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From:	General Secretariat of the Council
To:	Working Party on Combating Fraud
Subject:	Report of the European Anti-Fraud Office covering the period from 1 January to 31 December 2016

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In view of the meeting of the WP on Combating Fraud on Wednesday 7 June 2017, delegations will find attached the 2016 OLAF Report.



# The **OLAF** report **2016**

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# The **OLAF** report **2016**

**Sixteenth report of the  
European Anti-Fraud Office,  
1 January to 31 December 2016**

#### **DISCLAIMER:**

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

**The European Anti-Fraud Office is commonly known as OLAF, which is the acronym of its title in French, Office européen de lutte antifraude.**

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## Executive Summary

The European Anti-Fraud Office stepped up its game throughout last year, concentrating on large, transnational investigations, which often led to multi-million euro financial recommendations.

In 2016 OLAF has continued to perform very well, opening 219 investigations after a detailed process of analysing incoming information in 1157 selections. In the same time span, OLAF concluded 272 investigations, following which it issued 346 recommendations to the competent authorities at EU and national level. As a result of the investigations it concluded in 2016, OLAF recommended the recovery of EUR 631 million, money which will gradually be returned to the EU budget to fund projects that stimulate growth and jobs. In 2016, OLAF has also succeeded in further reducing the duration of its investigations, to 18.9 months, a new record for the Office.

OLAF's unique mandate allows the Office to have a complete picture of the changing nature of fraud with European Union funds. For the first time, the OLAF Report presents the most striking trends in fraud with EU funds. OLAF's analysis uncovered, for example, that public procurement is still an attractive marketplace for fraudsters, who use corruption and off-shore accounts as fraud facilitators. Research and Employment Grants constitute a similarly lucrative fraud business, with double-funding and employment subsidy fraud becoming increasingly popular.

In addition to its investigation and coordination cases, in 2016 OLAF co-organised or supported 12 successful Joint Customs Operations (JCOs) and has made significant progress in its efforts to fight the illicit trade in tobacco products, helping national authorities seize 469 million cigarette sticks.

In the past years, OLAF has significantly invested in the most innovative investigative techniques and tools. This helped the Office acquire state of the art forensic and analytical tools, which ensure that OLAF continues to remain at the forefront of the global fight against fraud. In 2016, OLAF used these tools to analyse the Panama Papers, which led to the Office opening a number of investigations.

In 2016, OLAF also supported the European Commission in making progress on two important policy initiatives. In one case, it was decided that serious VAT offences would be included in the scope of the Directive on the fight against fraud to the Union's financial interests by means of criminal law (so-called "PIF directive"). At the same time, it became clear that the European Public Prosecutor's Office (EPPO) would be established under an enhanced cooperation procedure.

In this Report, OLAF Director General Giovanni Kessler also takes the opportunity to present an assessment of OLAF's work over the last years, as well as a vision for the future of the Office.





## Foreword

I am very pleased to present you with the 2016 edition of the Annual Report of the European Anti-Fraud Office (OLAF). Over the last year, OLAF has not only upheld its strong investigative performance, but it has focused on large, transnational cases, where its expertise and involvement could make a significant difference to the EU taxpayers by delivering concrete results in protecting their money and the EU budget overall. OLAF has continued to build on the foundation laid when the Office was reformed in 2012, while constantly reducing the duration of investigations. As a result of this work, the Office recommended in 2016 the recovery of EUR 631 million to the EU budget.

Whenever the previous editions of OLAF Reports were published, we unfailingly received questions related to the nature of our investigations and to the trends we could identify in cases of fraud and irregularities affecting EU funding. Our institutional stakeholders, as well as EU citizens and journalists, were interested in the types of cases we mostly encountered, in the changing nature of fraud patterns, as well as in the types of actions which would prompt an OLAF investigation. This is why we decided to focus this year on helping our readers understand the substance of OLAF's investigative work and the recent trends that our investigations have brought to light. You will therefore be able to find out in this Report why public procurement is still attractive for fraudsters, how off-shore accounts are increasingly used to hide the proceeds of such crimes, how corruption is still an almost universal aspect found in our cases, or how undervaluation fraud is perpetrated by highly organised criminal gangs operating across borders.

This detailed view into what constitutes the challenging and diverse work of an OLAF investigator will show you how internal reforms and constant development have helped OLAF transition into not only a high-performing investigative body, but one with a clear focus and ability to solve large, complex, cross-border cases, often recommending multi-million euro recoveries.

To support its investigators in delivering quality results, OLAF has developed and promoted state-of-the-art investigative techniques and tools. With text mining and analytical capabilities which are, at this point, almost unparalleled in Europe for an administrative body, OLAF was able to take on complex challenges in 2016, such as analysing the Panama Papers. So this year, we've also given some prominence to innovation at OLAF, an aspect that is often less known to our readers, but is quintessential in backing the efficiency of a modern investigative body.

OLAF owes its excellent results to the skills, dedication and commitment of its outstanding staff, who have worked tirelessly to ensure that EU citizens' money is well protected, and that fraudsters are rightfully brought to justice. OLAF is also grateful for the positive cooperation of European Member States and Institutional Partners at EU and international level.

Last but not least, as this is the last year of my mandate, I would like to thank all of you for contributing to and for supporting OLAF's work. It is with the help of responsible European citizens who understand the importance of ensuring EU funds are spent lawfully that we are truly able to protect the financial interests of the European Union, and to hold EU staff to the highest standards of ethical behaviour. I would like to also express my deep admiration for OLAF staff, whom I am proud to have worked with for almost seven years – I could not have asked for a better, more competent team!

**Giovanni Kessler**  
Director-General of OLAF







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*The seat of the European Anti-Fraud Office, in Brussels.*



# 1. Mission and mandate



## MISSION

Detect, investigate and work towards stopping fraud involving European Union funds.

## MANDATE

OLAF's mandate is:

- ▶ to conduct independent investigations into fraud and corruption involving EU funds so as to ensure that all EU taxpayers' money reaches projects that can stimulate the creation of jobs and growth in Europe;
- ▶ to investigate serious misconduct by EU staff and members of the EU institutions, thus contributing to strengthening citizens' trust in the EU institutions;
- ▶ to develop EU policies to counter fraud.

## INVESTIGATIVE COMPETENCES

OLAF can investigate matters relating to fraud, corruption and other offences affecting EU financial interests concerning:

- ▶ all EU expenditure: the main spending categories are structural funds, agricultural policy and rural development funds, direct expenditure and external aid;
- ▶ some areas of EU revenue, mainly customs duties;

OLAF can also open investigations into suspicions of serious misconduct by EU staff and members of the EU institutions.

OLAF is part of the European Commission and, as such, under the responsibility of Commissioner Günther Oettinger.

However, in its investigative mandate, OLAF acts in full independence.

## WHAT WE DO

OLAF's investigative work broadly involves:

- ▶ assessing incoming information of potential investigative interest to determine whether there are sufficient grounds for OLAF to open an investigation;
- ▶ conducting administrative investigations, where appropriate in cooperation with national criminal or administrative investigative authorities and with EU and international bodies;
- ▶ supporting the anti-fraud investigations of national authorities;
- ▶ recommending necessary actions that should be taken by the relevant EU or national authorities;
- ▶ monitoring the actions taken by these authorities, in order to assess the impact of OLAF's work in the fight against fraud, and better tailor the support we provide to relevant national authorities.



Responsibilities for much of EU spending are shared between European, national, regional and local levels. Even where EU institutions manage funds directly, the money is often spent across national borders, and sometimes outside the EU. The detection, investigation and prosecution of fraud against the EU budget can therefore only be conducted in cooperation with a wide range of partners, at national, European and international level.

OLAF cases frequently concern:

- ▶ cross-border procurement fraud or corruption in public procurement procedures involving EU financing;
- ▶ double funding, where, through deceit, a project is funded several times by different donors who are unaware of the contributions the others made;
- ▶ subsidy fraud in different forms, as fraudsters take advantage of the difficulties of managing and controlling transnational expenditure programmes. Examples include the delivery of the same piece of research to several funding authorities within or beyond EU borders,

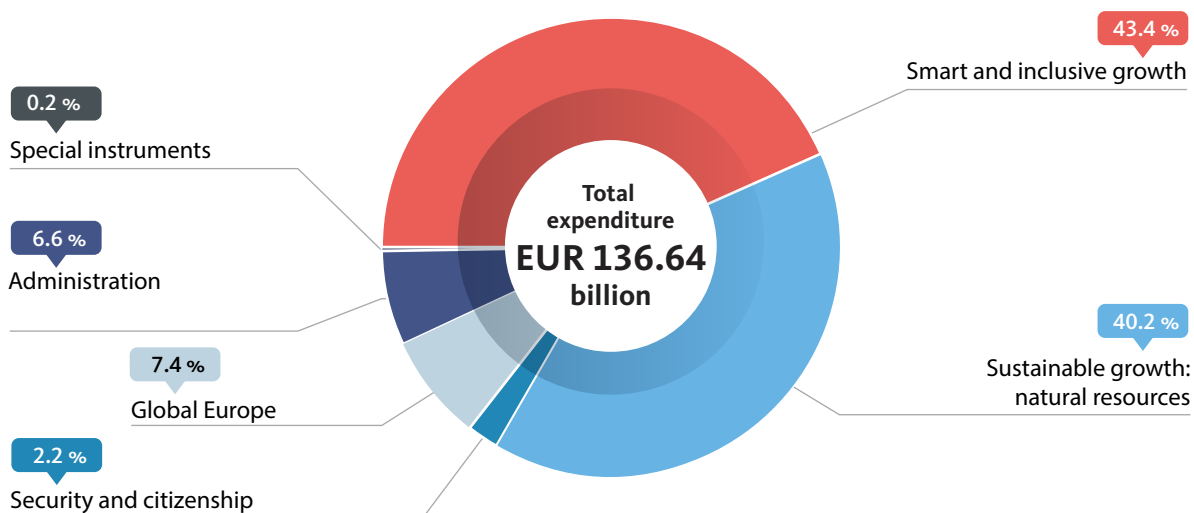
plagiarism – the copying of research which has already been undertaken by others, and the deliberate gross disrespect of the conditions of financial assistance;

- ▶ customs fraud whereby fraudsters attempt to avoid paying customs duties (EU own resources), for instance by smuggling goods into the EU.

EU bodies are, like other employers, at risk of fraud from their members and staff in relation to remuneration, allowances, travel and relocation expenses, social security and health entitlements. They may also be at risk from corrupt activity by members and staff in procurement procedures, and from other forms of corruption such as attempts to illicitly influence decision-making and recruitment procedures. To some degree, these risks are enhanced by the transnational nature of EU business, which also makes investigations more complex. OLAF thus has a unique mandate to carry out so-called “internal” investigations into allegations of misconduct involving staff and members of the EU institutions.



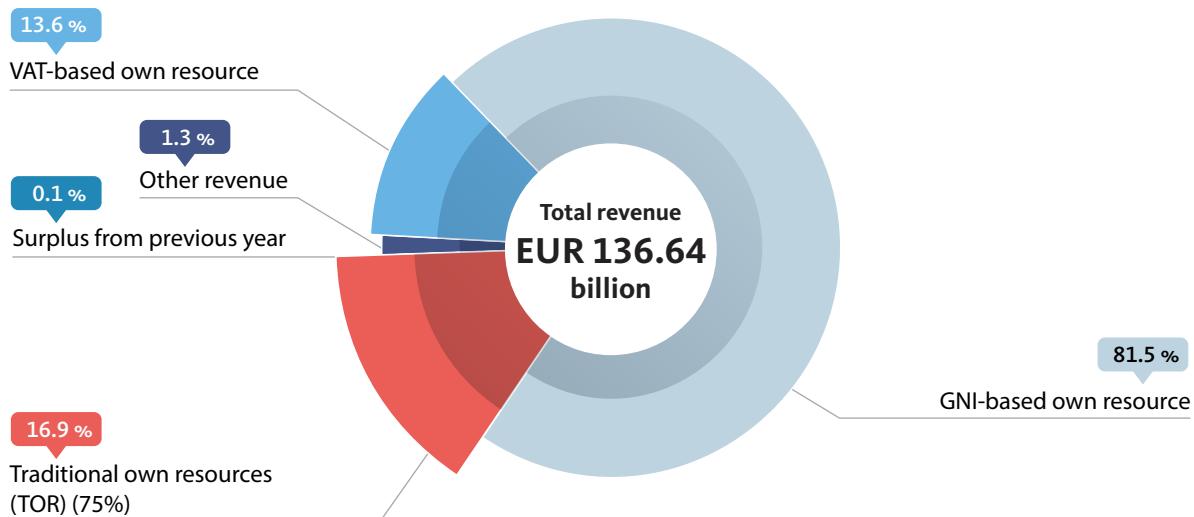
**Figure 1: EU expenditure in 2016**



(<sup>1</sup>) Source: OJ L51, 28.2.2017, p. 13

*Disclaimer:* these are based on final amounts but are still subject to reliability checks by the European Court of Auditors

**Figure 2: EU revenue in 2016**

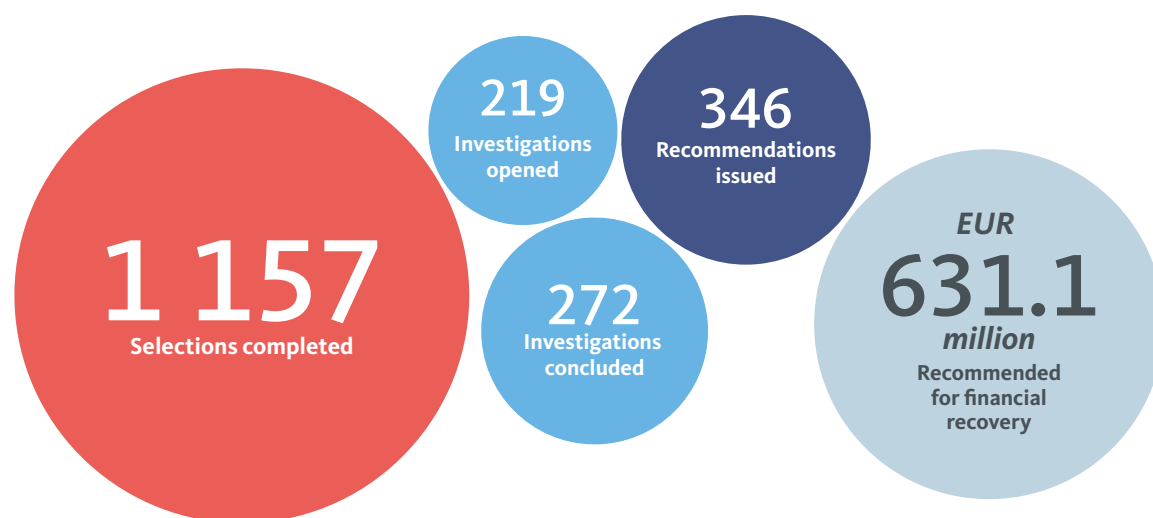


(<sup>1</sup>) Source: OJ L51, 28.2.2017, p. 14

*Disclaimer:* these are based on final amounts but are still subject to reliability checks by the European Court of Auditors

## 2. OLAF investigative activity: current trends in anti-fraud investigations

**Figure 3: OLAF's investigative activity in 2016: maintaining excellent results**



In the last five years OLAF has undergone a major transformation, with a significant effort deployed by management and staff together to improve the efficiency of its investigative function. This strategy has borne fruit, with OLAF transitioning into a highly performing body, with a clear focus on dealing with complex cases and delivering concrete results for EU taxpayers. Overheads were reduced, resources redeployed to the extent maximum on investigations and the necessary infrastructure investments made to support this investigative drive. As mentioned in the OLAF Report 2015, the Office has reached “cruising altitude” in its investigative performance over the last two years, given the resources it currently has. This is why in this year’s Report, beyond presenting performance indicators, we will focus on showcasing the substance of OLAF’s investigative work and recent trends that our investigations have revealed.

### 2.1. Summary of OLAF’s investigative performance in 2016

In a nutshell, the performance indicators displayed above show that in 2016 OLAF has continued to perform very well, fully in line with the path followed in previous years. OLAF opened 219 investigations after a detailed process of analysing incoming information in 1157 selections. It concluded 272 investigations pursuant to which it issued 346 recommendations to the competent authorities at EU and national level. As a result of its investigations concluded in the year, OLAF recommended the recovery of EUR 631 million to the EU budget. These funds will gradually return to the budget so that they can be reattributed to projects that can stimulate growth and jobs in Europe. In 2016, OLAF has also succeeded in further reducing the duration of its investigations, to 18.9 months overall, with the selection duration corresponding to these cases remaining at an average of 1.7 months. For a detailed presentation of these and other indicators, please refer to the Annex to this Report.



**Figure 4: An example of undervaluation fraud uncovered by OLAF**



Further details on this case are presented in this chapter.



Following the practice established in previous years, we present below a breakdown of the investigations concluded by OLAF in 2016, concerning the use of EU funds managed integrally or partially at national or regional level. This is not to be read as a ranking of fraud in Europe, but rather seeks to present the geographical focus of OLAF's investigative activity in 2016, which also relies on the amount, type and quality of information received.

Figure 6 shows that, as was the case in previous years, the structural funds sector remains at the core of OLAF's investigative activity. In 2016, it was closely followed by the customs and trade sector where OLAF has started carrying out more investigations.

**Figure 5: Investigations into the use of EU funds managed in whole or in part at national or regional level concluded in 2016**

		<i>Concluded with recommendations</i>
Romania	21	11
Poland	16	8
Hungary	13	11
Bulgaria	11	4
Greece	9	3
Italy	8	6
Slovakia	8	5
Czech Republic	5	1
Portugal	5	2
Croatia	4	1
Netherlands	4	1
The former Yugoslav Republic of Macedonia	4	2
France	3	2
Lithuania	3	1
Germany	2	1
Sri Lanka	2	2
United Kingdom	2	2
Austria, Cameroon, Congo (Brazzaville), Ethiopia, Ghana, Guyana, Israel, Kazakhstan, Kiribati, Kyrgyzstan, Madagascar, Malawi, Nepal, Niger, Serbia, Slovenia, Spain, Syria, Togo, Turkey, Zimbabwe	21 (1 per country)	14
<b>Total</b>	<b>141</b>	<b>77</b>

**Figure 6: Ongoing investigations at the end of 2016, divided by sector**

Sector	2014	2015	2016
Structural Funds	111	104	69
External Aid	79	66	52
Centralised Expenditure	49	58	59
Customs and Trade	56	50	60
EU Staff	43	37	48
Agricultural Funds	60	36	21
Social Funds	42	21	19
Tobacco and Counterfeit goods	21	18	8
New Financial Instruments	13	8	8
<b>Total</b>	<b>474</b>	<b>398</b>	<b>344</b>



*OLAF's Director-General participates in a Joint Customs Operation at the border between Romania and Moldova*

## 2.2. OLAF at the helm of large, complex, cross-border investigations

Beyond the indicators highlighted in the previous section, in this year's Report we delve deeper into OLAF's investigative work in order to outline the trends identified by OLAF investigators in recent cases, most of which were concluded in 2016. This analysis is based on empirical evidence, without therefore being a comprehensive list of concluded OLAF investigations. OLAF has a unique mandate to fight fraud affecting European Union financing. It also benefits from a unique position since the transnational dimension of its work allows it to have a complete picture of the changing nature of fraud patterns across Europe. In recent years, OLAF has strived to focus on those fraud cases with the largest impact, investigations of a complex, cross-border nature, where its trans-European view brings a clear added-value to curbing fraud. As a result, we note that while Europe has evolved in numerous ways, from the different political context, to an increasingly liberalised market, fraudsters have also adapted to this new context, constantly coming up with novel and creative ways to try to pocket EU money. We present below an analysis of some of the most striking trends revealed by OLAF investigations.

### A. PUBLIC PROCUREMENT: STILL AN ATTRACTIVE "MARKET PLACE" FOR FRAUDSTERS, WHERE CORRUPTION AND THE USE OF OFF-SHORE ACCOUNTS ACT AS FRAUD FACILITATORS

Ask any OLAF investigator and they would tell you that a large part of their caseload relates to allegations of fraud in **public procurement**. Thorough document verifications and meticulous on-the-spot checks made by OLAF have revealed several underlying issues that make this particular area more prone to fraudulent activities. For instance, some of the applicable national public procurement laws, ordinances or decisions are complicated and written in a manner that is unclear and difficult to apply even by the contracting authorities. Moreover, some authorities lack the administrative capacity and expertise to implement the rules in a coherent and consistent way, while in certain cases, members of the evaluation committees are insufficiently qualified, especially when appraising complex infrastructure tender proposals. Furthermore, when audits, controls and checks are conducted by the regulatory authorities, they are sometimes carried out in a superficial or inadequate manner.



For example, an OLAF investigation into tenders for EU-funded projects meant to develop inland waterways in Croatia revealed how expenditure in a niche market, where there were only few participants capable of providing the services requested and a small number of potential bidders, can create the perfect fraud story. OLAF's investigation revealed that a local businessman controlled the tender procedure by getting access to confidential material and steering the technical requirements to his advantage. He then conspired with other European companies to rig the market. By acting in a coordinated manner, the fraudsters were able to exclude competitors and divide EU-funded projects between themselves. OLAF worked with national authorities to gather evidence; criminal investigations are still on-going in three Member States. OLAF also made a Financial Recommendation to the European Commission to recover EUR 1.2 million.

In light of such issues, OLAF experts have developed over the last years a system of “Red flags” which can indicate whether a particular procurement project has a higher probability of suffering from fraud or corruption. Red flags can relate to bidders (who could for example, have multiple undeclared connections between them), to evaluation teams, or to the procedures themselves (very large tenders, too short timespan for the application process, changes in the project description after the award, etc).



Such “red flags” were for instance apparent in an investigation OLAF concluded in 2016 into a EUR 17.6 million cross-border fraud case. The investigation uncovered a fictitious subcontracting scheme used to artificially increase the prices declared for the supply of medical equipment from the Czech Republic to Slovakia. OLAF's investigation established that the public procurement procedure for the contract had been seriously breached and that prices of the medical equipment supplied had been grossly overstated, therefore causing serious damage to the EU financial interests. OLAF made a Financial Recommendation to the European Commission to recover all of the EU funds in question and issued a Judicial Recommendation to the Slovak Judicial Authorities to further follow-up on the matters uncovered.

With many **procurement fraud cases being transnational**, the new fraud scenarios often involve a contracting authority from one Member State and bidders from several other Member States who subcontract their works to companies again placed in different countries.



An investigation into fraud with EU funds that were meant to finance free food programmes for the poorest European citizens, which OLAF concluded in 2016, perfectly illustrates this trend. A criminal gang in Bulgaria used a complex scheme of phantom purchases, sales companies and off-shore accounts to hide the proceeds they received in exchange for corrupting senior officials in a Paying Agency in Romania. As a result of corruption-related serious criminal acts, the officials made false declarations and illegal advance payments for products that were never delivered. This led to EUR 26.7 million being diverted from to the EU budget, with the criminal gang making an additional EUR 5.98 million in “market profit” from the irregular sale of the products on the open market. In the course of its enquiries, OLAF uncovered that, in perpetrating the fraudulent acts, the criminal network carried out illegal activities in at least eight different countries, six of which were EU Member States. To help ensure the funds can actually benefit some of the most vulnerable members of society, OLAF made a Financial Recommendation to the European Commission to recover EUR 26.7 million. Judicial proceedings in the case are on-going in both Romania and Bulgaria.

The **use of off-shore accounts to hide the proceeds of crimes** is indeed often used in large public procurement cases.



In 2016, for example, OLAF concluded an investigation into a EUR 1.7 billion euro transport project in Hungary, in which several international specialist construction firms were the main players. Using its cross border powers, OLAF conducted enquiries in Hungary and in the UK and traced the projects links to companies in third countries. OLAF also checked the contractor bids, the use of sub-contractors, the use of consultancy companies, as well as the use of off-shore accounts. The investigation revealed very serious irregularities as well as possible fraud and corruption in the execution


1 [https://ec.europa.eu/anti-fraud/sites/antifraud/files/docs/body/identifying\\_reducing\\_corruption\\_in\\_public\\_procurement\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/docs/body/identifying_reducing_corruption_in_public_procurement_en.pdf)



*OLAF uncovers complex transnational cases working closely with Member States*

of the project. As a result of its investigation, OLAF recommended to the European Commission to recover EUR 228 million, and to the European Investment Bank to recover a further EUR 55 million. OLAF also made Judicial Recommendations to both Hungary and to the UK, advising them to take the OLAF findings into account in the judicial proceedings that are on-going in these Member States.

If there is one other common thread running through OLAF's investigations in general, and the public procurement ones in particular, that would be the **existence and use of corruption**.

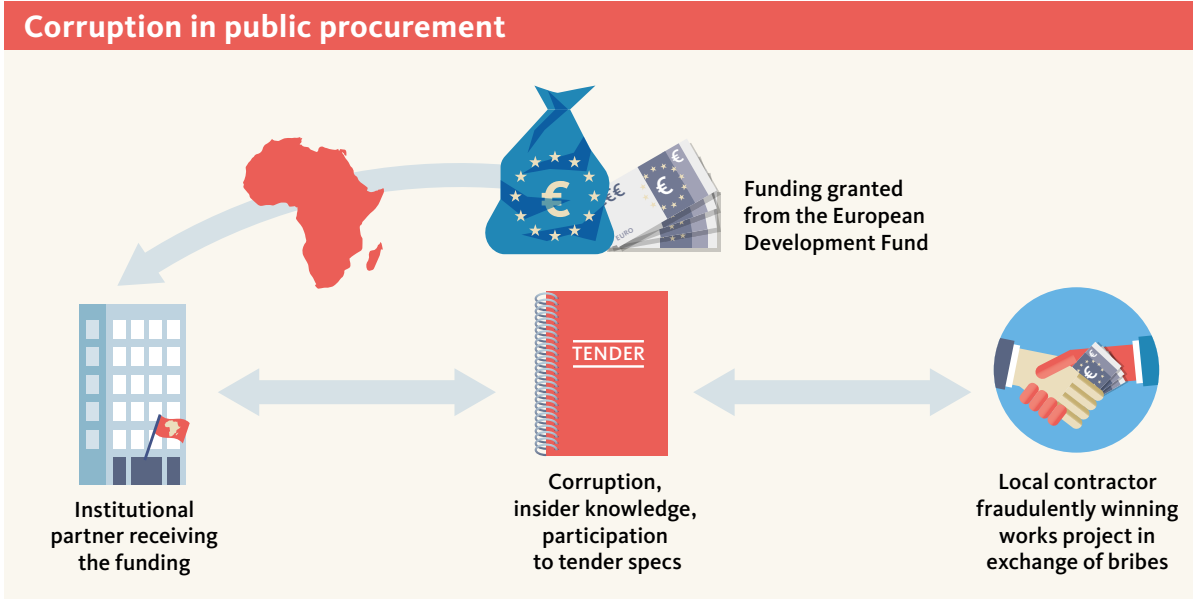
 For instance, in another case, OLAF received allegations from an anonymous source concerning an EU-funded competitiveness project in Kosovo<sup>2</sup>. The allegations indicated abuse of power, disclosure of confidential information about the evaluation of the tender proposals, corruptive practices and procedural irregularities. The available information suggested the possible collusion of an EU staff with an official of a Ministry and a representative of a company involved in the bidding process. OLAF coordinated its investigation with the national judicial authorities of Kosovo. The

investigation confirmed the allegations regarding the attempted tender manipulation. OLAF discovered that the Ministry official and the representative of the bidding company were exchanging confidential information during the evaluation in their attempts to steer the outcome of the tender procedure. It was also clarified that the EU staff was not involved in these manipulation attempts. Following the completion of the investigation in 2016, OLAF sent the information it gathered to the judicial authorities of Kosovo. This information was consequently used to initiate court proceedings against the two individuals.



OLAF can and does investigate wherever European funds are spent, in and outside the EU. In one such case, an EU Delegation located in an African country suspected irregularities and potential fraud related to a tender procedure by which a public works contract had been awarded to a local company. The European Development Funds at stake amounted to almost EUR 3 million. A financial audit launched by the EU Delegation highlighted financial irregularities, mostly ineligible costs and detected several irregularities in relation to the tender procedure set up under the responsibility of the institutional partner, such as numerous cancellations of successive tender processes for this works contract and the final awarding of the

<sup>2</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.




contract to the long-standing historical partner of this institution. In its investigation, OLAF was able to collect evidence proving that the work contract was unlawfully awarded to this established local partner in breach of procurement rules. The local partner was found to have previously been associated in the elaboration of the Terms of Reference for this works contract, he did not meet the eligibility criteria for being awarded the contract and was almost going bankrupt when applying for the contract. OLAF was able to demonstrate that a person working inside the institutional partner and the manager of the winning contractor had engaged in corruption. Copies of several supporting documents were collected proving that the winning contractor had been informed in advance about the details of the call for tender, that bribes had been agreed in advance between the two persons involved, and that additional bribes were to be paid to local administrative authorities with the awarded EU funds. The bribes were actually paid with cash withdrawn from the bank account of the contractor where the EU funds were transferred, and were registered in the accounting system as “administrative and representation costs.” OLAF issued Financial Recommendations For the recovery of a large part of the EU funds at stake.

## B. RESEARCH AND EMPLOYMENT GRANTS: A LUCRATIVE FRAUD BUSINESS?

In the last years, OLAF has investigated a significant number of fraud cases in the **academic and research fields**. Increasingly, OLAF investigators have had to deal with cross border cases concerning employment subsidy fraud involving universities and research institutes. With the help of EU grants, research and industry professionals can disseminate their knowledge. Unfortunately, there are individuals who seek to defraud the EU budget in the context of such exchanges.

More generally, fraud involving employment grants mostly relates to double funding, whereby employers are receiving a subsidy from a Member State to fund their employment, part of which is paid from EU funding, while at the same time the company who employs them is charging 100% of their time to an EU project. This is often coupled with claims for artificially inflated working hours.

 A recent OLAF investigation involved persons from four different Member States and third countries and concerned allegations of systematic fraud in the recruitment and secondment of a large number of researchers engaged in several EU research projects. The persons involved had falsified CVs and timesheets and had made false declarations about exchanges of researchers, as well as about appointments of



persons who either were not eligible to take part in the project, or who had personal links to the project managers. This deprived genuine researchers of funding. The OLAF investigation was carried out in close cooperation with Member State authorities and involved more than EUR 3 million in EU funds. The investigation was concluded with Financial and Judicial Recommendations.

### C. REVENUE FRAUD: COMPLEX TRANSNATIONAL SCHEMES TO EVADE CUSTOMS DUTIES RUN BY CRIMINAL NETWORKS

A particularly profitable area of customs fraud is the **evasion of anti-dumping and anti-subsidy duties**. Fraudsters may attempt to evade the duties by misdeclaring the type of product at import or by claiming it has originated in other countries than it really did, in order to benefit from preferential tariffs. This may be done by swapping containers en route to Europe and providing false sets of documents, or, in the more complex cases, by setting up fake factories allegedly producing the items in question.



The EU imposed anti-dumping and countervailing duties on biodiesel produced in the United States in 2009 and in Argentina and Indonesia in 2013. Following the introduction of such measures, OLAF experts generally monitor and analyse import flows to identify any sudden changes in the declared countries of origin which might point to customs fraud. OLAF investigators immediately started noticing cases where biodiesel was stored in third countries, such as India and Canada, and then re-exported to the European Union, declared as having originated in these two countries. OLAF investigators also started noticing large amounts of biodiesel coming into the EU via the Western Balkans. OLAF opened an investigation to see if biodiesel was indeed being illegally imported into Europe.

The Stabilisation and Association Agreements between the EU and the Western Balkan countries gave OLAF the possibility to request assistance from the countries in question. OLAF also received assistance from Dutch, Italian and US authorities. Moreover, further evidence of fraudulent transshipment was collected during a joint enquiry carried out by OLAF together with Dutch and Italian customs authorities as well as with local customs authorities from the Western Balkans. The legal

and technical expertise available in OLAF and the international administrative assistance amongst customs authorities were put to good use in solving this complex investigation. OLAF established that the biodiesel coming into Europe from the countries that had imposed anti-dumping duties was falsely declared as originating in Africa. Sometimes, the quantity declared was lower than the real one, or the product was kept in temporary storage in a particular EU country for a certain amount of time, in order to make the product difficult to trace back. Other times, when imported into the Western Balkans, the biodiesel was declared as another chemical product altogether. As a result of this investigation, OLAF has recommended the recovery of over EUR 2 million.

OLAF investigators have, in the last years, been faced with increasingly complex customs fraud cases – mostly **undervaluation fraud** - perpetrated by **highly organised international criminal gangs**.



OLAF investigated a major case of customs fraud whose consequences were felt all over the EU. Though concluded in early 2017, the case progressed substantially throughout 2016. OLAF investigators and analysts identified a fraud pattern employed by international organised crime groups who scouted ports in the EU with the weakest controls, in order to get away with declaring falsely low values for textiles and footwear imported from China. This is an example of so-called **undervaluation fraud**, whereby importers can derive profit from evading customs duties and related taxes, paying much less than what is legally due. OLAF's investigation revealed that the single most significant hub for this fraudulent traffic was in place in the UK.

In the context of this investigation, OLAF carried out an extensive analysis of all customs declarations presented in the UK for all imports of textiles and shoes from China between 2013 and 2016. For example, OLAF found women's trousers imported from China were declared at customs in the UK at an average price of EUR 0.91 per kg, although in the same period, the world market price for the raw material (cotton) alone was EUR 1.44 per kg and the average declared value in the whole of the EU for the same products was EUR 26.09 per kg.

OLAF calculated a loss to the EU budget of almost EUR 1.987 billion in customs duties. The investigation also revealed substantial VAT evasion in connection with imports through the UK by abusing the

suspension of the payment of VAT, the so-called customs procedure 42<sup>3</sup>. As the goods are destined for the markets of other Member States, it is the revenues of those Member States, such as France, Spain, Germany and Italy that are mainly affected. These VAT losses are cumulatively estimated in the range of EUR 3.2 billion for the period 2013-2016.

Despite repeated efforts deployed by OLAF, and in contrast to the actions taken by several other Member States to fight against these fraudsters, the fraud hub in the UK has continued to grow. As a result, OLAF has issued a Financial Recommendation addressed to the European Commission for the recovery from the UK to the EU budget of the EUR 1.987 billion<sup>4</sup> lost in customs duties, as well as an administrative recommendation aimed at preventing the abuse of customs procedure 42. A judicial recommendation was addressed to the UK Crown Prosecution Service to initiate judicial proceedings against those involved in fraudulently evading customs duties and against those knowingly involved in laundering the proceeds of this offence. The UK HMRC (Her Majesty's Revenue and Customs) also received an OLAF recommendation to take all necessary actions to implement risk indicators to effectively mitigate the undervaluation risks for importations of textiles and footwear from China, as well as to take all appropriate measures to recover the customs duties evaded to the extent possible.

Complex customs fraud does not always deal with undervaluation of goods. Tackling the **smuggling of counterfeit products** is also an important area of OLAF's work, in its efforts to protect the EU budget as well as more broadly the health of European citizens.



In a case of 2016, OLAF investigators checked a system connecting several customs authorities where Risk Information Form messages are exchanged and noticed that the Czech authorities had signalled a

3 Customs procedure 42 provides for non-EU goods to be released into free circulation in an EU Member State exempted from import VAT on the condition that these goods will be transported to another Member State due to an intra-community transaction.

4 As this case was concluded in 2017, the EUR 1.987 billion recommended for recovery are not included in the 2016 figure of financial recommendations presented in this report.

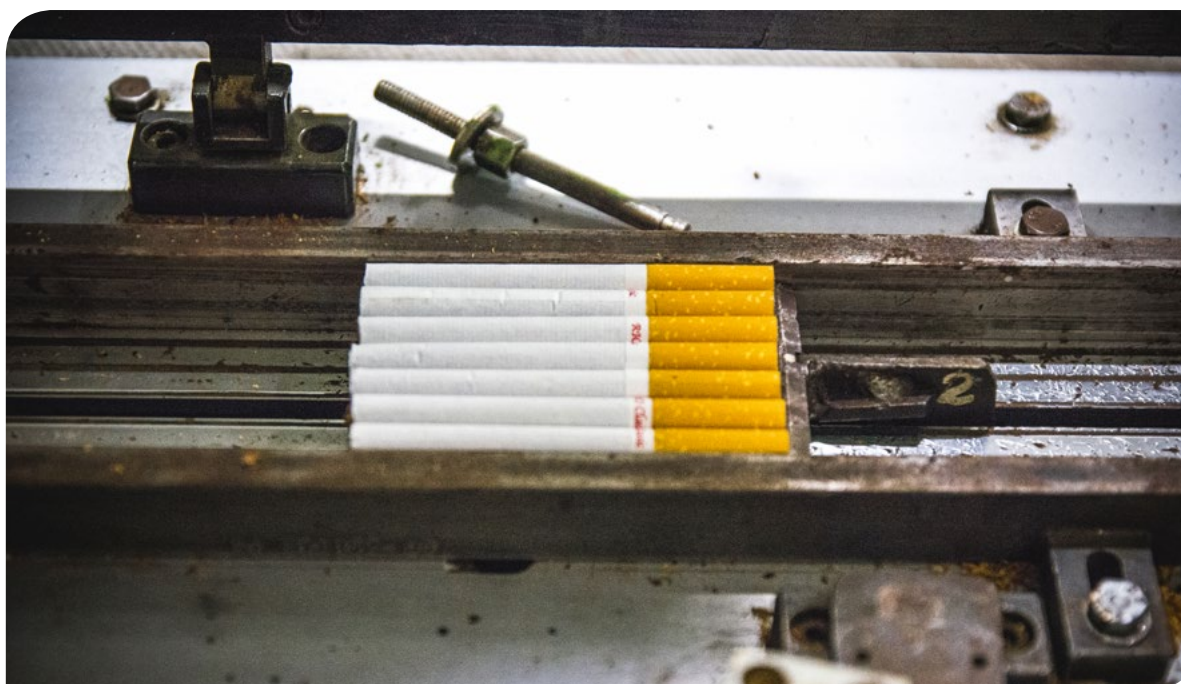
seizure of counterfeit ball bearings imported from China into the Czech Republic. OLAF investigators got in touch with the Czech authorities, and transmitted the information they received as a Mutual Assistance communication to all Member States, warning the latter to be on the look-out for additional such consignments. As a result, French Customs informed OLAF about three containers containing 21 tonnes of counterfeit bearings destined for a company in Spain. Spanish customs, together with OLAF investigators and representatives of the rights-holding company, carried out a control at the Spanish company in question, which resulted in over 3 tonnes of counterfeit bearings being seized. OLAF's work did not stop there. OLAF investigators went to establish that the Spanish company imported counterfeit bearings from a Chinese company, which appeared to be active and continuing its trade in counterfeit bearings worldwide, including in the EU. Based on this information, OLAF, via its Liaison Officer in China, requested the Chinese authorities to conduct an investigation concerning this particular Chinese company. OLAF also requested information from Hong Kong authorities regarding a company involved in the illegal traffic of counterfeit bearings seized in France and Spain. Investigations are on-going.

#### D. THE CHANGING NATURE OF CIGARETTE SMUGGLING

The prevalence of contraband on the EU tobacco market has significantly decreased in the last decade. A Commission Staff Working Paper published in 2016 showed, for example, that contraband in genuine Phillips Morris products on the illicit EU tobacco market dropped by around 85% from 2006 to 2014. This, however, did not lead to an overall reduction of illicit products on the EU market as smugglers turned their attention **to traffic with "cheap whites,"** which are non-branded cigarettes.



A five-month operation in which OLAF worked closely with EU Member States and the customs authorities of third countries to track suspicious shipments of cigarettes resulted in the seizure of more than 58 million cigarettes in the Port of Piraeus, Greece, in early 2016. The cigarettes had been produced in South-East European countries, but were declared



as meant for export to Asia. Initially transhipped through different European ports before being moved to Asia, the cheap whites were then shipped to a second Asian country, loaded into containers declared as garden sets or stones, and then transported back to Europe. As a result of OLAF's collaboration with authorities in Asia and Greece, the five containers used for this smuggling operation were identified and closely monitored until their arrival in Europe. The criminal network smuggling the goods was found to have used off-shore companies and false documents in order to hide their illicit activities.

In all the above-cited cases mentioned in this section, OLAF has been in the driving seat of large, complex, cross-border cases where it has succeeded in bringing a clear added-value on a European and often international scale. After reaching its "cruising altitude" in terms of investigative performance following its complete reorganisation five years ago, OLAF is now a unique central point in Europe for conducting intricate administrative investigations and delivering concrete results for the EU taxpayers. It has the experts, tools and capacities to detect new fraud trends and to adapt investigative techniques to be one step ahead of fraudsters.

### 2.3. OLAF's investigative mandate within the EU Institutions

OLAF also has a unique mandate to carry out internal investigations into the EU Institutions, Bodies, Offices and Agencies for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. The Office investigates serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of EU officials liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies. Indeed any perceived lack of integrity within the institutions presents a reputational risk not only to the Institutions themselves but also to the European project as a whole.

OLAF's remit for internal investigations is thus focused on alleged serious wrongdoing. While there is no all-encompassing definition of serious wrongdoing, OLAF's resources are concentrated on cases where the deployment of OLAF's know-how is warranted, just like in external investigations. It must be recalled that such internal investigations are rare in relative terms since there are numerous checks and balances in place to avoid fraud and misconduct in the EU Institutions. OLAF also works on a constant basis with the EU Institutions and bodies to help them detect, prevent and address any such possible cases.





OLAF was informed that a Contracts and Finance Officer working for an EU Agency had allegedly requested bribes in order to apply lower financial penalties to a supplier who had been late in delivering IT equipment. The contracted company had not delivered a number of laptops ordered by the Agency on time, and, according to the provisions of the contract, faced potential financial consequences.

OLAF conducted an inspection at the premises of the EU Agency, as well as interviewed the person concerned, who, shortly after, resigned from his position. The investigation uncovered that, on two occasions, the Contracts and Finance Officer had had unofficial meetings with representatives of the IT supplier outside the Agency's premises – one time in a bar and another time in a park. During these meetings, the person concerned requested side payments in cash, specifically two brown envelopes, one containing EUR 20,000 and the other 20,000 GBP. In exchange for the bribes, the Contract and Finance Officer proposed to reduce the amount of financial penalties. However, the company came clean and never accepted to pay the bribes and fully cooperated with OLAF throughout the investigation.

As a result of its investigation, OLAF issued Judicial Recommendations to the relevant national Judicial Authorities.

### **A. FICTITIOUS EMPLOYMENT AND MISUSE OF ALLOWANCES IN THE EUROPEAN PARLIAMENT**

In the field of internal investigations, in recent years OLAF has dealt with an increase in the number of cases related to the European Parliament. While many of the investigations are currently on-going, below you can find a sample of the cases concluded in 2016.

These cases typically relate to fictitious employment, misuse or fraudulent declaration of allowances, misuse of European Parliament funding to support the activities of national parties, as well as to situations of conflict of interest and possible corruption. Such irregularities concern MEPs and their assistants, as well as European Parliament staff members.



During a case OLAF concluded in 2016, investigators uncovered that a Member of the European Parliament committed serious irregularities concerning expenses the MEP had declared in relation to the employment of his/her assistants. In one case, OLAF established that MEP had produced a purely fictitious work contract for a person declared as his/her assistant, even though the person never worked for the European Parliament. In a second case, an assistant received a salary and allowances related to their employment in Brussels while, in reality, this person never provided any direct assistance to the MEP in the offices of the European Parliament as required by the rules, and did not actually reside in Brussels at all, a condition stipulated in the employment contract. Instead, the person lived elsewhere, and was not assisting the MEP in his/her duties at the European Parliament, but was working for the national party. As a result, OLAF sent its final report to the European Parliament, recommending the recovery of more than EUR 300,000, which represented the financial damage OLAF considered that the Parliament budget had suffered, as well as the launch of disciplinary procedures against one of these assistants. In addition, OLAF transmitted its final report to the national public prosecutor, recommending that judicial proceedings be initiated regarding the persons concerned identified by the OLAF investigation. Judicial proceedings are currently under way.



In another such case concluded in 2016, OLAF carried-out an investigation concerning the alleged undeclared external activity of a Parliamentary Assistant of another MEP. Despite the allegations, the OLAF investigation established that the assistant had fulfilled the conditions of his employment. However, the investigation did reveal some procedural shortcomings, and OLAF brought these to the attention of the European Parliament. The investigation was concluded with a disciplinary recommendation.

In addition, on the basis of various investigations, OLAF identified certain procedural weaknesses in the management and control systems of the European Parliament. As a result, in 2016 OLAF issued a number of administrative recommendations to the European Parliament, in order to address these issues. In



particular, OLAF recommended that the Parliament provides adequate means to register the presence of the Accredited Assistants while in Brussels, Strasbourg or on mission, as well as clarifies its guidelines on the usage of own devices such as laptops, tablets or phones, and that of private emails. Moreover, following an investigation into the unauthorised disclosure of an

OLAF-marked final report, OLAF issued an administrative recommendation urging the EP to fully protect confidential information transmitted in documents carrying the official markings of OLAF, to ensure personal data contained in them is only transferred on a need-to-know basis and to reinforce their rules on co-operating with OLAF.

**Figure 7: Investigations into EU staff and members of the Institutions concluded in 2016**

		<i>Concluded with recommendations</i>
European Commission	10	8
European External Action Service	7	6
Agencies	7	4
European Parliament	3	2
European Economic and Social Committee	2	2
Council of the European Union	1	0
European Investment Bank	1	1
EULEX	1	0
Court of Justice of the European Union	1	1
European Institute of Innovation and Technology	1	1
<b>Total</b>	<b>34</b>	<b>25</b>

## 3. OLAF on the European and international scene

### 3.1. Preventing and fighting revenue fraud

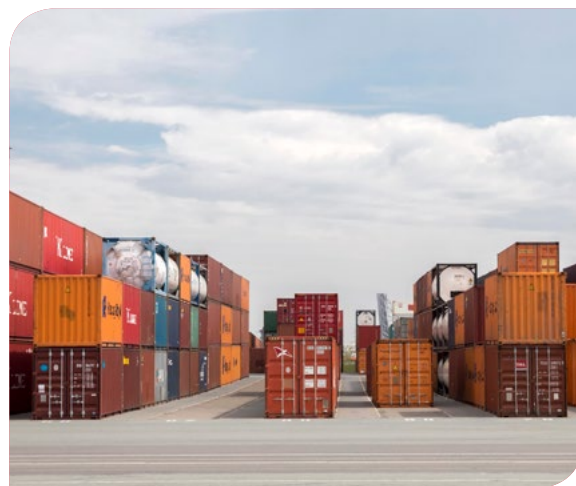
In a context of ever more inter-connected global markets, with international flows of goods and capital, OLAF has an important role in preventing and tackling fraud affecting the revenue of the EU, mainly customs duties. In 2016, the Office delivered significant results for the EU budget in this field.

#### OLAF AT THE HELM OF TRANS-EUROPEAN JOINT CUSTOMS OPERATIONS

In addition to its investigations concerning cases of revenue fraud, examples of which were presented in the previous chapter, OLAF has a crucial role in coordinating large-scale Joint Customs Operations (JCOs) involving EU and international operational partners. JCOs are targeted actions of a limited duration that aim to combat fraud and the smuggling of sensitive goods in specific areas at risk and/or identified trade routes. In 2016, OLAF co-organised or supported 12 such successful operations. Four of the JCOs organised in cooperation with Member States (Estonia, Finland, Greece and the Netherlands) were financed by OLAF:

**JCO Magnum** was organized at regional level and targeted the smuggling of tobacco products transported by road into the EU territory from third countries such as Belarus, Ukraine and Russia. The operation was coordinated by the Estonian Customs Administration and OLAF with the involvement of five Member States, and led to the seizure of around 11 million cigarettes.

**JCO Warehouse III** targeted the smuggling of excise goods, such as mineral oil/fuels, including the usage of the duty and tax suspension regimes for fraudulent activities. Coordinated by the Finnish Customs Administration and OLAF with the involvement of 26 Member States and the support of Europol, the operation was run from the Permanent Operational Coordination Unit at the OLAF premises in Brussels. The operation led to the seizure of several thousand litres of diesel.



**JCO Orion** targeted goods originating from non-EU countries and released into free circulation using customs procedure 42. The operation was coordinated by the Hellenic Customs Administration and OLAF with the involvement of the customs authorities of 23 Member States, and in close co-operation with their tax authorities. Managed from the OLAF Permanent Operational Coordination Unit, with the participation of liaison officers and a representative from Europol, the JCO led to customs officers uncovering several instances of undervaluation and misclassification of goods at import, as well as a string of missing traders who 'disappeared' in order to evade customs duties and VAT.

**JCO Wafers** focused on counterfeit semiconductors imported into the EU from China and Hong Kong by Post/Express Courier Services. This operation was coordinated by the Dutch Customs and OLAF with the involvement of 12 Member States and the support of Europol, and in close co-operation with the industry. The operation led to the seizure of several hundred thousand counterfeit semiconductors, as well as other counterfeit products.



## OLAF'S ANTI-TOBACCO SMUGGLING MANDATE

To counter tobacco smuggling into the EU, which causes huge revenue losses to the budgets of the EU and of the Member States, OLAF has a unique administrative investigative mandate in this field. In complex cross-border cases in particular, OLAF can bring significant added-value by helping coordinate anti-smuggling operations carried out by law-enforcement agencies across Europe. OLAF works to ensure that evaded duties are recovered, criminal smuggling networks are dismantled and perpetrators brought to justice.

In addition to its operational activities to fight illicit tobacco trade, in 2016, OLAF has also been a key contributor to the EU becoming a Party to the Protocol to Eliminate Illicit Trade in Tobacco Products to the WHO Framework Convention on Tobacco Control ("FCTC Protocol").

## A KEY TOOL IN FIGHTING THE ILLICIT TOBACCO TRADE – THE FCTC PROTOCOL

The FCTC Protocol is the first international treaty aiming to specifically tackle the illegal trade of tobacco products and it was adopted in November 2012. The EU, with OLAF as lead service, had a key role in negotiating it under the auspices of the World Health Organisation (WHO). On 24 June 2016, the EU became a Party to the Protocol having deposited the instrument of formal confirmation with the United Nations.

The FCTC Protocol is a key policy tool to prevent illicit tobacco trade at the international level and is therefore becoming the central pillar of the EU's policy to fight this cross-border phenomenon. In addition to acting as a deterrent against criminals engaging in the illegal tobacco trade, the Protocol will require legislation and administrative measures in the Parties enabling them to implement core commitments on the control of the supply chain of tobacco products. The key provisions concern track and trace systems to follow products through the supply chain, licensing requirements for

the production of tobacco products and manufacturing equipment, reinforced control in free zones as well as provisions on money laundering. This is complemented by other regulatory provisions such as due diligence, record keeping ("know-your-customer"), increased sanctions, law enforcement co-operation, and mutual administrative assistance.

The FCTC Protocol will only effectively help curbing illicit trade if it is also implemented by third countries which are the main source of illicit tobacco products or are transit countries on the smuggling routes. Therefore, the Commission and OLAF are intensifying their efforts to promote the Protocol outside the EU.

## NEW, POWERFUL TOOLS TO COMBAT CUSTOMS FRAUD MADE AVAILABLE IN 2016

In 2016, customs investigators across the European Union also gained access to new electronic tools to combat customs fraud more effectively. Through the update of Regulation 515/97, OLAF was empowered to create new IT systems which will allow the EU and its Member States to better track and trace suspicious shipments and thus increase the detection of customs fraud.

Investigators will now be able to access a new Container Status Messages directory which gathers messages that record the movements of containers transported on maritime vessels. The messages are directly provided by maritime carriers. Similarly, an Import, Export and Transit directory has also been developed, containing data on goods entering, transiting and leaving the EU. Data relating to exports which will be gathered is limited to sensitive products, such as tobacco, alcohol and fuels. As of next year, customs officials as well as OLAF officials will also be able to cross-check the information from both databases to detect potential fraud patterns. These new tools will strengthen the analytical capabilities of national customs authorities and OLAF in detecting fraudulent operations.

**Figure 8: Cigarettes seized with the support of OLAF (rounded to million sticks)**

Year	2012	2013	2014	2015	2016
Coordination and investigation cases	156	281	168	602	458
JCOs	0	68	132	17	11
<b>Total</b>	<b>156</b>	<b>349</b>	<b>300</b>	<b>619</b>	<b>469</b>



*OLAF holds meetings with international partners to help eradicate fraud with EU funds*

The amended legislation will also help speed up OLAF investigations by setting out deadlines for Member States to provide investigation-related documents. It will also facilitate the use of information obtained on the basis of mutual assistance as evidence in national judicial proceedings.

## FIGHTING TRANSHPMENT FRAUD GLOBALLY

The practice of the illegal transshipment of goods in the international Free Zones poses a serious problem for the EU because it can be used by criminal networks as a concealed transport route to bring into the EU illicit products and dangerous substances. OLAF is working hard to strengthen the co-operation with the third countries concerned by creating the conditions for an early tracking and monitoring system for the most dangerous products that could harm the health and safety of our citizens and damage our environment. OLAF has carried out missions and discussions with key international partners throughout 2016.

## 3.2. OLAF relations with its partners

### MUTUAL ASSISTANCE AND ANTI-FRAUD PROVISIONS IN INTERNATIONAL AGREEMENTS

Cooperation with third countries with a view to preventing, detecting and combating breaches of customs legislation is based on agreements on mutual administrative assistance in customs matters. Such agreements provide the required legal basis in the context of Article 19 of Regulation 515/97 for the exchange of information with third countries on fraud or irregularity. More than 70 agreements are currently in place, including with major EU trade partners, like the US, China or Japan. In 2016, the list of agreements in force has been enlarged with the following partners: Kazakhstan, Ivory Coast, Ghana and Kosovo. In addition, negotiations to update the previous agreement have been finalised with Armenia. Negotiations with Mercosur (Argentina, Brazil, Paraguay and Uruguay) have made good progress.

Free trade agreements can contain an anti-fraud clause which allows for a temporary withdrawal of tariff preference for a product in cases of serious customs fraud and a persistent lack of adequate cooperation to combat it. OLAF actively contributes to the negotiations on this anti-fraud clause. In 2016, the EU made progress in on-going negotiations for this clause with Japan, the US, Mexico, Mercosur and Tunisia.

### ADMINISTRATIVE COOPERATION ARRANGEMENTS WITH INTERNATIONAL PARTNERS

Maintaining close relationships with its EU and non-EU investigative partners is key to OLAF's success. Administrative Cooperation Arrangements (ACAs) can play an important role in fostering such relationships. In 2016, OLAF continued working towards concluding relevant arrangements with its investigative partners. To the existing approximately sixty arrangements in force at the beginning of the year, OLAF added two ACAs with Member States' authorities<sup>5</sup>, three ACAs with international customs authorities<sup>6</sup>, one ACA with

<sup>5</sup> City of London Police and Autorità Nazionale Anti-Corruzione from Italy.

<sup>6</sup> State Customs Committee of Belarus, Taiwan Bureau of Foreign Trade, and Taiwan Customs (revision of an existing ACA).



an international anti-corruption authority <sup>7</sup>, one ACA with a finance control Body <sup>8</sup> as well as one ACA with an international organisation <sup>9</sup>.

OLAF also concluded two new arrangements with EU institutions: one with the European Economic and Social Committee (EESC) and one with the European Investment Bank (EIB).

Throughout the year, OLAF also “assessed” its stock of existing ACAs, with a view to update those that needed to be and, ultimately, to be better equipped for future joint investigative work with its partners.

### ADVISORY COMMITTEE FOR COORDINATION OF FRAUD PREVENTION (COCOLAF)

OLAF also steers and chairs the Advisory Committee for Coordination of Fraud Prevention (COCOLAF) and its respective sub-groups, composed of representatives of Member States’ authorities. The 2016 annual meeting provided an opportunity to discuss the main developments in the fight against fraud and the preparation of the Article 325 TFEU Report on the ‘Protection of the European Union’s financial interests — Fight against fraud 2015’.

The COCOLAF subgroups met in 2016 to:

- ▶ exchange experience and best practices in anti-fraud activities;
- ▶ draw up fraud prevention documents under a collaborative approach with Member States’ experts coordinated by OLAF such as ‘Guidelines on National Anti-Fraud Strategies’;
- ▶ prepare guidance on the ‘Irregularity Reporting’ and the launch of updated the Irregularity Management System (IMS);
- ▶ share media strategies and launch communication activities on fraud prevention and deterrence.

### NATIONAL ANTI-FRAUD STRATEGIES

Member States are required to put in place efficient and proportionate anti-fraud measures for each operational programme financed or co-financed by the EU for the programming period 2014-2020. These anti-fraud measures are ideally part of a comprehensive national anti-fraud strategy (“NAFS”). OLAF encourages Member States to develop such anti-fraud strategies and can provide support to Member States in the drafting process. In 2016 OLAF, with the assistance of Member State experts, issued updated guidelines on the development of NAFS. Currently, nine Member States (Bulgaria, Croatia, Czech Republic, France, Greece, Hungary, Italy, Malta and Slovakia) have adopted a NAFS. In 2016, OLAF has also advised and assisted Albania, Serbia and the Former Yugoslav Republic of Macedonia in establishing their NAFS. Candidate and Potential Candidate Countries must adopt a NAFS for the protection of EU funds as part of the accession process.

### COOPERATION WITH EUROJUST

In 2016, OLAF and Eurojust organised a training session for Eurojust National Members and staff, in order for them to better understand OLAF’s mandate and working methods. Eurojust and OLAF continued to regularly exchange information of investigating interest and to cooperate on common cases.

### FPDNet

In 2016, OLAF also continued to work on fraud prevention training and awareness-raising activities through the well-established Fraud Prevention Network, FPDNet, bringing together professionals from Commission Services, Executive Agencies and the European External Action Service.

<sup>7</sup> National Anti-Corruption Bureau of Ukraine (NABU).

<sup>8</sup> Inspection Generale des Finances (IGF) of the Democratic Republic of Congo

<sup>9</sup> International Fund for Agricultural Development (IFAD).

## 4. Partnering to fight fraud: Monitoring the actions taken by the recipients of OLAF recommendations

### 4.1. Financial monitoring

#### OLAF INVESTIGATIONS LEAD TO HIGH AMOUNTS RECOMMENDED FOR RECOVERY TO THE EU BUDGET

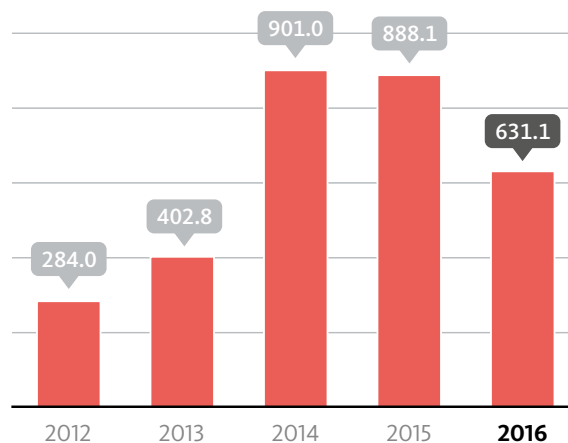
Financial recommendations are addressed by OLAF to the EU institutions or national authorities providing or managing EU funds. The aim of such financial recommendations is to seek the recovery of the defrauded EU funds to the EU budget. The sum recommended by OLAF for recovery each year depends on the scope and scale of the investigations concluded in that given year. The amount of recommended recoveries is therefore not an indication of the overall fraud level in Europe, but relates to specific investigations OLAF has finalised in a particular year.

Pursuant to the investigations it concluded in 2016, OLAF has recommended the recovery of EUR 631.1 million to the EU budget. OLAF is, however, not itself responsible for the recovery of these funds. It is important to note that this money will progressively be recovered by the relevant authorities at EU and Member State level over the years. Money can be retrieved from the beneficiaries of the funds, national managing authorities or paying agencies in a number of ways, including direct recovery, offsetting, deduction, de-commitment, programme closure, or clearance of accounts.

#### FINANCIAL IMPACT OF OLAF'S INVESTIGATIONS IN THE OVERALL DETECTION OF IRREGULARITIES ACROSS EUROPE

Member States also manage the collection of the EU's customs revenue. Their activities represent the first line of defence against any attempt to defraud the EU budget. OLAF counts on national authorities to perform their work efficiently and diligently, and supports them via trainings and through active exchange of information.

**Figure 9: Amount recommended by OLAF for financial recovery in 2016 (million EUR)**



Under sectoral regulations, Member States have to report any irregularity or suspicion of fraud<sup>10</sup> they detect exceeding EUR 10,000 to the European Commission. An analysis of this data is compiled in the Commission's Annual Report on the protection of the EU financial interests (the so-called "PIF Report").

In last year's OLAF Report 2015, OLAF presented for the first time an analysis in the field of Traditional Own Resources (TOR), as well as in the area of shared management, providing an overview of the number of fraudulent and non-fraudulent irregularities detected by national authorities throughout the EU. In this year's edition of the Report, the analysis was extended to include 2016 as well. The impact of investigations

<sup>10</sup> A case can be defined as fraud only after a definitive sentence is issued by a competent judicial authority. This can take a few years following the detection and reporting of the case to the Commission.



is shown as a percentage of the total TOR that authorities have collected for the years 2013-2016 and as a percentage of the total payments made under the two main areas of shared management<sup>11</sup> by each Member State.

In parallel with the Member States, OLAF also gathers data on the number of investigations it has conducted which have led to financial recommendations. Alongside the results by national authorities, the results obtained by OLAF during the same period are also published<sup>12</sup>.

In this analysis, it is assumed that financial recommendations issued by OLAF following investigations are comparable to the financial impact of irregularities detected and reported by Member States.

Figure 10 shows the number of irregularities/fraud cases detected in the area of Traditional Own Resources between 2013 and 2016 and the percentage that their financial impact represents in terms of the gross TOR collected by Member States and made available to the EU budget. OLAF results are shown alongside those of national authorities.

Figure 11 shows the number of fraudulent and non-fraudulent irregularities detected in the two main areas of shared management, namely Structural Funds and Agriculture, between 2013-2016 and their financial impact expressed as a percentage of the total payments for the years 2012-2015<sup>13</sup>, divided by Member State. OLAF results are shown alongside those of national authorities.

Our analysis thus highlights once again the important contribution OLAF investigations are making in helping the relevant authorities recover EU funds that have been defrauded or irregularly misspent. In terms of Traditional Own Resources, OLAF financial recommendations would represent 0.49% of the gross TOR collected, compared to 2.04% for all Member States together. As such, OLAF financial recommendations would account for between 19.3% and 23.9%<sup>14</sup> of the entire financial impact of investigative and control activities in the Member States. Compared to the period 2013-2015, the financial impact of OLAF's recommendations remained stable, while the financial impact of national investigations decreased. While OLAF identified fewer irregularities than national authorities as a whole, their financial impact was, on average, significantly larger. This is a testament to OLAF's commitment to utilising its resources effectively, and thus concentrating on cases where its input would bring the most value added.

Comparable results occur also in the shared management areas, where the financial impact of the activities of all Member States together accounts for 2.1% of payments, while OLAF alone recommended the recovery of 0.43% of payments. In this area, OLAF financial recommendations would represent 17.1% to 20.7% of the entire impact of investigative and control activities. There are particular countries, like Hungary, where the financial impact of OLAF cases was four times higher than that of national investigations.

Individually analysing the two main areas of shared management, OLAF's impact has been particularly significant in relation to the Structural Funds, as its financial recommendations represented 0.8% of the payments, i.e. between 19% and 23.5% of the financial impact of investigative and control activities of the Member States, which represents around 3.5% of the payments made between 2012 and 2015. Again, OLAF concentrated on large, complex cases, with a high financial impact.

11 Namely, Agriculture and Structural Funds.

12 Results by the Member States and OLAF may partially overlap. OLAF results are extracted from the Case Management System, and represent the total sum of financial recommendations issued at the end of the investigations. Data concerning Member States is extracted from the Irregularity Management System (IMS) for the two expenditure areas and from the OWNRES system for TOR. Data used in this report need to be considered as provisional as final data are published in the 'Report from the Commission to the European Parliament and the Council on the Protection of the European Union's financial interests — Fight against fraud - 2015' which will be published in July 2016.

13 The financial impact of irregularities detected between 2013-2016 is compared with payments disbursed between 2012-2015 as, in the area of expenditure, investigations are very rarely related to payments disbursed in the same fiscal year.

14 The range has been calculated assuming, for the lower limit, that OLAF results are not included in those reported by the Member States, while for the highest limit, the assumption is the opposite - that OLAF results are fully included in those reported by the Member States.



**Figure 10: Member State/OLAF detection of irregularities and their financial impact in the area of Traditional Own Resources for the period 2013-2016**

	Traditional Own Resources (TOR)			
	Member States		OLAF	
	Detected fraudulent and non-fraudulent irregularities	Financial impact as % of TOR collected	Investigations closed with recommendations	Financial recommendations as % TOR collected
	N	%	N	%
Austria	279	2.94%	8	0.14%
Belgium	780	1.06%	23	0.77%
Bulgaria	99	3.65%	15	1.56%
Croatia	49	1.69%	0	0.00%
Cyprus	37	1.78%	5	0.08%
Czech Republic	294	2.14%	15	1.11%
Denmark	282	1.68%	13	0.59%
Estonia	25	1.58%	7	0.44%
Finland	156	1.16%	8	0.47%
France	1 484	1.93%	20	0.31%
Germany	7 316	2.29%	27	0.20%
Greece	178	6.75%	11	0.18%
Hungary	174	1.43%	11	0.38%
Ireland	114	1.12%	9	0.42%
Italy	692	1.52%	23	0.24%
Latvia	104	5.56%	8	2.18%
Lithuania	168	2.29%	11	1.23%
Luxembourg	0	0.00%	0	0.00%
Malta	14	4.77%	1	0.03%
Netherlands	1 808	3.11%	35	1.01%
Poland	615	1.25%	22	1.03%
Portugal	126	2.50%	13	1.60%
Romania	305	4.05%	22	2.04%
Slovakia	68	1.05%	9	0.25%
Slovenia	45	0.64%	11	0.64%
Spain	1 402	2.33%	24	0.51%
Sweden	308	0.98%	11	0.28%
United Kingdom	4 177	1.86%	31	0.32%
<b>Total</b>	<b>21 099</b>	<b>2.04%</b>	<b>393</b>	<b>0.49%</b>



**Figure 11: Member State/OLAF detection of irregularities and their financial impact in the areas of Structural Funds and Agriculture for the period 2013-2016**

	Shared Management: Structural Funds and Agriculture			
	Member States		OLAF	
	Detected fraudulent and non-fraudulent irregularities	Financial impact as % of payments	Investigations closed with recommendations	Financial recommendations as % of payments
	N	%	N	%
Austria	295	0.34%	2	0.03%
Belgium	327	0.58%	1	0.03%
Bulgaria	720	1.74%	38	0.46%
Croatia	46	0.82%	1	0.01%
Cyprus	72	0.49%	0	0.00%
Czech Republic	3 212	5.49%	5	0.06%
Denmark	193	1.20%	0	0.00%
Estonia	346	1.39%	0	0.00%
Finland	125	0.09%	0	0.00%
France	1 039	0.33%	5	0.01%
Germany	1 623	0.37%	6	0.09%
Greece	1 505	2.23%	10	0.35%
Hungary	2 442	1.22%	41	4.16%
Ireland	1 325	3.14%	0	0.00%
Italy	3 016	1.63%	15	0.25%
Latvia	580	3.30%	1	0.01%
Lithuania	896	3.00%	3	0.08%
Luxembourg	1	0.12%	0	0.00%
Malta	80	2.28%	1	0.50%
Netherlands	726	2.03%	1	0.00%
Poland	4 731	1.60%	13	0.07%
Portugal	1 703	1.21%	7	0.24%
Romania	4 857	5.65%	99	0.68%
Slovakia	1 360	13.14%	14	2.55%
Slovenia	239	2.00%	1	0.14%
Spain	9 766	2.98%	5	0.49%
Sweden	207	0.82%	0	0.00%
United Kingdom	2 610	0.89%	5	0.05%
<b>Total</b>	<b>44 042</b>	<b>2.10%</b>	<b>274</b>	<b>0.43%</b>

## 4.2. Judicial monitoring

Ever since its creation, OLAF has been monitoring the actions taken by national judicial authorities following its judicial recommendations, in order to see the outcome of these cases on the ground and find out if they have led to indictments or to other judicial measures.

A recent analysis OLAF conducted into the national judicial outcomes for the last seven years confirms the results from the previous period, namely that around half of the cases submitted by OLAF to national judicial authorities have led to indictments. While judicial authorities are of course independent, and while the legal architecture may vary at Member State level, OLAF has continuously strived to understand the reasons why national judiciaries dismiss part of the cases it sends them. Therefore, OLAF carried out a detailed exercise with several Member States in 2014, 2015 and 2016 successively.

While it is not for OLAF to question the validity of national prosecutors' decisions to dismiss individual cases on particular grounds, OLAF's analysis confirms the argument in support of the Commission's proposal for a European Public Prosecutor's Office. First of all it appears that art. 11§2 of Regulation 883/2013, and prior to that, art. 9§2 of Regulation 1073/1999 which was identical, is not a sufficient legal basis to allow all Member States' judicial authorities to use OLAF reports as evidence in trial. Therefore, in numerous Member States, after receiving the OLAF final report, prosecutors carry out all the investigation activities once again in order to acquire admissible evidence.

Sometimes, despite great investigative efforts deployed by the Office, its limited investigation powers and practical possibilities do not allow it to collect strong evidence of a criminal offence.

As regards internal investigations, whereas for OLAF any infringement committed by EU staff is regarded as a very serious matter, irrespective of the prejudice to the EU budget, the priorities of the national judiciaries may be different.

Finally, some of the cases analysed show differences of interpretation of EU and national law between OLAF and national authorities. OLAF started in 2016 to address these differences, through bilateral meetings with the relevant judicial authorities.



Overall, the exercise covered all Member States with the exception of Croatia where OLAF did not issue any judicial recommendations, and of Malta and Slovenia, where no cases submitted by OLAF were dismissed. The results of the exercise carried out by OLAF were discussed in the annual Interinstitutional Exchange of Views, as well as at a meeting with all the national anti-fraud coordination services (AFCOS), in 2016.



**Figure 12: Actions taken by national judicial authorities (JA) following OLAF's recommendations issued between 1 January 2009 and December 2016**

Member state	No decision taken by JA (*)	Decision taken by JA			Indictment rate
		Total	Dismissed	Indictment	
Austria	3	5	2	3	60%
Belgium	9	36	17	19	53%
Bulgaria	13	22	12	10	45%
Croatia	2	0	0	0	NA
Cyprus	2	3	2	1	33%
Czech Republic	3	6	4	2	33%
Denmark	2	3	2	1	33%
Estonia	1	1	0	1	100%
Finland	2	1	1	0	0%
France	8	9	4	5	56%
Germany	15	19	13	6	32%
Greece	13	10	2	8	80%
Hungary	22	9	6	3	33%
Ireland	1	2	2	0	0%
Italy	25	30	11	19	63%
Latvia	2	2	2	0	0%
Lithuania	3	7	4	3	43%
Luxembourg	6	4	3	1	25%
Malta	3	4		4	100%
Netherlands	11	4	3	1	25%
Poland	9	11	2	9	82%
Portugal	10	5	4	1	20%
Romania	28	74	50	24	32%
Slovakia	5	9	7	2	22%
Slovenia	3	1	0	1	100%
Spain	12	16	10	6	38%
Sweden	1	2	1	1	50%
United Kingdom	19	13	7	6	46%
<b>Grand Total</b>	<b>233</b>	<b>308</b>	<b>171</b>	<b>137</b>	<b>44%</b>
<b>Grand Total without SAPARD (**)</b>	<b>233</b>	<b>246</b>	<b>123</b>	<b>123</b>	<b>50%</b>

(\*) In the category of no decision taken, we include also those cases that are still in the so-called "reporting period". When OLAF sends a judicial recommendation to a Member State, the competent authority has to report on the actions taken following the recommendation within 12 months.

(\*\*) OLAF's overall caseload in Bulgaria and Romania includes a large number of older investigations involving the misuse of SAPARD funds. SAPARD-related cases have led to a relatively low rate of judicial indictment. This was mainly due to the widespread use of consultants and agents in preparing aid applications and tender documents, which raised doubts at judicial level about the fraudulent intent of the beneficiaries. In both countries, the indictment rate of non-SAPARD cases is higher.

### 4.3. Disciplinary monitoring

#### EU INSTITUTIONS TAKE ACTION TO FOLLOW-UP ON OLAF'S INTERNAL INVESTIGATIONS

The Disciplinary Recommendations issued by OLAF concern misconduct of EU staff or members of the EU Institutions and are directed at the authority having disciplinary powers in the Institution concerned. The appointing authorities sometimes take several actions following a single recommendation from OLAF. At the same time, the appointing authority may join several recommendations resulting from different investigations and, subsequently, impose one single sanction.



**Figure 13:** Actions taken by the appointing authorities following OLAF's Disciplinary Recommendations issued between 1 January 2014 and 31 December 2016

Recipient of recommendation	Total	No decision taken (*)	Decision taken	
			No case is made	Action taken
Agencies	9	4	3	2
Court of Justice	2	1	1	0
European Commission	20	4	5	11
European Economic and Social Committee	2	1	1	0
European External Action Service	4	1	0	3
European Investment Bank	2	1	0	1
European Parliament	9	3	1	5
<b>Total</b>	<b>48</b>	<b>15</b>	<b>11</b>	<b>22</b>

(\*) In the category of no decision taken, we include also those cases that are still in the so-called "reporting period". When OLAF sends a disciplinary recommendation to an appointing authority, the competent authority has to report on the actions taken following the recommendation within 6 months.



## 5. Focus chapter: OLAF and innovation

OLAF has made significant investment and deployed substantial efforts in the last years to use and promote the most innovative investigative techniques and tools. OLAF has matched its unique investigative mandate with innovative state of the art investigative tools in order to continue to remain at the forefront of the global fight against fraud. In this year's Report, OLAF is placing in the spotlight some of its most important initiatives in this field, undertaken in 2016.

### 5.1. A premiere of 2016: OLAF's extensive analysis of the "Panama Papers"

In its investigative activities, OLAF generally uses all open source information available. For instance, OLAF's text mining and analysis capabilities are, at this point, almost unparalleled in Europe for an administrative body. When the Panama Papers were published, OLAF experts quickly realised that the documents could bring interesting leads in the fight against fraud and corruption, and that they had the necessary tools to process the huge data volume. OLAF therefore downloaded the Panama Papers public database, which contained almost 430,000 entities – persons and companies. With its highly-developed analytical tools, OLAF examined the large amount of available data. The first step, which took 11 days, was "cleaning" the data, whereby OLAF analysts fixed any possible inconsistencies. A Slavic name, for example, when translated from the Cyrillic alphabet to the Latin alphabet could be spelled in different ways, although it relates to the same person. Experts identified such instances, thus making the data more reliable. Experts then checked whether the following three categories had in any way been linked to the offshore companies exposed in the Panama Papers.

The first category related to EU staff who held managerial functions (European Commission Directors-General, Directors or Executive Directors of all EU Decentralized Agencies), to members of the European Institutions (the current Members of the European Parliament, the Juncker and Barroso II Commissions) and to staff categories across the European Institutions considered to be at higher risk, for example budget administrators, procurement officers, inspectors,

investigators or auditors. The second category consisted of experts providing services in the course of EU projects and beneficiaries of EU funds, while the third category comprised persons or entities that had been involved in OLAF closed or on-going investigations.

Overall, OLAF identified around 40,000 persons and companies pertaining to these three categories. The data was imported into iBase, a database that helped OLAF analysts identify persons, companies and their relationships. The software automatically flagged identical matches and semi-automatic "near matches" based on spelling variations.

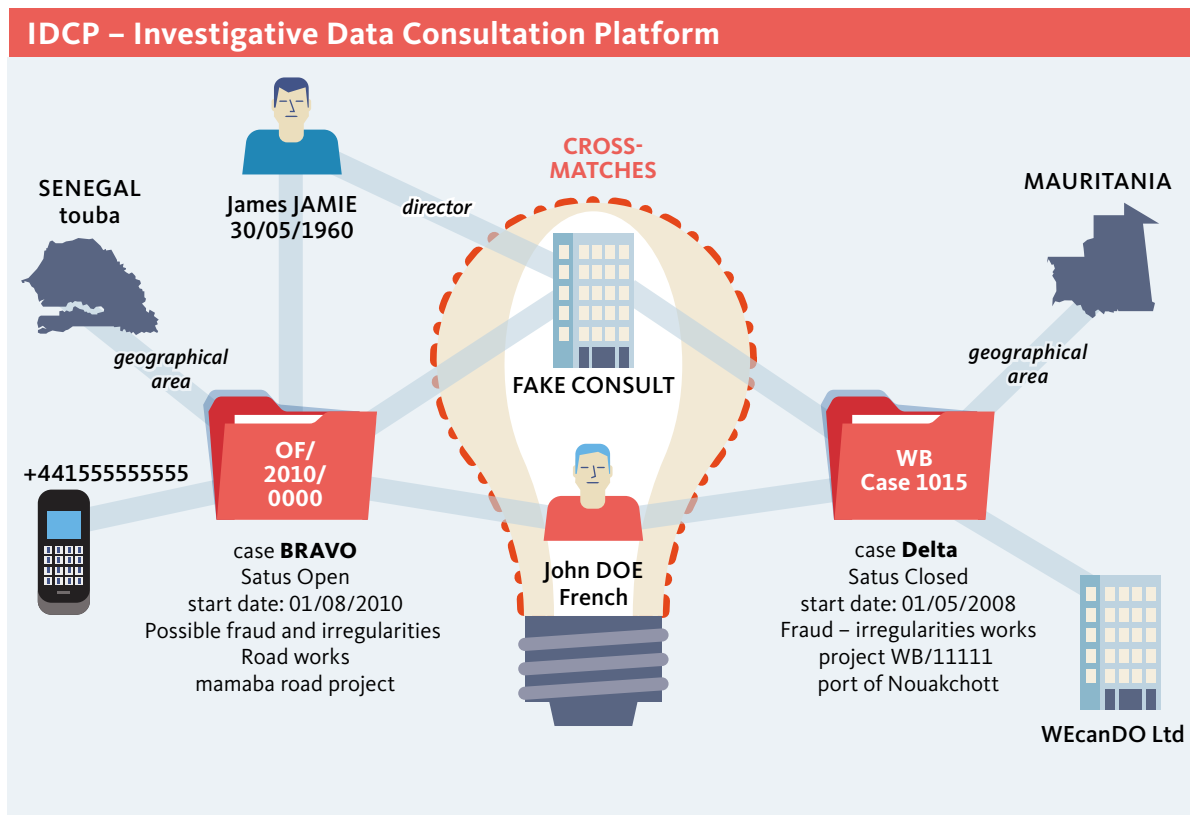
The analytical exercise undertaken by OLAF resulted in 17 real matches, a very number low compared to the large number of individuals and companies OLAF cross-referenced, and a positive sign attesting to the integrity of EU staff and members. On the basis of this analysis and of information also related to the Panama Papers but obtained from other sources, OLAF then opened four investigations.

The purpose of the analysis was not only to uncover any fraud against the EU budget or serious misconduct of EU staff and members, but to also identify any systemic vulnerability in European Commission programmes, with a view to correcting it.

### 5.2. The IDCP platform: cross-matching across borders

In June 2016, OLAF joined forces with the World Bank Integrity Vice Presidency (INT) by signing an arrangement to set up an Investigative Data Cross-Matching Platform (IDCP). This arrangement marks a new step in the longstanding and successful cooperation between the two bodies and deepens international cooperation in the fight against fraud by creating a database to support the exchange of investigative information.

The IDCP facilitates the exchange of case-related information between OLAF and INT, helping the two partners identify cases of double or multiple funding of development projects, as well as identical persons or economic operators defrauding their respective budgets.



The innovative feature of the IDCP is that once data has been uploaded into the system, it will automatically identify “cross-matches” such as the name of the same economic operator or of the same persons in the OLAF and INT investigations, and will automatically notify the two investigative bodies.

Cross-matches are done in full compliance with the European Data Protection Supervisor’s (EDPS) recommendations.

### 5.3. OLAF Operational Analysis and Digital Forensic activities

A dedicated OLAF Operational Analysis and Digital Forensic Unit is providing highly specialised technical assistance and analytical support to OLAF investigators. Assistance is focussed on complex investigations, both with respect to the content or the high volume of data. The Unit is composed of highly experienced and certified digital forensic examiners and analysts who are trained to find evidence wherever data/information has been stored, hidden or even deleted.

The Unit applies expert skills and state of the art tools to acquire, handle, process and analyse large amount of data and information in order to extract, interpret and present evidence useful in OLAF investigations. Moreover, the team works on a fully integrated platform of forensic data extraction, deep full text search, text mining, content analysis, audio search, multi-media analysis and advanced data visualisation.

The combination of these tools together with the expertise in handling and analysing huge volume of data and information make this Unit an essential and valuable support to OLAF investigative operations on complex investigations.

OLAF also assists its partners in the Member States and in the European Commission by providing technical, analytical and forensics support for their investigative operational activities (e.g. in the context of Joint Customs Operations) or facilitating and enhancing the audit risk analysis methods of the Commission’s Directorates-General.

Not only does OLAF’s Operational Analysis and Digital Forensic team offer assistance to national law enforcement authorities, it also shares its expertise with

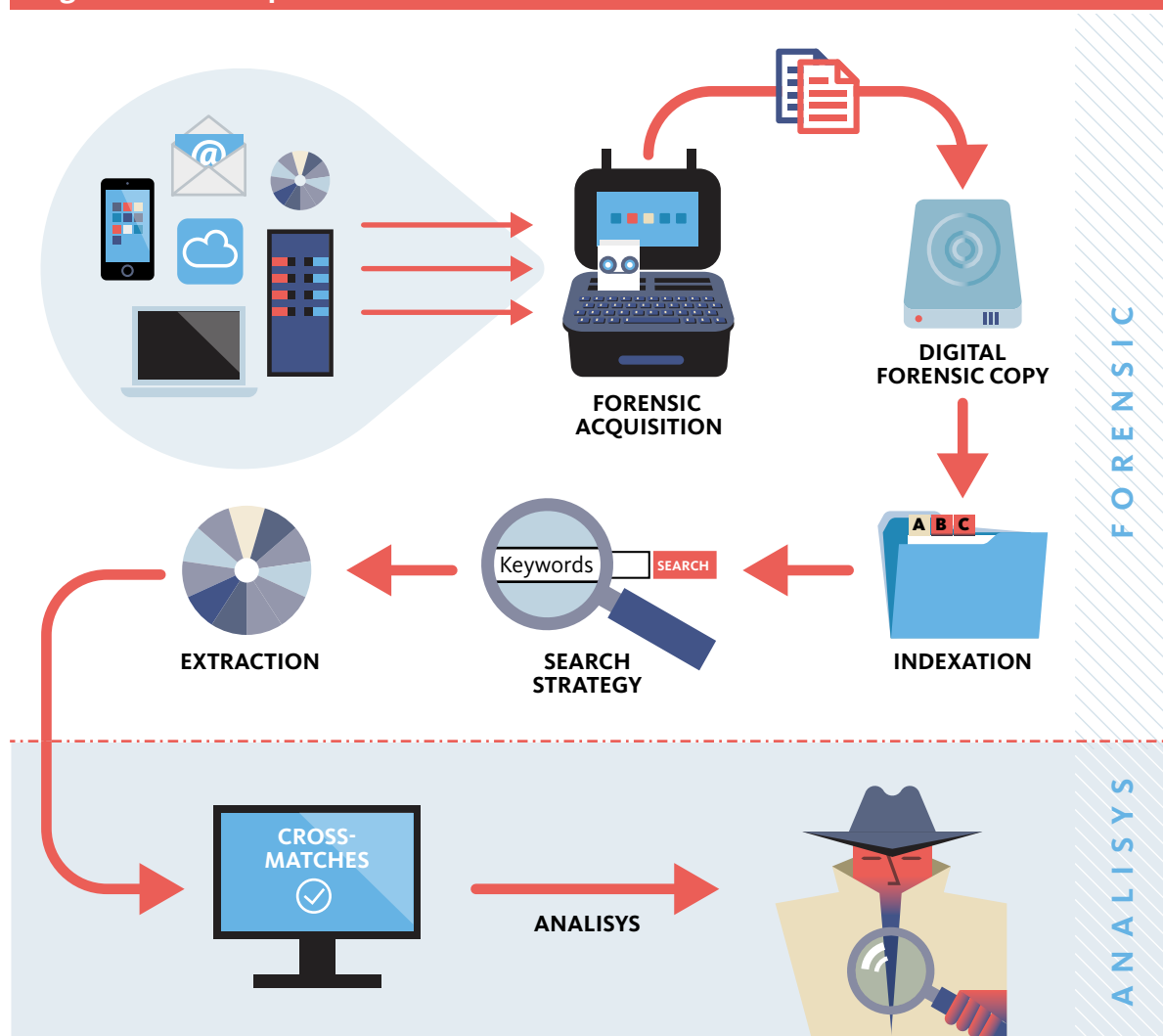


Member States and International Organisations by providing analytical support for developing intelligence based solutions, and technical assistance or training for their capacity-building in forensic procedures and in detecting methods of fraud.

OLAF management is committed to constantly providing OLAF investigators with new tools and with the necessary support to take on large, complex, cross-border fraud investigations. It is only through acquiring or developing such tools in-house that OLAF can stay one step ahead of the game and identify increasingly professionalised fraudsters.

Thanks to such collaboration between OLAF and its partners, the prosecution of corruption and fraud cases has been facilitated in many countries.

### Digital forensic operation





## 6. Policies to fight fraud

In addition to its investigative work, as a European Commission service, OLAF plays an active role in the development of EU anti-fraud policies. The Office is regularly at the forefront of drafting and negotiating legislative texts concerning the protection of the EU's financial interests against fraud and corruption. It is thanks to its solid investigative expertise, that OLAF can support the EU institutions in furthering a sound legal framework that offers ever-improved protection to the EU budget and to taxpayers' money. The main projects on which OLAF experts have made significant efforts in 2016 are summarised in this chapter.

### **PIF DIRECTIVE: AGREEMENT REACHED IN LATE 2016**

In 2016, the European legislators continued negotiations on the proposed Directive on the fight against fraud to the Union's financial interests by means of criminal law (so-called "PIF directive"). The aim of the proposal is to harmonise definitions of offences, sanction levels and prescription periods for EU fraud and related crimes. The main open issue for discussion in the course of 2016 was whether VAT fraud should or should not come within the scope of the Directive. An agreement was reached between the co-legislators in November 2016. Under this agreement, cases of serious VAT offences are included in the scope of the Directive when they involve a damage of at least EUR 10 million. The formal adoption of the Directive by the Council and the European Parliament is scheduled to take place in 2017.

### **THE LONG ROAD TO ESTABLISHING A EUROPEAN PUBLIC PROSECUTOR**

Decisive progress was made on the Commission proposal for the establishment of a European Public Prosecutor's Office ("EPPO") in 2016 under the Dutch and the Slovak Presidencies. At the same time, Sweden announced at the December Justice and Home Affairs Council that it would not participate at this stage in the EPPO. Discussions will continue under the Maltese Presidency. In the absence of unanimity, a large number of Member States decided at the beginning of 2017 to establish the EPPO under an enhanced cooperation

procedure. The Parliament – which will need to give its consent to the Council for the EPPO to be established – has reiterated its support for the creation of an independent and efficient EPPO in a Resolution adopted in October 2016.

OLAF will work closely with the EPPO as it is being set up, in order to allow it to benefit to a maximum from OLAF's practical experience in the fight against fraud affecting EU funds. Once the EPPO is operational, both bodies will need to establish a close partnership for the exchange of information and collaboration on investigations.

### **IMPLEMENTATION OF THE HERCULE III PROGRAMME**

OLAF is responsible for the management of the Hercule III Programme which mainly supports actions and projects that aim to protect the financial interests of the European Union. The Programme has a budget of more than EUR 100 million for the period 2014-2020. It is implemented on the basis of annual work programmes setting out the budget and the funding priorities for a given calendar year. The annual work programme for 2016 made available a budget of EUR 14.5 million for the purchase of, for example, specialised technical equipment by law enforcement agencies in the Member States, such as customs or police forces. The financial support was used for the purchase of a wide range of equipment, such as scanners used in harbours or airports, digital forensic soft- and hardware or the purchase and training of sniffer dogs. For example Greek customs obtained remarkable results with their "Cigarette Detector Dogs" which recently helped seize more than 250 million cigarettes and 500kg tobacco.

The technical equipment purchased with grants from the Hercule III Programme in 2016 was already found to have improved the quantity and quality of information customs authorities gathered on individuals and organisations suspected of involvement in smuggling. The equipment led to a better understanding of the methods deployed by organised crime, which contributed in 2016 to important seizures of cigarettes, tobacco or to the detection of money laundering and VAT evasion.



This was the third year of the implementation of the Hercule III programme and the first tangible results of the activities funded since 2014 started becoming available in 2016. These results demonstrate the substantial contribution with the Programme's financial support to the protection of the Union's financial interests.

The Hercule III Programme also supported conferences, seminars and training events attended by staff of national administrations, law enforcement agencies and NGOs in order to strengthen mutual cooperation, staff exchanges or the exchange of best practices in the protection of the Union's financial interests. The Programme funded digital forensic training sessions aimed at improving the skills of its participants to secure evidence from digital devices in a rapidly evolving technological environment and helping them to stay in the forefront of the fight against fraud.

### EVALUATION OF THE OLAF REGULATION NO 883/2013

The exercise of OLAF's mandate to investigate fraud and any other illegal activity affecting the EU financial interests and to help Member States fight fraud is governed by Regulation No. 883/2013, the so-called "OLAF Regulation", in force since 2013. Article 19 of the Regulation provides that *"by 2 October 2017, the Commission shall submit to the European Parliament and the Council an evaluation report on the application of this Regulation. That report shall be accompanied by an opinion of the Supervisory Committee and shall state whether there is a need to amend this Regulation."*

The evaluation work which already started in 2015 with the help of an external contractor is an important exercise intended to ensure that the legal framework for OLAF investigations is fit for purpose. It will provide recommendations for any future revision of the Regulation if shortcomings of the legislative framework and its implementation are identified. The report will look in particular at the effectiveness of OLAF's investigative tools, the procedural guarantees for persons concerned laid down in Regulation 883/2013, OLAF's governance and its relations with its partners. The evaluation will not only consider the status quo, but will also be forward looking. It will assess any necessary adaptations to OLAF's framework in order to clarify OLAF's relationship and added value vis-à-vis the European Public Prosecutor's Office and, more generally, its role in a changing anti-fraud landscape. The evaluation will thus allow the Commission to



identify any possible need to adapt OLAF's mandate and tools to current needs and challenges in the area of fraud.

In March 2017, a first evaluation conference was held in Brussels. In his remarks, OLAF Director-General Giovanni Kessler advocated the need for reform. *"The evaluation of Regulation 883 offers us an important opportunity,"* Mr. Kessler said. *"Not only can we see what worked and what should be improved, it gives us the possibility to truly reflect on the future of OLAF and assess whether the current OLAF model is still good enough to cater for the overall protection of the EU's financial interests."* In relation to the issues emerging from the evaluation, the OLAF Director-General put forward a number of areas that should be considered for a possible revision of the Regulation. In particular, he called for better tools to allow the Office to perform the investigative acts necessary in the fight against fraud. He also suggested that an amended Regulation should consider a sufficient legal basis to allow judicial authorities in all EU Member States to use OLAF reports as evidence in trial. Given OLAF's unique investigative mandate, he invited participants to



As part of the evaluation process, European Commissioner for Budget and Human Resources, Günther H. Oettinger, joined more than 200 stakeholders at a high-level conference on 1-2 March 2017 in Brussels. *“I can only commend OLAF for its impressive work in protecting the EU budget and helping ensure that citizens’ money goes towards projects that improve the lives of all Europeans,”* Commissioner Oettinger said. *“Now it’s time to look to the future and to try to make sure that OLAF has the tools it needs to successfully counter increasingly sophisticated forms of fraud,”* he added.

**Commissioner for Budget & Human Resources Günther Oettinger at the Conference on the evaluation of Regulation 883/2013, in March 2017**

consider possible new areas to further develop OLAF’s competences.

National-level experts joined academics, lawyers and EU civil servants in lively discussions on the key

provisions of the Regulation and their application in the context of current and emerging fraud trends. Results of the conference will feed into the evaluation report on the application of the Regulation 883/2013 that will be finalised in 2017.





## 7. Relations with the Supervisory Committee

The Supervisory Committee of OLAF is a body of five independent outside experts, established to reinforce and guarantee OLAF's independence by regularly monitoring the implementation of OLAF's investigative function. The Committee delivers Opinions to the Director-General of OLAF and reports to the EU institutions.

The Supervisory Committee members are appointed by common agreement of the European Parliament, the Council and the Commission. Regulation 883/2013 provides for a staggered renewal of the SC Members to ensure continuity in the Committee. In 2016, the European institutions established a new list of Members, as well as a reserve list for the Supervisory Committee. Two new members, Ms Drinan (IE) and Ms Stronikowska (PL), started their mandate mid-2016, replacing Mr Pöysti and Mr Bösch. The remaining three members of the SC, Ms Pignon, Mr Denolf and Mr Zimianitis were replaced in January 2017 by Ms Fazenda (PT), Mr Klement (CZ) and Mr Mulder (NL). Since March 2017, Mr Mulder is the Chair of the Committee, replacing Ms Drinan in this function.

In line with Regulation 883/2013, the Members are supported by a Secretariat. As of 1 January 2017, following an amendment of Regulation 883/2013, the Supervisory Committee Secretariat is no longer provided by OLAF, but by the Commission. It was decided by the Commission to attach the Secretariat staff to the Commission's Pay Master Office (PMO).

The Director-General of OLAF keeps the Supervisory Committee regularly informed of the Office's activities, implementation of its investigative function, and action

taken by way of follow-up to investigations. In 2016, in accordance with the Regulation 883/2013 and the working arrangements between OLAF and the Supervisory Committee, OLAF transmitted to the Committee 562 documents with information on cases lasting more than 12 months. OLAF informed the Committee of 266 recommendations, issued between 16 October 2015 and 15 October 2016, as a result of OLAF's investigations, and a further 67 instances in which information was transmitted to judicial authorities of the Member States. Staff of the Committee's Secretariat also had full access to 62 case files in OLAF's case management system.

In 2016, the Supervisory Committee delivered two Opinions to the Director-General, one on OLAF Draft Investigation Policy Priorities for the year 2016, and one on OLAF's Preliminary Draft Budget for 2017, to which OLAF has replied on 12 May 2016 and on 13 January 2017 respectively.

In its Opinions, the Supervisory Committee issues recommendations to the Director-General. OLAF reports annually to the Committee on the state of implementation of its recommendations, the last time on 16 February 2017, concerning all recommendations issued in 2016.

Details of the Committee's work can be found in its annual activity report. This report and OLAF's responses, as well as other information, are publicly available on OLAF's website.

## 8. Data protection, legality checks and complaints

### PROTECTION OF PERSONAL DATA IS CRUCIAL TO OLAF'S WORK

The protection of personal data contributes to the overall success of OLAF's investigative function as it safeguards the rights of individuals during all the stages of the life of an OLAF case. Ever since the creation of OLAF as an independent body, the Office has its own data protection officer (DPO) who ensures that OLAF implements the requirements of Regulation 45/2001 on the protection of personal data, including the recommendations of the European Data Protection Supervisor (EDPS). The decisions and recommendations of the EDPS have a significant impact on how OLAF carries out its investigative activities, such as on-the-spot checks or the forensic examination of digital devices.

More than 2800 relevant data subjects have been listed in the numerous cases opened by OLAF between 2012- 2016 and the investigative units in charge have taken the relevant measures to provide them with a data protection privacy statement as soon as possible.

In 2016, OLAF concluded several new Administrative Cooperation Arrangements (ACAs) which cover transfers of personal data with partners in non-EU countries and international organisations. Data protection clauses, based on a model established in consultation with the EDPS, were included in all of these ACAs. A specific arrangement was concluded between OLAF and the World Bank Integrity Vice-Presidency to launch the investigative Data cross -Matching platform marking a new step in the two bodies' successful cooperation, with the authorisation of the EDPS (see special focus chapter on innovation in this Report).

During 2016, OLAF received a total of 10 requests from data subjects for access to their personal data. All of these requests have been handled within the legally foreseen deadlines.

### OLAF GUARANTEES PROPORTIONALITY OF INVESTIGATIVE ACTS, AND SAFEGUARDS THE RIGHTS OF DEFENCE

The OLAF Director-General has put in place an internal advisory and control procedure to ensure the compliance of OLAF investigations with EU and national law, as well as the respect of procedural guarantees and fundamental rights of the persons involved in OLAF cases. The responsible team within unit 0.1, composed of OLAF staff with legal and prosecutorial experience in various Member States, conducts legality checks during OLAF's investigations, as well as legal reviews before cases are concluded.

The internal advisory and control review allows the Office to benefit from an ex ante control as regards the legality check of the investigative activities requiring the authorisation of the Director General, ensures the overall quality and conformity of the investigative activities to the applicable rules, and helps improve the final case reports, the decisions on closure and the recommendations issued by OLAF.

Furthermore, the control of the respect of national provisions ensures that the final OLAF case reports constitute admissible, credible and valuable evidence in the course of administrative and criminal proceedings in the Member States concerned.

### OLAF RECEIVES VERY LOW NUMBER OF COMPLAINTS ON ITS INVESTIGATIVE ACTIVITY

Persons affected by an OLAF investigation may address a complaint directly to OLAF. The possibility to make a complaint to the Director-General of OLAF is without prejudice to the citizen's right to lodge a complaint with the European Ombudsman or to raise issues related to OLAF investigations before the European Courts.

In 2016, the Director-General received six complaints from persons involved in OLAF investigations about issues relating to the handling of their procedural guarantees. In five of these complaints, the complainants



received a substantiated reply within the two months' deadline in accordance with the established procedures.

Officials and other EU staff may also complain to OLAF under Article 90a of the Staff Regulations against any act adversely affecting them in connection with OLAF investigations. In 2016, OLAF received two complaints in which Article 90a of the Staff Regulations was invoked. After examining them in accordance with the established procedure, OLAF concluded that they did not satisfy the conditions foreseen in Article 90a and replied to the complainants accordingly.

In 2016, the European Ombudsman opened two inquiries in relation to complaints involving OLAF, both of which were closed in the course of the year. The first complaint concerned a public access to documents request, where the Ombudsman concluded that OLAF was entitled to refuse access. The second complaint concerned an alleged failure to reply to the complainant's correspondence. Following the Ombudsman's intervention, OLAF settled the issue by replying to the complainant and apologising for the delay. In the course of 2016, the Ombudsman also concluded seven inquiries concerning OLAF that had been opened in previous years. Two of these inquiries concerned OLAF's investigative activity, two were about requests for access to documents, one concerned an alleged failure to reply to correspondence, one concerned the processing of personal data and one was related to the inclusion of a company in the Early

Warning System (EWS). All seven inquiries were closed either without a finding of maladministration, or because OLAF had already settled the matter.

Issues related to OLAF investigations were also raised before the European Courts in a very limited number of cases. Usually, this occurs in the context of litigation against measures taken by the Commission or other institutions, bodies or agencies based on OLAF recommendations, such as financial recovery or disciplinary procedures. It may also occur in the context of an action for damages caused by OLAF. This was the case in T-483/13 *Oikonomopoulos v. Commission*, where the General Court reviewed a broad range of procedural steps carried out by OLAF. In its judgement of 2016 the General Court confirmed OLAF's competence to carry out investigative activities. In particular, it upheld the opening of the investigation, the conduct of the on-the-spot checks the conduct of interviews, the timing and duration of the investigation and respect of the rights of defence of the person concerned.

In July 2016, the European Court of Justice confirmed in a judgment that OLAF investigative procedures respect the fundamental right to protection of personal data as well as the rights of defence<sup>15</sup>.

<sup>15</sup> Judgment of the General court 20 July 2016, T -483/13.

## 9. Staff and Budget

### Staff and budget

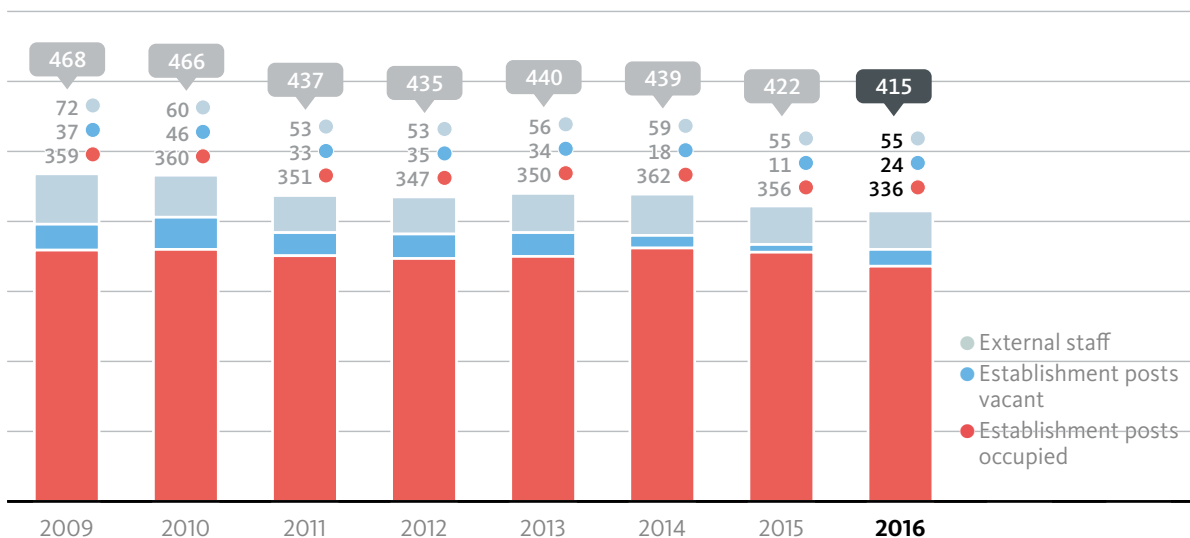
The number of OLAF staff members has declined in 2016 by 1.7%, in the context of the general reductions in staff and budgets in the EU public service. At the end of 2016, the total number<sup>16</sup> of staff members and available vacancies in OLAF stood at 415. Despite the staff cuts, OLAF managed to maintain the relative share of staff allocated to the fight against fraud at 78.3% and to anti-fraud policy work at 12.3%. The remaining 9.4% were allocated to overhead functions such as HR, finance and ICT infrastructure management.

So far OLAF has coped with the combination of a structural increase in workload and reduction in staff numbers through efficiency gains. Indeed, a number of organisational changes were introduced since 2012 to streamline support functions and processes, improve the distribution of responsibilities and competences, and reduce non-core activities, overheads and administrative burdens. These changes have improved the efficiency of investigations, despite the additional notification duties and legality checks imposed by Regulation 883/2013.

OLAF increasingly requires staff with a wide range of skills, training and professional backgrounds. Also, OLAF needs to be able to function and investigate in all EU languages. OLAF's staff profile in 2016 met the necessary standards. However, the challenges which OLAF faces in maintaining its current level of professional expertise go beyond the budgetary restrictions outlined above. OLAF will have to renew its ageing workforce, as investigative staff recruited from national services in the early days of the Office retire, and will have to manage the increasing demand from other Commission services and EU bodies for staff with the skills and background of OLAF professionals. With a view to anticipating these challenges, actions taken under the OLAF HR Strategic Plan in 2016 included:

- ▶ Launching two competitions in the investigative field for administrators to compensate the loss of expertise OLAF is facing due to the ageing of its staff and the expiry of many temporary agent contracts. Reserve lists, which should be published by in the last semester of 2017, will include 25 investigators with expertise in EU expenditure and anti-corruption, 15 investigators with experience

Figure 14: Number and breakdown of OLAF staff from 2009 to 2016



<sup>16</sup> Officials, temporary agents, contract agents, seconded national experts and interim staff employed on 31/12/2016; excluding trainees and external service providers.



**Figure 16: OLAF's administrative budget in 2016 (million EUR)**

EU staff	40.5
Infrastructure	6.7
ICT	5
External agents (contract staff, seconded national experts and interims)	2.6
Missions	1.7
Anti-fraud measures	1.9
Training, meetings and committees	0.5
<b>Total</b>	<b>58.9</b>



in customs and trade, tobacco and counterfeit goods, as well as 10 investigators able to take up the function of team leaders.

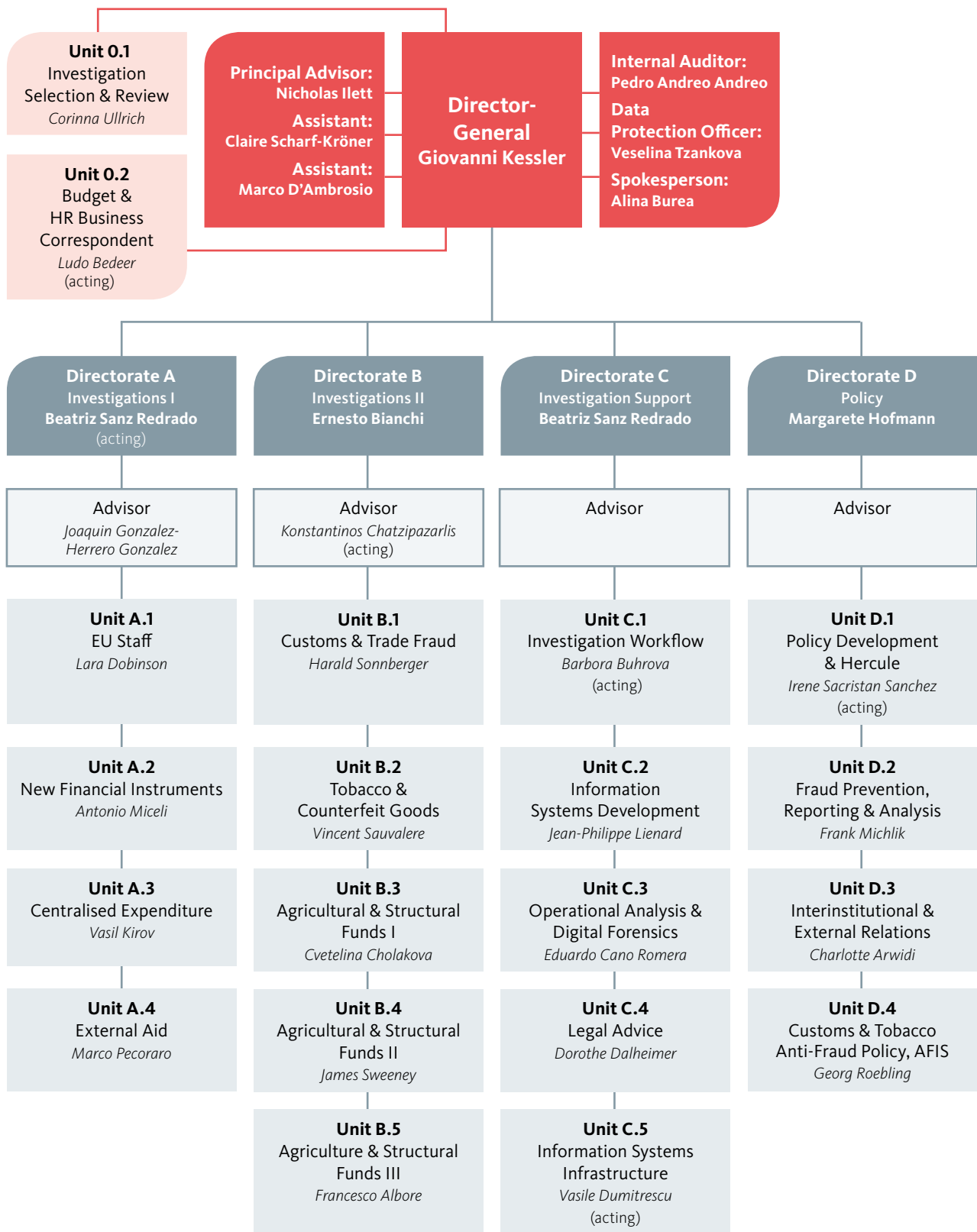
- ▶ Continuous investment in the professionalisation of its staff through internal investigative training, external trainings and coaching.
- ▶ The sharing of knowledge and enhancing the communication within the organisation, via

lunchtime debates and team building actions focusing on work related issues that have a direct impact on the teams' effectiveness.

- ▶ Communicating on OLAF's activities and contributing to a positive image of the Office by giving trainings and presentations to stakeholders outside the Office, as well as organising visits within OLAF premises.



Figure 15: Organisational chart



## 10. Communication

### WE NEED TO TALK ABOUT FRAUD

In recent years, OLAF has placed great emphasis on clearly and coherently communicating with its stakeholders and the public to explain the contribution it brings to the EU budget and the European project more generally. In its dual capacity as independent investigative body which also acts as a Directorate-General of the European Commission in developing anti-fraud policies, OLAF strives to be as open and as transparent as possible with the media and the public, while also protecting the confidentiality of investigations. To manage the communication on investigative matters independently from any other institution, OLAF has its own Spokesperson team who communicates to the media on matters linked to its investigative mandate.

Constantly looking for new ways to reach European citizens, and to raise awareness of the importance of fighting fraud with EU funds, in 2016, OLAF focused on both increasing its communication output, and diversifying the channels through which it reaches its audience. Communication actions were geared towards developing and maintaining a positive relationship with journalists in Brussels and beyond, with the end goal of both informing our readers on why enforcing a policy of zero tolerance to fraud is essential, and empowering them to take an active stance in fraud prevention and deterrence. OLAF organised or participated in several press conferences and events, on issues ranging from



the launch of the OLAF annual report, to customs fraud or cigarette smuggling. It partnered with national law enforcement institutions in order to present cross-European case studies (e.g. press event with Belgian Customs in December 2016).

In an attempt to better engage directly with its audience, in 2016 OLAF has become active on Twitter. This has helped the Office get closer to its audience, as well as engage with partner anti-fraud services, showcasing their work and achievements. Our guest-posting exercises developed with OLAF partner institutions, such as the Belgian and Latvian Ministries of Finance or the Dutch Customs and helped spread the word about the need to take action against fraud and corruption.

Throughout 2016, OLAF also continued to be the central point of the OAFCN, the OLAF Network of Anti-Fraud Communicators, which was created over a decade ago and is a unique cross-European network of communication experts working on anti-fraud issues. The Network brings together Communication Officers and Spokespersons from OLAF's operational partners in the Member States. It plays a pivotal role in communicating the threat of fraud to the public, as well as the joint efforts made by national and European authorities to combat it. It is a key platform for raising awareness and reaching out to various audiences on fraud issues.

OLAF also engaged in joint actions with other European Commission services, supporting the EU Budget Focused on Results initiative of the Directorate-General for Budget, for example, as well as presenting its work at the yearly Open Day of the European Institutions.



## 11. Outlook by the Director-General of OLAF

It has been almost seven years since I took over the position of OLAF Director-General. Moving to Brussels was not a difficult decision. As a former prosecutor, I was passionate about fighting fraud, while my strong belief in the values of the European Union made me embrace the role of a dedicated EU civil servant. Though I knew it would be a unique and challenging position, this was a challenge I both looked forward to, and welcomed.

With the end of my mandate in sight, I am proud to have had the opportunity to work alongside excellent colleagues, who supported me in steering the Office through an extensive reorganisation, one that helped OLAF work better, faster and more efficiently. I took over the management of OLAF at a turning point, and saw it transform into a modern investigative body, able to solve even the most complex, cross-border, fraud cases. Our results over the last years speak for themselves – several thousand large-scale investigations completed and recommendations issued, with several billion euros recommended for recovery, all in an ever shorter time frame and with no staff increase. With the support of my colleagues, we not only took on high profile internal and external investigations, but we did our work thoroughly and with great determination, while maintaining an unflinching dedication to our independence. I am very proud to highlight that we have succeeded in upholding our independence and in strengthening our position on the institutional landscape, even in difficult times, even in the face of often unjustified criticism that triggered reactions which could have weakened the Office.

I also think that we have done the most with the tools that were granted to OLAF by the legislators. We've reached the much-wished for "cruising altitude" in investigative performance, but in order to do more, the investigative tools available to us need to be updated to match the complexity of our cases and of today's fraud scenarios. The truth is that OLAF was given an ambitious investigative mandate, but was only endowed with limited administrative powers. Access to bank account information, the unhindered ability to gather necessary evidence, and a clear authority to interview witnesses – these are all things we are currently missing. Even our Final Reports lack the same evidentiary value in all EU Members - after receiving the OLAF Final Report, many national prosecutors need carry out all the investigative activities afresh in order to acquire admissible



evidence. This slows down the administration of justice and sometimes allows fraudsters to escape from the enforcement net.

Luckily, progress is within our reach. Right now, Regulation 883/2013, the legal text governing the work of OLAF, is being reviewed. This puts us in a unique position to analyse what works, as well as what could be improved. It is a matter of assessing what OLAF is, but looking towards the future at what it could become.

In my view, future should be guided by reform. The future I would want for OLAF means updating Regulation 883 in a way that allows us to have the tools we need to perform the investigative acts necessary to solve even the toughest fraud cases, and to generate evidence that can be relied on in national courts. As anti-fraud investigators, we need the right tools to perform investigations into possibly illicit financial flows, to follow the money throughout the fraudulent chain, as well as clear access to the premises of those economic operators or Institutions who may have been involved in fraudulent activities.

For the past several years, OLAF has actively participated in the drafting of the European Commission's proposal of creating a strong European Public Prosecutor's Office, an initiative I have taken every opportunity to openly support. It only made sense that faced with increasingly transnational cases of fraud with EU funds, the EPPO would create a truly European common space of justice. It is now clear that the EPPO has moved in the direction of enhanced cooperation and that not all EU Member States will be a part of it. In Member States that choose not to participate in this initiative, the

EPPO would not be competent for all offences against the Union's financial interests. Therefore, it will face important limitations to its ability to investigate and prosecute these offences across the whole EU.

With this in mind, and knowing that its work will be indispensable in complementing that of the EPPO, reflecting on the future of OLAF is more important than ever. The groundwork is here - OLAF is already an established, efficient, professional service. We have seen what OLAF can achieve on its own. Now we need to also reflect on ways in which OLAF can support and enhance the work of the EPPO. OLAF will play a prominent role to ensure an equivalent level of protection in both the Member States that will participate in the EPPO, and in the ones that will not do so. The Office will continue to conduct its investigations in non-participating Member States, sending judicial recommendations

where offences against the European Union's financial interests are detected, as well as in the participating Member States in situations where the EPPO chooses not to act. By working together, OLAF and EPPO will truly be able to close the circle of the protection of the European Union's financial interests.

The past seven years have taught me that with passion, drive and determination, nothing is impossible. OLAF has achieved excellent results in complete independence, with a staff fully dedicated to working for the benefit of the European citizens, and supported by a cohesive team of managers who have revitalised the work of the Office. Looking towards the future, and notably the creation of the EPPO, I am genuinely enthusiastic about what's in store for the Office. As I see it - the only way is up!

## 12. Statistical annex: additional data on OLAF investigative activity

This annex presents additional detailed data relating to OLAF's investigative activity in 2016, as a complement to the key indicators already mentioned in chapters 2 and 4.

**Figure 17: OLAF's investigative performance**

	2009	2010	2011	2012	2013	2014	2015	2016
Incoming information	959	975	1041	1264	1294	1417	1372	1136
Investigations opened	160	152	146	431	253	234	219	219
Investigations concluded	140	136	154	266	293	250	304	272
Recommendations issued	194	172	175	199	353	397	364	346

**Figure 18: Selections completed and their duration**

	2009	2010	2011	2012	2013	2014	2015	2016
Selections completed	1007	886	926	1770	1247	1353	1442	1157
Average duration (in months) of selection phase	5.8	6.3	6.8	1.4	1.8	2.0	1.7	1.7

**Figure 19: Average duration of closed and ongoing investigations (in months)**

	2009	2010	2011	2012	2013	2014	2015	2016
Average duration of investigation	20.2	20.8	22.4	17.3	17.5	18.1	18.7	17.2
Average duration of selection corresponding to these cases	5.7	6.4	6.9	6.3	4.3	2.9	2.3	1.7
<b>Total average duration of cases</b>	<b>25.9</b>	<b>27.2</b>	<b>29.3</b>	<b>23.6</b>	<b>21.8</b>	<b>21.0</b>	<b>21.0</b>	<b>18.9</b>

**Figure 20: Average duration of closed investigations only (in months)**

	2009	2010	2011	2012	2013	2014	2015	2016
Average duration of investigation	25.8	22.9	27.0	22.5	22.3	23.3	25.1	23.2
Average duration of selection corresponding to these cases	5.6	5.6	6.1	7.5	5.9	3.6	2.8	1.8
<b>Total average duration of cases</b>	<b>31.4</b>	<b>28.5</b>	<b>33.1</b>	<b>30.0</b>	<b>28.2</b>	<b>26.9</b>	<b>27.9</b>	<b>25.0</b>

**Figure 21: Recommendations issued**

Type of recommendation	2009	2010	2011	2012	2013	2014	2015	2016
Financial	76	62	63	116	233	253	220	209
Judicial	61	67	73	54	85	101	98	87
Disciplinary	18	10	16	25	24	15	16	18
Administrative	39	33	23	4	11	28	30	32
<b>Total</b>	<b>194</b>	<b>172</b>	<b>175</b>	<b>199</b>	<b>353</b>	<b>397</b>	<b>364</b>	<b>346</b>



Figure 22: Incoming information by source

Source	2009	2010	2011	2012	2013	2014	2015	2016
PRIVATE	523	594	767	889	889	959	933	756
PUBLIC	436	381	274	375	405	458	439	380
<b>Total</b>	<b>959</b>	<b>975</b>	<b>1041</b>	<b>1264</b>	<b>1294</b>	<b>1417</b>	<b>1372</b>	<b>1136</b>

Figure 23: Incoming information from Member States in 2016

Member State	Public source	Private source	Total
Austria	1	7	8
Belgium	11	14	25
Bulgaria	1	32	33
Croatia	2	4	6
Cyprus	0	1	1
Czech Republic	1	19	20
Denmark	2	2	4
Estonia	0	3	3
Finland	1	1	2
France	0	11	11
Germany	6	29	35
Greece	4	11	15
Hungary	2	20	22
Ireland	0	3	3
Italy	8	15	23
Latvia	1	2	3
Lithuania	2	6	8
Luxembourg	1	4	5
Malta	1	1	2
Netherlands	2	4	6
Poland	2	18	20
Portugal	1	4	5
Romania	2	33	35
Slovakia	2	16	18
Slovenia	1	5	6
Spain	7	23	30
Sweden	0	1	1
United Kingdom	3	14	17
<b>Total</b>	<b>64</b>	<b>303</b>	<b>367</b>

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