


Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation 2011/0454(COD)	Procedure completed
Protection of the financial interests of the European Union: Hercule III programme (2014-2020) Repealing Decision No 804/2004/EC 2003/0152(COD) Repealed by 2018/0211(COD)	
Subject 8.70.04 Protecting financial interests of the EU against fraud	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	CONT Budgetary Control		12/01/2012
		PPE MACOVEI Monica Shadow rapporteur S&D GEIER Jens ALDE SKYLAKAKIS Theodoros Verts/ALE STAES Bart ECR CZARNECKI Ryszard GUE/NGL DE JONG Dennis NI EHRENHAUSER Martin	
	Committee for opinion	Rapporteur for opinion	Appointed
	BUDG Budgets		29/02/2012
	LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	General Affairs	3292	11/02/2014
European Commission	Commission DG	Commissioner	
	European Anti-Fraud Office (OLAF)	ŠEMETA Algirdas	

Key events			
19/12/2011	Legislative proposal published	COM(2011)0914	Summary
19/01/2012	Committee referral announced in Parliament, 1st reading/single reading		
15/11/2012	Vote in committee, 1st reading/single reading		
23/11/2012	Committee report tabled for plenary, 1st reading/single reading	A7-0385/2012	Summary
14/01/2014	Debate in Parliament		

15/01/2014	Results of vote in Parliament		
15/01/2014	Decision by Parliament, 1st reading/single reading	T7-0029/2014	Summary
11/02/2014	Act adopted by Council after Parliament's 1st reading		
26/02/2014	Final act signed		
26/02/2014	End of procedure in Parliament		
20/03/2014	Final act published in Official Journal		

Technical information

Procedure reference	2011/0454(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Repealing Decision No 804/2004/EC 2003/0152(COD) Repealed by 2018/0211(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 325-p4
Modified legal basis	Rules of Procedure EP 150
Stage reached in procedure	Procedure completed
Committee dossier	CONT/7/08304

Documentation gateway

Legislative proposal		COM(2011)0914	19/12/2011	EC	Summary
Document attached to the procedure		SEC(2011)1610	19/12/2011	EC	
Document attached to the procedure		SEC(2011)1611	19/12/2011	EC	
Committee draft report		PE496.377	18/09/2012	EP	
Amendments tabled in committee		PE498.050	23/10/2012	EP	
Committee opinion	BUDG	PE496.328	07/11/2012	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0385/2012	23/11/2012	EP	Summary
Amendments tabled in committee		PE524.885	11/12/2013	EP	
Text adopted by Parliament, 1st reading/single reading		T7-0029/2014	15/01/2014	EP	Summary
Draft final act		00039/2013/LEX	26/02/2014	CSL	
Commission response to text adopted in plenary		SP(2014)167	19/03/2014		
Follow-up document		COM(2018)0003	10/01/2018	EC	Summary
Follow-up document		SWD(2018)0003	10/01/2018	EC	
Legislative proposal		SWD(2018)0381	03/09/2018		Summary

Additional information	
National parliaments	IPEX
European Commission	EUR-Lex

Final act
Regulation 2014/250 OJ L 084 20.03.2014, p. 0006 Summary Final legislative act with provisions for delegated acts

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".

2011/0454(COD) - 23/11/2012 Committee report tabled for plenary, 1st reading/single reading

The Committee on Budgetary Control adopted the report by Monica Luisa MACOVEI (EPP, RO) 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.

The committee recommends that the position of the European Parliament adopted in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

The Programmes added value: Members consider that the Programme should also contribute to:

- an increased transparency in the use of the funds relating to the protection of the financial interests of the Union, including the fight against cigarette smuggling and counterfeiting;
- an increased cooperation and coordination within the Commission's services, between the Commission and the Member States and between the different Member States.

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.

Members feel that the operational objectives of the Programme should be found in the main body of the proposed Regulation rather than in the Annexes.

Eligible actions: the proposed Regulation should provide finance for the maintenance costs of technical equipment purchased under the Programme. The equipment co-financed by the Programme shall be used exclusively for the protection of the financial interests of the Union.

Furthermore, the organisation of targeted specialised training shall aim at exchanging experience and best practices between the relevant authorities in the Member States, and third countries, including specialised law enforcement services, as well as representatives of international public organisations.

Types of financing and financing: at the request of the Commission, beneficiaries of the Programme shall transmit 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.

Members require that the co-financing rate for grants awarded under the programme shall not be less than 50% and shall not exceed 80 % of the eligible costs. The cofinancing rate shall not exceed: (i) 90 % of the eligible costs in cases of vulnerable and high-risk Member States; (ii) 30% of the eligible costs in respect of the funding of the maintenance of technical material purchases under the Programme.

The co-financing rate shall be inversely proportional to the total amount per annum the Member States receive as revenue derived from the agreements concluded by the Commission and Member States with four major tobacco companies.

Multiannual work plans: in order to implement the Programme, the Commission shall adopt annual work programmes to carry out the multiannual work plans and indicative timetables for the call of proposals for the period covered by the multiannual work plan. The annual work programmes shall specify the criteria for the awarding of a grant covering the maintenance of the technical equipment purchased under the Programme.

The Commission shall provide the European Parliament and the Council, with information on the annual implementation of the Programme on an annual basis.

Protection of the financial interests of the Union: the European Anti-Fraud Office (OLAF) may carry out 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.

Implementation: in order to provide for a detailed but flexible framework for implementation, the power to adopt delegated acts shall be delegated to the Commission in respect of: (i) the revision of the operational objectives and general allocation of funds, (ii) the adoption of key performance indicators, (iii) the eligible actions, (iv) the establishment of criteria defining vulnerable and high-risk Member States for co-financing, and (v) the updating or revision of the multiannual plans.

Financial envelope: the report points out that the financial envelope specified in the legislative proposal is only an indication to the legislative authority and cannot be fixed until agreement is reached on the proposal for a regulation laying down the multiannual financial framework for the years 2014-2020. The amendments proposed by the committee stress the role of the budgetary authority in this regard.

2011/0454(COD) - 15/01/2014 Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 644 votes to 14 with 12 abstentions, a 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.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of an agreement between Parliament and Council. They amend the proposal as follows:

Added value: Parliament stated that the Programme must also contribute to increased transnational cooperation and coordination at Union level, between Member States' authorities, the Commission and the European Anti-Fraud Office (OLAF).

Specific objective: attaining the specific objective of the Programme - to prevent and combat fraud, corruption and any other illegal activities affecting the financial interests of the Union - must be measured referring to target levels and baselines and through all of the following key performance indicators:

- the number of seizures, confiscations and recoveries following fraud cases detected by joint actions and cross border operations;
- the added value and effective use of the co-financed technical equipment;
- the exchange of information among Member States on the results achieved with the technical material;
- the number and type of training activities, including the amount of specialised training.

Operational objectives: these shall be:

- to improve the prevention and investigation of fraud and other illegal activities beyond current levels by enhancing transnational and multi-disciplinary cooperation;
- 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;
- to limit the currently known exposure of the financial interests of the Union to fraud, corruption and other illegal activities with a view to reducing the development of an illegal economy in key risk areas such as organised fraud, including cigarette smuggling and counterfeiting;
- to enhance the degree of development of the specific legal and judicial protection of the financial interests of the Union against fraud

by promoting comparative law analysis.

Financial envelope: this shall be EUR 104 918 000, (in current prices) for the period from 1 January 2014 to 31 December 2020. The Commission may depart from the indicative allocation of funds laid down in the Annex, but may not increase the allocated share of the financial envelope by more than 20 % for each type of action.

Type of financial intervention and co-financing: the co-financing rate for grants awarded under the Programme shall not exceed 80 % of the eligible costs. In exceptional cases, such as cases concerning Member States exposed to a high risk in relation to the financial interests of the Union, the co-financing rate shall not exceed 90 % of the eligible costs.

OLAFs investigations: the amended text states that OLAF may carry out 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.

Monitoring and evaluation: to increase transparency on the use of the funds, the Commission shall provide the European Parliament and the Council, on an annual basis, with information on the implementation of the Programme, including an independent mid term report on the implementation of the Programme and a final evaluation report on the achievement of the objectives of the Programme, including its added value.

All participating countries and other beneficiaries shall provide the Commission with all the data and information necessary to increase transparency and accountability and to permit the monitoring and evaluation.

2011/0454(COD) - 26/02/2014 Final act

PURPOSE: to establish the Hercule III Programme to combat fraud and to protect the taxpayers money for the period from 1 January 2014 to 31 December 2020.

LEGISLATIVE ACT: 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.

CONTENT: Hercule III was inspired by two previous programmes, Hercules and Hercules II, which covered the periods 2004-2006 and 2007-2013, respectively. It is designed to protect the financial interests of the Union by contributing to the actions carried out at Union level and the Member States in particular to combat cigarette smuggling and counterfeiting.

The Programme in particular shall create savings deriving from the collective procurement of specialised equipment and databases to be used by the stakeholders and those derived from specialised training.

Eligible actions: the Programme shall in particular support the following actions:

- specialised technical assistance for the competent authorities of the Member States (such as providing specific knowledge, specialised and technically advanced equipment and effective information technology (IT) tools facilitating transnational cooperation and cooperation with the Commission; support in setting up cross-border operations; supporting Member States capacity to store and destroy seized cigarettes; exchange of personnel and data);
- organisation of targeted specialised training, and risk analysis training workshops (such as exchange of experience and best practices; coordination of the activities of participating countries, and representatives of international organisations; raising the awareness of the judiciary).

Financial envelope: this is established at EUR 104 918 000 (in current prices) for the period from 1 January 2014 to 31 December 2020 (including at least 70% for technical assistance and 25% maximum for training).

In exceptional cases, for example, concerning Member States exposed to high risks, the maximum co-financing rate of 90% of the eligible costs will apply.

Protection of the financial interests of the Union: the Commission must ensure such protection when implementing financed actions by the application of preventive measures of effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by administrative and financial penalties. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections.

Monitoring and evaluation: in the interests of transparency, the Commission shall provide the European Parliament and the Council, on an annual basis, with information on the implementation of the Programme. It must present an independent mid-term evaluation report by 31 December 2017 and a final evaluation report by 31 December 2021.

ENTRY INTO FORCE: 21/03/2014. The Regulation shall apply from 01/01/2014.

DELEGATED ACTS: the Commission may adopt delegated acts in order to provide for a degree of flexibility in the allocation of funds. The power to adopt delegated acts is conferred on the Commission for a period of seven years from 21 March 2014. The European Parliament or the Council may raise objections in regard to a delegated act within two months of notification of that act (this period may be extended by two months). If the European Parliament or the Council make objections, the delegated act will not enter into force.

2011/0454(COD) - 10/01/2018 Follow-up document

The Commission presented a mid-term evaluation of the Regulation (EU) No 250/2014 of the European Parliament and of the Council establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme).

The time period covered by the evaluation is the first half of the seven year period that Hercule III programme lasts for, starting on 1 January 2014 (when the Regulation entered into force) until June 2017. To perform the mid-term evaluation, the Commission services relied primarily

on the external contractors study, as well as the impact assessment carried out at the time of the legislative proposal for the programme, the Commission's evaluation of the previous Hercule programme, the annual work programmes of Hercule III, and the annual overviews on the implementation of the programme that are prepared by the Commission.

The mid-term evaluation has shown that the Hercule III programme, in its present form and at this stage of its implementation, has largely fulfilled its mission:

- the specific and operational objectives of, and activities under, the programme continue to be relevant. The drivers behind the Commission's proposal for the Hercule III programme are still prevalent today, in particular the occurrence of fraud to the EU financial interests;
- the evaluation showed that the internal and external coherence of the programme was ensured. Internal coherence is primarily ensured by the allocation of the budget for the period 2014-2020 (EUR 104.9 million) between the different categories of actions. Additionally the Commission, at the selection stage, examines the applications with a view to also prevent possible overlaps and repetitions;
- the evaluation found that the programme has been effective: the programme financed actions which, by nature (e.g., by financing scanners to detect smuggled goods, or supporting digital forensic trainings to the benefit of national services in charge of investigating cases involving the EU financial interests), clearly contributed to the protection of the EU financial interests. With regards to technical assistance, the timing for the evaluation, i.e. early in the life of the programme, made it challenging to further substantiate the above finding that the programme is effective;
- the stakeholders almost unanimously recognised the added value of the programme. The majority of stakeholders also considered that the benefits from the programme would not materialise without the support of Hercule III or equivalent EU funding. The actions allowed for a better protection of the Union's external borders. The programme is an enabler for cross-border cooperation, in particular cross-border exchanges of information and best practices;
- there is a consensus among beneficiaries that the actions funded under the programme will continue producing benefits, even after their completion. This was particularly relevant for technical assistance actions where the deployment of equipment will continue generating results beyond the closing date of the activity;
- on the revenue side, it contributes to securing the financial means necessary for the initiatives taken to achieve the Europe 2020 strategies objectives and, on the expenditure side, it contributes to ensuring that these resources are not diverted to other ends.

Suggestions for improvements: some ideas have been tabled of possible new objectives and activities for the programme going forward. These ideas, with the limitation that the external study did not test to what extent they are shared by a large part of the stakeholders, could feed into the Commission services reflection for the next three years of the life of the programme, in particular in the areas of cross-border cooperation between Member States, cooperation with non EU partners, as well as new technological developments.

These ideas will also feed into the wider reflection about the support to antifraud activities in the context of the preparations for the future multi-annual financial framework post-2020.