

Protection of the financial interests of the European Union: Hercule III programme (2014-2020)

2011/0454(COD) - 19/12/2011 - Legislative proposal

PURPOSE: to establish the programme "Hercule III" to fight fraud, corruption and any other illegal activities affecting the financial interests of the Union.

BACKGROUND: Decision 804/2004/EC established the Hercule I programme and Decision 878/2007/EC extended this programme over the period 2007 to 2013, as Hercule II. The latter placed specific emphasis on the fight against cigarette smuggling and counterfeiting to reflect the legal obligations of the Commission stemming from the Anti-Contraband and Anti-Counterfeiting Agreement with Philip Morris International signed in 2004. It was the first of the agreements signed with international cigarette manufacturers under which, in recognition of more than US\$ 2 billion to be paid by them into national and the Union Budgets over periods of up to 20 years, the Commission and Member States agreed that European efforts to suppress the illegal traffic in tobacco products would be enhanced. The annual provision for Hercule was duly increased from 2007.

As the legal basis for Hercule II will expire at the end of 2013, its replacement should ensure the continuity of European support for the activities carried out by the Commission and Member States in providing better information, carrying out studies and providing training or technical and scientific assistance in the fight against fraud.

Under the Treaty on the Functioning of the EU, the protection of the Union's financial interests against fraud, corruption and any other illegal activities affecting the financial interests of the Union is a shared responsibility between the Commission and Member States.

The Hercule III programme concerns this specific sphere of activity of the Commission and its cooperation with Member States' competent authorities, as well as with the other European institutions and bodies, particularly OLAF.

It is essential that there should continue to be an instrument specifically dedicated to fighting fraud, corruption and any other illegal activities affecting the financial interests of the Union.

IMPACT ASSESSMENT: the Commission carried out an impact assessment. Four options, with their impact on the budget, were considered.

- **Option 1:** to continue the programme with the same level of funding (baseline scenario);
- **Option 2:** to renew the Hercule programme with improved objectives and a better methodology, including in particular a higher maximum rate of co-financing for technical support such as the procurement of equipment;
- **Option 3:** to significantly alter the distribution between the different spending objectives and put much greater support on operational and law enforcement activities;
- **Option 4:** discontinue the Hercule programme, with the possibility of continuing some actions under other Union co-financing programmes and/or to leave other actions to the Member States.

In view of the past experience, the **option to renew the programme with improved objectives and a better methodology is the preferred option** (option 2) with a budgetary envelope in real prices which

remains similar to the current envelope (approximately EUR 15 million per year). In contrast, Option 3 would result in an imbalance to the detriment of specific support for actions of prevention and detection of fraud and it might lead to confusion with regard to the attribution of responsibilities between Member States and the European Union. Member States are primarily responsible for the fight against fraud. Discontinuing the programme would reduce expenditure at Union level, without creating real economies and offsetting resources at national level or in the framework of another Union programme.

LEGAL BASIS: Article 325 TFEU.

CONTENT: this proposal establishes the Hercule III programme to promote activities against fraud, corruption and any other illegal activities affecting the financial interests of the Union. This objective shall be measured, *inter alia*, through the amount of recoveries following fraud cases detected by joint actions and cross border operations, the increased percentage of successful joint operations, and the increased number of cases accepted by the criminal investigative authorities.

The Programme shall run from 1 January 2014 to 31 December 2020.

Purpose: the aims are to:

- target exclusively the protection of the financial interests of the Union, in the context of a long term vision which is coherent with other Union objectives, on the basis of the priorities defined each year for this specific field of expertise;
- allow the implementation of other Union programmes to focus on priorities other than the protection of the financial interests;
- fully take into account the results of the actions already co-financed in the past in this field, including in terms of targeted beneficiaries and geographical balance;
- have direct impact on not only some Member States investigations, but also on OLAF investigations.

Added value: 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. An increased effectiveness of the cross-border operations is expected on the basis of common technical standards and joint training.

The Programme shall contribute to:

- 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;
- an increased transnational cooperation at the Union level and in particular to the effectiveness of the cross-border operations;
- 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, regional administrations and to other stakeholders.

Bodies eligible for funding: these are (i) national or regional administrations of a Member State or a third country which promote the strengthening of action at Union level to protect the Union's financial interests;

(ii) 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.

Eligible actions: the Programme shall provide financial support for the following actions:

(a) Provision of specialised technical assistance for national authorities through:

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

(b) Organisation of specialised training, and risk analysis training workshops, as well as conferences, aimed at:

- further fostering better understanding of Union and national mechanisms;
- exchanging experience between the relevant authorities in Member States, and third countries as well as representatives of international organisations, including specialised law enforcement services;
- coordinating the activities of Member States, third countries, and international public organisations;
- disseminating knowledge, particularly on better identification of risk for investigative purposes;
- developing high-profile research activities, including studies;
- improving cooperation between practitioners and academics;
- further raising the awareness of the judiciary and other branches of the legal profession for the protection of the financial interests of the Union.

(c) Any other action, provided by the annual work programmes, which is necessary for attaining the general and specific objectives provided for in the text.

BUDGETARY IMPLICATIONS: the programme will cover the period 2014-2020, and the overall budgetary envelope is EUR 110 000 000 in current prices. This amount is in line with the Commission's Communication on the next Multi-Annual financial framework for the period 2014-2020: "A Budget for Europe 2020".