

Annual Report 2010

European Anti-Fraud Office

Summary

Tenth Activity Report
1 January to 31 December 2009



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Disclaimer:

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

Note to the reader: The Summary version of the Tenth 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.

In Memoriam
Franz-Hermann Brüner
14 September 1945 – 9 January 2010

Mr Brüner was appointed OLAF's founding Director-General on 1 March 2000.

His aim from the start was to establish the Office as a credible, efficient and respected actor in the fight against fraud. Through the recruitment of experienced and specialist staff from a wide range of backgrounds, and the introduction of new procedures and work practices, supported by new tools and IT systems, he oversaw the creation of the sound base on which OLAF's successes were subsequently achieved.

Mr Brüner saw from the very beginning that OLAF could not achieve its goals by working alone. Cooperation was needed with a wide range of partners within the EU institutions and bodies, with the law enforcement, judicial and administrative authorities of the Member States and with international partners. This cooperation was essential not only to enable OLAF to conduct its operational activities but more widely so the fight against fraud and corruption could be tackled effectively wherever it occurred.

Most importantly Mr Brüner recognised that OLAF's success was only possible thanks to the hard work, commitment and professionalism of all its staff. It was fitting therefore that his last official engagement was to celebrate with his staff the 10th Anniversary of the creation of OLAF.



Foreword

For the whole of the period covered by this Report, OLAF was led by Franz-Hermann Brüner. Sadly, Mr Brüner died in January 2010, a year before the end of his second mandate. He is remembered elsewhere in this Report and in the many other tributes which have been published. Born amid the chaos of 1945, he devoted his life to improving the structures of justice in Europe, following German reunification, in Bosnia and Herzegovina, and at the heart of the EU project, as the first Director General of OLAF.

In 1999, the legislator gave OLAF three main tasks: to investigate in full independence fraud against the EU Budget inside and outside the Institutions, to foster cooperation among the Member States and to coordinate their anti-fraud activities, and to contribute to the development of anti-fraud policies and legislative initiatives. OLAF has developed into a structured, multi-disciplinary administration in pursuit of this remit. This Report records the results achieved, in particular in relation to OLAF's independent operational work.

The challenges which OLAF is now facing are largely the challenges of success.

Over a decade of expansion, OLAF has implemented its mandate by developing its activities in a whole range of areas: internal investigations within EU Institutions, agencies and bodies; substantial and complex investigations, increasingly analysis-based, in sectors of the Budget which were previously scarcely covered; coordination of Customs operations; suppression of illegal trafficking of cigarettes in a wide sense; major efforts in the new Member States before and after enlargement, and in neighbourhood countries; a leading role among the international organisations active in fighting fraud in aid and development projects as well as on the ground in Africa and elsewhere; a massive investment in specialist IT for investigation support, analysis, and secure international communication and coordination, to mention only some. Solid and reliable OLAF procedures have been developed within a complex and evolving legal framework.

OLAF is not, however, immune from the pressures which apply to the public service as a whole. Resource pressures mean that it is necessary to refocus and to reassess priorities so as to respond to the key threats as they develop and to ensure that OLAF staff are deployed so as to maximise the multiplier effect of our contribution to the joint efforts of partner services.

Also, necessary reform of OLAF is on the political agenda, partly to take account of lessons learnt in the past, partly to exploit the opportunities created for the future by the Lisbon Treaty. OLAF staff understand the need for change and welcome greater clarity and the perspective of a more significant role. Nevertheless, it is important that the political process takes due account of the need to maintain both the independence and the effectiveness of an operational service and the morale and commitment of its workforce.

Finally, on behalf of the senior management team, I would like to thank OLAF staff at all levels for their hard work and commitment, often in difficult and demanding circumstances.



N.J. Ilett
Acting Director-General,
July 2010

Contents

S.1. OLAF'S ROLE AND RESPONSIBILITIES	7
S.1.1. MISSION STATEMENT	7
S.1.2. OLAF'S MAIN POWERS AND RESOURCES	7
S.2. OLAF'S ADDED VALUE: A FEW CASE STUDIES	9
S.3. SPECIAL FOCUS OF THE 2010 REPORT.....	13
S.4. OLAF'S WORKLOAD	14
S.4.1 PUBLIC CONFIDENCE IN OLAF	14
S.4.2 OPERATIONAL ACTIVITY: PRIORITISING AND FOCUSING ON CORE BUSINESS	14
S.4.3 FOLLOW-UP ACTIVITY	18
S.4.4 RECOVERY	20

S.1. OLAF's role and responsibilities

S.1.1. Mission statement

The mission of the European Anti-Fraud Office (OLAF) is to protect the financial interests of the European Union, to fight fraud, corruption and any other irregular activity, including misconduct within the European Institutions. In pursuing this mission in an accountable, transparent and cost-effective manner, OLAF aims to provide a quality service to the citizens of Europe.

} Our values:
OLAF performs its duties with integrity, impartiality and professionalism, respecting individuals' rights and freedoms and in full respect of the Law. ~

OLAF's mandate covers all EU expenditure and part of the revenue side of the budget. It includes the general budget, budgets administered by the Union or on its behalf, certain funds not covered by the budget but administered by EU agencies; and extends to all measures affecting the Union's assets.

S.1.2. OLAF's main powers and resources

OLAF's status is hybrid in nature. It is part of the Commission, responsible for developing and monitoring the implementation of the EU's anti-fraud policies. However it has a measure of budgetary and administrative autonomy, which reinforces the total independence with which OLAF conducts investigations.

OLAF staff of nearly 500 civil servants and other staff act as agents of the Commission subject to its internal rules. As far as activities such as general administration, participation in the Commission's legislative and policy initiatives and international cooperation are concerned OLAF staff are subject to the policies and powers of the Commission.

OLAF's administrative budget for 2009 was €57 million. A further €20 million was allocated to providing support to Member States and some third countries through the Hercule II and Pericles programmes.

A proposal is under examination by the European Parliament and the Council under the co-decision procedure; the European Parliament has already adopted a Resolution in favour to the Commission proposal, subject to an important number of amendments. In order to take further the legislative process, the Commission has affirmed its intention to produce a reflection paper which would identify the convergent and divergent points in the positions of the institutions expressed so far and the possible options for the main issues at stake.

OLAF is supporting the Commission in this reflection which represents an opportunity to strengthen its operational procedures and increase the efficiency of its investigations, including the information exchange with its partners.

These proposals do not put into question OLAF's operational independence. Reform will take into account the 11- year accumulated experience and achievements of the Office and should comply with the principle of better regulation, therefore focusing on the main issues at stake and leaving the practical aspects to be dealt with by implementing rules, such as the OLAF Manual of Procedures.

S.1.3. Oversight and Corporate Governance

OLAF's operational activities are carried out in total independence; the Director General has sole authority and control over the investigative process. OLAF's Executive Board is chaired by the responsible Directors and made up of representatives from across the Office. This ensure compliance with relevant policies and legislation. Day-to-day responsibility for the conduct of investigations is carried out by the heads of the operational units. They are supported by Quality Management tools and reports which provide them with timely information on compliance with internal targets and external responsibilities.

Oversight of the operational independence of the Office is performed by an independent Supervisory Committee. OLAF's activities as the Commission service responsible for anti-fraud measures are overseen by the Commissioner responsible for the fight against fraud.

S.2. OLAF's added value: a few case studies

Internal Investigations

Misuse of Parliamentary expenses by an ex-MEP

A Member of the European Parliament (MEP) defrauded the EU budget by falsely claiming expenses in excess of €40 000 a year. Following press coverage of the allegations, the MEP repaid the expenses falsely claimed. The OLAF investigation concluded, however, that there was sufficient evidence that the MEP was aware that his acts were illegal. OLAF therefore referred the case to the relevant national authorities.

At his trial the now ex-MEP, who had not contested his seat in the 2009 European elections, pleaded guilty to false accounting and was sentenced to two years' imprisonment.

Internal EU Policies

Embezzlement by the Director of an NGO

The Director of a non-governmental organisation funded by the EU to provide training services has been charged with forgery and embezzlement.

Acting in close cooperation with the national police forces, OLAF established that a substantial proportion of the activities declared had not taken place at all. Those that had were found to have failed to comply with the terms of the grant agreement. The activity reports also contained false information and forged signatures. Sufficient evidence was gathered to demonstrate a criminal offence and judicial proceedings before the national authorities are in progress.

In the course of the investigation, the Commission rejected the final payment claimed by the NGO, terminated the grant agreement and issued an order for recovery of the full advance payment.

External Aid

Widespread fraud and corruption in an international programme

In 2005, the Global Fund suspended its operations in Uganda after allegations of widespread corruption and fraud and started to work closely with the new independent commission set up by the Ugandan government to investigate the allegations. It soon became clear, however, that neither the Global Fund nor the Ugandan government had the expertise or resources to investigate such a complex set of cases fully and so they asked OLAF for assistance, as the EU is one of the biggest contributors to the Global Fund.

OLAF focused on enabling local law enforcement bodies to manage, investigate and prosecute such a large number of complex economic crimes effectively. Besides focusing on the cases under investigation, this assistance also served to build up the capacity of the Ugandan authorities to tackle such crimes in the future.

In the first half of 2009, the first-ever convictions were secured before the newly created Anti-Corruption Division of the Ugandan High Court, resulting in prison sentences ranging from five to ten years in addition to criminal restitution. A further 45 cases are at different stages of investigation or currently before the Court.

Structural Actions

Factory fraud

The European Regional Development Fund (ERDF) provided aid for a factory which was supposed to provide more than a hundred jobs in a socially deprived area.

OLAF found that factory equipment, bought at inflated prices in Austria and sourced from Luxembourg, was delivered by means of a complex chain of financial transactions designed to create the impression that the promoters of the factory had put up investment financing when, in fact, they had invested nothing.

Only a few of the jobs promised ever materialised and the Austrian trader concerned promptly went into liquidation. Also, a large part of the financing has disappeared into an off-shore account. OLAF recommended that the €2 million of ERDF funding should be recovered and judicial proceedings have started in Italy and Austria.

This case is a good example of how OLAF can move quickly and effectively to defend the EU budget by conducting a series of coordinated checks on operators in different Member States involved in a transnational organised fraud.

Agricultural Expenditure

OLAF coordinates investigation into possible systemic fraud in the SAPARD programme

SAPARD (the Special Accession Programme for Agriculture and Rural Development) was designed to prepare the Central and Eastern European applicant countries to participate in the common agricultural policy and the single market.

OLAF is currently investigating allegations of widespread fraud in the funding of meat-processing plants in Bulgaria. In another ongoing investigation, OLAF requested the customs authorities in a number of Member States to verify the authenticity of invoices for purchases made.

The German customs authorities informed OLAF that they have evidence of systematic overpricing of purchases funded from SAPARD for plants in Bulgaria. OLAF is working closely with the authorities in five Member States and has conducted on-the-spot checks in another seven to determine the full extent of this fraud.

Agricultural Trade

Kaliningrad

Export refunds enable the EU to sell surplus agricultural products at prices which are competitive on the world market. After examining shipping records, the customs authorities spotted regular large shipments of sugar from the EU to Croatia, all via the Russian port of Kaliningrad. The exporters declared that Russia was the final destination of the sugar, which was therefore eligible for export refunds totalling several million euros.

At the request of OLAF, the Russian authorities carried out investigations into the company in Kaliningrad and were able to confirm that the sugar did not remain in Russia, but was re-exported to Croatia and was therefore not eligible for export refunds. OLAF carried out a control visit in cooperation with the Croatian customs authorities and found that over 3 400 tonnes of sugar had been imported into Croatia under this scheme.

Based on OLAF's findings, the Belgian paying agency proceeded to recover unduly paid export refunds totalling €1.2 million. A further €1.5 million was blocked by the paying agency and not released.

Customs

Chinese textiles

In 2004 the EU lifted quotas on textile imports from China. By mid-2005, however, the EU market was flooded with cheap Chinese imports and quotas were re-introduced. Exporters began circumventing them by falsely claiming that their textiles originated from Bangladesh.

OLAF focused on checking with the Bangladesh authorities the authenticity of hundreds of thousands of certificates provided to customs authorities in the EU. It soon became clear that not only were most of the certificates not genuine, but also the scale of the problem was much larger than thought, involving hundreds of importers across most EU Member States.

Following OLAF's investigations, the customs authorities in almost every EU Member State were able to start proceedings to recover around € 30 million in customs duties.

Cigarettes

Miami case

In 2003, the Irish Customs and Revenue Service requested OLAF's support following the seizure of 30 million cigarettes about to enter Ireland from the port of Miami. OLAF's coordination investigation soon uncovered fraud on a scale far greater than the six containers originally identified in Ireland. Over the next six years OLAF coordinated a complex investigation stretching across nine EU Member States and several countries in Central and South America.

OLAF's role was essential for ensuring a coordinated approach by the various customs authorities across the EU, in particular by providing a central contact point for cooperation with the US authorities. OLAF's investigation is still under way, but has already led to the seizure of over 43 million cigarettes and 11 arrests.

The prime suspect, responsible for coordinating the operation in Miami, was sentenced to two years in jail and ordered to pay € 1.2 million in compensation to the EU.

S.3. Special Focus of the 2010 Report

In this year's report, four areas of OLAF's activities have been highlighted to which OLAF has devoted particular attention.

Improving Operational Procedures

Improving Operational Procedures has been a major focus of OLAF's activities in 2009. Given the ever increasing amount of incoming information and the increased complexity of the frauds to be investigated; OLAF has implemented new policies to ensure the optimal use of its limited resources. In 2009 OLAF progressively introduced a de minimis policy, which introduced indicative thresholds under which OLAF would not automatically open an investigation but would pass the information to another competent authority. Whilst the possible financial impact of a fraud is an important factor, exceptions to these thresholds remain if the fraud represents a systemic problem or the reputation of the EU is jeopardised.

Fraud Prevention and Intelligence

OLAF has always believed that investigations alone are not sufficient to fulfil its mandate of protecting the financial interests of the EU. The lessons learnt from this operational activity are systematically and effectively exploited to prevent and deter future frauds. OLAF's fraud prevention and intelligence activities aim at ensuring that the fraud types, trends, threats and risks posed to the EU budget are better understood among those responsible for managing EU funds so that if such frauds happen again they will be more easily and more quickly identified and stopped.

EU Agencies

The move by the EU towards delegating the responsibility for a number of its activities to a wide range of Agencies across the scope of the activities of the Union poses new and different risks in terms of fraud and corruption. OLAF's operational experience has identified a number of issues particularly in the period immediately after the creation of new agencies. These risks are now being managed through continuous and in-depth cooperation with all relevant stakeholders.

Joint Customs Operations & DIABOLO II

OLAF plays a leading role in ensuring close cooperation between Member States authorities in the common fight to protect the borders of the EU against illegal and illicit imports and the evasion of import levies and duties. OLAF provides the infrastructure, IT and communications tools and intelligence and administrative support which allow Member States and relevant third countries to conduct joint operations to coordinate actions across the EU.

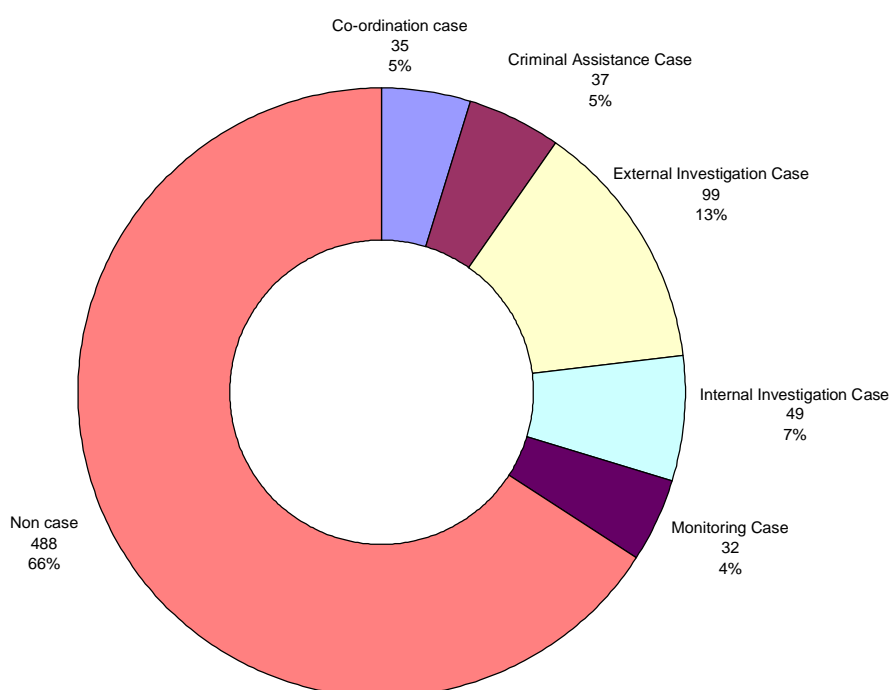
In 2009 a successful Joint Customs Operation Diabolo II was coordinated by OLAF which brought together all 45 Member of the ASEM partnership (EU Member States and most Asian Countries) to combat the global trade in counterfeit goods. During the operation over 65 million counterfeit cigarettes and hundreds of thousands of other counterfeit goods were seized.

S.4. OLAF's Workload

S.4.1 Public confidence in OLAF

OLAF is known and trusted to make effective use of the information it receives. The volume has risen from 802 new items of information in 2005 to 969 in 2009. In 2009, a total of 740 decisions were taken in response to new incoming information. A detailed breakdown by type of case is set out in Chart A.

Chart A: Decisions taken in 2009



S.4.2 Operational activities: prioritising and focusing on core business

Out of 740 decisions taken, 220 resulted in opening of a case, a slight increase compared with 2008 (when 204 cases were opened). OLAF's policy is to use its resources to investigate the most serious cases. It also continues to give priority to assessing information on cases for which OLAF has a clear mandate.

Since 2004 the number of OLAF's own investigations has first caught up with and now overtaken the number of cases in which OLAF assists national authorities (see Chart B). OLAF's activities have gradually moved towards about two thirds 'own investigations', with only about one third 'coordination and assistance cases'.

Chart B: Number of opening decisions per year and by type of investigation

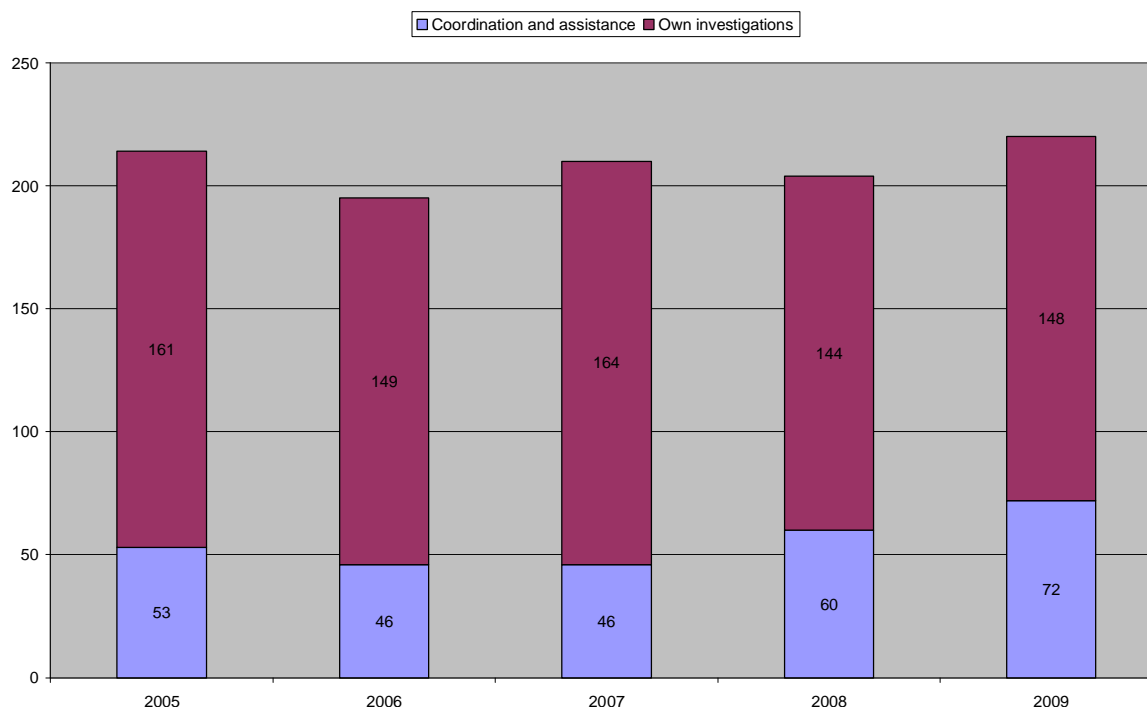


Chart C gives a breakdown of the 220 opening decisions adopted in 2009. Internal and external investigation cases, where OLAF bears sole responsibility for the preliminary administrative investigation, account for 148 of the 220 cases opened. The full version of this report provides a detailed analysis of operational activities, domain by domain.

Chart C: Opening decisions taken in 2009 by area and type of decision

Major sector	Co-ordination Case	Criminal Assistance Case	External Investigation Case	Internal Investigation Case	Total
Agriculture	7	25	7	0	39
Cigarettes	10	2	0	0	12
Customs	17	0	5	0	22
Direct Expenditure	0	0	23	1	24
EU Institutions + EU Bodies	0	8	17	48	73
External Aid	0	2	27	0	29
Structural Funds	1	0	20	0	21
Total	35	37	99	49	220

At the end of 2009, 369 OLAF investigations were active, of which 354 in the EU and 15 in candidate countries. A significant share of the investigations in the EU concern a limited number of countries: Belgium, Bulgaria, Italy, Germany, France and Romania (see Chart D).

This does not necessarily imply that more frauds occur in the countries with the highest number of OLAF investigations, as closer cooperation with local authorities can also lead to a higher number of referrals to the Office. A higher incidence is to be expected in Luxembourg and Belgium in proportion 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 followed up in these countries.

Chart D: Active investigations at the end of 2009 in Member States and candidate countries

Status of Country	Country involved	Total
Member State	Austria	11
	Belgium	48
	Bulgaria	68
	Cyprus	7
	Czech Republic	3
	Denmark	0
	Estonia	1
	Finland	0
	France	22
	Germany	22
	Greece	14
	Hungary	5
	Ireland	5
	Italy	36
	Latvia	3
	Lithuania	4
	Luxembourg	10
	Malta	2
	Netherlands	15
	Poland	12
Portugal	7	
Romania	18	
Slovakia	4	
Slovenia	2	
Spain	17	
Sweden	2	
United Kingdom	16	
	Sub-Total	354
Candidate Country	Croatia	1
	Former Yugoslav Republic of Macedonia	2
	Turkey	12
	Sub-Total	15

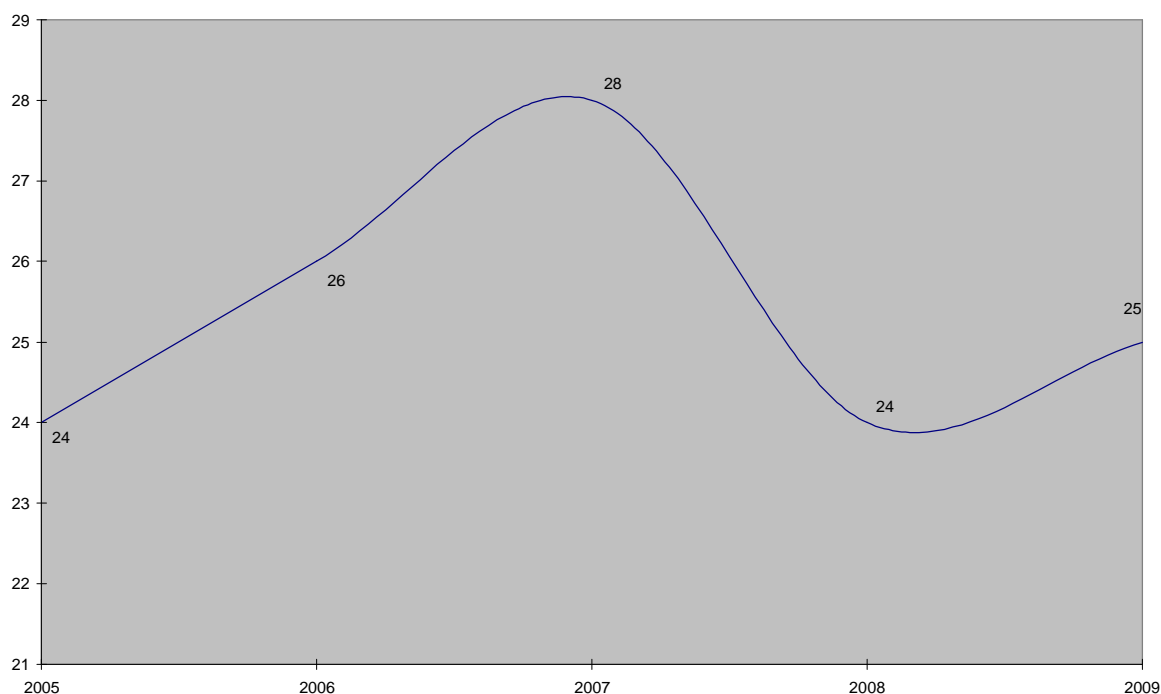
Chart E shows the number of cases opened and closed each year in the period 2005-2009. As can be seen, the clearance rate — the ratio between the numbers of cases opened and closed — has been kept close to 1 over the years. A clearance rate of 1 has been set as a medium-term target in order to adapt the workload to the resources available and to avoid an excessive backlog of cases.

Chart E: Opening, closing decisions and clearance rate (2005 - 2009)

	2005	2006	2007	2008	2009
Total cases opened	214	195	210	204	220
Total cases closed	233	217	232	187	188
Clearance rate	0.92	0.90	0.91	1.09	1.17

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 a key concern for the Office. About 60% of all OLAF cases are closed in less than two years. The decrease in the average duration (compared with 2007) confirms the progress made by the Office with 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 required.

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



S.4.3 Follow-up activity

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 were applied from the beginning of 2009 and 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

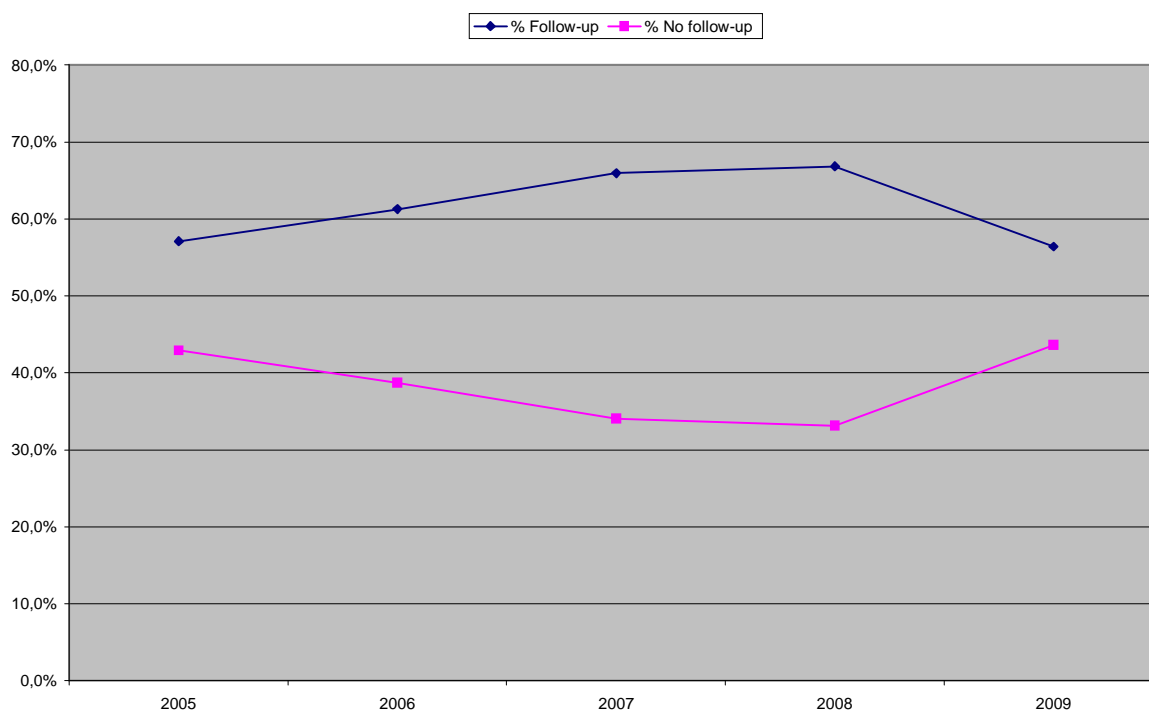
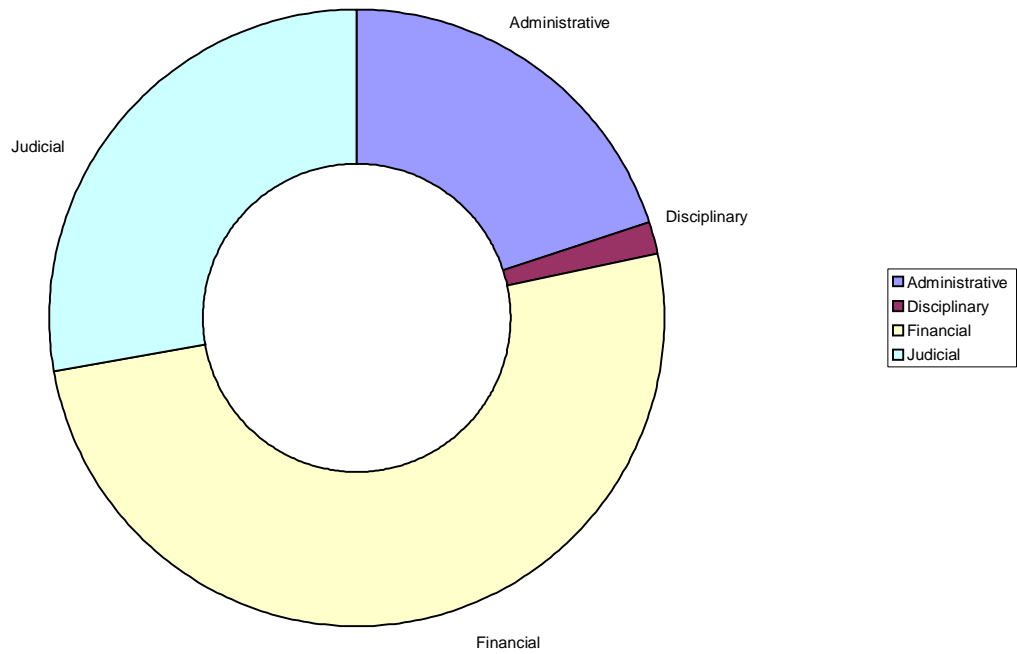


Chart H classifies the follow-up activities related to the closed cases for which at least one follow-up path was still open at the end of 2009. More than 75% take the form of judicial or financial follow-up.

Chart H: Type of follow-up activities in respect of closed cases at the end of 2009



S.4.4 Recovery

Chart I shows the annual breakdown of financial recovery operations completed in the last five years in OLAF cases, plus recoveries to date in financial follow-up cases which are still open. However, these sums are only a small fraction of the total amount recovered following detection of fraud or other irregularities, as most of the recovery operations are performed by Member States autonomously without any direct link to OLAF operations (for further details, see the Commission Report on the Protection of the Communities' financial interests - Fight against Fraud 2009 for more details).

Chart I: Breakdown of amounts recovered in million euros by calendar year in respect of financial follow-up paths

Major Sector	2005	2006	2007	2008	2009	Open
Agriculture	14.2	1.2	0.9	2.0	148.2	23.0
Customs	63.0	0.1	3.3	14.2	43.4	144.9
Direct Expenditure	0.2	0.2	0.5	0.5	0.9	0.8
EU Institutions + EU Bodies	0.0	2.2	0.1	0.2	0.2	1.7
External Aid	31.8	3.7	0.9	2.3	7.4	1.5
Structural Funds	98.1	17.2	197.7	128.0	49.1	16.9
Total	207.3	24.6	203.4	147.2	249.2	188.8

Financial results can fluctuate significantly from year to year, because of the impact of recoveries from occasional very big cases. This happened in the 2009 reporting year when, for example, one case in the agricultural sector retrieved over €113 million. Cyclical management aspects in certain sectors (e.g. the periodic closure of multi-annual expenditure programmes) also contribute to such year-on-year fluctuations.