



OLAF Supervisory Committee

Opinion No. 2/2009

**OLAF's Reports of Investigations
that have been in progress for more than nine months**

Brussels, 28 May 2009



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PART I

INTRODUCTION

The Director General of the European Antifraud Office (OLAF) provides a monthly report to the Supervisory Committee with a summary of every investigation that has been in progress for more than nine months (hereafter, "nine months reports"). The "nine months reports" set out the reasons for non-completion of investigations and a projected timeframe for closing each case.

The length of investigations is a matter of common concern for the institutions and for OLAF itself¹, taking into consideration the negative consequences that delays may have for the parties involved in the investigation and also for the administrative, judicial and financial follow up of those investigations conducted by OLAF.

The large backlog of cases, resulting from a large number of delayed cases, is also detrimental to the day to day work of OLAF, given that the mere administration of old cases takes significant resources away from the primary tasks of the office.

OLAF enjoys the exceptional and considerable experience of 10 years of conducting European and international investigations. Its significance and reputation is continuously growing. It is therefore essential that the time taken to investigate and complete cases is as short as possible.

The task of the Supervisory Committee

The general aim of this review carried out by the Supervisory Committee (SC) is to assess the duration of investigations and the reasons for potential undue delays in order to ensure that investigations are conducted continuously over a period proportionate to the circumstances and the complexity of the case.²

Through this regular monitoring procedure, the SC first and foremost reinforces OLAF's independence by verifying that no external interferences in the impartial conduct of investigations take place and that delays do not prevent the intended result of an investigation, for example, by running up against time bar.

¹ See OLAF Annual Activity Report 2007

² Article 6.5 of Regulation (EC) No 1073/1999



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This is the second opinion delivered by the SC on "nine months reports".

In April 2007 the SC issued the Opinion 1/2007 after having examined all 150 "nine months reports" covering the period January-December 2006. The aim of that opinion was to assess two different aspects: whether those reports contained adequate information to enable the SC to perform its monitoring function and to evaluate the extent to which those reports could be used as a management tool by OLAF in order to bring the investigation to a successful conclusion within a proportionate period. The conclusions and recommendations of that Opinion were accepted and followed by OLAF.³

The SC stated therein, as a future action, that the reasons for the non completion of investigations within the specified time period as indicated by OLAF would be scrutinized.

OLAF's "nine months reports"

This Opinion is now based on the examination of 275 "nine months reports" (out of 424 active cases) covering the period January 2007 to December 2008 and of 115 "assessments of initial information" concerning each and every "nine months report" that OLAF sent to the SC from March to December 2008.⁴ These "assessments" are drafted by OLAF's investigators before the decision to open an investigation is taken and they also contain "initial work plan suggestions". A control in the Case Management System (CMS) in order to determine the status of the cases was also carried out.

The reports received, by sector, were the following:⁵

- § 47 internal investigations: European institutions: where OLAF plays the leading role and enjoys clear procedural competences.⁶
- § 11 Internal/External Investigations: EU bodies: where OLAF plays the lead role.⁷
- § 51 Direct Expenditure and External Aid: where OLAF has the lead role and where the rules for the conduct of investigations are also based "on the agreements with third countries".⁸
- § 46 External Aid: where OLAF has the lead role and where the rules for the conduct of investigations are also based "on the agreements with third countries".⁹

³ See SC Annual Activity Report, page 28 (OJ C 123, 20.5.2008, p. 22-23 and/or annex 1)

⁴ See annex 2: model form number 40

⁵ See annex 3: model form number 20

⁶ Unit A1 (88 active cases); Article 4 of Regulation (EC) No 1073/1999

⁷ Unit A2 (27 active cases); Article 3 of Regulation (EC) No 1073/1999

⁸ Unit A3 (79 active cases); Article 3 of Regulation (EC) No 1073/1999 and "agreements with third countries"

⁹ Unit A4 (54 active cases); Article 3 of Regulation (EC) No 1073/1999 and "agreements with third countries"



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- § 43 Agriculture: where OLAF has strong and well established legal powers. However, this sector also covers customs cases where agricultural products are involved and where OLAF plays primarily a co-ordination and assistance role.¹⁰
- § 51 Customs I and II: where OLAF plays a co-ordination and assistance role and where the duration of cases depends very much on action from the Member States (MS) or third countries involved.¹¹
- § 26 Structural Measures: where OLAF enjoys a solid legal basis for conducting investigations.¹²

OLAF has established a model form for the “nine months reports”. The reasons for non completion of cases, as predefined in the model form of OLAF’s “nine month reports”, were ticked by the investigators as follows:¹³

- Ø **“Significant resources were allocated, nevertheless, the volume of the operational/investigative work means that more time is needed.”** in 133 reports, (50 %);
- Ø **“Tactical hold in investigation”** in 16 reports, (6%);
- Ø **“Lack of resources”** in 30 reports, (11%);
- Ø **“Low priority combined with limited resources”** in 12 reports, (5%);
- Ø **“Lack of co-operation: by MS ; by Commission Services; by other institution; by individual/company”** in 43 reports, (15%) and
- Ø **“Other: see case”** in 77 reports, (27 %).

The content of these “nine months reports” drafted by OLAF investigators is formally countersigned – “visaed” – by the Head of Unit of the sector in question and by the Director of each of the Investigations and Operations Directorates respectively.

From January 2008 and following the modification of the nine months report model form¹⁴, the reasons “tactical hold in investigation” and “low priority combined with limited resources” were removed from the list.

¹⁰ Unit B1 (68 active cases); Article 3 of Regulation (EC) No 1073/1999, Regulation (EC, Euratom) No 2988/95, Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 515/97 inter alia

¹¹ Unit B2 Customs I (38 active cases); Unit B3 Customs II (27 active cases)

¹² Unit B 4 (43 active cases).Article 3 of Regulation (EC) 1073/1999, Regulation (EC, Euratom) No 2988/95, Regulation (Euratom, EC) No 2185/96

¹³ Some cases give several reasons for delay, e.g. lack of resources and lack of co-operation

¹⁴ See annex 2B: previous version of model form 40



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The aim and methodology of the current review

It is of fundamental importance for any investigation office to be able to give clear reasons for delays and obstacles in the investigation process. This allows accurate planning and strategy of investigations, allocation of appropriate staff, precise evaluation of external co-operation, case prioritisation and establishment of the investigation policy.

Furthermore, the SC can only monitor the length of OLAF's investigations to exclude external interferences or biased decisions if objective and verifiable reasons are given for delays.

In December 2008, 78 % of the OLAF investigations had been in progress for a period exceeding nine months and 40% had been in progress for more than two years. In addition to performing an overall analysis of the information provided in the "nine months report", the SC decided to check the consistency of the reasons ticked by OLAF investigators in the "nine months reports" for non completion of cases, with the reasons as elaborated in detail in the main body of the report.

The SC also looked into the stated reasons for delays in order to analyse to what extent they contributed to an understanding of the real reason or the most important factors causing delay to ongoing investigations. To this end, the SC also analysed the "assessments of initial information", particularly the initial work plan suggestions.

By carrying out this analysis, the SC additionally aimed to clarify whether the high percentage of investigations which were in progress over a "nine month period" was due to objective and unavoidable causes.

Particular attention has been also paid to the expected time for completion of investigations that OLAF is obliged to communicate to the SC in the "nine months reports".¹⁵

Methodology

Taking into consideration the specific nature of each sector and the different powers and procedural rules applicable to each, the analysis was carried out sector by sector.¹⁶ However, for the main purpose of this Opinion, we have also grouped OLAF's reports on the basis of the predefined reasons ticked in the "nine months" model report for the non completion of cases within the specified period.

Specific conclusions and recommendations are to be made on a sectoral basis; however, global conclusions and recommendations will be provided.

¹⁵ Article 11.4 of Regulation (EC) No 1073/99

¹⁶ Directorate A Investigations & Operations covers four sectors: Unit A1 Internal investigations: European institutions; Unit A2 Internal/External investigations: EU bodies; Unit A3 Direct expenditure and External Aid; Unit A4 External aid. Directorate B Investigations & Operations also covers four sectors: Unit B1 Agriculture; Unit B2 Customs I; Unit B3 Customs II; Unit B4 Structural Measures



PART 2

ANALYSIS OF OLAF'S REASONS FOR NOT HAVING COMPLETED INVESTIGATIONS IN THE NINE MONTH PERIOD

1. "SIGNIFICANT RESOURCES WERE ALLOCATED NEVERTHELESS THE VOLUME OF OPERATIONAL/INVESTIGATIVE WORK MEANS THAT MORE TIME IS NEEDED"

Approximately 50% of investigations transmitted to the SC were declared by OLAF to be delayed for this reason.¹⁷

Internal investigations: European institutions

15 cases giving this reason were examined (31 % of cases in this sector transmitted to the SC).

Some of the cases were well explained and "the volume of investigative work" easy to understand in the context of the report¹⁸. Nevertheless, the underlying reasons for delay in many of the investigations were divergent: long periods of inactivity (up to 7 months) before initiating the investigation; case progress depending on potential information from outside sources where no investigative steps were actually taken by OLAF as well as unexplained reasons for delays.¹⁹ Lack of co-operation from individuals, appointments for interviews deferred to a later date and awaiting responses from individuals or institutions were also noted²⁰.

A significant factor which we identified was that of investigators working on other cases and on cases with higher priorities.²¹

Finally, in some cases, despite a sizeable number of investigators being allotted to a case, the reasons given for delay included both "significant resources" and "lack of resources".²² Although there might be underlying reasons for this contradiction related to different allocation of staff in

¹⁷ 48,36 %

¹⁸ See annex 4, cases number 31 and 44

¹⁹ See annex 4, cases number 17, 14, 19 and 5

²⁰ See annex 4, cases number 3 and 19

²¹ See annex 4, cases number 22, 14 and 1

²² See annex 4, case number 26



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the different phases of an investigation, nevertheless, on reading, it only serves to give a confusing impression.

Internal/External investigations: EU bodies

Eight cases giving this reason were examined (72% of cases in this sector transmitted to the SC).

In a number of cases, the "volume of investigative work" as the reason for delay is well presented and easily understandable in the context of the report.²³

In other cases the SC noted that long periods of inactivity elapsed from the date of opening the case to the appointment of investigators, or to the date when the investigation starts (up to 6 months) and that the unexplained and apparent change of the investigator in charge is the underlying reason for delay in some cases.²⁴ Delayed co-operation from individuals has also been identified in a case with very low economic impact.²⁵ Identical descriptions of the case and case results are reported in two different "nine months reports" where different operational acts are undertaken²⁶.

Direct expenditure and External aid

21 cases giving this reason were examined (41 % of cases in this sector transmitted to the SC).

Although in most investigations the reason mentioned is well explained and corresponds to the case workload²⁷, it was also noted that one third of cases are of a criminal assistance nature and no operational actions were undertaken by OLAF²⁸ or that a response from other bodies is still pending²⁹.

External aid

20 cases giving this reason were examined (43 % of cases in this sector transmitted to the SC).

²³ See annex 4, case number 50

²⁴ See annex 4, cases number 47, 40 and 48

²⁵ See annex 4, case number 49

²⁶ See annex 4, cases number 53 and 54

²⁷ See annex 4, cases number 77 and 68 inter alia

²⁸ See annex 4, cases number 59, 61, 60, 62, 75 and 70

²⁹ See annex 4, case number 64



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In some cases there is good planning, the aim of the investigation is clear and detailed, the investigations are well conducted and there is a clear and justified explanation for delays.³⁰

However, in other cases, “the volume of investigative work” does not correspond to work carried out by OLAF but rather to OLAF’s awaiting completion of audits carried out by external firms or experts, without any active participation or close follow up by OLAF.³¹ As pointed out in the first SC opinion on this matter, the added value of OLAF’s work in this field is not demonstrated. The SC has noted a degree of lack of clarity in the investigation planning following missions to third countries and some months after investigatory steps were carried out.³²

The SC observed a lack of adequate planning in some missions to third countries.³³ The compilation of appropriate documentation does not follow a common approach; sometimes missions are organised in order to obtain documentary evidence and sometimes the transfer of documents is arranged directly through the EC delegation³⁴ without prior contacts with the DG concerned, resulting in delays in the execution of the investigations³⁵. Furthermore, it indicates a lack of cost-effectiveness evaluation.

Delays are sometimes explained as being due to a lack of request from the national judicial authorities.³⁶ It has also been noted that contradictory reasons have been quoted to justify the delay i.e. both “significant resources” and “low priority combined with limited resources allocation” are ticked in the model report.³⁷

Conclusions and recommendations:

The reason "significant resources were allocated, nevertheless, the volume of the operational/investigative work means that more time is needed" does not correspond with the real cause for delay in more than half of those investigations examined.

The fact that this reason is ticked in the model report by investigators when the actual reason is different is a matter of concern for the SC. The SC has noted that this reason has been used across the board (indiscriminately), and has been differently interpreted by investigators working within the same Unit.

³⁰ See annex 4, cases number 117, 15 and 135

³¹ See annex 4, cases number 112 and 115

³² See annex 4, cases number 120 and 123

³³ See annex 4, case number 128

³⁴ See annex 4, case number 130

³⁵ See annex 4, case number 147

³⁶ See annex 4, case number 145

³⁷ See annex 4, cases number 126, 122, 121 and 150



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The fact that reports with conflicting selected reasons for non-completion of cases are formally countersigned – "visaed" – by management (Head of Unit and Director), reveals an unsatisfactory level of attention to the internal control of investigations.

The lack of a reliable use of this reason for delays may lead OLAF to misleading conclusions in terms of staff needs, budget demands and adoption of measures to reduce delays in investigations.

These reports should be used as a management tool for investigations. The SC recommends that OLAF carry out a revision of those investigations where this cause has been ticked in the model report in order to reassess the investigation strategy, taking into consideration the real reason for non-completion of cases.

Agriculture

28 cases giving this reason were examined (65 % of cases in this sector transmitted to the SC).

The SC noted that cases are well explained and OLAF investigators have carried out continuous work.³⁸ However, in most of the co-ordination cases that this sector deals with, the key reason for delays is not the volume of investigative work of OLAF's investigators but rather the lack of prompt (or any) reaction from the national authorities of the MS. In these cases OLAF is waiting for responses from these authorities.³⁹

In some external investigation cases, the same problem was identified⁴⁰ and, occasionally, it was noted that some of the information provided on the different steps in investigations was neither clear nor chronological, thus making it difficult to assess the exact reason for delay.⁴¹

Additionally it was noted that sometimes long periods of inactivity in the "assessment of initial information" resulted in little operational work during the nine months period.⁴²

It was also noted that some of these cases involved criminal elements which were the subject matter of judicial investigations in the MS concerned. In such cases, OLAF's investigations remained on hold in the absence of a straightforward exchange of information with MS' judicial authorities.⁴³

³⁸ See annex 4, cases number 181, 169, 178, 179, 176 and 194

³⁹ See annex 4, cases number 159, 161, 162, 167, 165, 166, 175, 191 and 193

⁴⁰ See annex 4, cases number 171 and 177

⁴¹ See annex 4, case number 179

⁴² See annex 4, case number 189

⁴³ See annex 4, cases number 186 and 183



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Customs I and II

28 cases giving this reason were examined (55 % of cases in this sector transmitted to the SC).

The greater number of these cases is dependent on co-operation with MS' authorities and, for the most part, OLAF acts in support of the MS' authorities in the conduct of their investigations. In other cases, OLAF is waiting for information to be provided by the MS or a third country.⁴⁴

The SC has sympathy with the explanation given by OLAF with regard to external investigations of antidumping cases namely, that due to their nature, scale, the involvement of several MS through mutual assistance and missions to third countries, it was not possible to conclude the investigation within a nine month period.⁴⁵ Higher working priorities were also mentioned and it was noted that some old cases awaiting reaction from MS are still active.⁴⁶

It was also noted that in co-ordination cases, the reasons for exceeding the nine month period were well explained and justified. Moreover, detailed investigation working plans were developed at the outset.⁴⁷

Some criminal assistance cases were identified, the case progress depending on the national courts' work or on the execution of letters of request.⁴⁸

The SC was pleased to note that the "nine months report" was explicitly used as a management tool for the case reassessment following a detailed analysis of unavoidable reasons for delays.⁴⁹

Structural Measures

13 cases giving this reason were examined (50 % of cases in this sector transmitted to the SC).

In some cases the "volume of investigative work" corresponds to changes of the investigator in charge.⁵⁰ In other cases the workload of the investigator in charge is the underlying reason for delay.⁵¹ The "volume of investigative work" does not seem to be well justified by the list of operational acts.⁵²

⁴⁴ See annex 4, cases number 201, 207 and 215, inter alia.

⁴⁵ See annex 4, cases number 202, 208, 211, 212, 234, 214, 229 and 237

⁴⁶ See annex 4, cases number 198 and 205

⁴⁷ See annex 4, cases number 240, 241, 242, 245 and 246

⁴⁸ See annex 4, cases number 244, 231 and 238

⁴⁹ See annex 4, case number 241

⁵⁰ See annex 4, e.g. case number 254

⁵¹ See annex 4, e.g. case number 168

⁵² See annex 4, e.g. case number 260



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The SC noted that both the periods of "assessment of initial information" and the time spent on operational work were excessively lengthy, the former lasting for over one year and the latter for up to ten months per case with no clear justification identified in the report.⁵³

Conclusions and recommendations:

There is a general lack of precision in the definition and the use of the reason "volume of operational/investigative work" which does not distinguish between the volume of work that OLAF carries out and the volume of work that is the responsibility of national authorities in the majority of the assistance and co-ordination cases.

Such lack of precision does not allow for a clear vision or measure of the level of assistance and co-operation with external national authorities, thus making it difficult for OLAF to improve its performance.

Regarding external investigations, with the exception of the customs sectors, the real reasons for delay were other and various.

It would be advisable to revisit the definition "volume of work" as it applies to each case in order to more properly identify where the responsibility lies for the measures to be taken.

⁵³ See annex 4, e.g. case number 264



2. "TACTICAL HOLD IN INVESTIGATION"

The SC has already expressed in its former Opinion on this matter that the term “tactical hold in investigation”, used in the "nine months reports", should either be restricted or omitted. Moreover, the use of this reason for not having concluded an investigation should be prudent and precise.

We are pleased to note that in 2008 no case report has been transmitted to the SC making formal use of this reason for delays, although it has been observed that it was used in "nine months reports" where the reason "Other" was mentioned.⁵⁴ Moreover, there are still a number of active cases where this reason has been indicated⁵⁵:

Internal investigations: European institutions

Four cases giving this reason were examined (8 % of cases in this sector transmitted to the SC).

It was noted that this reason was not clearly explained or justified. In some cases it has been used to put two related cases on stand-by⁵⁶ without attention being given to the procedural rights of the persons involved. Investigations with no economic impact and which appear to be based on vague allegations were also identified.

Case reports in which there were missions to third countries with no clear investigation strategy were also noted. The term “tactical hold” is in some cases combined with other reasons: workload of the investigators in charge and “lack of co-operation by other individual”⁵⁷, when the genuine reason for the case not being wound up is the lack of OLAF's powers to interview third parties in a non MS.

Direct expenditure and External Aid

Seven cases giving this reason were examined (13 % of cases in this sector transmitted to the SC).

In some cases the use of “tactical hold” is well explained⁵⁸. However, it was noted that sometimes no further investigation activities were conducted by OLAF, information was

⁵⁴ See annex 4, cases number 79, 38 and 76

⁵⁵ See annex 4, cases number 18, 79, 76, 38 and 36

⁵⁶ See annex 4, cases number 6 and 21

⁵⁷ See annex 4, case number 21

⁵⁸ See annex 4, cases number 69 and 78



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transmitted to the judicial authorities of a MS and OLAF has kept the cases waiting should those authorities need OLAF's assistance.⁵⁹

Occasionally, the underlying reason for delay corresponds to co-operation with other Commission services.⁶⁰

External Aid

Five cases giving this reason were examined (11 % of cases in this sector transmitted to the SC).

It was noted that in all those cases, "tactical hold in investigation" corresponded to OLAF waiting for the completion of audits carried out by external firms, or no further investigation activities were conducted by OLAF.⁶¹

Conclusions and recommendations:

Prudent use should be made of the reason "tactical hold" to keep an investigation open and it should be explained in detail in order to have a clear view of the investigation strategy.

Those investigations which are still active where this reason is indicated should be revisited and particular attention given to those dating from the nine month reports received in 2007.

⁵⁹ See annex 4, case number 63

⁶⁰ See annex 4, case number 66

⁶¹ See annex 4, cases number 110, 111, 114, 115 and 125



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3. “LACK OF RESOURCES”

Internal Investigations

Nine cases citing this reason were examined (19 % of cases in this sector transmitted to the SC).

The SC noted that reasons for delays are divergent and common to several cases: priority is given to other cases which were opened some time previously; long periods of inactivity (from four or five, up to 11 months) after collection of documents in missions to third countries or the copy of data, without further examination in cases where very small or non-estimated economic impact were observed.⁶²

In all of these cases the number of investigators in charge was aligned with or exceeded the proposal for staff allocation indicated by the evaluator in the “assessment of initial information”.

In some cases the reason “lack of resources” is explained as a lack of staff resources due to a temporary absence of the investigator in charge.⁶³

Direct expenditure and External Aid

Four cases giving this reason were examined (7 % of cases in this sector transmitted to the SC).

In those cases the reason “lack of resources” is explained in detail and refers to the workload of investigators in charge together with the average priority of the case in question,⁶⁴ or linked to the lack of investigators in OLAF with the required linguistic skills.⁶⁵

Occasionally it was noted that no explanation was given to justify the lack of resources in a high priority case with, in principle, adequate staff allocation.⁶⁶

External aid

Nine cases giving this reason were examined (19 % of cases in this sector transmitted to the SC).

The SC is concerned to observe that no investigation actions were taken for long periods from the date of opening the case (from nine up to 13 months) and the work plan was not initiated despite

⁶² See annex 4, cases number 7, 36, 9 and 8

⁶³ See annex 4, cases number 45 and 41

⁶⁴ See annex 4, case number 72

⁶⁵ See annex 4, case number 94

⁶⁶ See annex 4, case number 104



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the fact that the number of investigators corresponds to the number suggested in the initial information assessment.⁶⁷

In some cases, contradictory reasons were ticked in the "nine months reports": "significant resources", "complexity of the case" and "lack of resources".⁶⁸ Moreover, the SC noted that in some cases, following the decision to open a case, OLAF would either await completion of external audits for several months without undertaking any investigation acts or, in other cases, refer to other case priorities.⁶⁹

In other cases, the real reason as mentioned in other sections of the model form, is the complexity of the case and the volume of investigation work,⁷⁰ or "lack of time" without further explanation.⁷¹

Conclusions and recommendations:

The mention of the reason "lack of resources" for not having concluded the investigation in a nine months period is not justified in most of the cases examined.

This is a matter of particular concern for the SC taking into consideration that OLAF's demands for increasing the number of staff in the annual budget would also be, in principle, based on an analysis of the "lack of resources" in the investigations and operations field. Therefore, scrupulous attention should be paid to this matter.

This is also relevant for the SC given the fact that the SC is consulted on the annual draft budget for OLAF. Any inaccuracy in pointing out this reason could lead to misleading conclusions in terms of OLAF budget.

The indication of this reason should be explained in detail in the nine months report. Moreover, practical solutions to remedy this situation should be envisaged and explained in each and every report where this reason is mentioned .

⁶⁷ See annex 4, cases number 140, 144 and 131

⁶⁸ See annex 4, case number 150

⁶⁹ See annex 4, cases number 154 and 119

⁷⁰ See annex 4, case number 126

⁷¹ See annex 4, case number 129



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Customs I and II

Two cases giving this reason were examined (3 % of cases in this sector transmitted to the SC).

Higher operational priorities are mentioned in one of the cases⁷² and reasons for not working full time on a case are clearly explained, including solutions to remedy the lack of resources situation.⁷³

Structural Measures

Six cases giving this reason were examined (23 % of cases in this sector transmitted to the SC).

All cases mention the same reason to justify their non completion: “lack of resources and important volume of the investigative work”⁷⁴; however, apart from one of them,⁷⁵ no explanations are given to allow an understanding of any of those two reasons.

Conclusions and recommendations:

Apart from the customs sector where the nine months reports have been correctly used as a management tool to revisit the investigation needs, explanations are required in order to understand the reasons indicated for non-completion of cases.

⁷² See annex 4, case number 204

⁷³ See annex 4, case number 230

⁷⁴ See annex 4, cases number 252, 253, 256, 257, 258 and 259

⁷⁵ See annex 4, case number 253



4. “LOW PRIORITY COMBINED WITH LIMITED RESOURCE ALLOCATION”

The SC has already expressed in its former Opinion on this matter that, in policy investigation terms, when a case is of “low priority” coupled with “limited resource allocation”, an explanation is not expected for non-completion but rather for keeping it open nine months later.

We are pleased to note that in 2008, this reason for no n case completion was removed from the nine month model report. However, there are still a number of active cases that have used that reason and need to be urgently revisited.

Internal investigations: EU institutions

Five reports were examined (10 % of cases in this sector transmitted to the SC).

The SC noted that some cases remained open during prolonged periods (even following 10 months of "assessment of initial information ") and no investigation actions were undertaken, the pertinent reason being that the investigator was awaiting the results of an internal investigation.⁷⁶

In some cases these reasons are combined with “volume of investigative work” or “lack of co-operation from an individual”.⁷⁷ Sometimes no economic impact is mentioned and no tangible results are achieved but only potential irregularities are referred to.⁷⁸

In all those cases, the number of investigators in charge is adequate (it varies from two to four) and some investigations are still active, whereas others took more than two years to complete them.

External aid

Four cases giving this reason were examined (8 % of cases in this sector transmitted to the SC).

The SC noted with concern that investigations with “no financial detriment to the European Commission funds” as described in the report were opened and missions to third countries in cases with low economic impact have taken place.⁷⁹

It was also observed that contradictory reasons for some investigations not having been completed have been ticked in the model report: e.g. “significant resources were allocated” and

⁷⁶ See annex 4, case number 12

⁷⁷ See annex 4, case s number 13 and 15

⁷⁸ See annex 4, case s number 16 and 18

⁷⁹ See annex 4, case s number 116 and 118



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“low priority combined with limited resource allocation”, nevertheless in the latter, on the spot missions to third countries have taken place.⁸⁰

In all the above referred cases the number of investigators in charge seems to be adequate and is not in question.

Conclusions and recommendations:

“Limited resource allocation” is not justified in any of the “nine months reports” examined. As for the staff resources, the number of investigators seems to be adequate in relation to the volume of investigative work and to the work plan suggestions and it was not questioned in any of the cases. Some of these cases have a very low financial impact or even no financial impact on European Community funds.

The fact that these reports are formally visaed countersigned – “visaed” – by management (Head of Unit and Director), reveals that an unsatisfactory level of attention to the internal control of investigations.

When reference is made to “limited resource allocation” it should be clearly explained in order to avoid misleading conclusions regarding staff allocation and OLAF financial resources.

The evaluation assessment which is presented to the Board should include a cost -efficiency evaluation and an overview of the staff resources of the Unit. The allocation of those investigators to other cases, the number of cases which are still pending and categorised as “high priority” that could require the allocation of the investigators in question to other cases should also be mentioned.

Customs I and II

Three cases giving this reason were examined (5 % of cases in this sector transmitted to the SC).

These cases are well described and well explained and the timeframe for the completion of cases has been respected. OLAF intervention is accurate.⁸¹ Both “low priority and limited resource allocation” are well justified within the content of the reports.

⁸⁰ See annex 4, cases number 121 and 122

⁸¹ See annex 4, cases number 206, 209 and 210



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Structural Measures

One case giving this reason was examined (3 % of cases in this sector transmitted to the SC).

No investigations have been initiated since they were seen not to be cost-effective. Only “basic verification techniques have been applied and appear to indicate a risk of irregularities in the awarding of project funding”. If the case is of “low priority” it is perhaps unnecessary to open an external investigation.⁸²

Conclusions:

The reason for non completion of case was well justified and explained and the cost -efficiency evaluation was carried out.

⁸² See annex 4, case number 250



5. “LACK OF CO-OPERATION”

Lack of co-operation by the Member State (MS)

Seven case reports were received by the SC in 2007 and six in 2008.

Internal investigations: European institutions

One case giving this reason was examined (2 % of cases in this sector transmitted to the SC).

It was observed that this is an external investigation in which two units are involved and a lack of co-operation of the Commission services is claimed. No actions appear to be planned with respect to this lack of co-operation.⁸³

Internal/External investigations: EU bodies

One case giving this reason was examined (9 % of cases in this sector transmitted to the SC).

The SC noted that the reason for this case not having been completed is not the lack of co-operation from a MS, but from a third country where a criminal investigation has been started. OLAF has not conducted any investigative action during the nine month period and is awaiting a report from an external body in order to take “appropriate actions”.⁸⁴

External aid

Two cases giving this reason were examined (9 % of cases in this sector transmitted to the SC).

The SC observed some confusion in reference to dates of the evaluation period (up to one year and one month by four evaluators) and the drafting date of the "assessment of initial information" (only drafted three days before the date of opening the investigation). No investigative acts have been implemented during the nine month period due to the lack of request for assistance from OLAF from the MS national judicial authorities.⁸⁵

⁸³ See annex 4, case number 24

⁸⁴ See annex 4, case number 55

⁸⁵ See annex 4, case number 133



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The SC also noted that OLAF has not implemented the actions listed in the investigation plan in a case where lack of co-operation by the MS is quoted with reference made to Regulation 2185/96.⁸⁶

Conclusions and recommendations:

The lack of co-operation from the Member State has been inaccurately used in the cases examined. Sometimes this refers to the lack of co-operation from the Commission services, or the national authorities of third countries. On other occasions, it may refer to a lack of request for OLAF's assistance from the MS national authorities.

Moreover, no solutions are envisaged to solve the problem of a lack of co-operation.

The SC recommends that serious thought be given by investigators prior to the application of this reason for delay and advocates close scrutiny by managers.

Agriculture

Seven cases giving this reason were examined (16 % of cases in this sector transmitted to the SC).

The cases examined are external investigations and co-ordination cases in agricultural matters where OLAF is awaiting responses from the MS' authorities some of which have shown evidence of poor co-operation with OLAF.⁸⁷ According to the information provided in the nine months reports, OLAF does not seem to play a very proactive role in obtaining the information already requested.⁸⁸

Customs I and II

Two cases giving this reason were examined (4 % of cases in this sector transmitted to the SC).

⁸⁶ See annex 4, case number 147

⁸⁷ See annex 4, case number 188

⁸⁸ See annex 4, cases number 157, 163 and 180



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The cases studied are “co-ordination” and “criminal assistance” cases where OLAF's assistance is requested by the national authorities.⁸⁹

Structural Measures

Two cases giving this reason were examined (7 % of cases in this sector transmitted to the SC).

The SC verified that prolonged periods elapsed (eight months and four months) without any response from the national authorities in external investigation cases.⁹⁰

Conclusions and recommendations:

The lack of co-operation from the MS has been rightly identified in all the cases examined; there is a need for a more effective co-operation with and from the MS.

OLAF should take a more proactive approach.

Lack of co-operation by the Commission services

Two case reports were received by the SC in 2007 and three in 2008.

Internal investigations: European institutions

Three cases giving this reason were examined (16 % of cases in this sector transmitted to the SC).

The “lack of co-operation from the Commission services” is not the only reason indicated for delays in those three cases. This reason is combined with other explanations e.g. tactical hold, higher priorities of investigators in other cases, co-operation steps with national judicial authorities.⁹¹

⁸⁹ See annex 4, case s number 224 and 225

⁹⁰ See annex 4, case s number 262 and 255

⁹¹ See annex 4, case s number 2, 24 and 43



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It was noted that the “lack of co-operation from the Commission services” mentioned in the reports is not followed by proactive action from OLAF to remedy the situation.

Direct expenditure and External Aid

Two cases giving this reason were examined .

It was noted that the notion of lack of co-operation from the Commission services was an element with no impact on the OLAF investigation as such and somewhat confusing.⁹²

External aid

Two cases giving this reason were examined (4 % of cases in this sector transmitted to the SC).

In these cases the “lack of co-operation from the Commission services” is not clear. In one of them this type of “lack of co-operation” is not explained, in the other the Commission services seemed to have justified the delay by outside reasons.⁹³

Conclusions and recommendations:

In those cases examined where the lack of co-operation from the Commission services was identified, OLAF does not appear to have adopted concrete actions to remedy the situation.

OLAF should seek a way to speed up communication channels in this area.

Lack of co-operation by other institutions

Three case reports were received by the SC in 2007 and six in 2008.

⁹² See annex 4, cases number 96 and 100

⁹³ See annex 4, cases number 53 and 148



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Direct expenditure and External Aid

One case giving this reason was examined (2 % of cases in this sector transmitted to the SC).

The reason is well explained and it is combined with several other reasons for not having completed the investigation.⁹⁴

External aid

Two cases giving this reason were examined (4 % of cases in this sector transmitted to the SC).

The underlying reason in both cases is related to national judicial authorities and not to other institutions: lack of request for OLAF's assistance from national judicial authorities⁹⁵ and lack of response from those national judicial authorities⁹⁶.

Conclusions and recommendations:

Inaccurate use of this reason in some of the cases mentioned.

The SC recommends a re-examination of the use of this reason to avoid any confusion .

Agriculture

One case giving this reason was examined (2 % of cases in this sector transmitted to the SC).

The case is well explained and OLAF played an active role in moving the case forward and getting a positive answer from the national authorities of a third country in an external investigation.⁹⁷

⁹⁴ See annex 4, case number 100

⁹⁵ See annex 4, case number 133

⁹⁶ See annex 4, case number 134

⁹⁷ See annex 4, case number 195



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Customs I and II

Five cases giving this reason were examined (10 % of cases in this sector transmitted to the SC).

All cases are very well presented and thoroughly explained. However the investigators in charge tick systematically the box “lack of co-operation by other institution” but they indicate in brackets that the lack of co-operation comes from national authorities of third countries; the reason for non completion of all those co-ordination cases being in fact this latter.⁹⁸

Conclusions and recommendations:

All these cases are clearly explained. However, the reason for non completion is “lack of co-operation from national authorities of third countries” which is different from “lack of co-operation by other institutions”. No "nine months report" of lack of co-operation by other institutions has been transmitted to the SC in these fields.

For the sake of clarity, the reason "lack of co-operation by third countries" should be the subject matter of a separate box.

Lack of co-operation by individual/company

13 case reports were received by the SC in 2007 and three in 2008.

Internal investigations: European institutions

Three cases giving this reason were examined (6 % of cases in this sector transmitted to the SC).

In two of these cases the reason is well explained and justified.⁹⁹ However in the third case OLAF did not have powers to interview the individual concerned.¹⁰⁰

⁹⁸ See annex 4, case s number 233, 235, 201, 203 and 207

⁹⁹ See annex 4, case s number 1 and 15

¹⁰⁰ See annex 4, case number 21



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Direct expenditure and External Aid

One case giving this reason was examined (2 % of cases in this sector transmitted to the SC).

The reason is well justified in the case in question.¹⁰¹

External aid

Five cases giving this reason were examined (10 % of cases in this sector transmitted to the SC).

In all these cases, this reason is always combined with other reasons which are in fact the key reasons for cases not being concluded. These reasons are divergent and common to several cases: awaiting external auditors' reports, complexity of cases and connexion with other OLAF investigations, low priority and intangible financial damage.¹⁰²

Conclusion and recommendations:

The underlying reasons for delays in some of these cases examined are of a different nature from that of "lack of co-operation by individual/company".

Attention should be paid in detail to the correct use of this reason.

Agriculture

Three cases giving this reason were examined (7 % of cases in this sector transmitted to the SC).

All those cases are well explained and the reason for delay is rightly pointed out: lack of co-operation by third country.

¹⁰¹ See annex 4, case number 98

¹⁰² See annex 4, case s number 116, 124 and 150



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Customs I and II

Four cases giving this reason were examined (7 % of cases in this sector transmitted to the SC).

The cases are well and thoroughly explained; nonetheless the real reason for delays is in fact lack of co-operation by a third country.¹⁰³

The other three cases are in fact criminal assistance cases without the participation of a magistrate of the legal and judicial advice unit.¹⁰⁴

Conclusions and recommendations:

The reason for cases exceeding the nine month period is lack of co-operation by a third country and not by individual/company.

A new category should be established to reflect that different and real reason for delay, namely "lack of co-operation by a third country".

¹⁰³ See annex 4, case number 218

¹⁰⁴ See annex 4, cases number 200, 199 and 217



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6. “OTHER: SEE CASE”

73 cases mentioning “other” as the cause for delays were examined (27 %).¹⁰⁵

This reason has been cited in a large number of case reports: 16 in 2007 and 57 in 2008, thus making it the second most quoted reason for delay in the period examined.

The number of cases where this reason is quoted has also significantly risen in the latter half of 2008. An overall analysis shows that in a good number (nearly a half) of the cases the reason “Other” seems appropriate when reading the report.¹⁰⁶

Thus, in many cases, the reason for delay is: complexity of the investigation, change of investigator, other case priorities, criminal assistance case (lack of request from the national judicial authorities), tactical hold in investigation, etc.¹⁰⁷

Moreover, OLAF is "waiting for verifications in the MS", "co -operation from a third country" or "long term" investigations have also been identified.¹⁰⁸

However in many cases the true reason for delay seems to be otherwise, while still adhering to the predefined list of reasons provided in the model reporting format.¹⁰⁹

In other cases we found the stated reason for non -completion of the case difficult to understand and, in some cases, meaningless or even unacceptable. As examples of the latter , one may note two cases where the reason for delay is stated as “the investigation is still ongoing”.¹¹⁰

The SC also considers it a matter of particular concern that the “other” reason for delay is defined as being the discussion pending on the final case report when the investigation is finished (long periods from five months to up to more than one year).¹¹¹

¹⁰⁵ In 17 of these reports, this “other” reason was combined with another one.

¹⁰⁶ See annex 4, case s number 153, 106, 89, 86, 94, 139, 151, 42 and 39

¹⁰⁷ See annex 4, case s number 147, 152, 102, 100, 109, 80 and 93 inter alia

¹⁰⁸ See annex 4, case s number 173, 174, 232, 243, inter alia

¹⁰⁹ See annex 4, case s number 95, 100, 94, 137, 138, 140, 144, 148 and 43 inter alia

¹¹⁰ See annex 4, case s number 97, 82, 105, 25, 29 and 30 inter alia

¹¹¹ See annex 4, case s number 142, 146, 34 and 28



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Conclusions and recommendations:

The choice of the reason “other” in such a high percentage of investigations indicates the need to further extend and refine the list of reasons for non completion of cases.

The inappropriate indication of the reason “other” when an already predefined reason should be employed, together with its non-justifiable use, indicates the need to thoroughly review the choice of this reason and to re-examine the cases in question.

NO EXPECTED TIME FOR COMPLETION: A QUALITY PROBLEM

The format for reporting nine months cases to the SC contains a section for OLAF to report on the approximate time for completion of the case.

Out of the 275 reports examined we found that in 64 of the 275 cases, no such approximation was made at all, i.e. no time for completion was set. 20 cases were closed at the expected time for completion; 105 cases were closed more than one month later than the expected time for completion. In the vast majority of these cases the delay was significantly longer than one month, in some cases exceeding 18 months and 72 cases will be closed one or several months later than expected.

Conclusions and recommendations:

From this merely statistical and summary analysis it is hard not to draw the conclusion that this part of the “nine month reports” is burdened with a serious quality problem. In order to make the nine months reporting procedure useful to OLAF and as a case -management tool, the forecasts of the expected time for completion of cases must be made much more precise and accurate.



CONCLUSIONS AND RECOMMENDATIONS

The SC very much appreciates the information provided by OLAF's investigators in the "nine months reports". We are also pleased to verify that the new model report form that was adopted following the SC Opinion 1/2007 supplies clearer information for the SC to fulfil its remit.

However, the current review identifies three levels of problems which have a negative impact on the adequate implementation of the SC's monitoring task to reinforce OLAF's independence :

I- A lack of a consistent and meaningful approach in many cases raising doubts as to the justification for the selected reasons for delays.

Given the fact that the reasons ticked in the "nine months report" model form for the non completion of cases within that period do not correspond with the genuine causes in most of them, the SC is not in a position to state that the high percentage of OLAF investigations of longer duration than the specified period is justified.

It is clear from examination of the "nine months reports" that there are major shortcomings with regard to the rules laid down currently by OLAF administration with respect to management and control of the investigation process.

OLAF management and investigators should use the "nine months report" as a managerial tool to revisit the strategy and the planning of the investigation in progress.

II- A lack of investigative methodology and rigour and a need for improvement in the internal levels of management and control of investigations.

The key to successful and focussed investigations is good investigation planning .

A detailed investigation plan should be developed by the investigation team at the outset of each and every investigation, thoroughly enough to allow for the forecast of a date for the final decision. The indication of the "expected time for completion" is not only a legal obligation from OLAF towards the SC but also an essential tool for managing investigations and avoiding the negative consequences of their excessive duration.

This plan should cover every investigative step envisaged and be associated with a preliminary timetable for each step. This planning should be in writing and systematically annexed to the case file, facilitating its review and consultation in the event that investigators are met with demands for postponements or other kinds of delays.



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The management, at Unit level, should examine investigation plans regularly to follow and, where necessary, guide development of cases.

The SC proposes to deliver a further and fuller Opinion on investigation planning later in the year.

III- A lack of specific objective and verifiable reasons for delays.

For the SC to be in the best position to fulfil its monitoring remit, OLAF should be able to give more precise and accurate reasons for investigations not being completed within undue delays.

On close inspection of the process for assessment of reasons given for cases not completed within a nine month period, the SC recommends that this entire process be revisited.

This revision would also help OLAF to identify the real reasons for delays and enable it to take appropriate measures to reduce the length of investigations.

The SC makes the following recommendations for OLAF to refine the reasons for investigations not being completed in a nine month period.

1. Volume of operational/investigative work by OLAF/by other actors or partners .

There must be a clear distinction between the volume of work completed by OLAF and the volume of work which is carried out by external agents or partners. The SC recommends that “the volume of operational/investigative work” be split into these two categories. Based on the investigation plan, a detailed explanation should be provided as to the causes for delays or, where appropriate, an explanation of why extra steps were required which were not originally envisaged.

Every large case to be reviewed by the team on completion, in order to learn lessons from the handling procedure in that specific case .

2. Workload of investigators .

Overall workload needs to be explained by providing details of what other investigations are being pursued and the extent to which they will negatively impact on the current investigation.



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3. Change of the investigator in charge .

The SC is aware that changes of the investigator in charge may lead sometimes to several months delay. This is why the reasons for such a change should be highlighted, in particular in case s of conflict of interest.

4. Other higher case priorities .

The SC is aware that a case's priority may vary over its life cycle and explanation needs to be given as to why other investigations were given priority over the actual investigation and what investigation measures were taken. Investigation policy is a matter of continuous revision : common and regular discussions between both Directorates of operations/investigations on the investigations in progress are essential.

5. Inactivity for more than three months: the three months list .

Every investigator should review his/her cases on a monthly basis by the first of every month; if nothing has happened in a case for three months, the investigator should report the case to the Head of Unit. This report should then state the reasons for such a long period of inactivity and give a detailed action plan for the resumption of the case. Precise dates are needed for every anticipated measure to be taken and the action plans from these "three-months lists" must be very closely followed up.

6. Lack of resources .

A clear distinction needs to be made between the lack of resources either within the Unit or within the specific investigation team. If the lack of resources occurs in the specific team, an explanation should be provided as to what measures should be sought to provide extra staffing for the investigation in question. The SC understands that cases may become more complicated than previously anticipated and that there can be either no resources or an overload of cases.

7. Missions to third countries and collection of documents: problems arising .

The international nature of many of OLAF's investigations means that a thorough plan of action for a mission should be provided in writing before the mission takes place.



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8. Lack of co-operation: from the Commission services; from EU institutions; from MS authorities; from national authorities of third countries; from individual/company.

The nature of the lack of co-operation should be explicit (e.g. insufficiently prompt reaction from MS etc.) and a practical solution to remedy the specific obstacle needs to be explained in each and every case.

The SC has noted on several occasions a certain lack of pro-activity in cases where OLAF is met by lack of co-operation from MS authorities, institutions, Commission services, third countries or individuals. The SC therefore recommends OLAF review cases where these particular reasons are cited, in order to develop strategies for a more proactive attitude towards those who are proven to be non co-operative.

9. Lack of request for OLAF's assistance from the MS national authorities .

Clear distinction needs to be made between the assistance cases at the request of the national authorities of the MS since this is a different area of OLAF's competences .

10. External audits : problems arising .

Reference to OLAF's follow-up and input on audits carried out by external firms needs to appear in the "nine months report".

FUTURE ACTION

The SC will continue the examination of the "nine months reports" received from OLAF's Director General for the period 2009 together with a study of the "assessments of initial information" accompanying the reports.

Taking into consideration the serious quality problem identified in the "nine months reports" due to the frequent lack of reference to the expected time for completion of investigations, close scrutiny will be made in the future of OLAF's legal obligation in this area.