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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a European Parliament and Council Regulation

**on the Hercule III programme to promote activities in the field of the protection of the
European Union's financial interests**

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This report commits only the Commission's services involved in its preparation and does not prejudice the final form of any decision to be taken by the Commission.

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Executive summary of the Impact Assessment on the Hercule programme

1. Policy context and contribution to EU priorities

The Hercule programme is the only instrument specifically dedicated to fighting fraud, corruption and any other illegal activities affecting the financial interests of the Union. It is administered by OLAF.

The Treaty provides for the principle of effective and equivalent protection of EU financial interests across the Member States and EU institutions and close cooperation in the achievement of that objective.

Spending under Hercule II over 2007/2013 is €98.5 million. The proposal is to continue this spending under Hercule III at the present rate of €15 million annually.

Hercule II spending is divided between:

1. Technical assistance (60%)
2. Specialist antifraud training (35%)
3. Support of the Associations for European Criminal Law and the Protection of the EU Financial Interests (European Lawyers associations, ELA) (5%)

In addition, a minimum of €6 million annually must be spent from within 1 and 2 above on the suppression of the illegal cigarette trade. This reflects consistency with the specific anti-fraud, anti-smuggling and anti-counterfeiting objectives subscribed to in the Agreements with 4 major international cigarette manufacturers under which the latter will pay US\$ 2.3 billion into national and EU budgets over a 20 year period.

2. Consultation of interested parties

The impact assessment reflects consultation with stakeholders, especially in Member State operational services, other Commission services and other EU bodies; and also OLAF's operational experience and OLAF's experience with the management of the programme. It incorporates material from the intermediate review on the achievement of the objectives of Hercule II programme completed in late 2010.

3. Problem definition and intervention logic

Scale

The Commission's annual report under Article 325 on the protection of the financial interests for 2010 emphasises the need for further action to deal with fraud. The Commission's Anti-Fraud Strategy addresses this need and underlines the importance of the Hercule programmes. Statistics in the Article 325 report and in OLAF's independent operational report give an indication of the scale of fraud and of OLAF's caseload. The overall financial impact of reported irregularities for 2010 was €1.8 billion of which suspected instances of fraud accounted for €0.5 billion (out of an amount of €141 billion spent and approximately €17 billion of customs duties on the traditional own resources (income) side). OLAF completed

more than 1500 of its own investigations between 1999 and 2011 (360 are currently ongoing) leading to a recovery of more than one billion € via OLAF investigations on fraud cases and other irregularities until mid 2011.

Fraud has significant financial consequences, and negative social and economic effects. It also involves reputational risk to the EU project.

Drivers

The impact assessment identifies 5 key drivers which Hercule III should address:

1. Fraudsters adapt quickly to new circumstances at EU level, operate across borders and exploit the weakest points.
2. The Commission and the Member States have committed themselves to intensify the fight against cigarettes smuggling.
3. Pressures on public finance require increase in the cost-efficient protection of EU financial interest through improved detection and prevention.
4. The large number and varied nature of competent authorities in Member States and candidate or associated countries. The vast majority of resources available to fight EU budget fraud are at national not EU levels.
5. Differences in incentives and capacities between Member States impede equivalence in the protection of financial interests.

Problems

Under each driver, specific problems are identified. These include deficiencies in specialist knowledge and technical equipment, the changing threat from organised crime, lack of public confidence, lack of awareness of EU fraud, inadequate risk analysis and information sharing, inadequate capacity of national competent authorities to cooperate with each other and with OLAF, incompatibility of technical and communication equipment, the absence of a uniform administrative and judicial environment to investigate and prosecute fraudsters, and gaps in the skills and sharing of best practice among national authorities.

4. Programme objectives

The general objective is to protect the financial interest of the Union thus enhancing the competitiveness of the European economy and ensuring the protection of the taxpayers' money".

The specific objective of the programme is to prevent and combat fraud, corruption and any other illegal activities against the financial interests of the Union.

Further operational objectives have been defined in the annex to the regulation.

5. Subsidiarity and EU added value

The Treaty (Articles 317, 325 TFEU) makes the Commission in cooperation with the Member States responsible for the implementation of the budget and the countering of fraud. The latter is a policy of shared competence of the EU. Therefore the EU has a specific responsibility to

foster close and regular cooperation between all competent authorities by granting assistance and support. Furthermore, some Hercule actions take place at the level of the EU Institutions.

Clear added value is obtained from facilitating cooperation between Member States authorities, from cost savings from joint procurement, and through strengthening weak points where national authorities are particularly exposed to criminal action organised from the territory of neighbouring countries. There are also benefits to national finances in as much as many of the EU expenditure is spent under a regime of co-financing and smuggling frequently has detrimental effects both on the customs duties and on national (indirect) taxes. The programme addresses the problem of the lack of incentive for some Member States to deal with issues which have little impact on their own finances but which impact negatively on the EU-budget or on the national budgets of other Member States, particularly in times of budgetary stringency (e.g. cigarette smuggling and counterfeiting).

Also, the programme fosters networking and exchange of best practice between Member States' administrations, and improves compliance with EU law, by training national specialists in joint events attended by many nationalities.

6. Description of Policy Options

The baseline scenario is continuation of the status quo (option 1).

Option 2 would build on the status quo, but improving the methodology of the programme, notably by raising maximum co-financing ceilings so as to address the growing problems of matching finance in Member States, which is particularly important if protection in geographical zones which are particularly at risk and weak points in EU defences against fraud are to be strengthened.

Option 3 would be a radical shift towards the support of immediate operational activities at the expense of longer term objectives such as increased compliance, better information exchange, and the development of legal thought on EU-wide criminal law issues affecting protection of EU funds.

Option 4 is to discontinue the programme.

Two other options have not been further taken into account:

- An option to increase spending above present levels is rejected as inconsistent with the Multiannual Financial Framework planning as proposed by the Commission in its communication (COM(2011)500 'A Budget for Europe 2020'.
- An option to combine the programme with Pericles (protection against counterfeiting of the euro) is not viable because the respective legal bases foresee different legislative procedures for the adoption (see Articles 133 and 325 TFEU respectively).

7. Analysis of impacts by option

The impact of the options is analysed by first examining the impact achieved under Hercule II (baseline, option 1) and then by comparing the impact which the other options would have.

The discussion of option 4 considers the effect of discontinuation by sector of the programme and therefore also serves as a basis for considering possible changes in the distribution of spending between sectors. Option 4 is rejected because the cost in terms of reduced effectiveness and efficiency in the fight against fraud would greatly exceed the financial savings. The possibility of transferring some actions to other EU programmes is rejected because of the inevitable loss of focus on EU Budget protection.

Option 3 would have as its undesirable possible effect to generate a disbalance in the overall anti-fraud approach at an EU-level. In accordance with the Commission Anti-Fraud Strategy (CAFS, COM (2011) 376) a distinct effort needs to be maintained and even further developed on specific actions aimed at the prevention and detection of fraud, including an improved exchange of best practices and training.

The preferred choice is therefore Option 2 (basically an improved status quo). This would permit a more cautious move than under Option 3 to be made towards more emphasis on operational support, if it is so decided in the light of developing circumstances and stakeholder views.

8. Links with other post 2013 initiatives

Other initiatives in the areas of law enforcement and Customs cooperation will have positive indications for the protection of EU financial interests. Equally, initiatives under Hercule will have positive implications for other law enforcement, customs and security policies; a scanner provided primarily to detect illicit cigarette consignments can also identify other illicit consignments with revenue, criminal or security implications.

Nevertheless these initiatives follow distinct policy objectives and may not continuously support specific anti-fraud actions. It is indeed essential to maintain the focus of a programme targeted specifically at the protection of financial interests at EU level to allow for specialised projects aimed at improving fraud prevention, detection and investigation, including projects which require multidisciplinary involvement of services which belong to different administrations. Anti-fraud is a multidisciplinary objective requiring an effective and transnational cooperation between many different partner authorities.

The necessary coordination has taken place between OLAF and other DGs to avoid overlap or confusion between programmes.

9. Simplification and reduction of the administrative burden

Some technical improvements are suggested to reflect experience and consultations in accordance with the rules under the Financial Regulation, such as more flexible procedures for the financing of projects below a certain ceiling (50 000 €), reduced requirements in terms of breakdown of costs and estimates, the use of simplified requirements for application as well as for reporting on outcomes, and an increased use of working groups to accelerate feed back and improve the targeting of the spending.

10. Monitoring and evaluation

There will be annual and mid-term evaluations. OLAF officials attend many of the events financed in order to ensure proper monitoring of the quality and the target oriented character of the actions. This provides an adequate ex-ante control of the financing of the projects and is an important aspect of the implementation of the mandate of the Commission (OLAF) to assist Member States in the organisation of a close and regular cooperation. Output data and feedback will be systematically collected and analysed. SMART indicators will be developed wherever possible to measure the impact of actions under the programme. Where this is not possible because of the nature of the action, for example for some training actions, there will be close monitoring of quality and of output indicators.

The re-organisation of OLAF early in 2012 will reinforce OLAF's capacity to manage and evaluate the Hercule programme.