



# The **OLAF** report **2013**

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# The **OLAF** report **2013**

**Fourteenth report of the  
European Anti-Fraud Office,  
1 January to 31 December 2013**

**DISCLAIMER:**

OLAF's report features case studies for illustrative purposes only. In particular, the fact that OLAF presents such case studies does not prejudge the outcome of any judicial proceedings; nor does it imply that any particular individuals are guilty of any wrongdoing.



## Executive summary

- ▶ In 2013, the European Anti-Fraud Office (OLAF) received the highest amount of incoming information since its creation: 1294 items. This reflects the continued commitment of EU citizens, EU institutions and other partners to reporting suspected cases of fraud and also shows sustained confidence in OLAF.
- ▶ The selection of cases in OLAF lasted on average 1.8 months in 2013. OLAF succeeded in keeping the selection phase short despite the higher volume of incoming information.
- ▶ In 2012 and 2013, OLAF opened more investigations than in the preceding years (431 and 253 respectively), marking a new record high in a decade.
- ▶ The average duration of investigations in 2013 remained low at 21.8 months (23.6 months in 2012). The results of the last two years mark a clear improvement compared to previous years. This demonstrates the priority given by OLAF to improving the efficiency of its investigations and to reducing the overall duration of its cases.
- ▶ In 2013, OLAF issued 353 recommendations for action to be taken by the relevant EU institutions, bodies, offices, agencies or competent authorities of the Member States. This is an unprecedented high number since 2006, and a substantial increase (+77%) compared to 2012.
- ▶ On 1 October 2013, Regulation No 883/2013 on investigations by OLAF entered into force. It brought significant changes to the work of OLAF and to its relations with various stakeholders. The Regulation further defines the rights of persons concerned, introduces an annual exchange of views between OLAF and the EU institutions and requires that each Member State designate an Anti-Fraud Coordination Service.
- ▶ OLAF's Director-General adopted new Guidelines on Investigation Procedures for OLAF staff which entered into force on the same day as the OLAF Regulation.
- ▶ OLAF and its Supervisory Committee have agreed on new Working Arrangements following the entry into force of Regulation No 883/2013. These Arrangements notably cover the modalities of how OLAF shares information with its Supervisory Committee.
- ▶ During 2013, OLAF has contributed greatly to the Commission's efforts to fight against cigarette smuggling. It will continue to consider this as a priority area.
- ▶ OLAF contributed to the adoption by the Commission of a proposal for establishing a European Public Prosecutor's Office responsible for investigating and prosecuting offences of fraud affecting the EU.

'OLAF' is the acronym of its title in French, *Office européen de lutte antifraude*

### Communicating with OLAF on **olaf.europa.eu**

- ▶ How to report fraud to OLAF [ec.europa.eu/anti\\_fraud/investigations/report-fraud/index\\_en.htm](http://ec.europa.eu/anti_fraud/investigations/report-fraud/index_en.htm)
- ▶ How to complain about OLAF investigations [ec.europa.eu/anti\\_fraud/investigations/complaints-on-olaf-investigations/complaints\\_on\\_olaf\\_investigations\\_en.htm](http://ec.europa.eu/anti_fraud/investigations/complaints-on-olaf-investigations/complaints_on_olaf_investigations_en.htm)
- ▶ How to contact OLAF and ask for general enquiries  
[ec.europa.eu/anti\\_fraud/contacts/general-enquiries/index\\_en.htm](http://ec.europa.eu/anti_fraud/contacts/general-enquiries/index_en.htm)  
OLAF - European Commission - Rue Joseph II, 30, 1000 Brussels, Belgium
- ▶ How to request a visit to OLAF [ec.europa.eu/anti\\_fraud/contacts/request-visit/index\\_en.htm](http://ec.europa.eu/anti_fraud/contacts/request-visit/index_en.htm)
- ▶ Media contacts [ec.europa.eu/anti\\_fraud/contacts/media-enquiries/index\\_en.htm](http://ec.europa.eu/anti_fraud/contacts/media-enquiries/index_en.htm)





## Foreword

It is with great pleasure that I introduce this Annual Report of the European Anti-Fraud Office (OLAF). The last year was important for us because 2013 was the first full reporting year following the major reorganisation of OLAF in 2012. The reorganisation aimed to improve the overall efficiency of our investigative activity. We can now see that it has yielded excellent results.

In 2013, OLAF received more information of potential investigative interest than ever before. This reflects the continued attention given by citizens, institutions and other partners to fraud issues and shows increased confidence in OLAF's investigative capacities. We succeeded in assessing this information in a short time — 1.8 months on average — before deciding whether to pursue a case or not.

In 2013, we opened a high number of investigations, 253, confirming that the last two years mark a new record in OLAF investigations. In parallel, we worked on reducing the overall duration of our investigations, in order to increase the chance that OLAF cases lead to meaningful results on the ground, with better possibilities for prosecution, recovery and avoidance of prescription.

OLAF also issued the highest number of recommendations in the last five years, with 353 recommendations for judicial, financial, administrative or disciplinary action to be taken. We are hopeful that the results triggered by these recommendations will become apparent in the coming years when the competent authorities take the relevant measures.

Beyond these promising results, last year has also been busy for OLAF on the policy side. The new OLAF Regulation No 883/2013 came into force. It defines more clearly the rights of the persons concerned by OLAF investigations and facilitates cooperation with our operational partners within and beyond Europe. In line with this regulatory reform, we adopted new Guidelines on Investigative Procedures for OLAF staff. OLAF entered into a number of cooperation and working arrangements with a series of partners, which will help strengthen OLAF's outreach. Last but not least, OLAF assisted the European Commission with the development of anti-fraud policies and legislation. We contributed to the Commission's proposal on the establishment of a European Public Prosecutor's Office. We will continue to work on this file throughout the legislative process, contributing to the creation of a European area of justice.

In addition, OLAF continued to fight against tobacco smuggling, a harmful phenomenon that causes huge annual losses to the EU and Member States' budgets. You will find a focus chapter on this topic in this year's Report.

Looking back over 2013, we have done our best to make OLAF an increasingly efficient and engaged Office, at the service of European citizens. We stepped up our investigative efforts, contributed to key policies and further developed the cooperation with our operational partners. This was achieved with virtually the same resources as in previous years. I would like to conclude by thanking OLAF staff for their commitment, dedication and hard work.

Giovanni Kessler  
Director-General of OLAF







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# 1. OLAF's role and responsibilities

## Mission statement

The mission of the European Anti-Fraud Office (OLAF)<sup>(1)</sup> is threefold:

- ▶ It protects the financial interests of the European Union (EU) by investigating fraud, corruption and any other illegal activities;
- ▶ It detects and investigates serious matters relating to the discharge of professional duties by members and staff of the EU institutions and bodies that could result in disciplinary or criminal proceedings;
- ▶ It supports the EU institutions, in particular the European Commission, in the development and implementation of anti-fraud legislation and policies.

By performing its mission OLAF contributes to the efforts made by the EU institutions to guarantee that the best use is made of taxpayers' money.

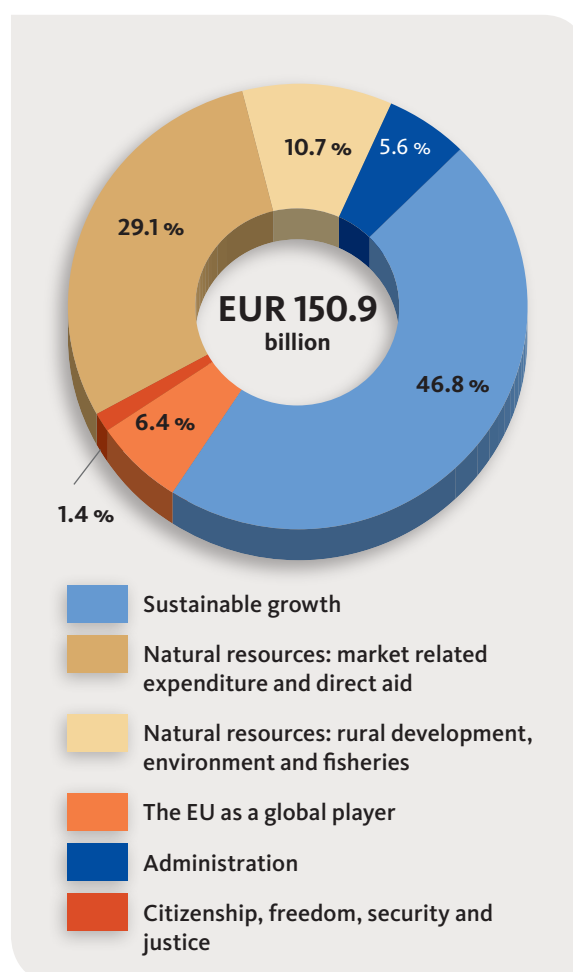
The legal basis for EU action against fraud is Article 325 of the Lisbon Treaty. OLAF's main role and remit for carrying out its administrative investigations is defined principally in Regulation (EU, EURATOM) No 883/2013<sup>(2)</sup> (the "OLAF Regulation") which came into force on 1 October 2013, after its adoption by the European Parliament and the Council of the European Union.

For investigations concerning members and staff of EU Institutions, bodies, offices and agencies ("internal investigations"), OLAF also derives its mandate from the inter-institutional agreement between the European Parliament, the Council and the Commission<sup>(3)</sup> and from Staff Regulations<sup>(4)</sup>.

While OLAF is part of the European Commission, under the responsibility of the Commissioner in charge of Taxation and Customs Union, Audit and Anti-Fraud (from 2010 to 2014), it has an independent status for its investigative function.

Action taken by OLAF to protect the financial interests of the EU covers the entire expenditure side of the budget. On the revenue side of the budget, OLAF focuses particularly on "traditional own resources", including customs duties and sugar sector levies that represent around 14.1% of the revenue side of the EU budget.

Figure 1: EU budget 2013 – Expenditure side



<sup>(1)</sup> OLAF is also referred to as "the Office" in this report

<sup>(2)</sup> Regulation (EU, EURATOM) No 883/2013 (referred to as the OLAF Regulation in this report) of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999.

<sup>(3)</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1999:136:0015:0019:EN:PDF>

<sup>(4)</sup> No 31 (EEC), 11 (EAEC) of 1 January 2014.

## Regulation No 883/2013 on investigations conducted by OLAF

The OLAF Regulation<sup>(5)</sup> strengthens the rights of the persons concerned by OLAF investigations, provides clarifications on investigation procedures and updates the information requirements to OLAF's Supervisory Committee. It also clarifies the information requirements between OLAF and the EU institutions, bodies, offices and agencies, as well as between OLAF and the EU Member States; it contains provisions on cooperation with EU law enforcement bodies and with third countries. Further information on three specific features of the OLAF Regulation is provided below.

### GUIDELINES ON INVESTIGATION PROCEDURES FOR OLAF STAFF

The OLAF Regulation requires the Director-General to adopt guidelines on investigation procedures. These are internal rules to be applied by all OLAF staff in order to ensure that OLAF investigations are carried out in a consistent and coherent manner. The guidelines cover:

- ▶ The conduct of investigations;
- ▶ The procedural guarantees;
- ▶ Details on the internal advisory and control procedures, including legality checks;
- ▶ Data protection.

They recall that all investigative activities are carried out in full respect of EU Treaties, the Charter of Fundamental Rights of the EU and EU legislation. In addition investigations are conducted in an objective and impartial manner ensuring procedural fairness, in accordance with the highest professional standards and in full respect of the rights of all persons involved.

Due to the adoption of the OLAF Regulation, the new guidelines come to application on 1 October 2013<sup>(6)</sup>. They replace the OLAF Instructions to Staff on Investigative Procedures adopted in 2012.

### DESIGNATION OF AFCOS IN THE MEMBER STATES

All Member States are required under the OLAF Regulation to designate an Anti-Fraud Coordination Service (AFCOS) to facilitate effective cooperation and an exchange of information, including information of an operational nature, with the Office. OLAF is providing the necessary assistance and advice to the Member States to support the national administrations in designating their AFCOS. The importance of the implementation of the AFCOS is twofold:

- ▶ At the EU level it will lead to better information exchange between OLAF and the Member States. In turn this will contribute to more effective transnational efforts to combat fraud;
- ▶ At the national level it can allow for better coordination between the anti-fraud authorities and improve the fight against fraud.

By the end of 2013 more than half of all Member States had designated an AFCOS.

### EXCHANGE OF VIEWS WITH THE INSTITUTIONS

The OLAF Regulation introduces an annual exchange of views at the political level between the European Parliament, the Council, the Commission and the Director-General of OLAF, with the participation of the OLAF Supervisory Committee. Representatives of the Court of Auditors, Eurojust and/or Europol may be invited to attend on an ad hoc basis<sup>(7)</sup>.

The exchange of views provides a forum for discussing aspect of OLAF's policy relating to methods of preventing and combating fraud, corruption or any other illegal activity affecting the financial interests of the EU. The possible topics include the strategic priorities for investigation policies and the effectiveness of the work of the Office, with regard to the performance of its mandate, as well as the relations between OLAF and other institutions and authorities in the EU, its Member States or third countries. The discussion must not, however, interfere with the conduct of OLAF's independent investigations.

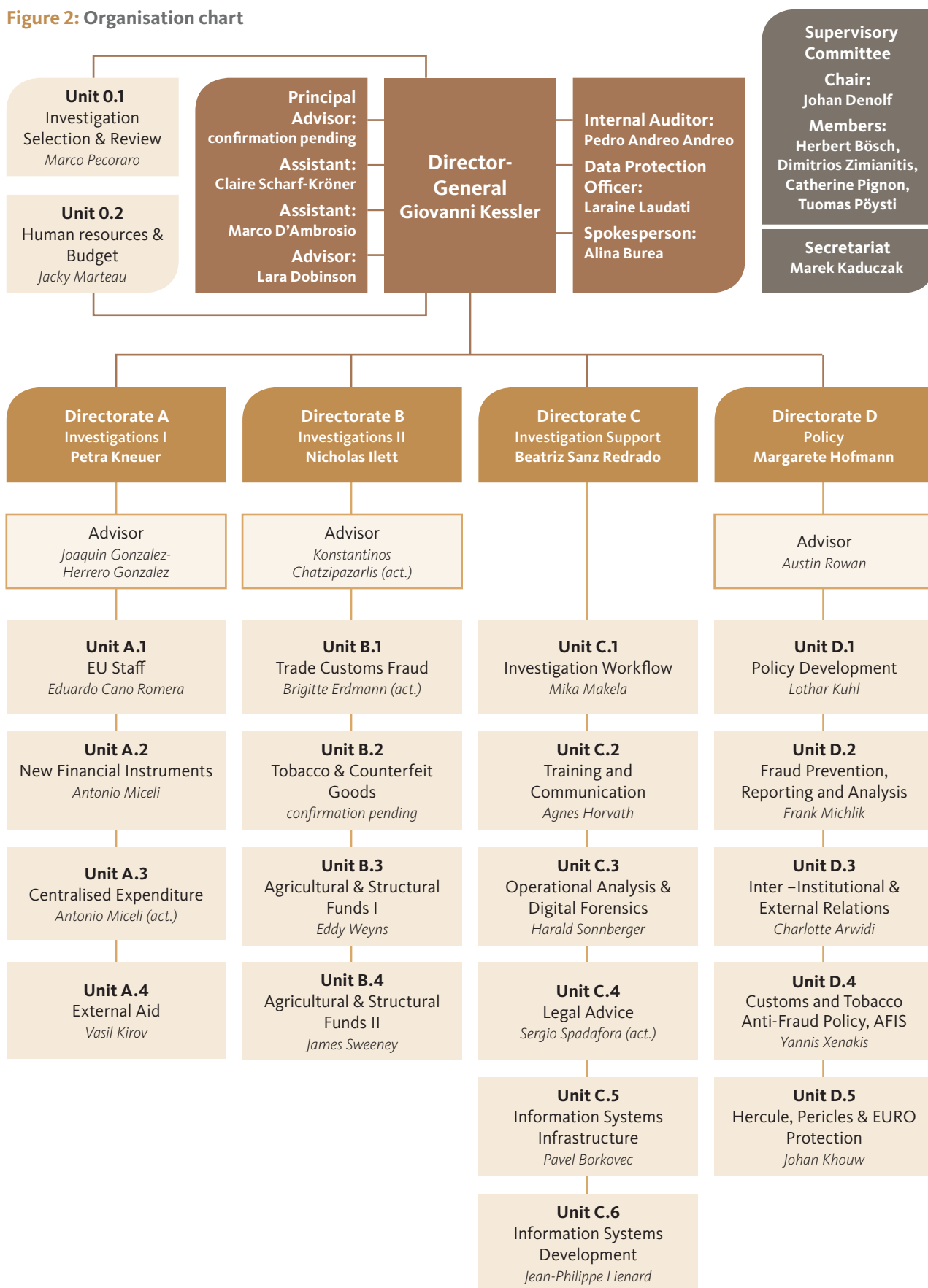
<sup>(5)</sup> For further details, please refer to : [http://ec.europa.eu/anti\\_fraud/about-us/legal-framework/memo\\_en.htm](http://ec.europa.eu/anti_fraud/about-us/legal-framework/memo_en.htm)

<sup>(6)</sup> For further details, please refer to : [http://ec.europa.eu/anti\\_fraud/documents/gip/gip\\_18092013\\_en.pdf](http://ec.europa.eu/anti_fraud/documents/gip/gip_18092013_en.pdf)

<sup>(7)</sup> See Article 16 of the Regulation No 883/2013 of 11 September 2013.



Figure 2: Organisation chart



## 2. OLAF's investigative activities

In 2013, OLAF saw the first results flowing from the major reorganisation of the Office in the previous year which aimed to improve the overall efficiency of its investigative activity. This reform has started to yield results allowing OLAF to step up the fight against fraud, while at the same time, dealing with more incoming information than ever before and shortening the overall duration of its investigations.

In addition the Office was further reinforced by the entry into force of Regulation No 883/2013 and the adoption of Guidelines on Investigation Procedures for OLAF Staff.

Figure 3a: OLAF's investigative activity in 2013

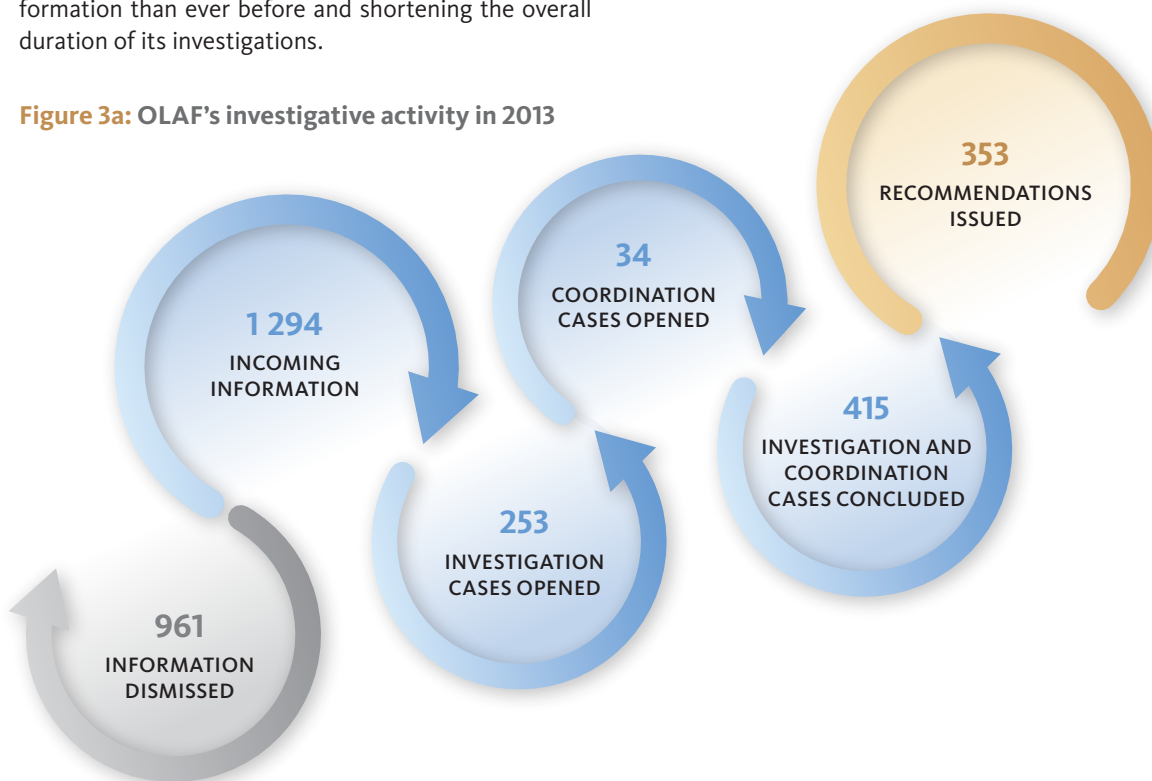
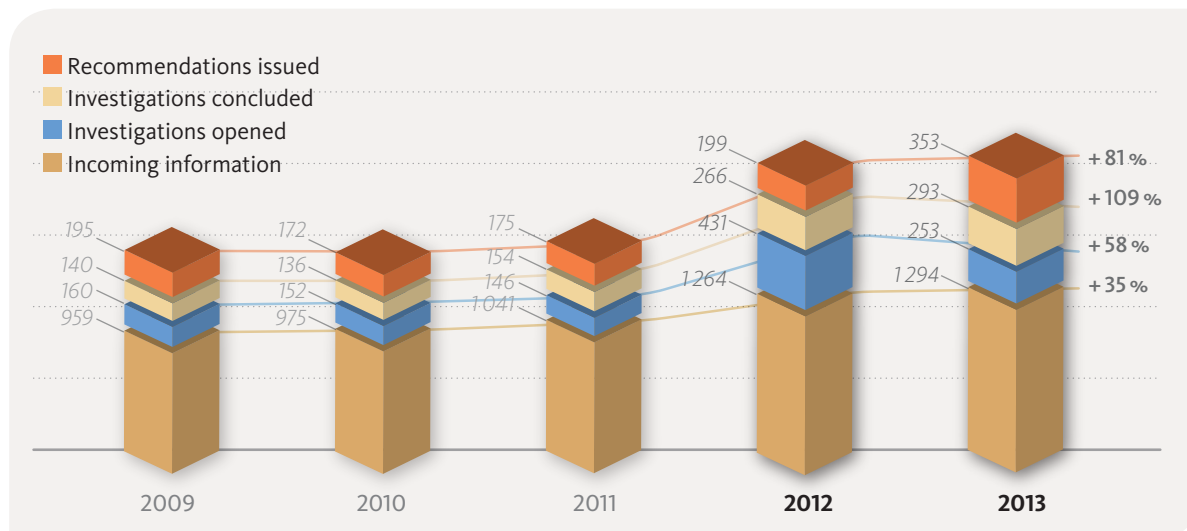


Figure 3b: OLAF over the last five years: increase in incoming information, more investigations opened and concluded and a higher number of recommendations issued





## 2.1 Incoming information

The reception of information of possible investigative interest is the starting point for OLAF's investigative activity.

### INFORMING OLAF IN 2013: ALL-TIME RECORD SINCE THE CREATION OF THE OFFICE

In 2013, OLAF received the highest number of incoming information items since its creation: 1 294 items. This reflects the continued commitment of EU citizens, EU

institutions and other partners to reporting suspected cases of fraud and also shows continued confidence in OLAF.

The largest amount of incoming information relates to the Structural Funds<sup>(8)</sup>. The Agricultural Funds and EU Staff sectors also represent an important share of the incoming information.

There were also 248 incoming information items that did not fall into OLAF areas of competence.

Figure 4: Incoming information by source

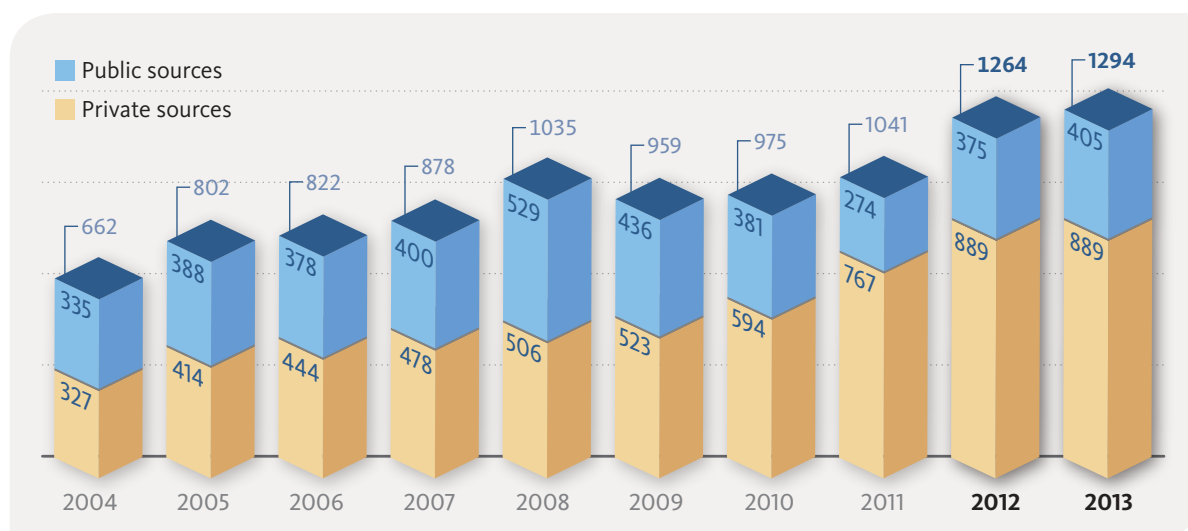
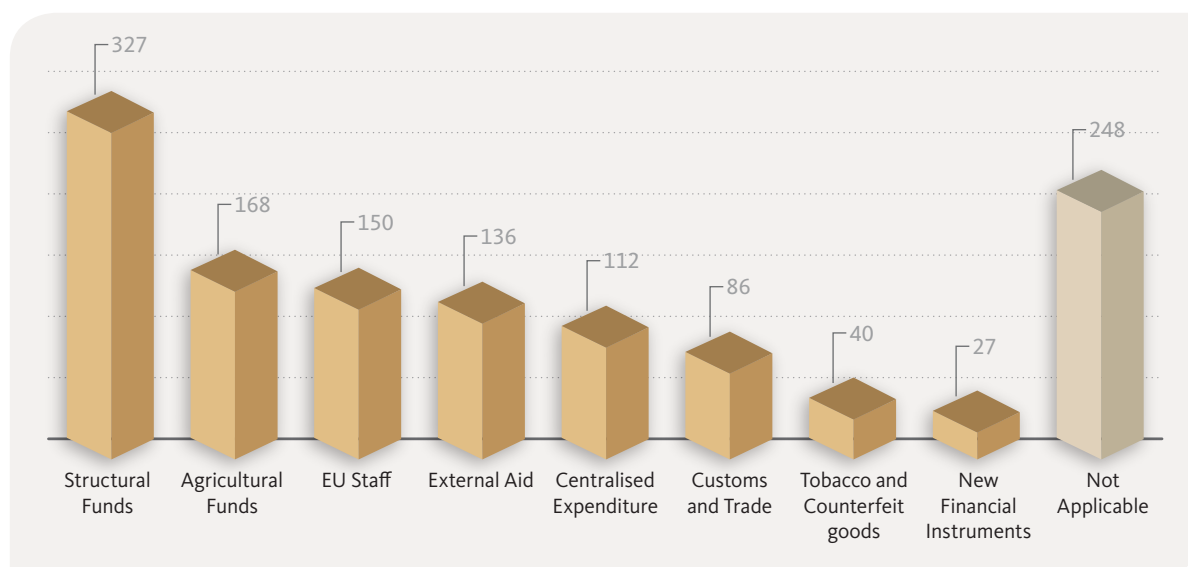


Figure 5: Incoming information by sector



<sup>(8)</sup> The Structural Funds sector includes the Cohesion Fund and Fisheries Funds. The Customs and Trade sector also includes precursors.

Two-thirds of the 1294 information items received by OLAF in 2013 arrived from private sources, whether known or anonymous<sup>(?)</sup>.

About 44% of the incoming information from public sources in 2013 has led to the opening of a case, this figure amounts to only 10% for incoming information from private sources.

Based on Regulation No 883/2013, OLAF may open an investigation when there is a sufficient suspicion that there has been fraud, corruption or any other illegal activity affecting the financial interests of the EU, also on the basis of anonymous information.

**Case study: Processing incoming information swiftly - Detection of fraud through reporting mechanism (Fraud Notification System)**

In September 2011 OLAF received anonymous but well substantiated allegations via its Fraud Notification System ([fns.olaf.europa.eu/](http://fns.olaf.europa.eu/)) and opened an investigation. The allegations focused on possible conflict of interest, tender manipulations and irregularities in the tender application (list of experts supplied). These were identified in relation to EUR 3.8 million provided to a Member State as technical assistance funding from the European Regional Development Fund.

In the course of its investigation OLAF uncovered evidence of falsified documentation and signatures in the tender procedure which confirmed the alleged irregularities.

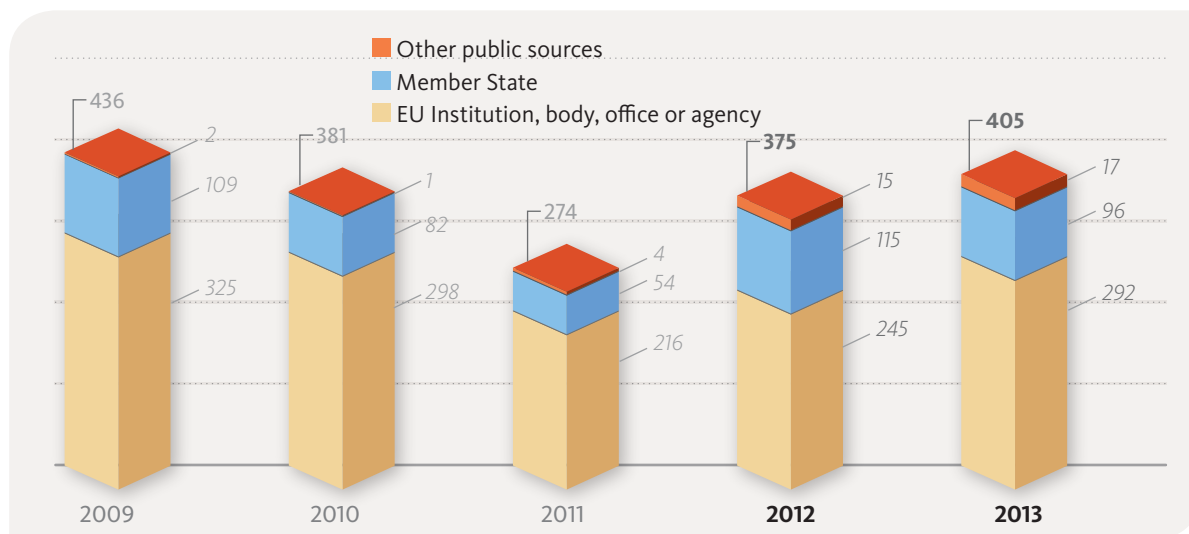
In early 2013, OLAF issued Recommendations to both the administrative and judicial authorities of the Member State concerned. This led to the opening of a national police investigation. A financial recommendation for the recovery of EUR 3.8 million of EU funding was also issued to the Directorate-General of Regional Policy of the European Commission.

In 2013, information from public sector sources was up by 8%. The increase was driven by a higher amount of information received from EU institutions, bodies, offices or agencies (+19%). This can be attributed to better cooperation with these institutions and bodies and to the implementation of anti-fraud strategies in the Commission services.

At the same time, there was a 17% decrease in the number of information items received from Member States compared to 2012. However in a medium-term perspective, the incoming information coming from Member States authorities remains stable.

As Member States share with the Commission the management of around 80% of EU funds, they have a responsibility to send to OLAF any relevant information relating to possible cases of fraud, corruption or any other illegal activity affecting the financial interests of the EU.

**Figure 6: Incoming information items from the public sector**



<sup>(?)</sup> Including sources that provided insufficient contact details.





**Figure 7: Incoming information from Member States**

Member State	Number of items
Germany	38
Italy	7
Greece, Spain	6
Belgium	5
France, Lithuania, United Kingdom	4
Bulgaria, Ireland, the Netherlands, Romania	3
Czech Republic, Portugal	2
Austria, Croatia, Malta, Poland, Slovakia, Slovenia	1
Cyprus, Denmark, Estonia, Finland, Hungary, Latvia, Luxembourg, Sweden	0
<b>Total</b>	<b>96</b>

Figure 7 shows the distribution among the number of items reported by the Member States which is an indicator of the degree of cooperation with the Office.

The amount of information items coming from third countries in 2013 was 13, up from 10 during 2012. The number of items coming from international organisations was 4 in 2013 compared with 5 in 2012.

### Case study: Investigation unveils misuse of multi-million fund from the EU budget

The EU is one of the biggest aid suppliers in the world. Among the different aid mechanisms and instruments the Commission also provides budget support to partner governments in third countries. In 2012, OLAF received information about the alleged misuse of the EU's budget support programme funds and serious financial irregularities in a third country.

In the course of its inquiry, OLAF obtained central pieces of information from an independent source and from a Ministry in the country concerned. These helped to establish that there had been serious mismanagement and that funds had been diverted towards non-contractual and non-agreed use. Most of the amounts provided did not enter the revenue of the national budget, but were funnelled to an account and used to finance other costs. In consequence, this funding was outside the budgetary control of the national Parliament and was excluded from the financial circuit of the competent Ministry.

As a result of this investigation, OLAF issued a recommendation for financial recovery to the European Commission's Directorate General for Development and Cooperation for approximately EUR 40 million.

## 2.2 Selection phase

During the selection phase, the unit in charge of Investigation Selection and Review analyses information of possible investigative interest and provides an opinion to the Director-General on whether an investigation or coordination case should be opened.

### SELECTION OF CASES IN OLAF

Under Regulation No 883/2013, cases are selected based on the existence of sufficient suspicion that there has been fraud, corruption or any other illegal activity affecting the financial interests of the EU. The decision whether to open an investigation also takes into account:

- the investigation policy priorities (annexed to the management plan of OLAF<sup>(10)</sup>) and the principles of subsidiarity and proportionality as well as the need for efficient use of the Office's resources;
- all the relevant information and the opinion provided by the Selection and Review unit. When a case is dismissed, the source that had submitted the information may be informed.

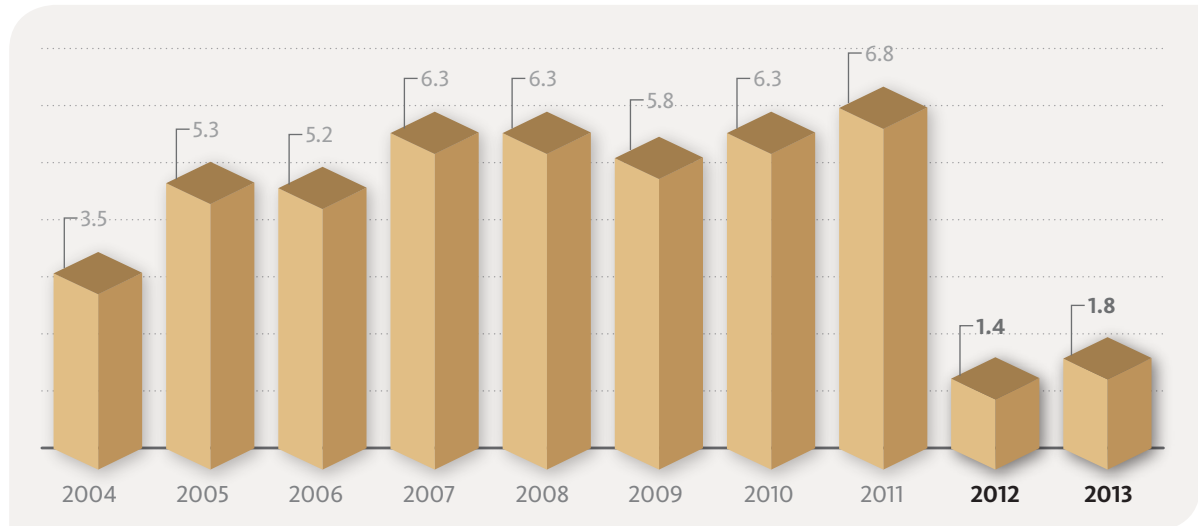
OLAF has made considerable efforts to reduce the overall duration of the selection phase in the last two years, with excellent results in 2013, confirming the trend of 2012.

### DURATION OF THE SELECTION PHASE REMAINS SHORT IN 2013

In 2013, the duration of the selection phase was 1.8 months (Figure 8), despite the higher volume of incoming information. This result is below the two-month maximum target established in OLAF's Management Plan.

<sup>(10)</sup> [http://ec.europa.eu/anti\\_fraud/documents/about\\_us/mgmt\\_plan/olaf\\_mp\\_2014\\_en.pdf](http://ec.europa.eu/anti_fraud/documents/about_us/mgmt_plan/olaf_mp_2014_en.pdf)

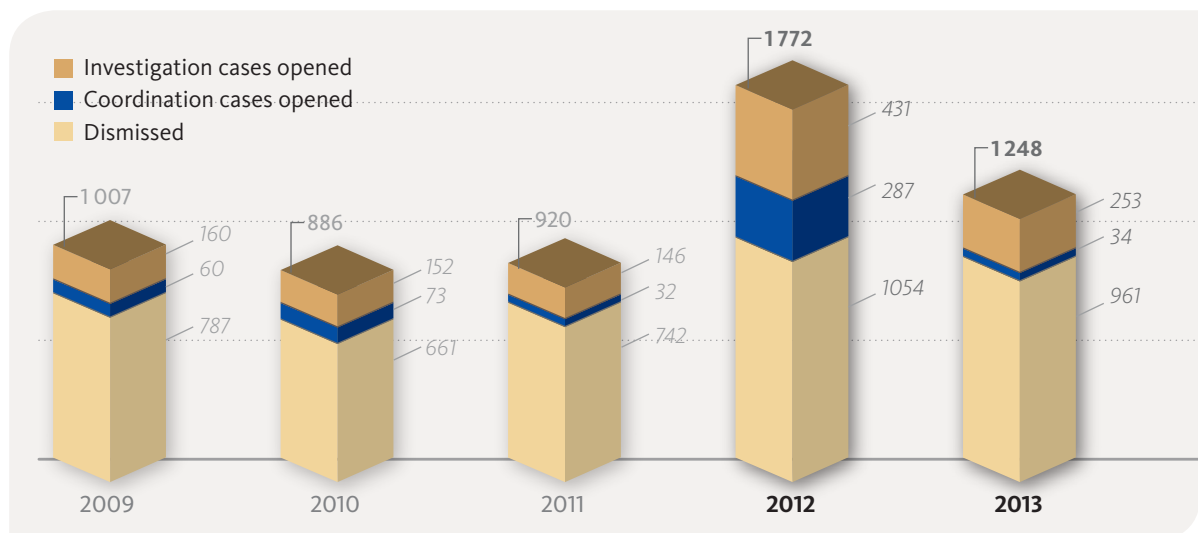
**Figure 8: Average duration of case selection phase (in months) <sup>(1)</sup>**



In 2013 the volume of selections completed remained at a high level.

The figures regarding selections also show that OLAF is increasingly focusing its resources on investigations. Eighty-eight percent of the cases opened in 2013 pursuant to a selection were investigations while only 12% were coordination cases.

**Figure 9: Results of the selection process**



<sup>(1)</sup> Note that the average for 2012 was calculated for 11 months following the reform of 1 February 2012. If January is included the average duration of the selection phase would be 3.9 months.



## 2.3 Investigations

### A RECORD NUMBER OF INVESTIGATIONS OPENED IN 2012 AND 2013

The analysis of data confirm OLAF's efforts to focus on investigations. In 2012 and 2013, the Office opened more investigations than in the preceding years (see Figure 10).

### DECREASE IN THE DURATION OF INVESTIGATIONS AND CORRESPONDING SELECTION PHASE

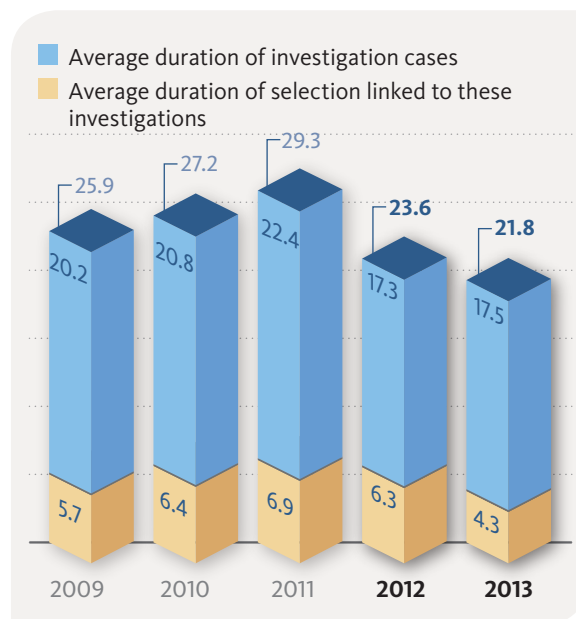
Investigations are being completed in less time. The 2013 results confirm the trend of 2012, and mark a net improvement with respect to previous years. This reflects the priority given by OLAF to improving the efficiency of its investigations and to reducing the overall duration of its cases.

In addition, in 2013, the average duration of the selection phase in investigation cases was 4.3 months, a record for the five previous years.

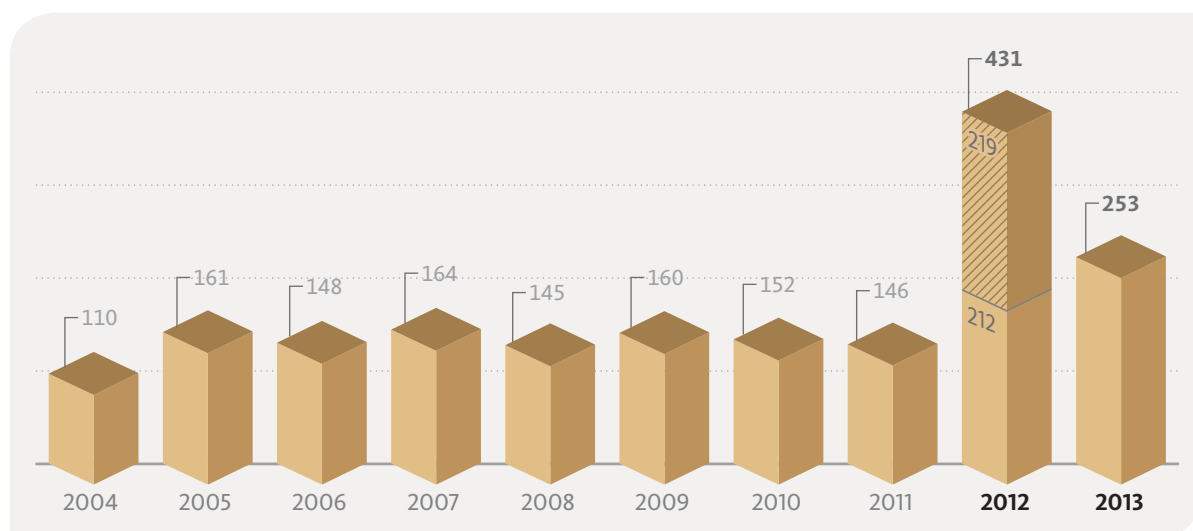
The figures provided in the Figure 11 include the average duration of investigation cases closed during 2013 or still open at the end of 2013, as well as the duration of the selection phase corresponding to these investi-

gation cases. Therefore the duration of the selection phase shown in Figure 11 (4.3 months) differs from the average duration of the selections conducted in 2013 (1.8 months - Figure 8)

**Figure 11: Average duration of investigations (with selection)**



**Figure 10: Investigations opened<sup>(12)</sup>**



<sup>(12)</sup> The figures for 2012 include 219 investigation cases, already previously under evaluation, opened as a result of the reorganisation of 01.02.2012.

As shown in Figure 12, a total of 484 investigation cases were ongoing at the end of 2013. The Structural Funds sector accounted for the highest number of investigations (149 in 2013 compared to 134 in 2012), followed by the Agricultural Funds (82 in 2013 compared to 59 in 2012) and External Aid (80 in 2013 compared to 106 in 2012) sectors.

**Case study: On-the-spot-check and interviews lead to discovery of irregularities in an ERDF project**

In late 2011 OLAF received information from a private source about possible irregularities concerning a project funded through the European Regional Development Fund (ERDF) in an overseas region of a Member State. A non-governmental organisation had been granted EUR 1.3 million for the construction of a shelter for young people and adults in social difficulties.

Complaints had already been submitted to the national authorities and certain judicial steps had been taken. Given that the EU was the biggest donor to the project, it was OLAF's responsibility to carry out a thorough investigation.

OLAF opened an investigation including an on-the-spot check and interviews with the informant, the beneficiary and regional authorities. The investigation revealed that the building had never been used for the

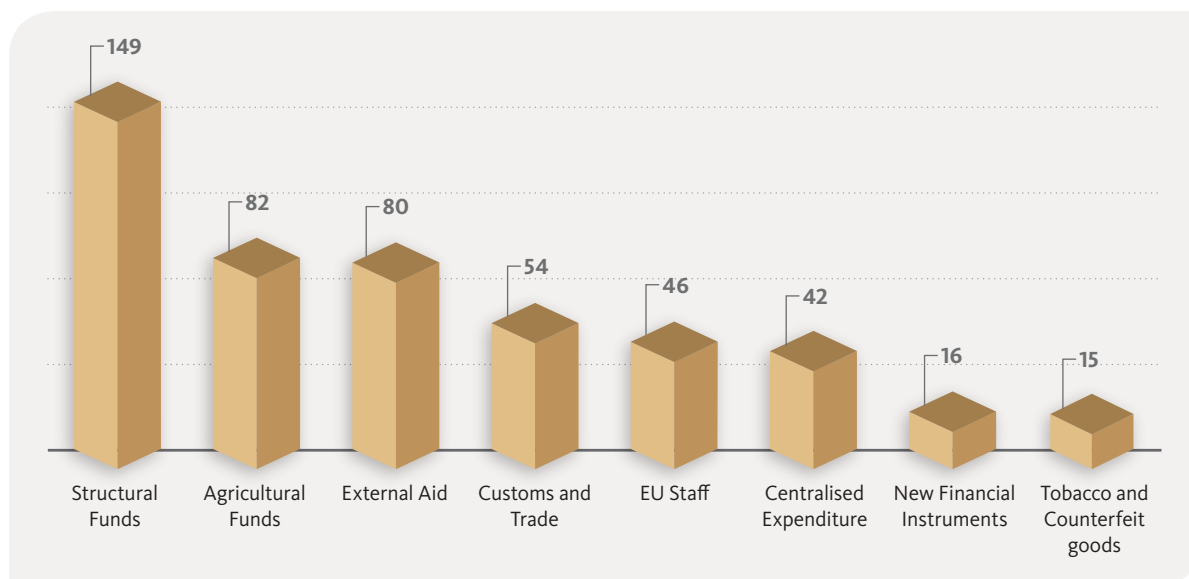
intended purpose since the completion of the works. In addition, a valid permit for construction and the necessary administrative authorisations had not been obtained by the beneficiary. The local government's technical service raised concerns at an early stage, but the managing authority disregarded them. The national co-financing authorities, which were also responsible for overseeing the project, should have noticed the red flags earlier.

OLAF recommended to the Directorate-General for Regional Policy the full recovery of the ERDF subsidy given that the terms of the project's grant agreement had not been respected. The EUR 1.3 million was deducted from the final balance of the project.

**Case study: Investigation leads to the discovery of complex anti-dumping duties fraud**

This case is an example of a particularly comprehensive investigation involving many stakeholders, including Member States, third countries and companies. This type of investigation requires considerable investigative and multinational legal expertise, available only in OLAF. Member States' capacities alone would have been insufficient to conduct such investigations.

**Figure 12: Ongoing investigations per sector**





A product is considered as being dumped if its export price to the EU is less than its normal value<sup>(13)</sup>. To prevent negative effect to its industries, the EU may apply an anti-dumping duty (ADD) for such products. OLAF is competent for investigating cases where EU importers evade such duties. The OLAF investigation below established evidence which enabled 18 Member States to start recovery proceedings for EUR 26 million in evaded ADD and conventional customs duties.

The focal point of the investigation was the traffic of Chinese-produced fasteners (such as screws and bolts) via Batam Island (Indonesia) to the EU. The traffic commenced following the imposition of an ADD on Chinese fasteners. The island is part of a free-trade zone and, as such, is closely monitored by Indonesian customs. Based on import and export records, together with transport documentation obtained from the maritime freight carriers, OLAF found that the finished fasteners had been imported from China into Batam and, following cross-stuffing of containers, were re-exported to the EU. On importation into the EU, the EU importers declared the goods as originating in Indonesia and presented Indonesian certificates of preferential origin to customs officials. The Indonesian exporters had obtained these certificates on the basis of incorrect information provided to the issuing authorities.

The evidence was collected in joint OLAF/Member States missions conducted in Indonesia in close cooperation with the Indonesian authorities. OLAF made financial recommendations to Member States' customs authorities to collect the evaded duties.

This investigation is among several which concern fraudulent imports of fasteners originating in China. It is also an example of good cooperation with Indonesia even in the absence of a customs agreement.

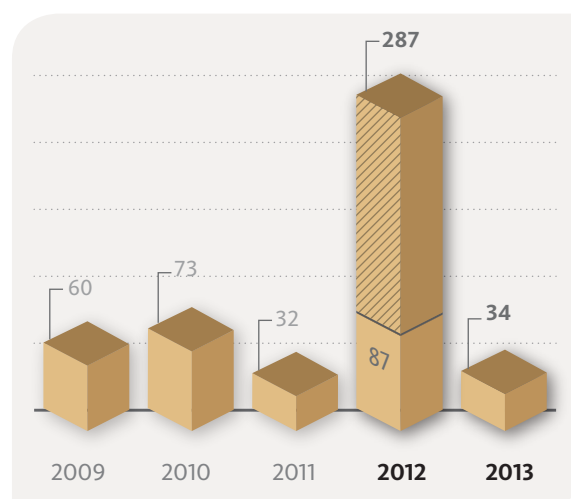
## 2.4 Coordination activities

### OLAF AS CENTRAL POINT

Within the framework of a coordination case, OLAF provides assistance and contributes to investigations carried out by competent authorities in the Member States. This facilitates the collection and exchange of evidence and ensures investigation synergy among the relevant competent authorities.

Due to the more limited role of OLAF in coordination cases in recent years, the tendency has been to open more investigations and fewer coordination cases.

Figure 13: Coordination cases opened<sup>(14)</sup>



Most coordination cases were opened in sectors linked to the collection of "traditional own resources": the Tobacco and Counterfeit Goods sector followed by the Customs and Trade sector. In these sectors especially, OLAF can bring added value in the context of a coordination case because it holds information of a European or international dimension, which national authorities may lack. In the case of the fight against tobacco smuggling, for example (see also chapter 3), OLAF can assist its partners with operational information on the transport of containers and can put at their disposal a IT coordination center in its Brussels headquarters.

<sup>(13)</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

<sup>(14)</sup> The figures for 2012 include 200 coordination cases, already previously under evaluation, opened as a result of the reorganisation of 01.02.2012.

## 2.5 Recommendations

### THE HIGHEST NUMBER OF RECOMMENDATIONS IN FIVE YEARS

In 2013 OLAF closed the highest number of cases with recommendations in the last five years (Figure 14). In addition the Office confirmed the trend of 2012 and issued a high number of recommendations - 353 - another record since 2006.

The Director-General of OLAF issues recommendations based on the results of investigations, for action to be taken by the relevant EU Institutions, bodies, offices, agencies or competent authorities of Member States.

A recommendation may be for administrative, disciplinary, financial or judicial action to be taken, and several recommendations may be made in a single case. The results of OLAF's investigations may also be transmitted to the competent authorities in third countries.

These recommendations are the main outcome of OLAF investigative activities. Indeed, it is mainly through is-

suing recommendations that OLAF can contribute to the efforts made by the EU Institutions to ensure that EU funding reaches the projects it is intended for or is recovered to the EU budget; that the reputation of the EU Institutions is safeguarded; and that any misconduct of EU staff is promptly addressed.

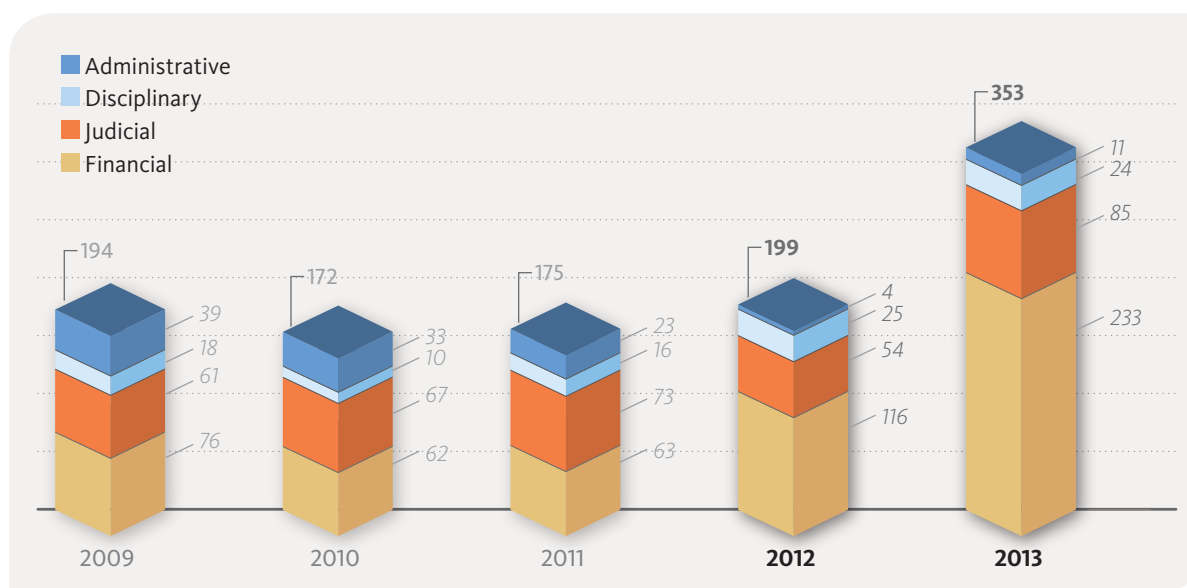
As demonstrated in Figure 15, the majority of recommendations issued in 2013 were financial recommendations and were almost double those of 2012, followed by judicial and disciplinary recommendations.

**Financial recommendations are usually directed at the EU institutions, bodies, offices or agencies providing or managing the EU funds. However they can also be directed at the competent authorities of Member States, such as national customs authorities, e.g. for the collection of evaded import duties.**

**Figure 14: Investigation and coordination cases closed with recommendations**

Cases closed	2009	2010	2011	2012	2013
with recommendations	106	98	108	100	164
without recommendations	82	91	100	365	251
<b>Total</b>	<b>188</b>	<b>189</b>	<b>208</b>	<b>465</b>	<b>415</b>

**Figure 15: Number of recommendations issued by type in the last five years**





In 2013 OLAF recommended that a total of EUR 402.8 million be recovered by the competent authorities, compared to EUR 284 million in 2012.

**Figure 16: Amounts recommended by OLAF for recovery in 2013**

Sector	Amount (EUR million)
Structural Funds	111.7
External Aid	100.4
Customs and Trade	84.9
New Financial Instruments	66.3
Agricultural Funds	34.4
Centralised Expenditure	4.5
EU Staff	0.6
<b>Total</b>	<b>402.8</b>

#### Case study: Financial and judicial recommendations issued in a fraud case involving a tender procedure

The Structural and Cohesion Funds are the financial instruments of EU regional policy, which are intended to narrow the development disparities among regions and Member States. There are two Structural Funds, the European Social Fund and the European Regional Development Fund (ERDF). In late 2010, OLAF received detailed information alleging that in 2003 and 2004 there were irregularities in the public procurement procedures for the procurement and construction of water purification plants in Member State. 75% of the costs were financed by the ERDF. There were also allegations regarding the regularity of the Technical Assistance related to these projects. The informant claimed that the local authorities did not investigate the initial allegations prior to OLAF's involvement.

OLAF opened an investigation and conducted a series of on-the-spot controls. Based on its findings OLAF concluded that the project tendering procedures were irregular for a number of reasons, including:

- ▶ The tender requirements were not directly related to the purpose of the contract and were discriminatory.
- ▶ The award/solvency criteria were not in line with public procurement rules.
- ▶ The successful tenderer was in possession of confidential information

- ▶ Disproportionately low weighting was given to the "price" criterion.

These abuses were intended to favour the successful tenderer over the other competitors. With regard to the Technical Assistance contract OLAF also found that this was seriously flawed both in its preparation and its execution.

In 2013, OLAF made financial recommendations to the Directorate-General for the Regional Policy that the total of EUR 10.2 million in EU funding provided for the projects be returned to the EU budget.

Later that year, the national judicial authority opened a case against the defendant following OLAF's judicial recommendation. Judicial proceedings are ongoing.

#### Case study: OLAF's internal investigation reveals an EU official's misconduct

OLAF is the only body with the competence to investigate officials from all European Union institutions, bodies and agencies. As such it is instrumental in safeguarding the integrity and reputation of the EU and its civil servants.

In 2009, based on information flowing from an external investigation, OLAF opened an internal case investigating irregular relations between a company under investigation and a European Commission official. The investigation revealed that the official may have been involved in professional misconduct, including a conflict of interest relating to the subcontracting of services for contracts that he managed.

Following its investigation, OLAF made a judicial recommendation regarding the possible passive corruption and other irregular activities of the official. Currently, judicial proceedings are ongoing and the personal immunity of the suspect has been waived. In these proceedings the Commission seeks financial compensation for financial loss and restoration of its reputation. Furthermore the disciplinary recommendations to the relevant European Commission body indicated a conflict of interest and other professional misconduct. As a result, the individual was found to be in breach of European Commission Staff Regulations and has been dismissed from duty.

## 2.6 Implementation of recommendations

OLAF is monitoring a total of 1267 recommendations issued in previous years, including the 353 recommendations issued in 2013.

### OLAF'S INVESTIGATIVE EFFORTS HAVE RESULTED IN HIGHER AMOUNTS RECOVERED TO THE EU BUDGET

OLAF's primary role in protecting the financial interests of the EU is to investigate fraud, corruption or other illegal activities affecting these interests. Where the results of such investigations establish a financial liability, all appropriate recovery actions must be undertaken. It must be underlined, however, that OLAF has not been empowered to recover EU monies. Consequently, any recovery actions following the results of OLAF investigations fall under the responsibility of competent authorities (EU institutions, bodies, offices, agencies or Member States).

In 2013, OLAF helped recover EUR 117.05 million to the EU budget.

The figures on amounts recovered indicated by sector in Figure 17 are those available at the time of adoption of this report. For expenditure sectors, the recovery data was provided to OLAF by the competent Commission services and other EU institutions, bodies, offices and agencies. With regard to the Customs (traditional own resources) sector, the recovery data was extracted from the OWNRES database which Member States use to report frauds and irregularities over EUR 10 000 to the Commission.

**Figure 17: Amounts recovered<sup>(15)</sup> by the competent authorities following OLAF's recommendations (in million)**

Sector	2012 recoveries	2013 recoveries
Customs Fraud	33.9	76.5
Structural Funds	33.4	33.7
Agricultural Funds	14.3	3.2
External Aid	12.8	2.5
EU Staff	0.05	0.8
Centralised Expenditure	0.04	0.05
EU funding through International Org and Bodies	0.003	0.3
<b>Total</b>	<b>94.493</b>	<b>117.05</b>

### OLAF'S INVESTIGATIONS HAVE LED TO AN INDICTMENT RATE OF 54%

The results of actions taken following OLAF judicial recommendations transmitted between 1 January 2006 and 31 December 2013, in total and by Member State, are presented in Figure 18a <sup>(16)</sup>. It covers recommendations issued by OLAF as a result of investigation activities conducted.

These statistics reflect progress in as much as more than half of OLAF's recommendations have led to results. However there continue to be considerable disparities in the follow-up given by the Member States to OLAF's judicial recommendations.

The heterogeneous treatment of OLAF's judicial recommendations in the Member States and the need to further speed up the judicial decision making confirm the urgency to set up a EU body in the field of criminal investigation and prosecution. As a result, the investigation and prosecution of fraud against the EU budget would be more equivalently handled in cooperation with national judicial authorities.

For this purpose the Commission proposed, in July 2013, a Regulation on the establishment of a European Public Prosecutor's Office (EPPO) <sup>(17)</sup> to improve the fight against offences affecting the Union's financial interests. Its exclusive task would be to investigate, prosecute and, where relevant, bring to judgement, in Member States' courts, crimes affecting the Union's financial interests.

<sup>(15)</sup> In the context of this report, the term 'recovery' includes the results of recovery orders issued by the Commission, offsetting of debts, de-commitment of EU finances from projects or programmes, debt liability apportionment between the Commission and Member States in certain sectors and recoveries of EU funds (e.g. import duties) from economic operators by Member States. Not all of these recovery transactions are individually identifiable in the Commission's accounting system.

<sup>(16)</sup> In Figure 18a a recommendation issued to different authorities was counted as several different recommendations based on the number of authorities that it was directed to. However, one recommendation could concern several individuals and it would still be counted as one recommendation.

<sup>(17)</sup> COM(2013) 534 final





**Figure 18a: Rate of indictment following OLAF's judicial recommendations**

N° of judicial recommendations	No decisions taken		Decisions taken			Rate of Indictment
	Reporting period	Ongoing criminal investigation	Total	Dismissal	Indictment	
436	37	138	261	121	140	54%

**Figure 18b: Actions taken by national judicial authorities following OLAF judicial recommendations per Member State between 1 January 2006 and 31 December 2013**

N° of judicial recommendations	No decisions taken		Decisions taken			Rate of Indictment	
	Reporting period	Ongoing criminal investigation	Total	Dismissal	Indictment		
Austria	5	-	2	3	1	2	67%
Belgium	43	-	14	29	15	14	48%
Bulgaria	27	2	7	18	8	10	56%
Cyprus	4	-	3	1	-	1	100%
Czech Republic	7	2	1	4	1	3	75%
Denmark	4	1	2	1	1	-	0%
Estonia	2	-	-	2	1	1	50%
Finland	1	-	-	1	1	-	0%
France	20	-	6	14	4	10	71%
Germany	30	-	6	24	7	17	71%
Greece	22	4	8	10	1	9	90%
Hungary	4	-	3	1	-	1	100%
Ireland	1	-	1	-	-	-	0%
Italy	71	2	26	43	18	25	58%
Latvia	1	-	1	-	-	-	0%
Lithuania	5	-	1	4	3	1	25%
Luxembourg	8	-	6	2	1	1	50%
Malta	6	1	-	5	-	5	100%
Netherlands	16	1	2	13	7	6	46%
Poland	17	2	4	11	5	6	55%
Portugal	10	-	3	7	5	2	29%
Romania	70	17	31	22	12	10	46%
Slovakia	9	3	1	5	5	-	0%
Slovenia	1	-	-	1	-	1	100%
Spain	30	-	7	23	14	9	39%
Sweden	3	1	-	2	-	2	100%
United Kingdom	19	1	3	15	11	4	27%
<b>Total</b>	<b>436</b>	<b>37</b>	<b>138</b>	<b>261</b>	<b>121</b>	<b>140</b>	<b>54%</b>

### 3. Focus on: The fight against illicit trade in tobacco products and the role of OLAF

The illicit trade in tobacco products is a harmful phenomenon that deprives the EU and Member States' budgets of considerable resources, with estimated tax losses of EUR 10 billion each year <sup>(18)</sup>. It is an ever more globalised, multifaceted phenomenon, subject to constant change <sup>(19)</sup>. This is why the fight against the illicit trade in tobacco products can only be successful if Member States' customs authorities and the EU coordinate their action through a variety of policy and law enforcement measures.

OLAF's work in the fight against illicit tobacco trade involves investigative activities and policy measures.

In order to address the significant challenges stemming from the need to step up the fight against illicit tobacco trade OLAF has deployed important resources over the last five years as detailed Figure 19.

**Figure 19: OLAF staff dealing with illicit trade in tobacco <sup>(20)</sup>**

2009	2010	2011	2012	2013
15	18	16	20	21

OLAF is focusing its work on the following areas:

- Investigations by OLAF and coordination of Member States' investigative activities;
- Joint Customs Operations coordinated by OLAF;
- Contributions to the development and implementation of policy and legal instruments.

#### INVESTIGATIONS BY OLAF AND COORDINATION OF MEMBER STATES' INVESTIGATIVE ACTIVITIES

On its own initiative or at the request of Member States, OLAF conducts or coordinates investigations into allegations of tobacco smuggling, often involving investigative missions in third countries as well as in the EU. These activities are supported by tracking and tracing information combined with other market information from the four major cigarette manufacturers with whom the EU and Member States have agreements (see section below). Europol is a partner in these activities.

Figure 20 shows the number of investigation and coordination cases that OLAF has opened in the last five years.

**Figure 20: Investigation and coordination cases opened in the sector of illicit trade in tobacco products in 2009-2013**

Year	2009	2010	2011	2012	2013
Investigation cases opened	0	0	3	13	8
Coordination cases opened	14	13	9	33	21

<sup>(18)</sup> This figure has been estimated on the basis of the total seizures of cigarettes in the EU, the assumption that enforcement authorities are able to seize 10% of the products traded illicitly and the EU average loss in excise and VAT taxes and applicable duties.

<sup>(19)</sup> This phenomenon has been further explained in the Commission's Cigarette Communication of 6 June 2013 (COM (2013) 324).

<sup>(20)</sup> The figures include staff involved in investigation and policy.

### Case study: OLAF coordinates multi-national efforts to curb cigarette smuggling

The following case started in 2010 is a good example of OLAF's coordination efforts in fighting illicit tobacco trade. The Czech customs authorities requested OLAF's coordination in an investigation of a structured cigarette smuggling network. The network had direct contacts with the producers of counterfeit cigarettes in China and used other criminal networks to traffic these into the EU.

Czech customs also provided information about the activities of this group in Spain. OLAF shared this information and helped coordinate the investigations in Spain and in the Czech Republic. The Spanish customs identified a large, structured criminal group responsible for smuggling cigarettes from China into Spain and Portugal. The group was also suspected of laundering the profits of these illegal activities.

OLAF coordinated actions across Europe, including controlled delivery<sup>(21)</sup>, and more than 40 million cigarettes were seized. OLAF also coordinated activities between judicial and customs authorities in Spain, Czech Republic, Portugal, Andorra, Romania, Poland and the Netherlands. It supported the investigative bodies of each Member State involved and prepared the requests for international judicial assistance together with Eurojust. Through the cooperation facilitated by OLAF, several Member States were able to carry out investigations and actions simultaneously.

The criminal network was identified and dismantled in Spain, Portugal and in the Czech Republic in 2010. The

competent services in the Member States, together with OLAF, are still in the process of confiscating the assets obtained through these illegal activities.

As a result more than EUR 7 million of potential losses in unpaid customs duties were prevented.

### JOINT CUSTOMS OPERATIONS COORDINATED BY OLAF

In the context of Joint Customs Operations (JCO) OLAF coordinates the work of several national customs authorities exchanging information and acting jointly against internationally organised contraband<sup>(22)</sup>.

Figure 21 illustrates the number of JCO related to the illicit trade in tobacco products OLAF that worked on during the last five years.

### RESULTS OF OLAF'S INVESTIGATIVE ACTIVITIES AND JOINT CUSTOMS OPERATIONS

As shown in Figure 22, OLAF's investigative activities and the JCO it has coordinated have contributed to significant amounts of cigarettes seized in the EU.

### CONTRIBUTIONS TO THE DEVELOPMENT AND IMPLEMENTATION OF POLICY AND LEGAL INSTRUMENTS

OLAF is involved in negotiating and drafting of international and EU legislation. The Office is the lead service responsible for the conclusion of the Protocol to Eliminate Illicit Trade in Tobacco Products, the first Protocol to the Framework Convention on Tobacco Control ("FCTC Protocol"), and contributes to the implemen-

**Figure 21: Joint Customs Operations conducted by OLAF in 2009-2013**

Year	2009	2010	2011	2012	2013
JCO	3	1	2	0	2

**Figure 22: Number of cigarettes seized with the support of OLAF's activity in 2009-2013**

Year	2009	2010	2011	2012	2013
Coordination and investigation cases	125 037 600	212 040 100	156 213 400	155 749 000	280 680 400
JCOs	81 944 400	74 816 400	1 741 726	0	68 137 676
<b>Total</b>	<b>206 982 000</b>	<b>286 856 500</b>	<b>157 955 126</b>	<b>155 749 000</b>	<b>348 818 076</b>

<sup>(21)</sup> Law enforcement authorities' tracking of suspected shipments through one or more Member States.

<sup>(22)</sup> For further information about JCO see chapter 4.1, "OLAF's cooperation activities with its partners".

tation of the EU Tobacco Products Directive. OLAF furthermore contributes to the implementation of the Cigarette Communication of 2013. It also participates in the negotiation and the implementation of agreements with the four major tobacco manufacturers.

### THE FCTC PROTOCOL

The FCTC Protocol is an international treaty annexed to the WHO Framework Convention on Tobacco Control. The EU signed the Protocol on 20 December 2013. The Protocol <sup>(23)</sup> will enter into force once 40 States have ratified it. Currently one state (Nicaragua) has ratified the Protocol. Some of its rules, like the introduction of a tracking and tracing regime, need to be implemented within five years after the entry into force of the Protocol.

The Protocol aims at combatting illicit trade in tobacco products by a variety of measures. These include inter alia an obligation for all tobacco manufacturers to record information allowing the tracking and tracing of their product, access of officials to that information and the reporting of that information upon request to a global information sharing point. Moreover, the Protocol foresees rules on the licensing of manufacturers and persons involved in the import and export of tobacco products and due diligence obligations for the manufacturers of tobacco products relating to the compliance of their customers with the applicable laws and regulations. These supply chain control provisions are complemented by provisions on offences, on law enforcement co-operation, mutual administrative and mutual legal assistance, extradition and international co-operation also with regard to free zones and internet sales.

OLAF has significantly contributed to the signature of the FCTC Protocol by the EU on 20 December 2013 and is now working on furthering its conclusion by the EU and its Member States. OLAF is equally promoting the ratification of the FCTC Protocol by other countries, mainly by those from which the EU illicit trade in tobacco products originates.

### THE CIGARETTE COMMUNICATION

The Communication on stepping up efforts to fight against cigarette smuggling and other forms of illicit trade in tobacco products (the “Cigarette Communication”) of June 2013 proposes a comprehensive EU strategy for fighting illicit trade in cigarettes.<sup>(24)</sup>

The Communication proposes measures to reinforce the cooperation with the main source and transshipment countries. It also proposes measures to reinforce the control of the supply chain of tobacco products such as tracking (monitoring the movement) and tracing (to detect at which point the product fell off the legal supply chain). Another priority is enhanced information and intelligence gathering and sharing among the competent authorities inside the EU, including the agencies and bodies at EU level. Furthermore, measures are proposed to organise targeted customs operations, to increase enforcement capacity with more coordinated financing, technical assistance and training, as well as sharing of best practices. Attention is moreover given to address corruption, to decrease the incentives created by the gaps and loopholes in the excise legislation, to strengthen the disincentives (sanctions) and to raise awareness in the public about the risks associated with consuming illicit cigarettes.

Council conclusions were adopted by ECOFIN on 10 December 2013 concerning the fight against the illicit trade.

OLAF is coordinating the implementation of the Cigarette Communication and will publish annual reports on the state of play of its implementation.

### THE AGREEMENTS WITH CIGARETTE MANUFACTURERS

OLAF contributed significantly to the conclusion of binding agreements between the EU and four tobacco manufacturers (PMI, JTI, ITL and BAT, hereafter named “Cooperating Manufacturers”) <sup>(25)</sup>. The Agreement with PMI was concluded in 2004, that with JTI in 2007, and the agreements with BAT and ITL in 2010. All Member States which were Members of the Union prior to the accession of Croatia have acceded to the cooperation agreements, with the exception of Sweden, which has not concluded

<sup>(23)</sup> [http://apps.who.int/iris/bitstream/10665/80873/1/9789241505246\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/80873/1/9789241505246_eng.pdf?ua=1)

<sup>(24)</sup> COM (2013) 324

<sup>(25)</sup> The texts of the agreements are available at: [http://ec.europa.eu/anti\\_fraud/investigations/eu-revenue/cigarette\\_smuggling\\_en.htm](http://ec.europa.eu/anti_fraud/investigations/eu-revenue/cigarette_smuggling_en.htm).



**Figure 23: Annual and seizure payments by the Cooperating Manufacturers in 2009-2013 in Euro**

Year	2009	2010	2011	2012	2013
Annual Payments	89 000 000	114 342 777	101 507 738	88 190 862	84 229 703
Seizure Payments	11 784 835	8 411 615	11 289 669	6 345 782	3 727 226
<b>Total</b>	<b>100 784 835</b>	<b>122 754 392</b>	<b>112 797 407</b>	<b>94 536 644</b>	<b>87 956 929</b>

the agreements with BAT and ITL. Croatia has joined the agreements on 7 April 2014.

The agreements foresee a variety of compliance commitments of the Cooperating Manufacturers in addition to private law and the applicable EU laws and regulations. The commitments include strong anti-money-laundering provisions and a global tracking and tracing of their product until it has been sold to their first customer and to subsequent customers as technology develops. They include provisions requiring to know their customer and to apply globally due diligence in proactively avoiding that their product ends up on the illicit market.

The agreements also foresee that Manufacturers cooperate with OLAF and the national police and customs authorities by providing relevant information to support investigations against the criminals behind the illicit trade in tobacco.

The agreements provide for annual and seizure payments to the EU's and the Member States' budgets. A share of 9.7% of the annual payments is allocated to the EU's general budget while the rest goes to the Member States' budgets. Seizure payments are an incentive for the manufacturers to control the chain of distribution by obliging them to make payments in the event of seizure in the EU of their genuine products above defined quantities. Their allocation to the EU's and the Member State's budgets is made on the basis of a complex formula taking into account the EU's share of customs duties and VAT which would have been due for the seized cigarettes.

OLAF is investing significant resources to ensure the smooth implementation of the agreements with the Cooperating Manufacturers.

## OUTLOOK

In the Cigarette Communication of 2013, the Commission undertook to address the remaining challenges in fighting illicit trade in tobacco products. Improving the availability and accuracy of independent information sources is of great importance, since such sources are needed to analyse trends and thereby better focus the OLAF's policy and investigation resources. The implementation of the agreements with the Cooperating Manufacturers continues to be a priority for the current monitoring of the supply chain of illicit cigarettes. Since illicit cigarettes seized in the EU often originate from countries outside the EU and are not destined for the EU market, EU legislation needs to be complemented by effective investigations, international agreements (like the FCTC Protocol) and the agreements with the Cooperating Manufacturers to curb the illicit trade in tobacco products.



## 4. Policies to fight against fraud

### 4.1 OLAF's cooperation activities with its partners

OLAF conducts investigations in the EU institutions, Member States and worldwide, wherever there is a suspicion of fraud against EU funds. It also supports the Commission and other EU institutions and bodies as well as Member States in the development and implementation of anti-fraud legislation and policies.

The institutions and authorities in the EU and across the globe cooperate with OLAF in sharing information on suspected fraud and corruption, providing operational assistance and monitoring the implementation of its recommendations.

#### COOPERATION WITH EU INSTITUTIONS AND BODIES

Among the EU institutions, OLAF strengthened in particular its cooperation with the European Parliament, with the signature of Practical Arrangements on 29 July 2013. This document aims at ensuring the effectiveness of investigations led by OLAF and enhancing cooperation between OLAF and the European Parliament. Discussions on the signature of similar arrangements are ongoing with other EU institutions.

The OLAF Regulation puts a specific emphasis on developing cooperation with Europol and Eurojust, important partners of OLAF in the fight against fraud, corruption and any other illegal activity affecting the financial interests of the Union.

OLAF and Europol are working on a practical arrangement to reinforce their cooperation and information exchange based on work done so far.

In order to build a stronger relationship with Eurojust, the OLAF Director-General adopted on 18 October 2013 new internal guidelines for OLAF investigators regarding the transmission of case-related information to Eurojust<sup>(26)</sup>. The guidelines aim at developing a consistent and coherent practice for the cooperation between the two bodies through, for instance, information exchanges and training events.

<sup>(26)</sup> In 2013, OLAF and Eurojust cooperated in four common cases (which correspond to four cases registered in OLAF and six cases registered in Eurojust). In 2013 OLAF attended two Eurojust coordination meetings.

OLAF has an established practice on cooperating with Eurojust on cases that need additional attention from national prosecutors.

#### Case study: Cooperation with Eurojust and current limitations of intervention

The following case is an example of good cooperation between OLAF and Eurojust, but also shows the limits of OLAF's scope of intervention. In 2010, OLAF established that a network of individuals located in several Member States was possibly smuggling fresh garlic from China into the EU via Norway. Import of fresh Chinese garlic to the EU is subject to a 9.6% ad valorem duty and a specific amount of EUR 1 200 per tonne (net weight).

OLAF carried out a fact-finding mission to Norway and a Member State helped quickly to disrupt the alleged fraudulent activities. A load of garlic was seized. Initially the national prosecutor refused to dedicate resources to the criminal investigations and the subsequent prosecution of all persons involved in this smuggling activity (57 truckloads of garlic had been smuggled into the EU by this group in 2009 and 2010). After more than a year and the intervention of Eurojust, a new criminal investigation was opened by a different national prosecutor.

OLAF assisted the national prosecutor's office in preparing and executing mutual legal assistance requests in various Member States, but OLAF recognised its current limits to intervene. It took more than three years before an indictment had been issued. The evaded customs duties are estimated at EUR 1.6 million and the loss of a further EUR 170 000 was prevented following the disruption of the operations in June 2010.

This is an example of a case where an initiative by the European Public Prosecutor's Office could have resulted in a quicker and more successful ending.

#### COOPERATION WITH MEMBER STATES

In its role as coordinator in the fight against fraud at EU level, OLAF cooperates closely with the Member States in order to ensure a rapid exchange of information and swift follow-up actions.



In 2013 the Advisory Committee for the Coordination of Fraud Prevention (COCOLAF) and its working parties, where relevant Member States' authorities are represented, were re-structured along the lines of different fraud prevention and control areas, such as:

- legislative and policy issues;
- general issues of investigative cooperation, irregularities, protection of the Euro;
- external communication.

The aim of this re-structuring was to provide a clearer overview of activities and relations with the Member States' authorities.

Member States are now required to designate an anti-fraud coordination service (AFCOS). In Member States that have joined the EU since 2004, AFCOS are already operational and assisting OLAF in its investigative and policy activities. At the end of the year 2013, 15 Member States had designated AFCOS and others have taken steps to do this in 2014.

As part of its extensive cooperation with AFCOS, OLAF organises an annual AFCOS conference together with the candidate countries. In 2013 this took place in Ankara, Turkey.

Among the Member States that have designated AFCOS, the following have decided to place it as a constituent body within the Ministry of Finance: Croatia, Cyprus, Czech Republic, Estonia, France, Latvia, Hungary, the Netherlands, Slovenia and Poland.

Bulgaria and Lithuania have placed it within the Ministry of Internal Affairs.

Finally, in Malta, Romania and Slovakia the AFCOS is set up as an independent body within the national government.

All of the above were designated by 31 December 2013, while a number of other AFCOS have already been designated in the course of 2014. It is expected that all Member States will have an AFCOS in place before the end of 2014.

While EU legislation provides sufficient basis for cooperation with Member States' authorities, the Office will also sign Administrative Cooperation Arrangements to further facilitate the working relationship between OLAF and the respective authority.

OLAF signed the following Administrative Cooperation Arrangements in 2013:

- the Swedish International Development Cooperation Agency (SIDA);
- the Prosecutor General's Office of Latvia;
- the General Prosecution Office of the Italian Court of Auditors.

## COOPERATION WITH NON-EU COUNTRIES AND INTERNATIONAL ORGANISATIONS

Cooperation with non-EU countries and international organisations is an important component of OLAF's work. Through the signature of Administrative Cooperation Arrangements with partner services in non-EU countries, international organisations and financial institutions, OLAF has managed to establish in recent years, a solid network of partners throughout the world. This approach was pursued in 2013 when OLAF signed arrangements with the Palestinian Anti-Corruption Commission, the Moldovan Customs Service, the Ukrainian Ministry of Revenue and Duties and the Australian Customs and Border Protection Service.

### Case study: Strengthened cooperation between OLAF and the Customs Service of the Republic of Moldova in tackling cigarette smuggling.

OLAF signed an Administrative Cooperation Arrangement (ACA) with the Moldovan Customs Service on reinforcing the cooperation in fighting trade customs fraud and especially the illicit trade in tobacco products. The ACA came as a result of good cooperation, exchanges of information and assistance received on a regular basis from Moldovan Customs.

In 2013 the Moldovan Customs Service informed OLAF about a number of illegal factories in different EU countries, running under the coordination/activities of a Moldovan organised crime group. This group specialised in supplying machines for manufacturing cigarettes and providing technical assistance in the use of these machines. On the basis of the information received, OLAF coordinated a joint investigation into illegal factories located in Bulgaria, Greece and Poland.

As a result of this coordination case, tobacco containers were seized, three illegal factories shut down and the Moldovan criminal organisation was dismantled with the individuals concerned arrested.

## AN EXAMPLE OF TARGETED AND EFFICIENT COOPERATION: OLAF CO-ORDINATED JOINT CUSTOMS OPERATIONS IN 2013

In the implementation of the policy to fight against the smuggling of excise goods, Joint Customs Operations (JCO) are specifically targeting smuggling and customs fraud in high-risk areas or along identified trade routes. These operations also improve cooperation between the countries involved in tackling these illegal activities. JCOs do not only safeguard the EU's financial interests, but also protect citizens and legitimate businesses by intercepting illegal products entering the EU.

In 2013 OLAF provided substantial conceptual, operational and financial inputs to two operations.

The first operation, 'ROMOLUK', was carried out in the context of the EU Action Plan to fight smuggling of cigarettes and alcohol along the Eastern border of the EU. It was jointly coordinated by OLAF and Romanian Customs, with the participation of the Ukrainian and Moldavian authorities, EU-BAM, FRONTEX and EUROPOL. OLAF provided its expertise, as well as analytical and logistical input.

The second operation, 'WAREHOUSE', was carried-out in close cooperation with Lithuanian

tax authorities to target excise and VAT fraud specifically, as well as customs fraud. During the entire operation, OLAF provided organisational, logistical, financial and technical support to allow for an exchange of information and intelligence in real-time.

OLAF put its newly designed application Virtual Operational Coordination Unit (V-OCU) at the disposal of the Member States to allow a real time exchange of information and intelligence through a secure customs network during the JCOs.



## 4.2 Implementation of the Commission Anti-Fraud Strategy: OLAF's contribution

2013 was a significant year in the implementation of the Commission Anti-Fraud Strategy (CAFS). The priority actions announced in the CAFS were completed in 2013 as well many supporting actions.

### PRIORITY ACTIONS

In the CAFS, three issues were addressed as a matter of priority related to fraud prevention:

- ▶ To insert adequate anti-fraud provisions in Commission proposals on spending programmes for the programming period 2014-2020. Provisions have been included in all relevant funding programmes which provide for a reference to OLAF's investigative competence.

- ▶ The development of anti-fraud strategies at Commission Service level. OLAF developed a methodology to support Commission Services in the elaboration of their strategies and organised workshops with groups of services active in similar policy areas. Most Directorates-General adopted their strategies; a few are finalising theirs.
- ▶ The revision of the procurement directives by Directorate-General for Internal Market and Services. The new rules on public procurement and concession contracts entered into force in April 2014.

### SUPPORTING ACTIONS IN 2013

OLAF provided training to Commission officials and auditors in particular on the detection of fraud and fraud indicators and on reporting suspicions of fraud. The training has led to increased fraud awareness within the Commission and will lead to a stronger focus on the prevention of fraud and detecting fraud at an early stage.





OLAF also supported the Commission Services on fraud risk management. Fraud risk assessment is an important part of the methodology for the elaboration of an anti-fraud strategy. By identifying and assessing fraud risks within a Commission Service, anti-fraud measures can be directed at areas with a higher fraud risk, thus enabling a proportionate and effective means of fraud prevention.

The Fraud Prevention and Detection Network (FPD-Net), a network of representatives from all Commission Services aimed at exchanging experience and best practices in fraud prevention had four meetings in 2013. Among the discussed topics were the ethics structure in the Commission and the anti-fraud measures to prevent and detect corruption and irregular activities of EU officials.

#### OLAF ANTI-FRAUD STRATEGY

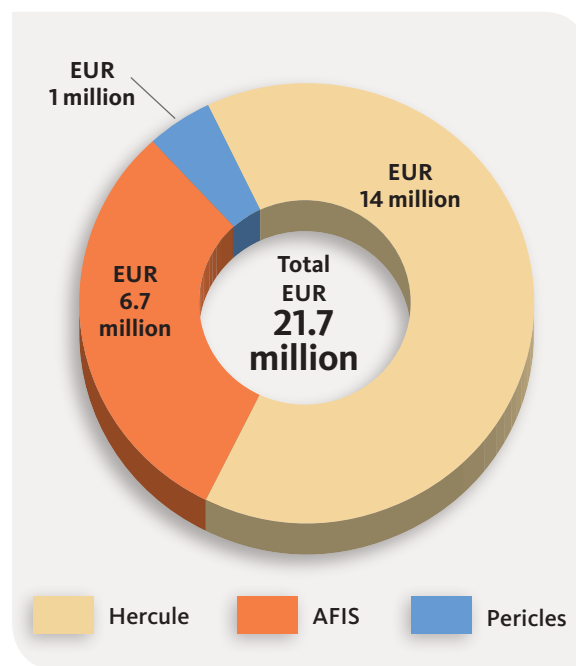
In December 2013, OLAF adopted its own Anti-Fraud Strategy for 2014-2017 to strengthen the anti-fraud measures already in place in the Office. Taking into account the fraud risk assessment, the control environment, the procedures in place and OLAF's mission, it was decided to focus on two main objectives:

- ▶ Maintaining a high level of control for funds managed by OLAF;
- ▶ Promoting the highest level of integrity of OLAF staff.

A set of actions was proposed and will be implemented in order to achieve these objectives.

## 4.3 Financial support

Figure 24: OLAF budget for programmes in 2013



#### HERCULE PROGRAMME

The Hercule programme offers funding dedicated to preventing and fighting fraud, corruption and any other illegal activities affecting the financial interests of the Union, including the fight against cigarette smuggling and counterfeiting.



The Hercule II programme<sup>(27)</sup> had a budget of EUR 14 million in 2013 for funding actions to strengthen the operational and administrative capacity of customs and police forces in the Member States, and for training activities and conferences as well as for IT support.

In 2013, the Commission supported more than 40 technical assistance actions, for an amount of almost EUR 8.5 million, undertaken by law enforcement agencies in the Member States. The actions consisted of, for example, the purchase of x-ray scanners deployed at the Union's external borders to examine containers, trucks and other vehicles. The scanners proved to be helpful in the detection of substantial amounts of smuggled and counterfeit cigarettes and tobacco but also helped in revealing the presence of liquor, drugs or arms.

Hercule funding was further provided for organising conferences and training seminars in 2013 in order to provide an opportunity to law enforcement staff from different Member States and third countries to meet and to share information on the best practices in the fight against irregularities, corruption and fraud. The Hercule programme continued to provide funding in support of digital forensics training sessions for law enforcement staff from Member States and some third countries.

Lastly, one of the programme's operational objectives consists of enhancing the development of legal and judicial protection of the financial interests against fraud by promoting comparative legal analysis.

### EUCRIM magazine

Eucrim is a periodical publication which serves as a Europe-wide forum for European criminal law and intends to encourage discussion among practitioners and academics. The magazine is also a forum for the Network of the Associations for European Criminal Law and for the Protection of the EU Financial Interests. Eucrim is issued four times per year and it is available in paper and electronic versions<sup>(28)</sup>. The project is financially supported by OLAF under the Hercule programme.

A new Hercule III Regulation for 2014-2020 entered into force in January 2014. The budget for this programme amounts to EUR 104.9 million over the seven-year period and at least 70% will have to be spent on Technical Assistance actions.

<sup>(27)</sup> Decision 878/2007 of 23 July 2007 for the period 2007-2013

<sup>(28)</sup> <http://www.mpicc.de/eucrim>

### ANTI-FRAUD INFORMATION SYSTEM

The Anti-Fraud Information System (AFIS) is a set of anti-fraud applications operated by OLAF under a common technical infrastructure aiming at the timely and secure exchange of fraud-related information between national and EU competent administrations. It encompasses two major areas: Mutual Assistance in Customs Matters and Irregularities Management.

The programme's budget for 2013 was EUR 6.7 million including human resources and IT costs.

### PERICLES PROGRAMME

OLAF manages, on behalf of the European Commission, the Pericles programme: an exchange, assistance and training programme to protect the euro against counterfeiting. The amount allocated to the programme in 2013 was EUR 1 million. In 2013, 13 projects to protect euro banknotes and coins against counterfeiting were funded in the framework of the Pericles Programme.

In 2011 the Commission presented a proposal for a new Pericles programme for 2014-2020. The negotiations between the Commission, the European Parliament and the Council were successfully concluded in 2013. The budget for this programme amounts to EUR 7.3 million over the seven-year period.

### Results of the study 'Identifying and reducing corruption in public procurement in the EU'

**At the request of the European Parliament, a study was commissioned by OLAF on behalf of the European Commission and carried out, using a special budget line, between March 2012 and June 2013 by PwC and Ecorys, with the support of the University of Utrecht. It concluded that corruption had a very detrimental effect on public resources and therefore the transparency of procurement projects and procedures should be strengthened as a priority<sup>(29)</sup>.**

<sup>(29)</sup> [http://ec.europa.eu/anti\\_fraud/documents/anti-fraud-policy/research-and-studies/identifying\\_reducing\\_corruption\\_in\\_public\\_procurement\\_en.pdf](http://ec.europa.eu/anti_fraud/documents/anti-fraud-policy/research-and-studies/identifying_reducing_corruption_in_public_procurement_en.pdf)

## 5. Data protection

The year 2013 marks an important milestone for data protection at OLAF and in all of the EU institutions, bodies, offices and agencies: it is the tenth anniversary of the appointment of the European Data Protection Supervisor (EDPS), responsible for overseeing their implementation of data protection requirements. The OLAF Data Protection Officer (DPO) and OLAF Controllers have collaborated extensively with the EDPS, and as a result, data protection has permeated every aspect of OLAF's work. OLAF has set up a system for data protection compliance based on the accountability principle.

Some of the most significant achievements of the last ten years are the following:

### PRIOR CHECKING

As OLAF is processing operations related to investigations that require the EDPS review, it has submitted approximately 50 notifications for prior checking. These notifications describe OLAF's most sensitive data processing operations, including internal and external investigations, the Fraud Notification System, intelligence, mutual assistance on irregularities, and monitoring by the OLAF Supervisory Committee. The EDPS has issued a total of approximately 25 prior checking opinions (having treated several notifications together in some of the opinions), and each opinion contains a number of recommendations which OLAF has had to implement.

### CONSULTATIONS

OLAF has submitted a number of consultations to the EDPS over the ten-year period, seeking advice on legislation being drafted, internal rules on data protection, and important issues of policy or procedures to be followed. An example of an important issue with respect to which OLAF sought advice from the EDPS is the data protection clauses to be attached to OLAF's administrative cooperation arrangements with third countries and international organisations. Through meetings and discussions, model data protection clauses have been agreed for transfers of personal data to recipients in third countries and international organisations.

### INSPECTIONS AND VISITS

The EDPS has conducted several inspections and on-the-spot visits at OLAF. These occurred in 2006, 2011 and 2013 to verify the reality regarding the measures taken with respect to the EDPS opinions concerning OLAF investigations and mutual assistance. In each instance, the EDPS staff selected at random a group of case files, and verified whether they reflected the commitments OLAF had made. The EDPS issued a report following each inspection (the 2013 inspection report is expected in early 2014) suggesting, when necessary, ways to strengthen data protection.

### OLAF'S "PRIVACY BY DESIGN" AND ACCOUNTABILITY IN DATA PROTECTION

Following all the prior checks, OLAF has developed and implemented a system for ensuring compliance by each investigator in each case. This is achieved through the OLAF instructions to staff on data protection, OLAF work forms and the OLAF Data Protection Module in the Case Management System. The instructions to staff on Data Protection were adopted by the Director-General in April 2013, replacing Guidelines that had been in force for several years. The instructions take account a number of the EDPS recommendations indicating what OLAF case handlers must do in order to meet data protection requirements. The OLAF work forms contain privacy statements and data protection transfer clauses, ensuring that the recipients of letters from OLAF are correctly informed of their data protection rights or obligations. Case handlers are obliged to record relevant information about their observance of data-protection requirements in the OLAF data-protection module, which was updated in 2013.

The first decade of collaboration between OLAF and the EDPS has been a period of great change. The excellent collaboration between the EDPS and the various actors at OLAF – the DPO, the management and the investigators – has resulted in a practical implementation of the requirements in this complex environment. The result is that data-protection for all data subjects involved in OLAF investigations is rigorously applied.

## 6. Supervisory Committee

The mandate of the Supervisory Committee to monitor OLAF's investigative function in order to reinforce its independence is outlined in Article 15 of Regulation (EU, Euratom) No 883/2013.

The Committee is composed of five members, appointed by the common agreement of the European Parliament, the Council and the Commission. In carrying out their duties the members do not take instructions from any government, institution, body, office or agency.

In 2013, the members of the Committee were: Mr Johan Denolf (Chair, elected as of 8 October 2013 for another one year term), Mr Herbert Bösch, Ms Catherine Pignon, Mr Tuomas Pöysti (as of 27 March 2013) and Mr Jens Madsen (as of January 2013)<sup>(30)</sup>. In February 2014 the Supervisory Committee welcomed a new member, Mr Dimitrios Zimianitis, who replaced Mr Jens Madsen. According to the OLAF Regulation the term of office of the members is five years, not renewable and two members should be replaced alternately to preserve the Supervisory Committee's expertise<sup>(31)</sup>.

In 2013, OLAF allocated to the Supervisory Committee the necessary resources for performing its mission. In addition, during the year, the number of staff members assigned to the Supervisory Committee Secretariat increased from 6 to 8.

The Supervisory Committee delivers opinions or, when appropriate, recommendations to the Director-General of OLAF. These can be delivered on its own initiative, at the request of the Director-General or at the request of an EU institution, body, office or agency without interfering with the conduct of investigations in progress.

In 2013, the Supervisory Committee delivered two Opinions to the Director-General of OLAF related to OLAF's Preliminary Draft Budget for 2014 and to the Establishment of an internal procedure for complaints. During the year, the Supervisory Committee requested and was granted access to 18 cases. Additionally, access to 351 documents relating to investigations was requested. All requests were honoured by OLAF. The Committee received information on all cases transmit-

ted by OLAF to national judicial authorities and OLAF reported to the Supervisory Committee all the required information on the duration of cases.

### NEW REGULATORY FRAMEWORK BETWEEN OLAF AND THE SUPERVISORY COMMITTEE

With the entry into force of Regulation (EU, Euratom) No 883/2013, OLAF and its Supervisory Committee agreed on new joint Working Arrangements which were signed on 14 January 2014. The text is available on the OLAF website<sup>(32)</sup>.

The Working Arrangements marked a significant step forwards in the working relations between both parties. They set out:

- ▶ The general information to be provided to the Supervisory Committee concerning the investigative activity of OLAF;
- ▶ An agreed methodology for providing extensive information on OLAF investigations, whilst fully respecting the rules concerning the confidentiality of information and personal data contained in the relevant case files;
- ▶ A timeframe for the provision of this information, taking into account the monitoring needs of the Supervisory Committee to have regular and reliable information on the investigative function of OLAF, while reducing the burden of continuous reporting for the Office.

The Working Arrangements aim at strengthening the relationship between OLAF and its Supervisory Committee, by enhancing the support for OLAF's investigative function and to its independence and improving the cooperation practices.

<sup>(30)</sup> Supervisory Committee's dedicated section on OLAF's website : [http://ec.europa.eu/anti\\_fraud/about-us/supervisory-committee/index\\_en.htm](http://ec.europa.eu/anti_fraud/about-us/supervisory-committee/index_en.htm)

<sup>(31)</sup> Article 15.3, Regulation (EU, Euratom) No 883/2013

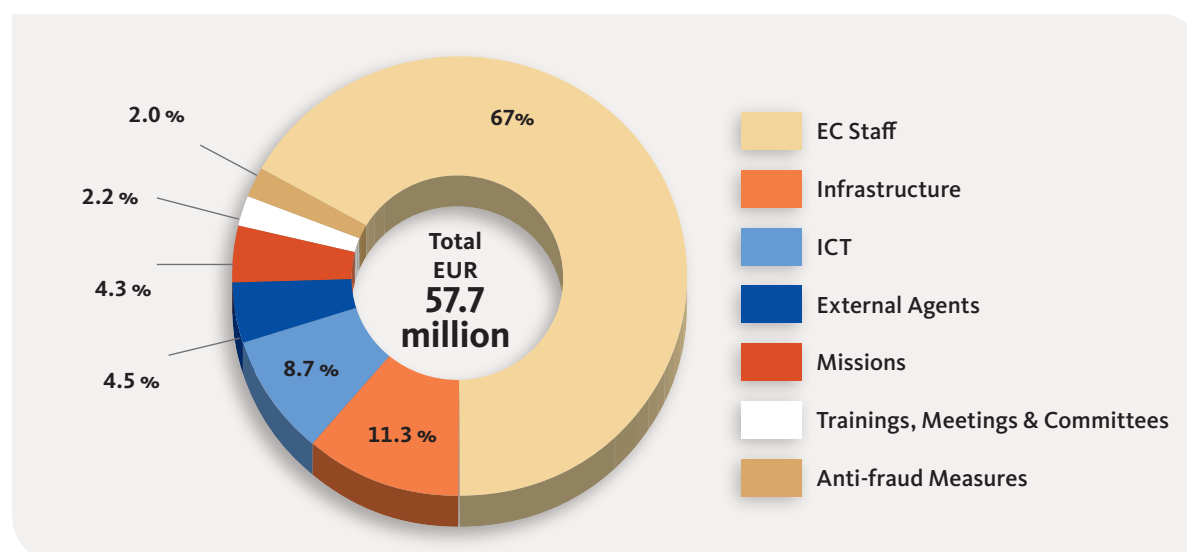
<sup>(32)</sup> [http://ec.europa.eu/anti\\_fraud/documents/legal-framework-agreements/working\\_arrangements\\_olaf\\_supervisory\\_committee\\_en.pdf](http://ec.europa.eu/anti_fraud/documents/legal-framework-agreements/working_arrangements_olaf_supervisory_committee_en.pdf)

## 7. Resource management

### 7.1 OLAF's Budget

In 2013 OLAF's administrative budget, EUR 57.7 million, was allocated as follows:

**Figure 25: OLAF administrative budget in 2013**



### 7.2 Human Resources

On 31 December 2013, almost 80% of OLAF's total staff (350 out of 440) was working on activities related to OLAF's investigative functions.

**Figure 26: Overview of OLAF personnel on 31 December 2013**

	Permanent and Temporary posts	External Personnel	Total
Fight against fraud	306	44	350
Administrative support for the European Anti-fraud Office	32	6	38
Policy strategy and coordination for the European Anti-fraud Office	46	6	52
<b>Total</b>	<b>384</b>	<b>56</b>	<b>440</b>

## 7.3 Training

As a follow-up to the entry into force of OLAF Regulation, in-house training was organised on the implications of this new regulation on the investigative procedures and practices.

The main focus on investigative training was reinforced by a set of new training sessions delivered exclusively by experienced investigators. The topics of these sessions were Interviewing techniques, Gathering of evidence, On-the-spot checks, Report writing and Inspection of premises. These training sessions were organised to maintain and improve further the high standards of OLAF in the investigative field and led to the identification of best practices.

OLAF's forensic experts and operational analysts regularly participate in a number of highly specialised external training sessions.

Furthermore, OLAF's staff was trained by the Directorate-General for Agriculture and Rural Development and by the specialist EU agency for judicial cooperation in criminal matters, Eurojust, in order to enhance their knowledge on specific relevant subject matters.

A management training programme was developed in 2013 to enhance management competencies via group coaching. The importance of ethics in OLAF was addressed in an awareness campaign including a lunch debate, along with the drafting of an OLAF Ethics guide and a revamp of the intranet page dedicated to Ethics.

A mentoring session was organised in order to prepare staff members interested in middle management positions. Special attention was paid to gender balance and equal opportunities issues.

OLAF is contacted regularly by other Commission services, institutions or bodies and external organisations to give presentations on specific topics relating directly to its competences, expertise or methods of work. In the framework of the Commission's Anti-Fraud Strategy, OLAF supports the Commission services and EU agencies in their efforts to raise awareness about fraud issues and develop appropriate anti-fraud training.



## 8. Outlook: 2014 and beyond

OLAF is looking forward to continuing its active involvement in all the relevant investigation activities and policy initiatives linked to its mandate.

- ▶ The Office will strive to further consolidate the positive results achieved in the investigative field.
- ▶ The first exchange of views between the European Parliament, the Council, the Commission and the Director-General of OLAF took place on 8 April 2014. OLAF welcomes this new process as a good opportunity to improve further the relationship and dialogue with the institutions on matters of general anti-fraud policies which are the focus of the exchange.
- ▶ Improving cooperation with partners will remain a key priority for OLAF in the years to come. OLAF intends to conclude cooperation arrangements with the Commission and the other EU institutions; deepen cooperation with Eurojust and Europol and sign further Administrative Cooperation Arrangements with Member States and third country authorities, as well as with international organisations.
- ▶ OLAF will continue to actively support the negotiations on the Commission's legislative proposal on the establishment of a European Public Prosecutor's Office. As the legislative process further advances, it will be necessary and important to reflect on the special relationship between OLAF and the future EPPO.







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