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Subject : Proposal for a Regulation of the European Parliament and of the Council on the
Hercule III programme to promote activities in the field of the protection of the
European Union's financial interests (**first reading**)

OUTCOME OF PROCEEDINGS

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
establishing a programme to promote activities in the field of the protection of the European
Union's financial interests ("Hercule III" programme)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 325 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

[...]

HAVE ADOPTED THIS REGULATION:

¹ OJ C [...], [...], p. [...].

Chapter I

General provisions

Article 1

Subject matter

The multiannual action programme to promote activities against fraud, corruption and any other illegal activities affecting the financial interests of the Union "Hercule III" (hereinafter referred to as "the Programme") is hereby established for the period from 1 January 2014 to 31 December 2020.

Article 2

Added value

The Programme shall contribute to:

- (a) developing the activities at Union level and the Member States to counter fraud, corruption and any other illegal activities affecting the financial interests of the Union, including the fight against cigarette smuggling and counterfeiting;
- (b) an increased transnational cooperation at Union level and in particular to the effectiveness of the cross-border operations;
- (c) an effective prevention of fraud, corruption and any other illegal activities affecting the financial interests of the Union, by offering joint specialised training for staff of national and regional administrations, and to other stakeholders.

The Programme in particular creates savings deriving from the collective procurement of specialised equipment and databases to be used by the stakeholders and those derived from the specialised training.

Article 3

General objective of the Programme

The general objective of the Programme shall be to protect the financial interests of the Union thus enhancing the competitiveness of the Union's economy and ensuring the protection of the taxpayers' money.

Article 4

Specific objective of the Programme

The specific objective of the Programme shall be to prevent and combat fraud, corruption and any other illegal activities affecting the Union's financial interests.

This objective shall be measured, inter alia, through the amount of recoveries following fraud cases detected by joint actions and cross border operations, the increased percentage of successful joint operations, and the increased number of cases accepted by the criminal investigative authorities.

The operational objectives are set out in the Annex to this Regulation.

Article 5

Bodies eligible for funding

The following bodies shall be eligible for funding under the Programme:

- (a) national or regional administrations of a Member State or a participating country, as referred to in Article 6(2), which promote the strengthening of action at Union level to protect the Union's financial interests;
- (b) research and educational institutes and non-profit making entities provided that they have been established and have been operating for at least one year, in a Member State or in a participating country, as referred to in Article 6(2), and promote the strengthening of action at Union level to protect the Union's financial interests.

Article 6
Participation in the Programme

1. Participating countries shall be the Member States and the countries referred to in paragraph 2.
2. The Programme shall be open to the participation of any of the following countries:
 - (a) acceding States, candidate countries and potential candidates benefiting from a pre-accession strategy, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective Framework Agreements, Association Council Decisions or similar Agreements;
 - (b) partner countries under the European Neighbourhood Policy provided that these countries have reached a sufficient level of alignment of the relevant legislation and administrative methods with those of the Union. The partner countries concerned shall participate in the Programme in accordance with provisions to be determined with those countries following the establishment of Framework Agreements concerning their participation in Union programmes;
 - (c) the EFTA/EEA countries, in accordance with the conditions laid down in the EEA Agreement.
3. Representatives of countries forming part of the stabilisation and association process for countries of South-Eastern Europe, the Russian Federation, and certain countries with which the Union has concluded an agreement for mutual assistance in fraud-related matters, and representatives of international and other relevant organisations, may take part in activities organised under the Programme wherever this is useful for the achievement of the objectives referred to in Articles 3 and 4. These representatives shall be chosen on the basis of their skills, experience and knowledge relevant to the specific activities.

Article 7
Eligible actions

The Programme shall provide, under the same conditions set out in the annual work programmes referred to in Article 10, financial support for the following actions:

- (a) Provision of specialised technical assistance for the Member States' competent authorities through:
- providing specific knowledge, specialised and technically advanced equipment and effective information technology (IT) tools facilitating transnational cooperation and cooperation with the Commission;
 - ensuring the necessary support and facilitating investigations, in particular the setting up of joint investigation teams and cross border operations;
 - supporting Member States' capacity to store and destroy seized cigarettes, as well as independent analytical services for the analysis of seized cigarettes;
 - enhancing staff exchanges for specific projects, in particular in the field of the fight against cigarette smuggling and counterfeiting;
 - providing technical and operational support for the law enforcement authorities of the Member States in their fight against illegal cross border activities and fraud affecting the Union's financial interests, including in particular support for customs authorities;
 - building information technology capacity throughout the Member States and participating countries, as referred to in Article 6(2), by developing and providing specific databases and IT tools facilitating data access and analysis;
 - increasing data exchange, developing and providing IT tools for investigations, and monitoring intelligence work.

- (b) Organisation of specialised training, and risk analysis training workshops, as well as conferences, aimed at:
- further fostering better understanding of Union and national mechanisms;
 - exchanging experience between the relevant authorities in the Member States, and participating countries, as referred to in Article 6(2), as well as representatives of international organisations as mentioned in Article 6(3), including specialised law enforcement services;
 - coordinating the activities of Member States, participating countries, and representatives of international public organisations, as defined in Article 6(2) and (3);
 - disseminating knowledge, particularly on better identification of risk for investigative purposes;
 - developing high-profile research activities, including studies;
 - improving cooperation between practitioners and academics;
 - further raising the awareness of the judiciary and other branches of the legal profession for the protection of the financial interests of the Union.
- (c) Any other action, provided by the annual work programmes under Article 10, which is necessary for attaining the general and specific objectives provided for in Articles 3 and 4.

Chapter II

Financial framework

Article 8

Financial envelope

The financial envelope for the implementation of the Programme for the period from 1 January 2014 to 31 December 2020 shall be EUR [110 000 000], in current prices.

Article 9

Types of financial support and co-financing

1. The Commission shall implement the Programme in accordance with Regulation (EU) No XXXX/2012 of the European Parliament and of the Council on the financial rules applicable to the annual budget of the Union¹ (hereinafter referred to as the "Financial Regulation").

2. Financial support under the Programme for actions provided for under Article 7 shall take the form of:
 - a) grants;

 - b) public procurement.

 - c) reimbursement of costs for participation in activities under the Programme incurred by the representatives referred to in Article 6(3).

¹ OJ C [...], [...], p. [...].

3. The purchase of equipment shall not be the sole component of the grant agreement.¹
4. The co-financing rate for grants awarded under the Programme shall not exceed² [80 %] of the eligible costs. In exceptional and duly justified cases, defined in the annual work programmes referred to in Article 10, the co-financing rate shall not exceed [90 %] of the eligible costs.

Article 10
*Annual work programmes*³

In order to implement the Programme, the Commission shall adopt annual work programmes. They shall set out the objectives pursued, the expected results, the method of implementation and their total amount. They shall also contain a description of the actions to be financed, an indication of the amount allocated to each action and an indicative implementation timetable. They shall include for grants the priorities, the essential evaluation criteria and the maximum rate of co-financing.

¹ Recital 6 shall be modified and read as follows: *"The Programme shall be implemented in full compliance with the provisions of Regulation (EU) No XX/XX of XX 2012 on the financial rules applicable to the annual budget of the Union. In accordance with Article [108] of this Regulation, a grant may not have as its sole purpose the purchase of equipment. An operational grant is meant to support financially an "action intended to help achieve an objective forming part of a European Union policy";"*

² Recital 12 shall be modified and read as follows: *"In order to ensure uniform conditions for the implementation of the Programme, implementing powers should be conferred on the Commission. The Commission should adopt the annual work programmes setting out the priorities, the budget breakdown and the evaluation criteria for the grants for actions. The Commission will consult the Member States on the annual work programme in the framework of the Advisory Committee for the Coordination of Fraud Prevention (COCOLAF) set up by Commission Decision 94/140/EC of 23 February 1994, as amended by Commission Decision 2005/223/EC of 25 February 2005. The exceptional and duly justified cases for which a maximum co-financing rate of [90 %] is proposed will be part of the annual work programme presented to COCOLAF."*

[The following statement by the Commission will accompany this Regulation: *"The actual funding by the Union of the actions falling under the proposed maximum co-financing rate of 80 % for grants awarded under this Programme will in practice be lower."*]

³ See footnote No 2 above.

Resources allocated to communication actions under the Programme shall also contribute to cover the corporate communication of the Union's political priorities, as far as they are related to the general objectives of the Programme.

Chapter III

Monitoring and evaluation

Article 11

Monitoring, evaluation and management

1. The Commission shall provide annual information on the results of the Programme to the European Parliament and to the Council. Information on consistency and complementarity with other programmes and activities at Union level shall be included. The Commission shall continually disseminate the results of the relevant actions supported under the Programme. All participating countries shall provide the Commission with all the data and information necessary to permit the monitoring and evaluation of the Programme.

2. An evaluation of the Programme shall be carried out by the Commission. By 31 December 2017, an independent mid-term evaluation report shall be presented by the Commission on the achievement of the objectives of all the measures, results and impacts, the efficiency of the use of resources and its added value to the Union, in view of a decision on the renewal, modification or suspension of the measures. The evaluation shall additionally address the scope for simplification, its internal and external coherence, the continued relevance of all objectives, as well as the contribution of the measures to the Union's priorities of smart, sustainable and inclusive growth. It shall take into account evaluation results on the long-term impact of the predecessor measures.

In addition, by 31 December 2021, the Commission shall present to the European Parliament and to the Council a final evaluation report on the achievement of the objectives of the Programme.

The long-term impacts and the sustainability of effects of the Programme shall be evaluated with a view to feed into a decision on a possible renewal, modification or suspension of a subsequent programme.

Article 12¹

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.
2. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on-the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds under the Programme.

¹ Text of Article 12 has been replaced with the one of the standard provision on the protection of the financial interests of the Union in spending programmes under the new MFF (direct expenditure and external aid), as agreed.
The following recital will be added: *"The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU) No XXXX/2012 of the European Parliament and of the Council on the financial rules applicable to the annual budget of the Union;"*.

3. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹ and Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities² with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under the Programme.
4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and with international organisations, contracts, grant agreements and grant decisions resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

Chapter IV

Final provisions

Article 13

Repeal

Decisions 804/2004/EC and 878/2007/EC of the European Parliament and the Council are repealed.

However, financial obligations related to actions pursued under those Decisions shall continue to be governed by those Decisions until their completion.

¹ OJ L 136, 31.5.1999, p. 1.

² OJ L 292, 15.11.1996, p. 2.

Article 14
Entry into force

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2014.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

Operational objectives of the Programme

The operational objectives of the Programme shall be the following:

- (1) to improve the prevention and investigation of fraud and other illegal activities beyond its currently reached levels by enhancing transnational and multi-disciplinary cooperation;
- (2) to increase the protection of the financial interests of the Union against fraud, facilitating the exchange of information, experiences and best practices, including staff exchanges;
- (3) to strengthen the fight against fraud and other illegal activities providing technical and operational support to national investigation, and in particular customs and law enforcement authorities;
- (4) to limit the exposure of the financial interests of the Union to fraud, corruption and other illegal activities, as compared to the level of exposure known today, with a view to reducing the development of an illegal economy in key risk areas such as organised fraud, smuggling and counterfeiting, especially of cigarettes;
- (5) to enhance the degree of development of the specific legal and judicial protection of the financial interests against fraud by promoting comparative law analysis.
