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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council on the Hercule III programme to promote activities in the field of the protection of the European Union's financial interests (COM(2011)0914 – C7-0513/2011 – 2011/0454(COD))

Committee on Budgetary Control

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on the Hercule III programme to promote activities in the field of the protection of the European Union's financial interests
(COM(2011)0914 – C7-0513/2011 – 2011/0454(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0914),
 - having regard to Article 294(2) and Article 325 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0513/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the Court of Auditors of 15 May 2012¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Budgets (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 201, 7.7.2012, p. 1.

Amendment 1

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) To continue and even develop the activities at Union and Member State level 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 should be adopted.

Amendment

(5) To continue and even develop the activities at Union and Member State level 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 should be adopted. ***Sufficient flexibility should be provided for the level of co-financing in cases of vulnerable and high-risk Member States.***

Or. en

Amendment 2

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) The Commission should present to the European Parliament and to the Council an independent interim report on the implementation of this Programme, as well as a final report on the achievement of the objectives of this programme.

Amendment

(9) The Commission should present to the European Parliament and to the Council an independent interim report on the implementation of this Programme, as well as a final report on the achievement of the objectives of this programme. ***Furthermore, the Commission should provide, on a yearly 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 other***

programmes and activities at Union level.

Or. en

Justification

In order to improve transparency the Commission should provide the European Parliament with sufficient information on the annual implementation.

Amendment 3

Proposal for a regulation

Recital 10a (new)

Text proposed by the Commission

Amendment

(10a) 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 in accordance with Regulation (EU) No XXXX/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union;

Or. en

Justification

A special standard clause should be included in the legislative act.

Amendment 4

Proposal for a regulation

Recital 12

Text proposed by the Commission

Amendment

(12) The Commission should adopt the annual work programmes setting out the

(12) The Commission should adopt the annual work programmes setting out the

priorities, the budget breakdown and the evaluation criteria for the grants for actions. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission.

priorities, the budget breakdown and the evaluation criteria for the grants for actions. ***Specific key performance indicators should be developed by the Commission. These indicators should include target levels and baselines in order to assess the achieved results.*** In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission.

Or. en

Justification

Measurable indicators should be developed by the Commission in order to measure the results.

Amendment 5

Proposal for a regulation Article 2 - point b

Text proposed by the Commission

(b) an increased transnational cooperation at the Union level and in particular to the effectiveness of the cross-border operations;

Amendment

(b) an increased transnational cooperation ***and coordination*** at the Union level and in particular to the effectiveness ***and efficiency*** of the cross-border operations;

Or. en

Amendment 6

Proposal for a regulation Article 2 - point ba (new)

Text proposed by the Commission

Amendment

(ba) an increased transparency of the use of the funds relating to the protection of the financial interests of the Union, including the fight against cigarette

smuggling and counterfeiting;

Or. en

Amendment 7

Proposal for a regulation Article 3

Text proposed by the Commission

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

Amendment

The general objective of the Programme shall be to protect the financial interest of the Union thus enhancing the competitiveness of the European economy, ***the cooperation between the Member States and the Commission*** and ensuring the protection of the taxpayers' money.

Or. en

Justification

The cooperation between Member States and the Commission should be increased.

Amendment 8

Proposal for a regulation Article 4 - paragraph 1a (new)

Text proposed by the Commission

Amendment

Key performance indicators, including target levels and baselines, shall be developed by the Commission in order to assess the effectiveness of the programme, and in particular its specific objective.

Or. en

Justification

Measurable indicators should be developed by the Commission in order to measure the results.

Amendment 9

Proposal for a regulation Article 4 - paragraph 2

Text proposed by the Commission

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.

Amendment

The specific objective shall be measured ***taking into account the key performance indicators***, inter alia, through the amount of ***seizures, confiscations and*** recoveries following fraud cases detected by joint actions and cross border operations, the increased percentage of successful joint operations, the increased number of cases accepted by the criminal investigative authorities ***and the increased number of specialised training***.

Or. en

Justification

Measurable indicators should be developed by the Commission in order to measure the results.

Amendment 10

Proposal for a regulation Article 4a (new)

Text proposed by the Commission

Amendment

Article 4a

Operational objectives of the Programme

The operational objectives of the Programme shall be the following:

(a) to improve the prevention and investigation of fraud and other illegal activities beyond its currently reached 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 exposure of the financial interests of the Union to fraud, corruption and other illegal activities, as compared to the level of exposure known today, with a view to reducing the development of an illegal economy in key risk areas such as organised fraud, smuggling and counterfeiting, especially of cigarettes;

(e) to enhance the degree of development of the specific legal and judicial protection of the financial interests against fraud by promoting comparative law analysis.

Or. en

Justification

This text is better placed in the articles than in an annex.

Amendment 11

Proposal for a regulation Article 6 - paragraph 3

Text proposed by the Commission

3. Representatives of countries forming part of the stabilisation and association process for countries of South-Eastern Europe, the Russian Federation, and certain countries with which the Union has concluded an agreement for mutual assistance in fraud related matters, **and**

Amendment

3. Representatives of countries forming part of the stabilisation and association process for countries of South-Eastern Europe, the Russian Federation, and certain countries **and representatives of international public organisations** with which the Union has concluded an

representatives of international and other relevant organisations, may take part in activities organised under the Programme wherever this is useful for the achievement of the objectives referred to in Articles 3 and 4. These representatives shall be *chosen on the basis of their skills, experience and knowledge relevant to the specific activities*.

agreement for mutual assistance in fraud related matters, may take part in activities organised under the Programme wherever this is useful for the achievement of the objectives referred to in Articles 3 and 4. *The participation in the Programme by these representatives shall be in accordance with the relevant provisions of Regulation (EU) No xxxx/2012 [of the European Parliament and of the Council of the financial rules applicable to the general budget of the Union].*

Or. en

Justification

The participation should be made in accordance with the relevant provisions of the Financial Regulation.

Amendment 12

Proposal for a regulation Article 7 - point b - indent 2

Text proposed by the Commission

– exchanging experience between the relevant authorities in the Member States, and third countries as referred to in Article 6(2) as well as representatives of international organisations as mentioned in Article 6(3), including specialised law enforcement services;

Amendment

– exchanging experience between the relevant authorities in the Member States, and third countries as referred to in Article 6(2) as well as representatives of international **public** organisations as mentioned in Article 6(3), including specialised law enforcement services;

Or. en

Amendment 13

Proposal for a regulation Article 9 - paragraph 3a (new)

Text proposed by the Commission

Amendment

3a. Beneficiaries of the programme shall transmit at the request of the Commission detailed data about their activities funded under the programme, in order to increase transparency and accountability as well as to assess the effectiveness and efficiency of the Programme, in conformity with Article 11.

Or. en

Amendment 14

Proposal for a regulation Article 9 - paragraph 4

Text proposed by the Commission

Amendment

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 programme referred to in article 10, the co-financing rate shall not exceed 90 % of the eligible costs.

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 **and in cases of vulnerable and high-risk Member States**, defined in the annual work programme referred to in article 10, the co-financing rate shall not exceed 90 % of the eligible costs.

Or. en

Amendment 15

Proposal for a regulation Article 10 - paragraph 2

Text proposed by the Commission

Amendment

Budget allocated to communication actions

Budget allocated to communication actions

to be carried out by the Commission under this Regulation shall also cover the corporate communication of the political priorities of the Union.

to be carried out by the Commission under this Regulation shall also cover the corporate communication of the political priorities of the Union, *as far as they relate to the general objective of the Programme.*

Or. en

Amendment 16

Proposal for a regulation Article 11 - paragraph 1

Text proposed by the Commission

1. The Commission shall provide **annual** information on the **results** of the programme **to the European Parliament and to the Council**. Information on consistency and complementarity with other programmes and activities at Union level shall be included. The Commission shall continually disseminate the results of the activities supported under the Programme. All participating countries shall provide the Commission with all the data and information necessary to permit the monitoring and evaluation of the Programme.

Amendment

1. The Commission shall provide **the European Parliament and the Council, on a yearly basis, with** information on the **annual implementation** of the programme, **including the objectives achieved, the results and the key performance indicators identified in the annual programme**. Information on consistency and complementarity with other programmes and activities at Union level shall be **detailed and included in the communication**. The Commission shall continually disseminate, **including in the relevant websites**, the results of the **funded actions and** activities supported under the Programme, **in order to enhance transparency to the benefit of the EU taxpayers**. All participating countries **and representatives referred to in Article 6(3)** shall provide the Commission with all the data and information necessary to permit the monitoring and evaluation of the **annual implementation of the Programme, where relevant and of the overall programme**.

Or. en

Justification

In order to improve transparency the Commission shall inform on an annual basis the European Parliament and the Council on the implementation of the programme.

Amendment 17

Proposal for a regulation Article 11 - paragraph 2

Text proposed by the Commission

2. An evaluation of the Programme shall be carried out by the Commission. No later than by 31 December 2017, an evaluation report shall be established by the Commission on the achievement of the objectives of all the **measures**, results and impacts, the efficiency of the use of resources and its European added value, in view of a decision on the renewal, modification or suspension of the **measures**. The evaluation shall additionally address the scope for simplification, its internal and external coherence, the continued relevance of all objectives, as well as the contribution of the **measures** to the Union priorities of smart, sustainable and inclusive growth. It shall take into account evaluation results on the long-term impact of the predecessor **measures**.

In addition, by 31 December 2021, the Commission shall present to the European Parliament and to the Council a report on the achievement of the objectives of the programme.

The longer-term impacts and the sustainability of effects of the Programme shall be evaluated with a view to feed into a decision on a possible renewal, modification or suspension of a subsequent Programme.

Amendment

2. An evaluation of the Programme shall be carried out by the Commission. No later than by 31 December 2017, an **independent mid-term** evaluation report shall be established by the Commission on the achievement of the objectives of all the **actions**, results and impacts, the **effectiveness and** efficiency of the use of resources and its European added value, in view of a decision on the renewal, modification or suspension of the **activities**. The evaluation shall additionally address the scope for simplification, its internal and external coherence, the continued relevance of all objectives, as well as the contribution of the **activities** to the Union priorities of smart, sustainable and inclusive growth. It shall take into account evaluation results on the long-term impact of the predecessor **Programme**.

In addition, by 31 December 2021, the Commission shall present to the European Parliament and to the Council a report on the achievement of the objectives of the **general and specific objectives of the Programme and the impact of all funded activities or actions under the Programme**.

Furthermore, the longer-term impacts and the sustainability of effects of the Programme shall be evaluated with a view to feed into a decision on a possible renewal, modification or suspension of a subsequent Programme.

Justification

An independent mid-term evaluation report shall be prepared presenting the results.

Amendment 18

Proposal for a regulation
Article 12 - paragraph 1

Text proposed by the Commission

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 **deterrent** penalties.

Amendment

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.

Or. en

Amendment 19

Proposal for a regulation
Article 12 - paragraph 2

Text proposed by the Commission

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.

The European Anti-fraud Office (OLAF) may carry out on-the-spot checks and

Amendment

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.

inspections on economic operators concerned directly or indirectly by such funding in accordance with the procedures laid down in Regulation (Euratom, EC) No 2185/96 with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the European Union in connection with a grant agreement or grant decision or a contract concerning Union funding.

Without prejudice to the first and second sub-paragraphs, cooperation agreements with third countries and international organisations and grant agreements and grant decisions and contracts resulting from the implementation of this Regulation shall expressly empower the Commission, the Court of Auditors and OLAF to conduct such audits, on-the-spot checks and inspections.

Or. en

Justification

The text should be included in a new paragraph.

Amendment 20

**Proposal for a regulation
Article 12 - paragraph 2a (new)**

Text proposed by the Commission

Amendment

2a. The European Anti-fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud

Office (OLAF)¹ and 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 irregularities² 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 concerning Union funding.

¹ OJ L 136, 31.5.1999, p. 1.

² OJ L 292, 15.11.1996, p. 2.

Or. en

Justification

A special standard clause should be included in the legislative act.

Amendment 21

**Proposal for a regulation
Article 12 - paragraph 2b (new)**

Text proposed by the Commission

Amendment

2b. Without prejudice to paragraphs 2 and 2a, 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.

Justification

A special standard clause should be included in the legislative act.

Amendment 22**Proposal for a regulation****Annex**

Text proposed by the Commission

Amendment

Operational objectives of the Programme ***deleted***

The operational objectives of the Programme shall be the following:

(1) to improve the prevention and investigation of fraud and other illegal activities beyond its currently reached levels by enhancing transnational and multi-disciplinary cooperation;

(2) 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;

(3) 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;

(4) to limit the exposure of the financial interests of the Union to fraud, corruption and other illegal activities, as compared to the level of exposure known today, with a view to reducing the development of an illegal economy in key risk areas such as organised fraud, smuggling and counterfeiting, especially of cigarettes;

(5) to enhance the degree of development of the specific legal and judicial protection of the financial interests

against fraud by promoting comparative law analysis.

Or. en

Justification

This text is better placed in the articles than in an annex