



EUROPEAN PARLIAMENT

2009 - 2014

---

*Committee on Budgetary Control*

---

30.3.2012

## **WORKING DOCUMENT**

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

Committee on Budgetary Control

Rapporteur: Iliana Ivanova

In December 2011, the Commission approved a proposal for a Regulation on the Hercule III programme to promote activities in the field of the protection of the EU financial interests<sup>1</sup> (hereafter Hercule III). Parliament is now requested to adopt this proposal under the ordinary legislative procedure.

The Rapporteur welcomes the continuation of Hercule III. Hercule is the only programme specifically dedicated to protect the financial interests of the EU and is entirely managed by the European Anti-fraud Office (OLAF).

## **1. Community programme Hercule and its funding: earmarking and coordination**

Hercule III represents the “third phase” of Hercule I, the Community programme established by Decision 804/2004/EC<sup>2</sup> of the European Parliament and of the Council covering period 2004 - 2006, and amended in 2007 by Hercule II in force until December 2013<sup>3</sup>. Initial total budget of Hercule I was EUR11,8 million and covered only grants targeting law enforcement authorities and bodies working in the field of the protection of the financial interests of the Union, such as universities, lawyers associations, and public authorities of the Member States (MSs) or other countries covered by the legal basis.

In 2006, the Commission decided to amend Decision 804/2004/EC, in order to take into account the evaluation of the implementation of the “first phase” of the Community programme<sup>4</sup> and to allow the expenditure of additional funding provided by the Anti-contraband and anti-counterfeit agreement signed in July 2004 by the Commission, 10 MSs, and Philip Morris International (PMI agreement)<sup>5</sup>.

The 12 years agreement with Philip Morris provides for payments by PMI of up to USD 1,25 billion over the lifetime of the agreement<sup>6</sup> (Programme Hercule II served for the first time as a legal basis to finance activities aimed at combating fraud and illicit cigarette trade. In addition, cooperation agreements were concluded also with Japan Tobacco (JTI) in December 2007, with British American Tobacco (BAT), in July 2010 and with Imperial Tobacco limited (ITL), in September 2010. The four manufacturers will pay a collective total of USD 2.15 billion over 20 years, of which 10% is paid to the Commission and the rest goes to the MSs.

In this regard, Hercule III will continue to serve as the basic act also for the expenditures relating to the fight against cigarette smuggling. This objective will receive an important part of the total budgetary envelope, which increased now from EUR98,6 million to EUR 110 million. This

---

<sup>1</sup> COM(2011) 914 of 19.12.2011

<sup>2</sup> OJ L 143, 21.04.2004, p.9

<sup>3</sup> OJ L 193, 25.07.2007, p.18

<sup>4</sup> SEC(2006)826 of 28.6.2006

<sup>5</sup> [http://ec.europa.eu/anti\\_fraud/documents/cigarette-smugg-2004/agreement\\_2004.pdf](http://ec.europa.eu/anti_fraud/documents/cigarette-smugg-2004/agreement_2004.pdf)

<sup>6</sup> The Commission received 9,7% of the financial envelope of the PMI agreement, the rest went un-earmarked to the MSs.

legal and financial framework leaves open several questions, which should be addressed in the context of the adoption of Hercule III.

First: the potential earmarking of the financial envelop and the application of the principle of universality<sup>7</sup>. OLAF and the Commission consider that the principle of universality is applied stating that Hercule III's money "may" be devoted to activities in the field of the fight against cigarette smuggling and counterfeiting. The Rapporteur acknowledges this position, but considers that the importance of this anti-fraud objective should call for an open debate with all relevant institutions.

Second: the sustainability of the funding of anti-smuggling initiatives after the expiration of the tobacco's agreements, in particular the PMI agreement, is not fully explained by the Commission. The Rapporteur considers that anti-fraud efforts funded in this field, through EU money, should create synergies with other national initiatives, so to improve the long-term impact of the spending.

Third: the way of coordinating the initiatives in the field of the fight against cigarettes smuggling and counterfeiting at EU and national level is not sufficiently clear. At EU level there are potential overlaps between Hercule and Fiscal 2013 programmes, which should be further assessed. At national level, it will be very useful to understand how the MSs have been spending their own money coming from the Tobacco manufacturers under the several agreements signed together with the Commission. Hercule III should offer clear basis for the expenditures in the MSs.

## **2. The assessment of the programme: key performance and result indicators**

The decision to favour the continuation of Hercule partly depends on the assessment of the current programme. The assessment is carried out efficiently when specific and measurable performance indicators are clearly defined in the legal basis. The question is now to understand what kind of improved key performance indicators Hercule III needs, and therefore if its objectives, activities, and expected outputs shall be adjusted consequently.

In 2011 the Commission adopted two important documents: the Impact assessment and the Intermediate Review of the Hercule II objectives<sup>8</sup>. Both convey overall positive analysis and feedback from the beneficiaries and OLAF staff in charge of the programme management, and the Rapporteur welcomes this overall positive achievement. However, the reports raise some questions about the indicators, which shall also be used again for Hercule III, or even improved.

The "result indicators" of specific objectives of Hercule III, are the amount of recoveries, the increased percentage of joint operations, and the increased number of cases accepted by the

---

<sup>7</sup> On 26 March 2012 OLAF sent to the Rapporteur a note explaining why the earmarking should not be a problem.

<sup>8</sup> Updated Intermediate Review on the achievement of the objectives of the Hercule II programme

criminal investigative authorities. The Rapporteur considers that these indicators can be applicable to the technical assistance sector, but are not sufficient to assess the activities funded under the “training and conference” sector. The 2011 Impact assessment accompanying the proposal on Hercule III<sup>9</sup> reports that about 60% of the total annual envelop is spent for technical assistance measures, whereas the remaining 40% covers projects relating to the anti-fraud training and conferences. The “indicators for monitoring implementation of the proposal” regarding “training and conferences” need further development since “quantitative outputs” does not necessarily mean “qualitative results”. Specific (SMART) performance and result indicators should therefore be better identified in the proposal.

As far as the outputs of the current programme are as stated in the 2011 Intermediate report, there is sufficient ground to salute the continuation of the programme until 2020. However, the Rapporteur would like to carry out an extensive study about the implementation of the programme, on the basis of the information just transmitted by OLAF<sup>10</sup>, so to suggest, where relevant, concrete recommendations for improvement and amendments of Hercule III could be done. In addition, taking note of the impact assessment’s outcomes, she would like to access – insofar this is not confidential information - the feedback from the stakeholders involved.

### **3. Programme management and evaluation: need for better harmonisation?**

The Rapporteur started her analysis by collecting all relevant information about the current programme and its implementation<sup>11</sup>. Hercule III states, indeed, that the Commission shall provide annual information on the results of the programme to Parliament and Council. In addition, all participating countries shall provide the Commission with all the data and information necessary for the monitoring and the evaluation of the programme. This would be also in line with a transparent and sound financial management of EU money.

The Rapporteur found information about the implementation of many of the Hercule initiatives, however not all “funding sectors” in OLAF were releasing relevant data in the same way. The different approach may derive from the fact that until this year, different Units were managing their own parts of the programme. On 1<sup>st</sup> February 2012, a Unit is operational at OLAF in order to coordinate the management of all actions relating to Community programmes in the field of the protection of the financial interests and the euro. The Rapporteur was informed by OLAF about the creation of a new internal database, which shall collect and process all information about the execution of the OLAF Community programmes. She welcomes both initiatives since they will have a positive impact on the

---

<sup>9</sup> SEC(2011)1610 of 19.12.2011.

<sup>10</sup> On 26 March, the Rapporteur received information about the execution of the Hercule II programme.

<sup>11</sup> See [www.europa.eu/anti-fraud/index\\_en.html](http://www.europa.eu/anti-fraud/index_en.html)

improvement of the Hercule III general management and on the transparency of the programme.

In particular, the creation of a specific OLAF Unit should also improve the consolidation of a harmonized implementation procedure among all funding sectors. This shall mean that all relevant information about the implementation of the programme should be made available on the website in the same way, on specific deadlines: annual work programme, calls for proposals, information about the beneficiaries and the contracts / grants awarded. Concerning Hercule II, the Rapporteur congratulates the Office for the information released on training and conference, and hopes that for the technical assistance also similar information will be released in a consistent manner and on time. In particular, she hopes that information about technical assistance aiming at combating cigarette smuggling and counterfeiting will be made public in the same way. Lack of transparency or late release of information may harm equal opportunities among potential beneficiaries, and it is contrary to the principle of sound management of EU funds.

#### **4. From Hercule I to Hercule III**

Hercule I and Hercule II were established through a “decision” of the European Parliament and the Council. Hercule III will be created through a “regulation”. The Rapporteur welcomes the initiative, which is aimed at harmonising among all services of the Commission the basic acts linked to the “direct expenditures”, through a regulation. This approach will bring clarity and transparency. In addition, the Rapporteur considers the main feature of the Commission Anti-Fraud Strategy (CAFS)<sup>12</sup> a valuable step forward in the protection of the financial interests of the Union: “fraud-prevention” deserves as much attention as “fight against fraud”. Hercule III matches this concern<sup>13</sup>.

After an analysis of all relevant documentation available on Hercule I and II the Rapporteur intends to draft a Second Working Document on the legislative proposal, which aims at addressing potential red flags and looking for solutions to answer the challenges ahead.

---

<sup>12</sup> COM(2011) 376 final of 24.6.2011

<sup>13</sup> See in particular Art. 12 of the Hercule III proposal.