



Council of the
European Union

Brussels, 4 January 2021
(OR. en)

Interinstitutional File:
2018/0211(COD)

14259/20
ADD 1

GAF 72
FIN 982
UD 401
AGRI 489
ENFOCUSTOM 148
JAI 1131
ENFOPOL 353
EPPO 59
CADREFIN 473
CODEC 1394

'I' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)

No. Cion doc.: 9539/18 + ADD 1 + ADD 2 - COM(2018) 386 final + ANNEX + SWD(2018) 281 final
No. prev. doc.: 15467/18 + ADD 1

Subject: Proposal for a Regulation of the European Parliament and of the Council establishing the EU Anti-Fraud Programme
- Confirmation of the final compromise text with a view to agreement

**Regulation of the European Parliament and of the Council
establishing the EU Anti-Fraud 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 Articles 33 and 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) Article 325 of the Treaty on the Functioning of the European Union requires the Union and the Member States to counter fraud and any other illegal activities affecting the financial interests of the Union. The Union should support activities in these fields.

¹ OJ C 10, 10.1.2019, p. 1.

- (2) Past support for such activities through Decision No 804/2004/EC of the European Parliament and of the Council² ("Hercule programme"), amended and extended by Decision No 878/2007/EC of the European Parliament and of the Council³ ("Hercule II programme"), repealed and replaced by Regulation No 250/2014 of the European Parliament and of the Council⁴ ("Hercule III programme"), has made it possible to enhance the activities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.
- (3) Supporting the reporting, by the Member States and candidate and potential candidate countries, of irregularities and fraud affecting the financial interests of the Union through the Irregularity Management System (IMS) is a requirement of sectorial legislation for the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development⁵, the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund⁶, Asylum, Migration and

² 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).

³ 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).

⁴ Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 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 (OJ L 84, 20.3.2014, p. 6).

⁵ Commission Delegated Regulation (EU) 2015/1971 of 8 July 2015 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development and repealing Commission Regulation (EC) No 1848/2006 and Commission Implementing Regulation (EU) 2015/1975 of 8 July 2015 setting out the frequency and the format of the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, under Regulation (EU) No 1306/2013 of the European Parliament and of the Council (OJ L 293, 10.11.2015, p. 6).

⁶ Commission Delegated Regulation (EU) 2015/1970 of 8 July 2015 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund and Commission Implementing Regulation (EU) 2015/1974 of 8 July 2015 setting out the frequency and the format of the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European

Integration Fund and the instrument for financial support for police cooperation, preventing and combating crime and crisis management⁷, the Fund for European Aid to the Most Deprived⁸, as well as the pre-accession assistance⁹ regarding the programming period 2014 2020 and onwards. IMS is a secure electronic communications tool which facilitates the Member States', as well as candidate and potential candidate countries' obligation to report detected irregularities and which supports the management and analysis of irregularities.

- (4) While the importance of the work carried out by the Commission in the context of fraud prevention is undisputable, the importance of, inter alia, the implementation of the Anti-Fraud Information System (AFIS), as well as of anti-fraud strategies at the national level should also be fully recognized.

Maritime and Fisheries Fund, under Regulation (EU) No 1303/2013 of the European Parliament and of the Council (OJ L 293, 10.11.2015, p. 1).

- ⁷ Commission Delegated Regulation (EU) 2015/1973 supplementing Regulation (EU) No 514/2014 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the Asylum, Migration and Integration Fund and the instrument for financial support for police cooperation, preventing and combating crime, and crisis management; and Commission Implementing Regulation (EU) 2015/1977 setting out the frequency and the format of the reporting of irregularities concerning the Asylum, Migration and Integration Fund and the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, under Regulation (EU) No 514/2014 of the European Parliament and of the Council (OJ L 293, 10.11.2015, p. 15).
- ⁸ Commission Delegated Regulation (EU) 2015/1972 of 8 July 2015 supplementing Regulation (EU) No 223/2014 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the Fund for European Aid to the Most Deprived and Commission Implementing Regulation (EU) 2015/1976 of 8 July 2015 setting out the frequency and the format of the reporting of irregularities concerning the Fund for European Aid to the Most Deprived, under Regulation (EU) No 223/2014 of the European Parliament and of the Council (OJ L 293, 10.11.2015, p. 11).
- ⁹ Article 16 of Commission Implementing Regulation (EU) No 447/2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession assistance (IPA II) (OJ L 132, 3.5.2014, p. 32).

- (5) Council Regulation (EC) No 515/97¹⁰ and Council Decision 2009/917/JHA¹¹ provide that the Union is to support mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission, to ensure the correct application of the law on customs and agricultural matters.
- (6) That support is provided to a number of operational activities. This includes the Anti Fraud Information System (AFIS), an information technology platform which consists of a set of applications operated under a common information system managed by the Commission. IMS is also operated under the AFIS platform. Such a system requires stable and predictable financing over the years to ensure its sustainability.
- (7) The AFIS platform includes several information systems, including the Customs Information System (CIS). The CIS is an automated information system which aims at assisting Member States in preventing, investigating and prosecuting operations which are in breach of customs or agricultural legislation, by increasing, through more rapid dissemination of information, the effectiveness of the cooperation and control procedures of their customs administrations. The CIS covers both administrative and police cooperation cases under a single infrastructure. For administrative cooperation purposes, the CIS is established by Regulation (EC) No 515/97, adopted on the basis of Articles 33 and 325 of the Treaty on the Functioning of the European Union. For police cooperation purposes, the CIS is established by Decision 2009/917/JHA, adopted on the basis of Articles 30(1)(a) and 34(2)(c) of the Treaty on the European Union. The police cooperation dimension of the CIS can technically not be dissociated from the administrative one as both aspects are operated under one single information technology system. Considering that the CIS itself is only one of several information systems run under AFIS and that the number of police cooperation cases is lower than the number of administrative cooperation cases in the CIS, the police cooperation dimension of AFIS is deemed accessory to its administrative one.

¹⁰ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, as lastly amended by Regulation 2015/1525 (OJ L 82, 22.3.1997, p. 1).

¹¹ Council Decision 2009/917/JHA on the use of information technology for customs purposes (OJ L 323/20, 10.12.2009, p. 20).

- (8) Union support in the fields of the protection of the financial interests of the Union, of irregularity reporting, and of mutual administrative assistance and cooperation in customs and agricultural matters should be streamlined under a single programme, the EU Anti-Fraud Programme (the "Programme"), with a view to increasing synergies and budgetary flexibility, and to simplifying management.
- (9) The Programme therefore combines a component along the lines of the Hercule programme, another component ensuring the financing of IMS and a third one that finances the activities tasked to the Commission under Regulation (EC) No 515/97, including the AFIS platform.
- (10) This Regulation complies with the principles of added value and proportionality. The Programme should facilitate cooperation among relevant authorities of the Member States and between the Member States, the Commission and other relevant Union bodies, including EPPO, where appropriate, in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, in order to ensure a more effective protection of the financial interests of the Union, as well as the correct application of the law on customs and agricultural matters, without impinging on Member States' responsibilities and 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 in collectively protecting the financial interests of the Union and encourages the use of common Union structures to increase cooperation and information exchange between competent authorities, while supporting reporting of data on irregularities and cases of fraud.
- (11) In addition, supporting the protection of the financial interests of the Union should address all aspects of the Union's budget, both on the revenue and expenditure sides. In this framework, due consideration should be given to the fact that the Programme is the only one to protect the expenditure side of the Union budget.

- (12) 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 [*reference to be updated as appropriate according to the new interinstitutional agreement*: 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 management¹²], for the European Parliament and the Council during the annual budgetary procedure.
- (13) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 of the Treaty on the Functioning of the European Union apply to this Regulation. These rules are laid down in Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council¹³ (the "Financial Regulation") and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes, indirect implementation, and provide for checks on the responsibility of financial actors. Rules adopted on the basis of Article 322 of the Treaty on the Functioning of the European Union also include a general regime of conditionality for the protection of the Union budget.
- (14) The types of financing and the methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. This should include consideration of the use of lump sums, flat rates and unit costs, as well as financing not linked to costs as referred to in Article 125(1) of the Financial Regulation.
- (15) In order to ensure continuity, under the Programme, in the financing of all the activities tasked to the Commission under Regulation (EC) No 515/97, including the AFIS platform, Annex I provides an indicative list of the activities to be financed.

¹² *Reference to be updated*: OJ C 373, 20.12.2013, p. 1. *The agreement is available at*: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2013.373.01.0001.01.ENG&toc=OJ:C:2013:373:TOC.

¹³ OJ L 193, 30.7.2018, p. 1.

- (16) Actions should be eligible on the basis of their ability to achieve the specific objectives of the Programme provided for in Article 2. These may include the provision of special technical assistance for the competent authorities of Member States, such as providing specific knowledge, specialised and technically advanced equipment and effective information technology (IT) tools; ensuring the necessary support and facilitating investigations, in particular the setting up of joint investigation teams and cross border operations; or enhancing staff exchanges for specific projects. Moreover, eligible actions may also include the organisation of targeted specialised training, risk analysis workshops as well as, where appropriate, conferences and studies.
- (17) The purchase of equipment through the Union instrument for financial support for customs control equipment¹⁴ may have a positive impact on the fight against fraud affecting the financial interests of the EU. There is a joint responsibility on the Union instrument for financial support for customs control equipment and the Programme to avoid any duplication in the Union support. The Programme should essentially target its support to the acquisition of types of equipment which do not fall under the scope of the Union instrument for financial support for customs control equipment or equipment for which the beneficiaries are authorities other than the authorities targeted by the Union instrument for financial support for customs control equipment. Moreover, it should be ensured that the funded equipment is appropriate to contribute to the protection of the financial interest of the Union.
- (18) The Programme should be open to participation by countries of the European Free Trade Association (EFTA) which are members in the European Economic Area (EEA). It should also be open to participation by acceding countries, candidate countries and potential candidates, as well as countries covered by the European Neighbourhood Policy, 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 and Association Council decisions, or similar agreements. The Programme should also be open to other third countries provided that they enter into a specific agreement covering the specific conditions of their participation to Union programmes.

¹⁴ [ref]

- (19) Taking into account past evaluations of the Hercule programmes and in order to strengthen the Programme, the participation of legal entities established in a third country which is not associated to the Programme should be exceptionally possible.
- (20) In particular, the participation of entities established in countries which have an association agreement in force with the Union should be encouraged, with a view to strengthening the protection of the financial interests of the Union through cooperation relating to customs and exchange of best practices, particularly as regards ways of combating fraud, corruption and other illegal activities affecting the financial interests of the Union and as regards facing challenges relating to new technological developments.
- (21) 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"¹⁵, as well as the progress report on the implementation of this communication of 12 May 2017¹⁶.
- (22) The Union ratified the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation Framework Convention on Tobacco Control (the Protocol) in 2016. The Protocol should serve to protect the Union's financial interests insofar as it concerns the fight against cross-border illicit tobacco trade, which causes revenue losses. The Programme should support the Secretariat of the World Health Organisation Framework Convention on Tobacco Control in its functions related to the Protocol. It should also support other activities organised by the Secretariat in connection with the fight against illicit tobacco trade.

¹⁵ COM(2013) 324 final.

¹⁶ COM(2017) 235 final.

(23) In accordance with Regulations (EU, Euratom) 2018/1046¹⁷ (the "Financial Regulation"), and (EU, Euratom) No 883/2013 of the European Parliament and of the Council¹⁸ and Council Regulations (Euratom, EC) No 2988/95¹⁹, (Euratom, EC) No 2185/96²⁰ and (EU) 2017/1939²¹, the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities, including fraud, the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, the imposition of administrative penalties. In particular, in accordance with Regulations (Euratom, EC) No 2185/96 and (EU, Euratom) No 883/2013, the European Anti-Fraud Office (OLAF) may carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office (the "EPPO") may investigate and prosecute offences against the financial interests of the Union, as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council²². In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, and the European Court of

¹⁷ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

¹⁸ 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)

¹⁹ OJ L 312, 23.12.1995, p. 1.

²⁰ 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).

²¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

²² Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

Auditors (ECA), and ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (24) Third countries which are members of the European Economic Area (EEA) may participate in Union programmes in the framework of the cooperation established under the Agreement on the European Economic Area²³, which provides for the implementation of the programmes by a decision under that Agreement. Third countries may also participate on the basis of other legal instruments. A specific provision should be introduced in this Regulation to grant the necessary rights for and access to the authorizing officer responsible, OLAF and the ECA to comprehensively exert their respective competences.
- (25) Pursuant to [*reference to be updated as appropriate according to a new decision on OCTs: Article 94 of Council Decision 2013/755/EU*²⁴], persons and entities established in overseas countries and territories are eligible for funding subject to the rules and objectives of the Programme and possible arrangements applicable to the Member State to which the relevant overseas country or territory is linked.
- (26) In order to ensure uniform conditions for the implementation of the Anti-Fraud Programme, implementing powers should be conferred on the Commission. The Commission should adopt work programmes setting out among others the priorities and the evaluation criteria for the grants for actions.
- (27) The maximum possible rate for co-financing for grants should be defined in the present Regulation.

²³ OJ L 1, 3.1.1994, p. 3.

²⁴ Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision) (OJ L 344, 19.12.2013, p. 1).

- (28) Pursuant to paragraphs 22 and 23 of the Interinstitutional agreement for Better Law-Making of 13 April 2016²⁵, there is a need to evaluate this Programme on the basis of information collected through reporting, namely on performance, monitoring and evaluation requirements, while avoiding overregulation and administrative burdens, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the Programme on the ground. Evaluation should be carried out in a timely, independent and objective manner.
- (29) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to develop the provisions for a monitoring and evaluations framework of the Programme. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (30) Article 42a(1) and (2) of Regulation (EC) No 515/97 provide for the legal basis for financing AFIS. This Regulation should replace that legal basis and provide for a new one. Article 42a(1) and (2) of Regulation (EC) No 515/97 should therefore be deleted.
- (31) Regulation (EU) No 250/2014 establishing the Hercule III programme covered the period from 1 January 2014 to 31 December 2020. This Regulation provides for a follow-up to the Hercule III programme, starting from 1 January 2021. Regulation (EU) No 250/2014 should therefore be repealed,

²⁵ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).

([32]) Reflecting the importance of tackling climate change in line with the Union's commitments to implement the Paris Agreement, and the commitment to the United Nations Sustainable Development Goals, the actions under this Regulation should contribute to the achievement of a 30% target of all MFF expenditure spent on mainstreaming climate objectives.

([33]) In accordance with Article 193(2) of Regulation (EU, Euratom) No 2018/1046, a grant may be awarded for an action which has already begun, provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement. However, the costs incurred prior to the date of submission of the grant application are not eligible, except in duly justified exceptional cases. In order to avoid any disruption in Union support which could be prejudicial to Union's interests, it should be possible to provide in the financing decision, during a limited period of time at the beginning of the multi-annual financial framework 2021-2027, and only in duly justified cases, for eligibility of activities and costs from the beginning of the 2021 financial year, even if they were implemented and incurred before the grant application was submitted.

([34]) In order to ensure continuity in providing support in the relevant policy area and to allow implementation as of the beginning of the multi-annual financial framework 2021-2027, it is necessary to provide for the application of this Regulation from the beginning of the 2021 financial year,

HAVE ADOPTED THIS REGULATION:

CHAPTER I GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes the EU Anti Fraud Programme (the "Programme") for the duration of the Multiannual Financial Framework 2021-2027.

It lays down the objectives of the Programme, the budget for the period 2021-2027, the forms of Union funding and the rules for providing such funding.

Article 2

Programme objectives

1. The Programme has the following general objectives:
 - (a) the protection of the financial interests of the Union.
 - (b) support to mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

2. The Programme has the following specific objectives:
 - (a) preventing and combatting fraud, corruption and any other illegal activities affecting the financial interests of the European Union.
 - (b) supporting the reporting of irregularities, including fraud, with regard to the shared management and pre-accession assistance funds of the Union budget.
 - (c) providing tools for information exchange and support for operational activities in the field of mutual administrative assistance in customs and agricultural matters.

Article 3

Budget

1. The financial envelope for the implementation of the Programme for the period 2021–2027 shall be EUR 181.207 million in current prices.
2. The indicative distribution of the amount referred to in paragraph 1 shall be:
 - (a) EUR 114.207 million for the objective referred to in Article 2(2)(a);
 - (b) EUR 7 million for the objective referred to in Article 2(2)(b);
 - (c) EUR 60 million for the objective referred to in Article 2(2)(c).
3. Up to 2% of the amount referred to in paragraph 1 may be used for technical and administrative assistance for the implementation of the Programme, such as preparatory, monitoring, control, audit and evaluation activities, including corporate information technology systems. Moreover, the indicative allocation in point (a) of paragraph 2 takes due account of the fact that the Programme is the only one of its kind addressing the expenditure side of the protection of the financial interests of the Union.

Article 4

Third countries associated to the Programme

The Programme shall be open to the following third countries:

- (a) European Free Trade Association (EFTA) members which are members of the European Economic Area (EEA), in accordance with the conditions laid down in the EEA agreement;
- (b) acceding countries, candidate countries and potential candidates, 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 and association council decisions, or similar agreements, and in accordance with the specific conditions laid down in agreements between the Union and those countries;

- (c) countries covered by the European Neighbourhood Policy, 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 and Association Council decisions, or similar agreements, and in accordance with the specific conditions laid down in agreements between the Union and those countries;
- (d) other third countries, in accordance with the conditions laid down in a specific agreement covering the participation of the third country to any Union programme, provided that the agreement:
 - (i) ensures a fair balance as regards the contributions and benefits of the third country participating in the Union programmes;
 - (ii) lays down the conditions of participation in the programmes, including the calculation of financial contributions to individual programmes and their administrative costs. These contributions shall constitute assigned revenues in accordance with Article 21(5) of the Financial Regulation;
 - (iii) does not confer to the third country a decisional power in respect of the programmes;
 - (iv) guarantees the rights of the Union to ensure sound financial management and to protect its financial interests.

Article 5

Implementation and forms of Union funding

1. The Programme shall be implemented in direct management in accordance with the Financial Regulation or in indirect management with bodies referred to in Article 62(1)(c) of the Financial Regulation.
2. The Programme may provide funding in any of the forms laid down in the Financial Regulation, in particular grants and procurement, as well as the reimbursement of travel and subsistence expenses as provided for by Article 238 of the Financial Regulation.
3. The Programme may provide funding for actions carried out in accordance with Regulation (EC) No 515/97, in particular to cover the types of costs referred to in the indicative list in Annex I.
4. When the action supported involves the acquisition of equipment, the Commission shall, where appropriate, set up a coordination mechanism ensuring efficiency and interoperability between all the equipment purchased with the support of Union Programmes.

Article 6

Protection of the financial interests of the Union

Where a third country participates in the Programme by a decision under an international agreement or by virtue of any other legal instrument, the third country shall grant the necessary rights and access required for the authorising officer responsible, OLAF and the ECA to comprehensively exert their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, as provided for in Regulation (EU, Euratom) No 883/2013.

CHAPTER II

GRANTS

Article 7

Grants

Grants under the Programme shall be awarded and managed in accordance with Title VIII of the Financial Regulation.

Article 8

Co-financing

The co-financing rate for grants awarded under the Programme shall not exceed 80% of the eligible costs. Any funding in excess of that ceiling shall only be granted in exceptional and duly justified cases, defined in the work programmes referred to in Article 11, and shall not exceed 90% of the eligible costs.

Article 9

Eligible actions

Only actions implementing the objectives referred to in Article 2 shall be eligible for funding:

Without prejudice to any other action provided by the work programmes under Article 11, the following actions may be considered eligible for funding:

- (a) providing technical knowledge, specialised and technically advanced equipment and effective IT tools enhancing transnational and multidisciplinary cooperation and cooperation with the Commission;
- (b) enhancing staff exchanges for specific projects, ensuring the necessary support and facilitating investigations, in particular the setting up of joint investigation teams and cross border operations;

- (c) providing technical and operational support to national investigations, in particular to customs and law enforcement authorities to strengthen the fight against fraud and other illegal activities;
- (d) building IT capacity throughout the Member States and third countries, increasing data exchange, and developing and providing IT tools for investigation and monitoring of intelligence work;
- (e) organising specialised training, risk analysis workshops, conferences and studies aimed at improving cooperation and coordination among services concerned with the protection of the financial interests of the Union;
- (f) any other action, provided by the work programmes under Article 11, which is necessary for attaining the general and specific objectives provided for in Article 2.

When the action supported involves the acquisition of equipment, the Commission shall ensure that the funded equipment is appropriate to contribute to the protection of the financial interest of the Union.

Article 10

Eligible entities

1. The eligibility criteria set out in paragraph 2 shall apply in addition to the criteria set out in Article 197 of the Financial Regulation.
2. The following entities are eligible:
 - (a) public authorities which may contribute to achieving one of the objectives referred to in Article 2 and are established in any of the following countries:
 - (i) a Member State or an overseas country or territory linked to it;
 - (ii) a third country associated to the Programme;
 - (iii) a third country listed in the work programme under the conditions specified in paragraph 3.

- (b) research and educational institutes and non-profit-making entities which may contribute to the achievement of the objectives referred to in Article 2, provided that they have been established and have been operating for at least one year in a Member State, or a third country associated to the Programme, or a third country listed in a work programme under the conditions specified in paragraph 3.
 - (c) any legal entity created under Union law or any international organisation.
3. Entities referred to in paragraph 2 established in a third country which is not associated to the Programme are exceptionally eligible to participate where this is necessary for the achievement of the objectives of a given action.
 4. Entities referred to in paragraph 3 shall in principle bear the cost of their participation, except in cases duly justified in the work programme.

CHAPTER III

PROGRAMMING, MONITORING, AND EVALUATION

Article 11

Work programme

In order to implement the Programme, the Commission shall adopt work programmes referred to in Article 110 of the Financial Regulation.

Article 12

Monitoring and reporting

1. Indicators to report on progress of the Programme towards the achievement of the general and specific objectives set out in Article 2 are set in Annex II.
2. To ensure effective assessment of progress of the Programme towards the achievement of its objectives, the Commission is empowered to adopt delegated acts, in accordance with Article 15, to amend Annex II to review or complement the indicators where considered necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.

3. The Commission shall report on the performance of the programme annually to the European Parliament and to the Council in the framework of the PIF Report.

In the framework of the discussions thereon, the Parliament may make recommendations for the annual Anti-Fraud Work Programme. The Commission shall duly take these recommendations into account.

3. The performance reporting system shall ensure that data for monitoring programme implementation and results are collected efficiently, effectively, and in a timely manner. To that end, proportionate reporting requirements shall be imposed on recipients of Union funds and, where relevant, on the Member States.

Article 13

Evaluation

1. When conducting the evaluations, the Commission shall ensure that the evaluation is independent, objective and timely and that the evaluators carry out their work free from any attempt to influence them.
2. The interim evaluation of the Programme shall be performed once there is sufficient information available about the implementation of the Programme, but no later than four years after the start of the programme implementation.
3. At the end of the implementation of the Programme, but no later than four years after the end of the period specified in Article 1, a final evaluation of the Programme shall be carried out by the Commission.
4. The Commission shall communicate the conclusions of the evaluations, accompanied by its observations, to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Court of Auditors, and publish them on the Commission's website.

Article 14

Delegation of power

The Commission is empowered to adopt delegated acts in accordance with Article 15 to develop the provisions for a monitoring and evaluations framework as provided for in Article 12.

Article 15

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 14 shall be conferred on the Commission until 31 December 2028.
3. The delegation of power referred to in Article 14 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 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 at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 14 shall enter into force only if no objection has been expressed either by the European Parliament or by 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
TRANSITIONAL AND FINAL PROVISIONS

Article 16

Information, communication and publicity

1. The recipients of Union funding shall acknowledge the origin and ensure appropriate visibility of the Union funding (in particular when promoting the actions and their results) by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public. Acknowledging the origin, and ensuring visibility, of the Union funding shall not be required where there is a risk of compromising the effective performance of anti-fraud and customs operational activities.
2. The Commission shall on a regular basis implement information and communication actions relating to the Programme, and its actions and results. Financial resources allocated to the Programme shall also contribute to the corporate communication of the political priorities of the Union, as far as they are related to the objectives referred to in Article 2.

Article 17

Amendment of Regulation (EC) No 515/97

In Article 42a of Regulation (EC) No 515/97, paragraphs 1 and 2 are deleted.

Article 18

Repeal

Regulation 250/2014 is repealed with effect from 1 January 2021.

Article 19

Transitional provisions

1. This Regulation shall not affect the continuation or modification of the actions concerned, until their closure, under Regulation 250/2014 and under Article 42a of Regulation (EC) No 515/97, which shall continue to apply to the actions concerned until their closure.
2. The financial envelope for the Programme may also cover technical and administrative assistance expenses necessary to ensure the transition between the Programme and the measures adopted under Regulation 250/2014 and under Article 42a of Regulation (EC) No 515/97.
3. In accordance with point (a) of the second subparagraph of Article 193(2) of Regulation (EU, Euratom) No 2018/1046, in duly justified cases specified in the financing decision and for a limited period, activities supported under this Regulation and the underlying costs may be considered eligible as of 1 January 2021, even if they were implemented and incurred before the grant application was submitted.

Article 20

Entry into force

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

It shall apply from 1 January 2021.

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President

Indicative list of the types of costs that the Programme will fund for actions carried out in accordance with Regulation (EC) No 515/97:

- (a) all costs of installing and maintaining the permanent technical infrastructure making available to the Member States the logistical, office automation and IT resources to coordinate joint customs operations and other operational activities;
- (b) the reimbursement of travel and subsistence expenses, as well as any other indemnities where appropriate, of representatives of the Member States and, where appropriate, representatives of third countries, taking part in the Community missions, joint customs operations organised by or jointly with the Commission and training courses, ad hoc meetings and preparatory and evaluation meetings for administrative investigations or operational actions conducted by the Member States, where they are organised by or jointly with the Commission;
- (c) expenditure relating to the acquisition, study, development and maintenance of computer infrastructure (hardware), software and dedicated network connections, and to related production, support and training services for the purpose of carrying out the actions provided for in Regulation (EC) No 515/97, in particular preventing and combating fraud;
- (d) expenditure relating to the provision of information and expenditure on related actions allowing access to information, data and data sources for the purpose of carrying out the actions provided for in Regulation 515/97, in particular preventing and combating fraud;
- (e) expenditure relating to use of the Customs Information System provided for in instruments adopted under Article 87 of the Treaty on the Functioning of the European Union and in particular in Decision 2009/917/JHA on the use of information technology for customs purposes, in so far as those instruments provide that that expenditure shall be borne by the general budget of the European Union.
- (f) expenditure relating to the acquisition, study, development and maintenance of the Union components of the common communication network used for the purposes of point (c).

INDICATORS FOR THE MONITORING OF THE PROGRAMME

The Programme will be monitored closely on the basis of a set of indicators intended to measure the extent to which the general and specific objectives of the Programme have been achieved and with a view to minimising administrative burdens and costs. To that end, data will be collected as regards the following set of key indicators:

Specific Objective 1: Preventing and combating fraud, corruption and any other illegal activities affecting the financial interests of the Union.

Indicator 1: Support in preventing and combatting fraud, corruption and any other illegal activities affecting the financial interests of the EU, as measured by:

1.1: Satisfaction rate of activities organised and (co-)financed through the programme.

1.2: Percentage of Member States receiving support each year of the Programme.

Specific Objective 2: Supporting the reporting of irregularities, including fraud, with regard to the shared management and pre-accession assistance funds of the Union budget.

Indicator 2: User satisfaction rate for the use of Irregularities Management System.

Specific Objective 3: Providing tools for information exchange and support for operational activities in the field of mutual administrative assistance in customs matters.

Indicator 3: Number of mutual assistance information made available and number of supported mutual assistance-related activities.