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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) - Approval of the final compromise text with a view to a first reading agreement with the European Parliament

FINAL COMPROMISE TEXT

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

~~on the Hercule III~~ **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:

- (1) The Union and the Member States have set themselves the objective of countering fraud, corruption and any other illegal activities affecting the financial interests of the Union, including cigarette smuggling and counterfeiting. ~~Together with the Commission, the Member States should, in particular~~ **In order to improve the long-term impact of spending and to avoid duplication, close and regular cooperation and coordination should be ensured at Union level and** between ~~the competent~~ **Member States'** authorities.
- (2) Activities with the aim of providing better information, specialised training, **including comparative law studies** or technical and scientific assistance help significantly to protect the financial interests of the Union and at the same time to attain an equivalent level of protection across the Union.

¹ OJ C 201, 7.7.2012, p. 1.

- (3) Past support for such initiatives has made it possible to enhance the activities undertaken by the Union and the Member States in terms of fighting fraud, corruption and any other illegal activities affecting the financial interests of the Union. ~~The objectives of the Hercule programme for both the period 2004-2006 and the period 2007-2013 were successfully achieved.~~
- (3a) The Commission conducted a review of the achievements of the Hercule II programme which reports on its inputs and outputs.**
- (4) The Commission has carried out an impact assessment in 2011, so as to evaluate the need to continue or not the programme.
- (5) To continue and even develop the activities at Union and Member State level to counter fraud, corruption and any other illegal activities affecting the financial interests of the Union, including the fight against cigarette smuggling and counterfeiting, also taking into account the new challenges in a context of budgetary austerity, a new programme should be adopted.
- (5a) The programme should be implemented by taking into account the recommendations and measures listed in the Communication from the Commission to the Council and the European Parliament "Stepping up the fight against cigarette smuggling and other form of illicit trade in tobacco products – a comprehensive EU Strategy" (COM(2013)324).**
- (6) ~~This Regulation~~ **programme** shall be implemented in full compliance with the provisions of Regulation (EU) No 966/2012 of 25 October 2012 on the financial rules applicable to the annual budget of the Union. **In accordance with Title VI ("Grants") 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.**

- (7) 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, penalties.
- (8) The programme is open to participation by acceding countries, candidate countries and potential candidates benefiting from a pre-accession strategy, as well as partner countries of the European Neighbourhood Policy, provided that these countries have reached a sufficient level of approximation of the relevant legislation and administrative methods to those of the Union, 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.
- (9) The Commission should present to the European Parliament and to the Council an independent interim report on the implementation of the programme, as well as a final report on the achievement of the objectives of this programme. **Furthermore, the Commission should provide, on a yearly basis, the European Parliament and the Council with information on the annual implementation of the programme, including results of the funded actions and information on the consistency and the complementarity with other programmes and activities at Union level.**
- (10) This Regulation complies with the principles of subsidiarity and proportionality. The Hercule III programme facilitates cooperation between the Member States and between the Commission and the Member States in order to protect the financial interests of the Union, ~~without however impinging on Member States' responsibilities, and~~ using resources more efficiently than could be done at national level. Action at EU level is necessary and justified as it clearly assists Member States collectively to protect the EU and national budgets and encourages the use of common EU structures to increase cooperation and information exchange between competent authorities. **The programme should not, however, impinge on Member States' responsibilities.**

- (11) The programme should run for a period of seven years to align its duration with that of the multiannual financial framework laid down in [Article 1] of the Council Regulation No [XXXX] laying down the multiannual financial framework for the years 2014-2020.
- (11a) In order to provide for a detailed but flexible framework for implementation, the power to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend the indicative allocation of funds. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.**
- (11b) The Commission shall undertake the necessary steps to ensure that the annual work programmes will be consistent and complementary with other EU funded programmes, in particular in the area of customs, in order to strengthen the overall impact of the Hercule III actions and to avoid any overlapping of programmes.**
- (12) The Commission should adopt the annual work programmes ~~setting out the priorities, the budget breakdown and the evaluation criteria for the grants for actions. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission~~ **containing the actions financed, the selection and award criteria and the exceptional and duly justified cases, such as those concerning Member States exposed to a high risk in relation to the financial interests of the Union, in which the maximum rate of co-financing of 90 % of the eligible costs is applicable. The Commission should discuss with the Member States the application of this Regulation 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.**

- (12a) Member States should endeavour to enhance their financial contributions under the co-financing rate for grants awarded under the programme.**
- (13) This Regulation establishes, for the entire duration of the programme, a financial envelope constituting the prime reference, within the meaning of Point [176] of the Interinstitutional Agreement of [XX/YY/201Z] between the European Parliament, the Council and the Commission on cooperation in budgetary matters and on sound financial management, for the budgetary authority during the annual budgetary procedure.
- (13a) 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 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the annual budget of the Union;**
- (13b) It is appropriate to align the duration of the programme with the Council Regulation laying down the multiannual financial framework for the years 2014-2020. Therefore, this programme should apply as from 1 January 2014. For reasons of urgency, this Regulation should enter into force as soon as possible after its publication in the Official Journal of the European Union.**

HAVE ADOPTED THIS REGULATION:

Chapter I General provisions

Article 1

Subject matter

The multiannual action programme "~~Hereule III~~" (~~hereinafter referred to as "Programme"~~) is hereby established to promote activities against fraud, corruption and any other illegal activities affecting the financial interests of the Union. ~~The Programme shall run~~ **"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 **and coordination** at the Union level, **between Member States' authorities, the Commission and the European Anti-Fraud Office (OLAF)**, and in particular to the effectiveness **and efficiency** 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 ~~collective~~ 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 ~~European~~ **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 ~~against~~ **affecting** the Union's financial interests.

This **specific** objective shall be measured **referring, *inter alia*, to target levels and baselines and through the following key performance indicators:**

- the amount of **seizures, confiscations and** recoveries following fraud cases detected by joint actions and cross border operations, ~~and the increased number of cases accepted by the eriminal investigative authorities;~~
- **the added value and effective use of the co-financed technical equipment;**
- **the exchange of information among Member States on the results achieved with the technical material;**
- **the number and type of training activities, including the amount of specialised training.**

Article 4a

Operational objectives of the Programme

The operational objectives of the Programme shall be the following:

- (a) **to improve the prevention and investigation of fraud and other illegal activities beyond its currently reached levels by enhancing transnational and multi-disciplinary cooperation;**

- (b) **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;**
- (c) **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;**
- (d) **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, including cigarette smuggling and counterfeiting;**
- (e) **to enhance the degree of development of the specific legal and judicial protection of the financial interests against fraud by promoting comparative law analysis.**

Article 5

Bodies eligible for funding

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

- (a) national or regional administrations of a Member State or a ~~third country~~ **participating** country, as ~~identified~~ **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 ~~third country~~ **participating** country, as ~~identified~~ **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) ~~accessing countries~~ **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 **States and** 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 ~~to~~ **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. ~~Those representatives shall be chosen on the basis of their skills, experience and knowledge relevant to the specific activities~~ **participate in the Programme in accordance with the relevant provisions of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the**

financial rules applicable to the annual budget of the Union (hereinafter referred to as the "Financial Regulation").

Article 7
Eligible actions

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

- (a) Provision of specialised technical assistance for ~~national~~ **the competent authorities of the Member States** 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 ~~third~~ **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 **targeted** specialised training, and risk analysis training workshops, as well as, **where appropriate**, conferences, aimed at:
- further fostering better understanding of Union and national mechanisms;
 - exchanging experience **and best practices** between the relevant authorities in the Member States, and ~~third~~ **participating** countries, as referred to in Article 6(2), **including specialised law enforcement services**, as well as representatives of international organisations as mentioned in Article 6(3), ~~including specialised law enforcement services~~;
 - coordinating the activities of Member States, ~~third~~ **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 **not covered under points a) or b)**, provided by the annual work programmes under Article 10, which is necessary for attaining the general ~~and~~, the specific **and the operational** objectives provided for in Articles 3 ~~and~~, 4 **and 4a**.

Chapter II

Financial framework

Article 8

Financial envelope

1. 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~~ [104 918 000]**, in current prices.

That amount shall constitute the prime reference for the budgetary authority during the annual budgetary procedure within the meaning of Point 16 of the Interinstitutional Agreement of [XX/XX/201X] between the European Parliament, the Council and the Commission on budgetary discipline, cooperation in budgetary matters and on sound financial management.

2. **Within the financial envelope for the Programme, indicative amounts shall be allocated to eligible actions listed in Article 7, within the percentages set out in the Annex for each type of action. The Commission may depart from the indicative allocation of funds laid down in the Annex, but may not increase the allocated share of the financial envelope by more than 20 % for each type of action.**

Should it prove necessary to exceed that limit, the Commission shall be empowered to adopt delegated acts in accordance with Article 12a to modify the indicative allocation of funds laid down in the Annex.

Article 9

Types of financial intervention and co-financing

1. The Commission shall implement the Programme in accordance with the Financial Regulation.
2. ~~Union funding~~ **Financial support under the Programme** for ~~activities~~ **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 Programmes incurred by **the** representatives referred to in Article 6(3).
3. The purchase of equipment shall not be the sole component of the grant agreement.
4. The co-financing rate for grants awarded under the Programme shall not exceed 80 % of the eligible costs. In exceptional and duly justified cases, defined in the annual work programmes referred to in Article 10, **such as cases concerning Member States exposed to a high risk in relation to the financial interests of the Union**, the co-financing rate shall not exceed 90 % of the eligible costs.

Article 10
Annual work programmes

In order to implement the Programme, the Commission shall adopt annual work programmes. They shall ensure that the **general, specific and operational** objectives pursued, **in Articles 3, 4 and 4a are implemented in a consistent manner and shall outline** 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 **priority actions financed**, the ~~essential evaluation~~ **selection and award** criteria and the maximum rate of co-financing.

~~Budget Resources~~ allocated to communication actions ~~to be carried out by the Commission~~ under this ~~Regulation~~ **Programme** shall also **contribute to** cover the corporate communication of the **Union's** political priorities ~~of the Union~~, **as far as they are related to the general objectives of the Programme.**

Chapter III
Monitoring and evaluation

Article 11²
Monitoring, evaluation and management

1. The Commission shall provide **the European Parliament and the Council, on an annual basis, with** information on the ~~results~~ **implementation** of the Programme ~~to the European Parliament and to the Council~~, **including the objectives and the results achieved.**
Information **on cooperation and coordination between the Commission and the Members States and** on consistency and complementarity with other programmes and activities at

² Commission unilateral statement related to Article 11: "*Without prejudice to the annual budgetary procedure, it is the Commission's intention to present in the context of a structured dialogue with the European Parliament an annual report on the implementation of the Regulation, including the budget breakdown set out in the Annex, starting from January 2015, and the work programme to the responsible Committee in the European Parliament in the context of the PIF report.*".

Union level shall be included. The Commission shall continually disseminate, **including in the relevant websites**, the results of the activities supported under the Programme **to increase transparency on the use of the funds**. ~~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~~ **thorough** evaluation of the Programme shall be carried out by the Commission. ~~No later than~~ **By 31 December 2017, an independent mid-term** evaluation report shall be ~~established~~ **presented** by the Commission on the achievement of the objectives of all the ~~measures~~ **actions**, results and impacts, the **effectiveness and** efficiency of the use of resources and its ~~European~~ **added value to the Union**, in view of a decision on the renewal, modification or suspension of the ~~measures~~ **actions**. 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~~ **actions** 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~~ **achievements of the objectives of the Hercule II programme which shall be presented by the Commission by 31 December 2014.**

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, **including its added value.**

Furthermore, ~~the longer-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.

3. **All participating countries and other beneficiaries shall provide the Commission with all the data and information necessary to increase transparency and accountability and to permit the management, monitoring and evaluation, including on cooperation and coordination, of the Programme as referred to in paragraphs 1 and 2 of this article.**

Article 12

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 ~~deterrent~~ **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.
3. ~~The European Anti-Fraud Office (OLAF)~~ may carry out **investigations, including** on-the-spot checks and inspections ~~on economic operators concerned directly or indirectly by such funding,~~ in accordance with the **provisions and** procedures laid down in **Regulation (EC) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) 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 irregularities** 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 ~~concerning Union funding~~ **under the Programme**.
4. Without prejudice to ~~the first and second sub-paragraphs~~ **1, 2 and 3**, cooperation agreements with third countries and **with** international organisations, **contracts,** ~~and~~ grant agreements and grant decisions ~~and contracts~~ resulting from the implementation of this Regulation shall **contain provisions expressly empowering** the Commission, the Court of Auditors and OLAF to conduct such audits, ~~on-the spot checks and inspections~~ **investigations,** according to their respective competences.

Article 12a
Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this article.**
- 2. The power to adopt delegated acts referred to in Article 8 shall be conferred on the Commission for a period of seven years from [...]³.**
- 3. The delegation of power referred to in Article 8 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.**
- 4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.**
- 5. A delegated act adopted pursuant to Article 8 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.**

³ The date of entry into force of this Regulation should be inserted.

Chapter IV
Final provisions

Article 13

Repeal

Decisions 804/2004/EC and 878/2007/EC of the European Parliament and the Council are repealed ~~with effect from 1 January 2013.~~

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

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 ~~as of the~~ **from** 1st ~~of~~ 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.~~

Indicative allocation of funds

The indicative allocation of funds to eligible actions listed in Article 7 is the following:

Types of action	Share of the budget (in %)
(a) Technical assistance	At least 70 %
(b) Training	Maximum 25 %
(c) Any other action not covered under points (a) or (b)	Maximum 5 %