

Official Journal of the European Union

C 10



English edition

Information and Notices

Volume 62

10 January 2019

Contents

III *Preparatory acts*

COURT OF AUDITORS

2019/C 10/01	Opinion No 9/2018 (<i>pursuant to Article 287(4) TFEU</i>) concerning the proposal for a Regulation of the European Parliament and of the Council establishing the EU Anti-Fraud Programme	1
--------------	--	---

EN

III

(Preparatory acts)

COURT OF AUDITORS

OPINION No 9/2018*(pursuant to Article 287(4) TFEU)***concerning the proposal for a Regulation of the European Parliament and of the Council establishing the EU Anti-Fraud Programme***(2019/C 10/01)***CONTENTS**

	<i>Paragraph</i>	<i>Page</i>
SUMMARY	I-VI	2
INTRODUCTION	1-8	3
PART ONE: GENERAL REMARKS	9-17	4
Design of the programme	9-12	4
Programme objectives	13-14	4
Programme indicators	15-16	5
Programme monitoring, evaluation and reporting	17	5
PART TWO: SPECIFIC REMARKS	18-21	5
Eligibility rules	18	5
Co-financing rates	19-20	5
Evaluation	21	6
PART THREE: CONCLUSIONS AND RECOMMENDATIONS	22-25	6
ANNEX — ECA SUGGESTED AMENDMENTS TO THE PROPOSAL		7

THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 325(4) thereof,

Having regard to the Court of Auditors' opinion on the Hercule III programme to promote activities in the field of the protection of the European Union's financial interests ⁽¹⁾ (opinion 3/2012 ⁽²⁾),

Having regard to the Court of Auditors' special reports 10/2015 ⁽³⁾, 24/2016 ⁽⁴⁾ and 19/2017 ⁽⁵⁾,

Having regard to the Court of Auditors' briefing papers on the future of EU finances ⁽⁶⁾ and the Multiannual Financial Framework for the 2021-2027 period ⁽⁷⁾,

Having regard to the proposal for a regulation of the European Parliament and of the Council establishing the EU Anti-Fraud Programme, submitted by the Commission on 30 May 2018 ⁽⁸⁾ (hereafter 'the proposal'),

Having regard to the requests made by the Council and the Commission, on 27 June 2018 and 30 May 2018 respectively, for an opinion on the abovementioned proposal,

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union ⁽⁹⁾;

HAS ADOPTED THE FOLLOWING OPINION:

SUMMARY

I. The Commission's proposal on the EU Anti-Fraud Programme for the 2021-2027 programming period includes a set of measures to help the Member States and the Union in preventing and fighting fraud affecting the Union's financial interests, and in supporting mutual administrative assistance and cooperation in customs and agriculture matters. Although the Commission tried to streamline the budgetary management, there is a risk of overlaps and lack of synergies with actions funding similar or the same actions. This calls into question the value added of the programme.

II. The preparation of the proposal did not include a comprehensive and documented impact assessment. The proposal was accompanied by an *ex ante* evaluation, as required by the Financial Regulation. However, we take note that the Commission did not carry out an assessment to explore overlaps and synergies between the programme and other EU actions, and to better evaluate its value added. As we noted in special report 19/2017, the Commission found that, under Hercule II, more could have been done to enhance cooperation between its services to prevent overlaps and to benefit from synergies among programmes.

III. The proposal does not stipulate the co-financing rate, i.e. the percentage of EU contribution to the costs of the actions (the rest being borne by the Member State). This is not in line with the Financial Regulation. We have previously recommended that a maximum co-financing rate of 50 % is set for the technical equipment components, and of 80 % for the other actions.

⁽¹⁾ See 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 (OJ L 84, 20.3.2014, p. 6).

⁽²⁾ OJ C 201, 7.7.2012, p. 1.

⁽³⁾ Special report 10/2015: 'Efforts to address problems with public procurement in EU cohesion expenditure should be intensified'.

⁽⁴⁾ Special report 24/2016: 'More efforts needed to raise awareness of and enforce compliance with State aid rules in cohesion policy'.

⁽⁵⁾ Special report 19/2017: 'Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU'.

⁽⁶⁾ 'Future of EU finances: reforming how the EU budget operates', briefing paper, 15 February 2018.

⁽⁷⁾ 'The Commission's proposal for the 2021-2027 Multiannual Financial Framework', briefing paper, 10 July 2018.

⁽⁸⁾ COM(2018) 386 final.

⁽⁹⁾ OJ L 193, 30.7.2018, p. 1.

IV. Some of the programme's general and specific objectives are not specific and measurable. The proposed performance indicators are not clear and robust enough. This is contrary to the Financial Regulation, and limits the monitoring of implementation, the evaluation of results, and the effective targeting of funds to actions producing value added.

V. We recommend the legislative bodies to better specify the programme's objectives and the indicators that would be used to monitor its implementation and evaluate its results and to ask the Commission to carry out an assessment to explore the programme's overlaps and synergies with other EU actions and evaluate its value added.

VI. We also suggest that the legislative bodies clarify the frequency of performance reporting and the co-financing rates to be applied, and to state that the evaluations should be carried out by an independent evaluator.

INTRODUCTION

1. Article 325 of the Treaty on the Functioning of the European Union (TFEU) gives the Union and the Member States shared responsibility for protecting the EU's financial interests. The implementation of previous multiannual financial frameworks (MFFs) was accompanied by a set of measures to help the Member States and the Union in preventing and combating fraud affecting those interests, and to support mutual administrative assistance and cooperation in customs and agriculture. For the 2014-2020 programming period, one of the main programmes set up to implement measures against fraud was Hercule III.

2. For the 2021-2027 programming period, the proposed EU Anti-Fraud Programme would continue most of the provisions of Hercule III, which covers spending on specialised technical assistance to Member States, targeted specialised training and other actions. These focus on the fight against fraud and support cross-border operations. The programme would also finance two key systems: the Anti-Fraud Information System (AFIS) ⁽¹⁰⁾, which covers customs applications managed by the Commission, and the Irregularity Management System (IMS), which assists Member States in their obligation to report detected (fraudulent and non-fraudulent) irregularities related to EU funds.

3. The proposed programme would have two general objectives:

(1) Protecting the financial interests of the European Union;

(2) Supporting mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

4. It would also have three specific objectives:

(1) Preventing and combating fraud, corruption and any other illegal activities affecting the EU's financial interests;

(2) Supporting the reporting of irregularities, including fraud, with regard to the shared management and pre-accession assistance funds of the EU budget;

(3) Providing tools for information exchange and support for operational activities in the field of mutual administrative assistance in customs and agricultural matters.

5. The total proposed budget for implementing the programme is 181 million euro for the entire period. This amount would nominally be allocated to the three specific objectives as follows: 114 million euro (63 %), 7 million euro (4 %) and 60 million euro (33 %) respectively. The programme would be administered directly by the Commission ⁽¹¹⁾.

⁽¹⁰⁾ See Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

⁽¹¹⁾ The possibility exists that a specific action will be implemented under indirect management.

6. In our opinion 3/2012, we highlighted some weaknesses in the performance assessment of Hercule II⁽¹²⁾, which focused on inputs and outputs but did not report on the programme's impact. More recently, a summary of our findings in special reports 10/2015, 24/2016 and 19/2017 is that weaknesses were noted in the operation of the AFIS and the IMS. These affected effective communication and reporting of information concerning fraud and irregularities.

7. This opinion draws on our previous work, as well as on an examination of the Commission's proposal, the *ex ante* evaluation⁽¹³⁾ accompanying it and the Hercule III mid-term evaluation (covering the period from January 2014 to June 2017).

8. This opinion is divided into three parts: general remarks, specific remarks and conclusions.

PART ONE: GENERAL REMARKS

Design of the programme

9. In the current MFF, Hercule III is a stand-alone spending programme. The EU Anti-Fraud Programme would combine Hercule III with the financing basis for the AFIS and the IMS. While these two systems would continue to be bound operationally by their respective legal instruments (Regulation (EC) No 515/97 for the former and multiple sector-specific regulations for the latter), the AFIS financing provisions would be transferred to the new programme.

10. We welcome the Commission's initiative to streamline the budgetary management of the three instruments. However, there is a risk of overlaps and lack of synergies with actions funding similar or the same actions⁽¹⁴⁾, for example the next Customs programme. Efficient and effective use of resources could be achieved by combining actions in similar areas. In special report 19/2017, we noted the Commission's own finding that, under Hercule II, more could have been done to enhance cooperation between its services to benefit from synergies and prevent overlaps between programmes⁽¹⁵⁾.

11. The proposal was accompanied by an *ex ante* evaluation, as required by Article 34(2) of the Financial Regulation. However, the preparation of this proposal did not include a comprehensive and documented impact assessment⁽¹⁶⁾. The Commission considered that no assessment was necessary, both because the EU Anti-Fraud Programme would continue existing initiatives and because of its structure and limited budget.

12. According to the explanatory memorandum accompanying the proposal, the Commission would use its annual work programmes to explore how to avoid duplication and find synergies between the new programme and other instruments in the same policy areas. In the absence of an impact assessment, we consider that the Commission's proposal would benefit from assessing whether combining the new programme with other programmes financing similar actions⁽¹⁷⁾ in areas such as Justice, Customs, and Home Affairs⁽¹⁸⁾ would ensure better use of funds. This assessment could also provide a better basis for the assessment of value added of the programme.

Programme objectives

13. The proposal sets out two general and three specific objectives (see **paragraphs 3 and 4**). In our view, general objective (1) and specific objective (1) are too broad and may overlap with the objectives of other programmes. Contrary to the requirement in Article 33(3) of the Financial Regulation, they are only partially SMART (specific, measurable, attainable, relevant and time-bound).

⁽¹²⁾ Hercule II programme is the preceding programme of Hercule III in the programming period 2007-2013.

⁽¹³⁾ Commission staff working document: Ex-ante evaluation accompanying the proposal for a regulation of the European Parliament and the Council establishing the EU Anti-Fraud Programme (SWD(2018) 294 final of 30 May 2018).

⁽¹⁴⁾ Justice, Customs, and Home Affairs (see also footnote 18).

⁽¹⁵⁾ COM(2015) 221 final of 27 May 2015 'Report from the Commission to the European Parliament and to the Council on the achievement of the objectives of the Hercule II programme'.

⁽¹⁶⁾ According to the Better Regulation Guidelines (SWD(2017) 350 final of 7 May 2017), an impact assessment is required when the expected economic, environmental or social impacts of EU action are likely to be significant (p. 15).

⁽¹⁷⁾ See in particular recital 13 of the proposal with regard to the acquisition of customs control equipment.

⁽¹⁸⁾ Fiscalis programme, Customs programme, Justice programme and Internal Security Fund.

14. We also note that the programme does not define operational objectives of the kind set for Hercule III. Doing so would break down the current objectives into more detailed working targets and make it easier to set performance indicators.

Programme indicators

15. Article 33(3) of the Financial Regulation requires the use of performance indicators that are relevant, accepted, credible, easy and robust (RACER). The proposal provides for three indicators to be used for monitoring progress towards the specific programme objectives (see **Box**).

Box — Performance indicators tied to the specific programme objectives

- (1) Support in preventing and combating fraud, corruption and any other illegal activities affecting the financial interests of the Union, as measured by:
 - Satisfaction rate of activities organised and (co-)financed through the programme, and
 - Percentage of Member States receiving support each year of the programme.
- (2) User satisfaction rate for the use of the Irregularities Management System.
- (3) The number of mutual assistance information made available and the number of supported mutual assistance-related activities.

16. These indicators do not measure the results and impact of action taken to support the protection of the EU's financial interests. In their current form, they only partially meet the RACER criteria and would not be suitable to measure how well the programme objectives were being achieved. In our view, the proposal does not include appropriate indicators that link the resources used on activities combatting fraud with their impact.

Programme monitoring, evaluation and reporting

17. The above shortcomings in objectives and indicators would mean limitations in the monitoring of the programme's implementation and the (interim and final) evaluation of its results. In addition, the proposal does not indicate the frequency of performance reporting. In our view, it is good practice to report annually on performance (see **Annex**).

PART TWO: SPECIFIC REMARKS

Eligibility rules

18. Article 8 of the proposal would make all actions implementing the objectives eligible for funding. We note that the Commission did not set out any specific rules for assessing the eligibility of actions to be financed. In the absence of these rules and considering that some of the objectives are vague (see **paragraphs 3, 4 and 13**), the assessment is too broad to be meaningful.

Co-financing rates

19. The proposal does not stipulate a co-financing rate — the percentage of EU contribution to the costs of the actions (the rest being borne by the national implementing body). This is not in line with the Financial Regulation⁽¹⁹⁾. Under Hercule II, the co-financing rate for technical assistance was set at 50 % of eligible costs. For Hercule III, the co-financing rate was 80 % for all EU actions (and 90 % in exceptional and duly justified circumstances). However, this proposal does not clarify how high the maximum EU support could be or how much Member States would need to contribute from their national budgets.

20. In our view, the maximum co-financing rates should be clearly stated in the regulation (see **Annex**) as they will ensure the right balance between EU and national interests, secure ownership of Member States and provide transparency on spending. We stated in our opinion 3/2012 that the maximum co-financing rate should remain at 50 % for technical equipment in order to ensure that EU and national interests in the purchase of equipment are evenly balanced.

⁽¹⁹⁾ Article 186.

Evaluation

21. Article 12(1) provides that evaluations would be carried out in a timely manner to feed into the decision-making process. However, the proposal does not specify that these evaluations should be carried out by an independent evaluator. According to the Commission⁽²⁰⁾, an evaluation can be considered independent when evaluators: (i) carry out their tasks without influence or pressure from the organisation; (ii) are given full access to all necessary information; and (iii) have full autonomy of action and when reporting their findings. We suggest that the Commission expand this article accordingly (see **Annex**).

PART THREE: CONCLUSIONS AND RECOMMENDATIONS

22. The proposed EU Anti-Fraud Programme for the 2021-2027 programming period would essentially continue the current Hercule III programme while also financing the AFIS and the IMS. We welcome the Commission's initiative to streamline its budgetary management in this way. However, efficient and effective use of resources could be achieved by combining actions in similar areas (see **paragraphs 2 and 10**).

23. The proposal is not based on a comprehensive and fully documented impact assessment. We take note that the Commission did not carry out an assessment to explore the programme's overlaps and synergies with other EU actions and to better evaluate its value added (see **paragraphs 11 and 12**).

24. Some of the general and specific objectives are not specific and measurable, and the performance indicators are not clear and robust enough. This would limit the monitoring of implementation, the evaluation of results and effective targeting of funds to actions ensuring value added. The proposal also fails to clarify the frequency of performance reporting (see **paragraphs 13 to 17**).

25. We recommend that the legislative bodies undertake the following as soon as possible to:

- (a) Better specify the programme's objectives and the indicators that would be used to monitor its implementation and evaluate its results.
- (b) Clarify the frequency of performance reporting, set maximum co-financing rates and state that evaluations should be carried out by an independent evaluator (see **paragraphs 17, 20 and 21**). We give our suggested amendments in the **Annex**.
- (c) Ask the Commission to carry out an assessment to explore the programme's overlaps and synergies with other EU actions and to better evaluate its value added.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 15 November 2018.

For the Court of Auditors

Klaus-Heiner LEHNE

President

⁽²⁰⁾ See Better Regulation Guidelines (SWD(2017) 350 final of 7 May 2017).

ANNEX

ECA suggested amendments to the proposal

Proposal for a regulation of the European Parliament and of the Council establishing the EU Anti-Fraud Programme (COM(2018) 386 final)

Article	Our suggestion/proposed change	Comments
8	<p>Current text <i>Eligible actions</i> Only actions implementing the objectives referred to in Article 2 shall be eligible for funding.</p> <p>Proposed amendment <i>Eligible actions and co-financing</i> 1. Only actions implementing the objectives referred to in Article 2 shall be eligible for funding. 2. The maximum co-financing rate shall be xx% for technical equipment. This may be increased to xx% in exceptional and duly justified cases. The maximum co-financing rate of xx% shall also apply to other EU actions.</p>	The co-financing rates should be clearly indicated in the regulation (see paragraph 20).
11(3)	Add a third sentence: 'Performance reporting shall be done once a year.'	The proposal does not currently indicate the frequency of performance reporting (see paragraph 17).
12(1)	Add a second sentence: 'They should be carried out by an independent evaluator.'	The proposal does not mention that evaluations should be made by an independent evaluator. We suggest including this requirement in the relevant article (see paragraph 21).

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN