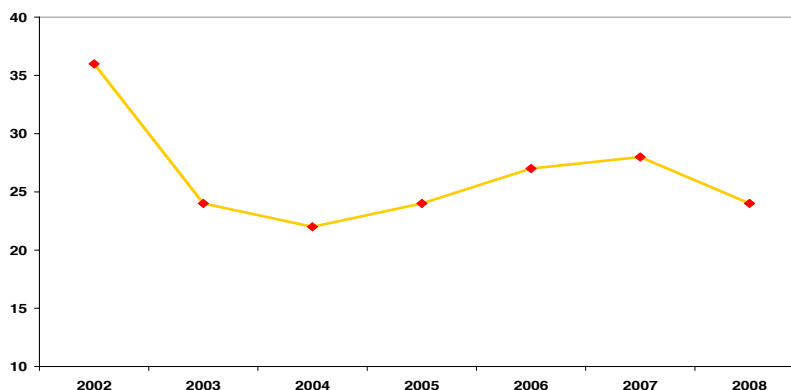
Chart E: Opening, closing decisions and clearance rate (2003-2008)

	2003	2004	2005	2006	2007	2008
Cases opened	308	219	214	195	210	204
Cases closed	493	339	233	216	232	187
Clearance rate	0.62	0.64	0.91	0.90	0.90	1.14

Chart F shows that the average duration of cases has been relatively stable over time. OLAF keeps this indicator under close scrutiny, since reducing the average duration of cases is of a key concern for

the Office. About 60% of all OLAF cases are closed in less than 2 years. The decrease in the average duration emphasises the progress accomplished by the Office in tackling this important issue, in spite of the difficulties faced by investigators in complex cases and in cases where the involvement of Member States or outside partners is required⁶.

Chart F: Duration in months of the active stage of investigations completed in each calendar year



2.3 Follow-up activity

Cases closed with follow-up accounted for an increased proportion of cases closed in 2008 - more than 68% as compared to 41% only five years earlier. This positive development demonstrates that OLAF's operational and investigative work has been successfully translated into a proportional increase in significant investigative findings. However, OLAF is now striving to increase its focus on 'serious cases' even more through the adoption of more stringent criteria for opening follow-up paths. **These *de minimis* rules will apply as of 2009 and will restrict follow-up to cases where the financial, reputational or systemic risk is highest. The remaining cases will be referred to other competent bodies whenever necessary.**

Chart G: Cases closed with and without follow-up in each calendar year

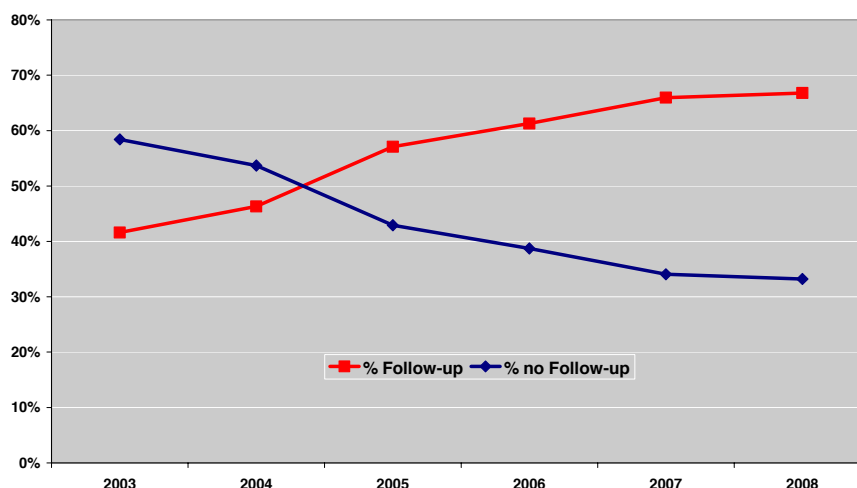
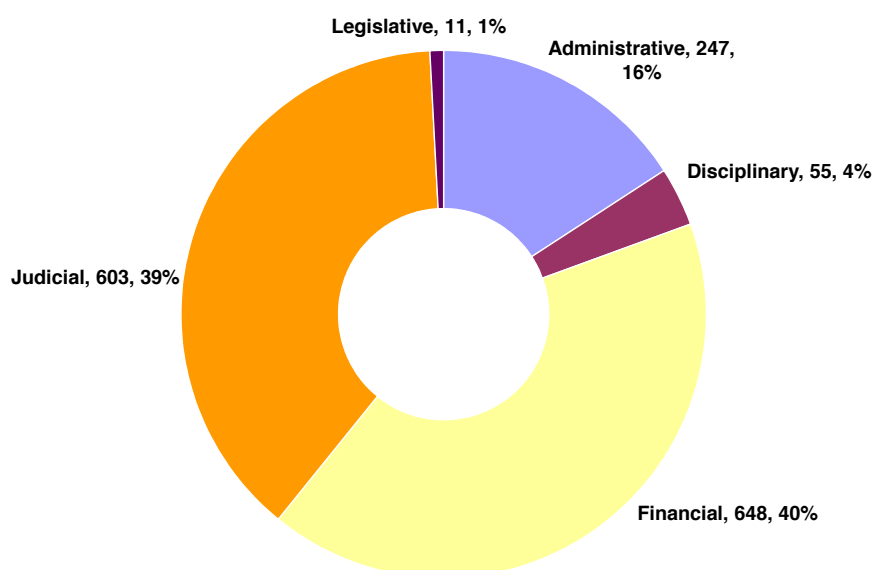


Chart H illustrates the follow-up activities related to the 888 cases closed for which at least one follow-up path was still open at the end of 2008. Most activities relate to judicial and financial follow-up. A special focus on judicial follow-up can be found in the complete version of the report for 2008.

⁶ See section 2.3 of the full Report.

Chart H: Type of follow-up activities in respect of closed cases at the end of 2008

2.4 Recovery

In 2008, a sum exceeding €450 million was recorded as recovered in the context of OLAF cases. This arises from the follow-up paths closed in 2008 (about €150 million) and from the actions that were still in follow-up at the end of the year (about €315 million).

Chart I shows the annual breakdown of financial recovery completed in the last five years. These sums represented only a fraction of the total amounts recovered following a fraud or other irregularity, as most of the recoveries are made by Member States with no direct link to OLAF cases⁷.

Chart I: Breakdown of amounts recovered in million Euros in each calendar year in respect of financial follow-up paths (closed only, except for the last column)

Major Area	2004	2005	2006	2007	2008	Total	<i>Additional amounts recovered in respect of follow-up paths still open in 2008</i>
Agriculture	0.07	14.43	1.18	0.84	2.0	18.4	147.2
Customs	1.58	63.05	0.13	3.34	14.2	82.2	142.8
Internal EU Policies	1.86	0.18	0.25	0.49	0.5	3.3	1.2
EU Institutions and Bodies	0.04	0.00	2.16	0.13	0.2	2.4	1.9
External Aid	2.01	31.78	92.72	0.90	1.9	129.3	2.5
Structural Funds	192.62	97.96	17.22	197.67	128.0	634.1	18.7
Total	198.17	207.40	113.66	203.37	146.8	869.7	314.3

⁷ See the *Commission Report on the Protection of the Communities' financial interests – Fight against Fraud 2008* for more details.

3 OLAF's added value: some case studies⁸

Problems with SAPARD funding - OLAF's role as "watchdog"

The SAPARD programme (Special Accession Programme for Agriculture and Rural Development) was introduced by the Commission in order to support the Central and Eastern European applicant countries in the pre-accession period for their participation in the CAP and the single market.

In Bulgaria and Romania, OLAF has detected various cases of fraud and irregularities in projects funded under SAPARD where second hand equipment was used instead of new, and inflated offers and manipulated invoices were presented to, and accepted by, the competent authorities. In addition, it was established that falsified documents were used to support SAPARD funding applications. The financial impact of these irregularities and fraud cases could amount to more than €80 million. At the end of 2008, OLAF had twenty-three active cases in Bulgaria (out of 42 in this Member State) and five in Romania (out of a total of 21) in the area of agriculture.

To address these frauds and irregularities and to safeguard the financial interests of the Community, OLAF has intensified its activities in these two new Member States. In August 2008, Bulgaria established a "SAPARD" task force which OLAF is actively advising with a view to enabling established cases of fraud to be brought before the Courts. In both Member States, OLAF is working in close co-operation with the competent authorities on an on-going basis.

OLAF supports the Italian authorities in counterfeit euros operation



In January 2009, the Italian authorities carried out a nationwide operation against a major criminal organisation involved in euro counterfeiting. The operation, for which OLAF and the ECB provided technical assistance, **had been prepared since 2005**.

A total of **96 persons were arrested**, most of them in Reggio Calabria and near Naples, and around 150 house searches were performed. The group had been producing large numbers of counterfeit euro banknotes of 20, 50 and 100 euros and 2-euro coins.

Case study: Embezzlement in Global Fund projects in Uganda

In cooperation with the Office of the Inspector General (OIG) of the Global Fund and investigators of the UK Serious Fraud Office (SFO), OLAF is currently providing assistance to the Ugandan Directorate for Public Prosecutions (DPP) and Criminal Investigation Division (CID) in the investigation and prosecution of a series of cases arising out of the findings of a National Ugandan Commission of Inquiry into the mismanagement of the Global Fund grant program to Uganda.

The Global Fund combats in particular HIV /AIDS, TB and malaria. From 2002 to 2005 contributions of €230 million and €202 millions were made to the Global Fund from the European Development Fund (EDF) and the EU budget respectively. The Global Fund's activities therefore directly concern the Community's expenditures and affect the budget of the EDF and OLAF has the power to carry out investigations into alleged irregularities in the use of funds.

In August 2005 the Global Fund suspended payments of grants worth around **US\$ 200 million** to Uganda owing to allegations of mismanagement of funds. In a report of May 2006, an independent Commission of inquiry identified various instances of improper management of funds, including misappropriation of funds, fraud, bribery, false accounting and perjury. In response to the Inquiry report, the Ugandan government issued a

⁸ OLAF's annual report features case studies for illustrative purposes only. The fact that OLAF presents such case studies does not prejudice the outcome of judicial proceedings; nor does it mean that the allegations presented imply that particular individuals are guilty of any wrongdoings.

White paper, which recommended, among others, that over 300 cases identified by the Commission be referred to the national authorities for criminal investigation. In the course of the criminal investigations it became clear that outside forensic and investigative experience was needed by the Ugandan authorities.

Since August 2008, OLAF, the SFO and OIG carried out four joint missions to Kampala to provide support to investigatory and prosecutorial authorities, to enable the effective investigation of alleged fraud and the recovery of funds. (e.g. through IT forensic investigation and case management support to investigators and prosecutors). Specifically, the teams reviewed cases that are currently before the courts, provided suggestions on how to strengthen those cases, provided specialist IT tools and support to the investigations.

This successful partnership has resulted in criminal prosecution in several cases. Two convictions were secured before the newly established Anti-Corruption Division of the Ugandan High Court on cases where assistance was provided. The cases resulted in **sentences of 5 and 10 years imprisonment** on multiple counts of fraud, and the ordering of repayment of the amounts defrauded.

Apart from meeting immediate needs for the effective prosecution of these cases, such assistance has also initiated a cooperation to develop the capacity of Ugandan authorities to effectively deal with large-scale corruption cases.

4 Cooperation with OLAF's partners: a key factor in the fight against fraud

4.1 Cooperation with Member States

4.1.1 Joint Customs Operations

In 2008, OLAF coordinated the joint customs operations "MUDAN" and "BOOMERANG", and supported the joint customs operations "CARETTA" and "BELUGA" conducted respectively by Ireland and France.

Operation MUDAN for example was the first operation targeting the import movements of cigarettes using the postal system. The results of the operation included 920 seizures of 1.5 million counterfeit Chinese brand cigarettes and 2 tons of Hand Rolling Tobacco.

4.1.2 Agreements with cigarette manufacturers

In 2008, OLAF continued to implement the Agreements concluded in 2004 and 2007 with PMI and JTI. In cooperation with OLAF and the Member States, the Agreements provide for procedures to monitor and trace products in order to determine the point at which genuine cigarettes (of the PMI and JTI brand) are diverted from the legal supply chain and fall into the hands of smugglers. Every year, the budgets of the EU and its Member States lose hundreds of millions of euros in unpaid taxes from contraband and counterfeit cigarettes. Counterfeit and other forms of contraband compromise legitimate distribution channels, and compete unfairly with genuine products.

In September 2008, OLAF posted its first overseas liaison officer in Beijing, China. His placement complements the Agreements concluded by the European Commission with cigarette manufacturers. His primary responsibility is to provide intelligence and to facilitate international cooperation with the host authorities in support of the anti-contraband and anti-counterfeit activities of the Office in relation to tobacco products since China is one of the primary sources of counterfeit cigarettes for the EU, and the good cooperation with the Chinese authorities is key to efficiently tackling this problem.

On the basis of direct OLAF intelligence over 83 million cigarettes were seized in 2008, representing prevented losses in taxes and duties of **€20 million**. In addition, OLAF's continuing assistance to the Member States in large-scale international investigations helped them to seize several hundred million cigarettes and dismantle a number of serious international criminal groups.

4.2 Cooperation with EU bodies in charge of police and judicial cooperation

4.2.1 Eurojust

On 24 September 2008, OLAF and Eurojust concluded a Practical Arrangement on further improved co-ordination and co-operation in the fight against financial fraud. For Eurojust and OLAF, this arrangement constitutes a further enhancement of their co-operation and collaboration, in accordance with their respective competences and tasks. The Practical Agreement contains in particular provisions for the exchange of general and personal data. The agreement is intended to stimulate more effective cooperation on operational cases of common interest.

Since the establishment of the joint Liaison Working Group in 2004, cooperation on cases of common interest has increased.

4.2.2 *Europol*

Since the signing of the administrative arrangement with Europol in April 2004, regular meetings have taken place between members of OLAF Intelligence units and their counterparts in the economic crime section of Europol. Bilateral relations with Europol have been strengthened, which is reflected in part by the initiation of negotiations for an administrative arrangement similar to that concluded with Eurojust.

Both OLAF and Europol also work on combating cigarette smuggling and on the protection of the euro. The analytical resources of Europol combined with the established operational experience of OLAF should ensure the best possible service to the Member States and should avoid unnecessary duplication of efforts.

4.3 Cooperation with international partners: raising awareness and building trust

OLAF itself organised six conferences and seminars in 2008 for external training purposes in priority areas such as cooperation with candidate countries, investigations in cooperation with national services, including those of Africa and the Middle-East, communication and cooperation with national prosecutors.

4.4 Special focus in the 2008 report

In this year's report certain areas of OLAF's work have been highlighted as they represent areas in which the Office has paid particular attention as part of its efforts to improve the effectiveness and efficiency of its activities.

The full report provides an extended analysis on the **judicial follow-up of OLAF's investigations** (**section 2.4**), as this is essential for the effective prosecution and deterrence of fraud. Since its creation in 1999, OLAF has opened more than 3.000 cases, as a result of which over 300 individuals have been sentenced by criminal courts, for a combined total of nearly 875 years of imprisonment. In addition, OLAF's investigations have led to in excess of €1 billion of European taxpayers' money being recovered.

Several case studies are featured in the report which demonstrate how OLAF's work cannot always be expected to bring overnight results, as judicial proceedings often require several years to reach a final outcome.

The second area of focus relates to OLAF activities in the area of "**External Aid investigations and External Relations**" (**section 3.3**), including the need to work with partners in third countries and other international organisations. OLAF's mission extends well beyond the borders of the EU and protecting effectively EU funds around the world cannot be done in isolation. The Global Fund case presented in section 3 exemplifies these developments.

A separate emphasis is put on the consequences of **recent European case-law** (**section 5.5.4**). Some judgments by the European courts have had a direct bearing on OLAF's everyday work requiring changes to the way in which operational activities are carried out.