



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC

REGULATION (EU) No .../2014
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC

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 procedure²,

¹ OJ C 201, 7.7.2012, p. 1.

² Position of the European Parliament of 15 January 2014 (not yet published in the Official Journal) and decision of the Council of

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. 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 Member States' authorities.
- (2) Activities with the aim of providing better information, specialised training, including comparative law studies and 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.
- (3) Past support for such activities through Decision No 804/2004/EC of the European Parliament and of the Council¹ (Hercule programme), which was amended and extended by Decision No 878/2007/EC of the European Parliament and of the Council² (Hercule II programme), has made it possible to enhance the activities undertaken by the Union and the Member States in terms of countering fraud, corruption and any other illegal activities affecting the financial interests of the Union.
- (4) The Commission has conducted a review of the achievements of the Hercule II programme which reports on its inputs and outputs.

¹ Decision No 804/2004/EC of the European Parliament and of the Council of 21 April 2004 establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule programme) (OJ L 143, 30.4.2004, p. 9).

² Decision No 878/2007/EC of the European Parliament and of the Council of 23 July 2007 amending and extending Decision No 804/2004/EC establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule II programme) (OJ L 193, 25.7.2007, p.18).

- (5) The Commission carried out an impact assessment in 2011, so as to evaluate the need to continue the programme.
- (6) To continue and even develop the activities at Union and Member State levels 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 ('the Programme') should be adopted.
- (7) The Programme should be implemented taking into account the recommendations and measures listed in the Commission communication of 6 June 2013 entitled "Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – A comprehensive EU Strategy".
- (8) The Programme should be implemented in full compliance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council¹. In accordance with that Regulation, a grant is meant to support financially an action intended to help achieve a Union policy objective and is not to have as its sole purpose the purchase of equipment.

¹ Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p.1).

- (9) The Programme should be open to participation by acceding States, candidate countries and potential candidates benefiting from a pre-accession strategy, as well as 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 to those of the Union, 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, as well as the countries of European Free Trade Association (EFTA) participating in the European Economic Area (EEA).
- (10) The Commission should present to the European Parliament and to the Council an independent mid-term evaluation report on the implementation of the Programme, as well as a final evaluation report on the achievement of the objectives of the Programme. Furthermore, the Commission should provide, on an annual 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 regard to other relevant programmes and actions at Union level.

- (11) This Regulation complies with the principles of subsidiarity and proportionality. The Programme should facilitate cooperation between the Member States and between the Commission and the Member States in order to protect the financial interests of the Union, using resources more efficiently than could be done at national level. Action at Union level is necessary and justified as it clearly assists Member States collectively to protect the general budget of the Union and national budgets and encourages the use of common Union structures to increase cooperation and information exchange between competent authorities. The Programme should not, however, impinge on Member States' responsibilities.
- (12) The Programme should run for a period of seven years to align its duration with that of the multiannual financial framework laid down in Council Regulation (EU, Euratom) No 1311/2013¹.
- (13) In order to provide for a degree of flexibility in the allocation of funds, 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 in respect of amending the indicative allocation of those 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.

¹ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

- (14) The Commission should adopt annual work programmes 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 set up by Commission Decision 94/140/EC¹.
- (15) Member States should endeavour to enhance their financial contributions under the co-financing of grants awarded under the Programme.
- (16) The Commission should undertake the necessary steps to ensure that the annual work programmes are consistent with and complementary to other relevant programmes funded by the Union, in particular in the area of customs, in order to strengthen the overall impact of the actions of the Programme and to avoid any overlapping of the Programme with other programmes.
- (17) This Regulation lays down a financial envelope for the entire duration of the Programme which is to constitute the prime reference amount, within the meaning of Point 17 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management² for the European Parliament and the Council during the annual budgetary procedure.

¹ Commission Decision 94/140/EC of 23 February 1994 setting up an advisory committee for the coordination of fraud prevention (OJ L 61, 4.3.1994, p. 27).

² OJ C 373, 20.12.2013, p. 1.

- (18) 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.
- (19) Decision No 804/2004/EC should be repealed. Transitional measures should be adopted to enable the completion of financial obligations relating to actions pursued under that Decision and of reporting obligations specified therein.
- (20) It is appropriate to ensure a smooth transition without interruption between the Hercule II programme and the Programme and it is appropriate to align the duration of the Programme with Regulation (EU, Euratom) No 1311/2013. Therefore, the Programme should apply as from 1 January 2014,

HAVE ADOPTED THIS REGULATION:

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" ("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 all of the following:

- (a) the development of 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) increased transnational cooperation and coordination at Union level, between Member States' authorities, the Commission and the European Anti-Fraud Office (OLAF), and in particular with regard to the effectiveness and efficiency of cross border operations;

- (c) the 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 for other stakeholders.

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

Article 3

General objective

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

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

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

- (a) the number of seizures, confiscations and recoveries following fraud cases detected by joint actions and cross border operations;
- (b) the added value and effective use of the co-financed technical equipment;
- (c) the exchange of information among Member States on the results achieved with the technical material;
- (d) the number and type of training activities, including the amount of specialised training.

Article 5

Operational objectives

The operational objectives of the Programme shall be all of the following:

- (a) to improve the prevention and investigation of fraud and other illegal activities beyond current 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 currently known exposure of the financial interests of the Union to fraud, corruption and other illegal activities 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 of the Union against fraud by promoting comparative law analysis.

Article 6

Bodies eligible for funding

Each of the following bodies shall be eligible for funding under the Programme:

- (a) national or regional administrations of a participating country, as referred to in Article 7(1), which promote the strengthening of action at Union level to protect the financial interests of the Union;
- (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 participating country, as referred to in Article 7(1), and promote the strengthening of action at Union level to protect the financial interests of the Union.

Article 7
Participation in the Programme

1. Participating countries shall be the Member States and the countries referred to in paragraph 2 ('participating countries').
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 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 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 countries of the European Free Trade Association (EFTA) participating in the European Economic Area (EEA), in accordance with the conditions laid down in the Agreement on the European Economic Area.

3. Representatives of countries forming part of the stabilisation and association process for countries of South-Eastern Europe, the Russian Federation, of certain countries with which the Union has concluded an agreement for mutual assistance in fraud-related matters, and of international and other relevant organisations, may take part in activities organised under the Programme wherever this is useful for the achievement of the general and specific objectives provided for in Articles 3 and 4 respectively. Those representatives shall participate in the Programme in accordance with the relevant provisions of Regulation (EU, Euratom) No 966/2012.

Article 8

Eligible actions

The Programme shall provide, under the conditions set out in the annual work programmes referred to in Article 11, appropriate financial support for all of the following actions:

- (a) provision of specialised technical assistance for the competent authorities of the Member States through one or more of the following:
 - (i) providing specific knowledge, specialised and technically advanced equipment and effective information technology (IT) tools facilitating transnational cooperation and cooperation with the Commission;
 - (ii) ensuring the necessary support and facilitating investigations, in particular the setting up of joint investigation teams and cross border operations;

- (iii) supporting Member States' capacity to store and destroy seized cigarettes, as well as independent analytical services for the analysis of seized cigarettes;
 - (iv) enhancing staff exchanges for specific projects, in particular in the field of the fight against cigarette smuggling and counterfeiting;
 - (v) 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 financial interests of the Union, including in particular support for customs authorities;
 - (vi) building information technology capacity throughout participating countries by developing and providing specific databases and IT tools facilitating data access and analysis;
 - (vii) 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 one or more of the following:
- (i) further fostering better understanding of Union and national mechanisms;
 - (ii) exchanging experience and best practices between the relevant authorities in the participating countries, including specialised law enforcement services, as well as representatives of international organisations as referred to in Article 7(3);

- (iii) coordinating the activities of participating countries, and representatives of international organisations, as referred to in Article 7(3);
 - (iv) disseminating knowledge, particularly on better identification of risk for investigative purposes;
 - (v) developing high-profile research activities, including studies;
 - (vi) improving cooperation between practitioners and academics;
 - (vii) 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 point (a) or (b) of this Article, provided by the annual work programmes under Article 11, which is necessary for attaining the general, the specific and the operational objectives provided for in Articles 3, 4 and 5 respectively.

CHAPTER II

FINANCIAL FRAMEWORK

Article 9

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 104 918 000, (in current prices).

The annual appropriations shall be authorised by the European Parliament and the Council within the limits of the multiannual financial framework.

2. Within the financial envelope for the Programme, indicative amounts shall be allocated to the eligible actions listed in Article 8, 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 20 % limit, the Commission shall be empowered to adopt delegated acts in accordance with Article 14 to modify the indicative allocation of funds laid down in the Annex.

Article 10

Type of financial intervention and co-financing

1. The Commission shall implement the Programme in accordance with Regulation (EU, Euratom) No 966/2012.
2. Financial support under the Programme for eligible actions listed in Article 8 shall take the form of any of the following:
 - (a) grants;
 - (b) public procurement;

(c) the reimbursement of costs for participation in activities under the Programme incurred by the representatives referred to in Article 7(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 11, 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 11

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 provided for in Articles 3, 4 and 5 respectively are implemented in a consistent manner and shall outline the expected results, the method of implementation and their total amount. In the case of grants, the annual work programmes shall include the actions financed, the selection and award criteria and the maximum rate of co-financing.

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 objective provided for in Article 3.

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 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. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹ and Council Regulation (Euratom, EC) No 2185/96² 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.

¹ Regulation (EU, Euratom) 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 repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

² 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 (OJ L 292, 15.11.1996, p. 2).

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 III

MONITORING, EVALUATION AND DELEGATED POWERS

Article 13

Monitoring and evaluation

1. The Commission shall provide the European Parliament and the Council, on an annual basis, with information on the implementation of the Programme, including on the achievement of the objectives of the Programme and the results. Information on cooperation and coordination between the Commission and the Members States and on consistency and complementarity with other relevant programmes and actions at Union level shall be included. The Commission shall on an ongoing basis disseminate, including on relevant websites, the results of the activities supported under the Programme to increase transparency on the use of the funds.

2. The Commission shall carry out a thorough evaluation of the Programme and present to the European Parliament and to the Council:
 - (a) by 31 December 2017, an independent mid-term evaluation report on the achievement of the objectives of all the actions, results and impacts, the effectiveness and 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 actions; the mid-term evaluation report shall additionally address the scope for simplification, internal and external coherence of the Programme, the continued relevance of all objectives of the Programme, as well as the contribution of the actions to the Union's priorities of smart, sustainable and inclusive growth; it shall also take into account evaluation results on the achievements of the objectives of the Hercule II programme;
 - (b) by 31 December 2021, a final evaluation report on the achievement of the objectives of the Programme, including its added value; furthermore, the long-term impacts and the sustainability of effects of the Programme shall be evaluated with a view to feeding into a decision on a possible renewal, modification or suspension of any 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 monitoring and evaluation, including on cooperation and coordination, of the Programme as referred to in paragraphs 1 and 2.

Article 14
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 9 shall be conferred on the Commission for a period of seven years from ...*.
3. The delegation of power referred to in Article 9 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.

* OJ: please, insert the date of entry into force of this Regulation.

5. A delegated act adopted pursuant to Article 9 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.

CHAPTER IV

FINAL PROVISIONS

Article 15

Repeal

Decision No 804/2004/EC is repealed.

However, financial obligations relating to actions pursued under that Decision and reporting obligations specified therein shall continue to be governed by that Decision until the completion of those obligations.

Article 16
Entry into force

This Regulation shall enter into force on the 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 ...,

For the European Parliament
The President

For the Council
The President

ANNEX

Indicative allocation of funds

The indicative allocation of funds to eligible actions listed in Article 8 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) of Article 8	Maximum 5 %
