

Brussels, 30.5.2018  
SWD(2018) 294 final

**COMMISSION STAFF WORKING DOCUMENT**

**EX-ANTE EVALUATION**

*Accompanying the document*

**Proposal for a  
REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL  
establishing the EU Anti-Fraud Programme**

{COM(2018) 386 final}

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## 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

### 1.1. Scope and context

This Commission staff working document (SWD) provides an ex-ante evaluation of the legislative proposal for the new EU Anti-Fraud Programme. It is required for all programmes which entail significant spending<sup>1</sup>. The scope of the evaluation covers the lessons learned, the challenges to be addressed, internal coherence as well as coherence with other instruments, policy and management objectives, the objectives of the programme, the programme's structure and its European Union's (EU) added value, the delivery mechanisms, and performance monitoring and evaluation.

Article 325 of the Treaty on the Functioning of the European Union (TFEU) provides for a shared obligation of the Member States and the EU to protect the latter's financial interests. Article 33 TFEU provides for the strengthening of customs cooperation between Member States and between the latter and the Commission. The implementation of the past EU multi-annual budgets has been accompanied by a set of measures to complement the Member States in preventing and fighting fraud affecting the financial interests of the EU, and supporting mutual assistance in customs and agriculture matters. These measures include the **Hercule** spending programme, the **Anti-Fraud Information System (AFIS)** and the **Irregularity Management System (IMS)**.

Firstly, **Hercule III**<sup>2</sup> is a multiannual action programme running from 1 January 2014 to 31 December 2020 to promote activities against fraud, corruption and any other illegal activities affecting the financial interests of the EU. To this end, it contributes to financing a range of activities, such as the purchase of technical equipment, training and conferences. It is the only EU programme solely dedicated to support the fight against fraud affecting the financial interests of the EU. Secondly, unlike Hercule, which is a spending programme, **AFIS** is an operational activity which finances a number of operational actions under Regulation 515/97 on mutual administrative assistance in customs and agriculture matters<sup>3</sup>. This also strengthens the protection of the financial interests of the EU, mainly at the revenue side. Thirdly, **IMS** is an instrument introduced by the sectorial legislation<sup>4</sup> to support the Member States, candidate and potential

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<sup>1</sup> According to Article 30 of Regulation (EU, Euratom) 966/2012 on the financial rules applicable to the general budget of the Union, as amended by Regulation (EU, Euratom) 2015/1929 of 28 October 2015, OJ L 286 of 30 October 2015 (OJ L 286, 30.10.2015, p. 1).

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> For Common Agricultural Policy: Commission Delegated Regulation (EU) 2015/1971 (OJ L 293, 20.11.2015, p. 6); Commission Implementing Regulation (EU) 2015/1975 (OJ L 293, 10.11.2015, p. 6); For European Structural Funds, Cohesion Fund and European Maritime and Fisheries Fund: Commission Delegated Regulation (EU) 2015/1970 (OJ L 293, 10.11.2015, p. 1); Commission Implementing Regulation (EU) 2015/1974 (OJ L 293, 10.11.2015, p. 20); For Fund for European Aid for the Most Deprived: Commission Delegated Regulation (EU) 2015/1972 (OJ L 293, 10.11.2015, p. 20); Commission Implementing Regulation (EU) 2015/1976 (OJ L 293, 10.11.2015, p. 11);

candidate countries to report to the Commission cases of irregularities, including fraud, in the areas of shared management and pre-accession-assistance. Annex 1 provides a synoptic outline of all three instruments.

Until now, Hercule, AFIS, and IMS have been implemented separately, as standalone instruments. IMS services however are delivered through the AFIS platform and are also financed (maintenance and development) under the AFIS budget. In the context of the preparation of the next Multiannual Financial Framework (MFF), the Commission aims at streamlining and simplifying the EU support to the Member States, as well as at identifying complementarities and synergies between programmes. Therefore, the Commission proposes to put forward a new anti-fraud programme that would combine the existing Hercule III spending programme and the financing basis for AFIS and IMS. It is important to note however that **the operational provisions of AFIS and IMS will remain in their respective legal instruments**<sup>5</sup>, Regulation 515/97 for AFIS, and sectorial regulations for IMS. Only the financing provisions of AFIS in Regulation 515/97 (Article 42a) will be transferred to the new EU Anti-Fraud Programme Regulation, which will repeal it from Regulation 515/97. This new financing arrangement for AFIS will cover all actions currently financed under AFIS, including IMS. The new regulation will decouple the financing of IMS from AFIS and spell this financing out as a stand-alone action to be financed under the new regulation.

## 1.2. Lessons learned from Hercule, AFIS and IMS

Hercule, AFIS, and IMS are long-standing EU tools to support the fight against fraudulent and non-fraudulent irregularities to the detriment of the EU budget and for supporting mutual administrative assistance between customs administrations and cooperation with the Commission. They have been subject to regular evaluations and user satisfaction surveys, which have largely demonstrated the added-value of each of them.

**Hercule** has been evaluated twice in the last few years. The Commission *ex post* report on the evaluation of Hercule II programme (2007-2013) was adopted and transmitted to the European Parliament and the Council in May 2015<sup>6</sup>. The Commission mid-term evaluation report of Hercule III (starting on 1 January 2014 until June 2017, the first half of the seven-year period that the programme lasts for) was adopted and transmitted in early January 2018<sup>7</sup>.

The *ex post* evaluation of Hercule II found that the support granted to Member States was largely positive and led to better transnational and multidisciplinary cooperation between

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For Home Affairs Funds: Commission Delegated Regulation (EU) 2015/1973 (OJ L 293, 10.11.2015, p. 20); Commission Implementing Regulation (EU) 2015/1977 (OJ L 293, 10.11.2015, p. 15).

<sup>5</sup> See footnotes 4 and 5 above.

<sup>6</sup> Report from the Commission to the European Parliament and the Council on the achievement of the objectives of the Hercule II Programme, COM(2015) 221 final.

<sup>7</sup> Report from the Commission to the European Parliament and the Council, Mid-Term evaluation of the 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, COM(2018) 3 final.

authorities in their activities seeking to protect the EU's financial interests. The Programme contributed to strengthening the operational and investigative capacity of its main beneficiaries, such as police forces, customs authorities and other law enforcement agencies.

The evaluation also found that the effectiveness of the Programme could be enhanced by ensuring more personal contact between stakeholders, for example, through staff exchanges. The need to strengthen the reporting on the Programme's activities, as well as the monitoring of the results, has also been highlighted. These findings were echoed in the mid-term evaluation of Hercule III (see below).

Because no non-EU country entered into an agreement with the EU for their participation in the Programme, the geographical distribution of beneficiaries was essentially focused on Member States<sup>8</sup>. However, participants from a large number of non-EU countries did attend events, such as the digital forensic training sessions.

The mid-term evaluation of the Hercule III Programme has demonstrated that the Programme, at this stage of its implementation, has fulfilled its mission. It has proven relevant, mechanisms are in place to ensure its coherence, and it has been effective and efficient. There is a clear added-value to have such a programme at EU level, and its activities have been found largely sustainable. The evaluation report also contains suggestions to improve the existing Programme.

The independent study underpinning the Commission evaluation outlined some ideas which have been proposed, including possible objectives and activities for the programme going forward, in particular in the areas of cross-border cooperation between Member States, cooperation with non-EU partners, as well as the challenges of new technological developments. With regards to training activities, the study concluded, on the basis of the final reports of the actions and surveys of beneficiaries, that they generated results that were largely in line with the expected outputs. Nonetheless, it found that only few actions involved staff exchanges between national administrations and few actions involved international participation.

The evaluation demonstrated the overall efficiency of the Hercule III Programme. In particular, the application process did not appear to be too cumbersome for a large majority of the programme's stakeholders. However, some applicants suggested alleviating the burden generated by the application and reporting processes, for instance by reducing the amount of requested information or increasing the use of IT tools for the application process. Most of these suggestions are currently in the process of being addressed since the Commission, in 2017, started using an electronic management

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<sup>8</sup> Participating countries/territories comprise (Article 7 Regulation) EU Member States and may comprise (under specific conditions): i) acceding States, candidate countries (i.e. Albania, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey) and potential candidates; ii) partner countries under the European Neighbourhood Policy (i.e. Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria, Tunisia, Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine; Russia is not part of the European Neighbourhood Policy but takes part in cross-border cooperation activities); iii) European Free Trade Association (EFTA) countries participating in the European Economic Area (EEA) (i.e. Iceland, Liechtenstein, and Norway).

system for the submission, processing and management of grant applications under the programme. The improvements brought about by the electronic management system involve for instance digitalising the whole application process and introducing the use of digital signatures. The electronic system has noticeably alleviated the administrative burden and related time and resources spent on the applications in particular.

As **AFIS** is not a financial programme, it is not subject to the corresponding evaluation cycles. Nevertheless, there is a set of indications that can be taken into account for evaluating the performance of the related operational activities<sup>9</sup>.

In particular, OLAF's Internal Audit Capability performed an audit to assess the performance of AFIS. Its report in 2014 confirms the efficiency and effectiveness of AFIS and the adequacy of the management and coordination mechanisms. It concluded that the stakeholders consider the quality of the AFIS services as satisfactory, or even highly satisfactory<sup>10</sup>.

Overall, it appears that the operational activities under AFIS constitute a valuable support to Member States' and Commission's operational and investigative work aiming at: detecting customs infringements, recovering customs duties, and enhancing customs cooperation in the anti-fraud area. The efforts made in recent years in addressing identified shortcomings have contributed to increase the level of trust, participation and satisfaction of Member States' competent authorities.

More specifically, the permanent physical (Permanent Operational Coordination Unit - POCU) and IT infrastructure (Virtual Operation Coordination Unit - VOCU) for the support of joint customs operations (JCO) has been regularly used by Commission and Member States, as well as third countries and other organisations on numerous occasions. The evaluation reports submitted after the completion of JCOs show that this physical structure and AFIS application strongly facilitate the coordination tasks associated to JCOs with a large number of participants. Their use is frequently recommended during the evaluation of these operations. The fact that these facilities are also frequently used for operational activities in the area of law enforcement cooperation (free of charge for the participants) is an additional proof of Member States' appreciation.

Also importantly, the reimbursement of transport, accommodation and daily allowance costs of representatives of the Member States' training courses and meetings for investigative or operational actions, including JCOs, have proven to be critical to secure the participation of a large number of Member States in these initiatives.

The Commission carries out regular survey reports on AFIS. The latest ones indicate that more than 80% of Member State users are satisfied with the functionality and

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<sup>9</sup> Notably on the basis of the Commission annual reports on AFIS activities (pursuant to Art. 51a of Reg. 515/97) as part of the Commission report on the protection of the EU's financial interests (PIF Report).

<sup>10</sup> Audit report on performance audit of AFIS, Ares(2014)2592647.

performance of the various AFIS applications, as well as for the AFIS training provided<sup>11</sup>.

Following Member States' recommendations provided during workshops organised by the Commission, OLAF has strengthened in recent years the involvement of Member States during all stages of development of new or updated AFIS applications, aiming at improving its usage and user satisfaction. This was the case during the update of AFIS VOCU<sup>12</sup>, AFIS Mail<sup>13</sup>, Customs Information System (CIS)<sup>14</sup> and IMS<sup>15</sup>, which involved a large number of Member States participants in the above-mentioned workshops. As a result of this joint work, Member States acceptance and usage of the mentioned applications has significantly improved, along with the enlargement of these user communities.

The European Court of Auditors concluded that the information on Container Status Messages (CSM) and fair prices provided by the two AFIS applications, CSM directory and Automated Monitoring Tool (AMT), are effective tools to identify potential cases of fraud related to misdescription of origin and undervaluation/underinvoicing. They can also provide useful tools to estimate the size of the customs gap<sup>16</sup>.

Looking at possible improvements, the European Court of Auditors special report no 19/2017 on "Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU", states that the EU's tools and programmes for exchanging customs information and increasing cooperation have not reached their full potential. In particular, certain mutual assistance requests related to specific fraud areas are not implemented in a uniform way by Member States. Some AFIS customs information systems are insufficiently used.

Member States have also provided some feedback on the performance of AFIS. They have for some years stressed the issue of double reporting of customs information in CIS and in the exchange of risk-related information in a Risk Information Form<sup>17</sup>. The Project Group 'Reporting Customs seizures in Customs Risk Management System and AFIS-CIS', coordinated by the Commission, with the participation of Member States representatives, was created to address this issue in 2016. A set of recommendations were issued by the project group, and its implementation is on-going.

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<sup>11</sup> AFIS Satisfaction Survey report 2015, Ares(2015)5036716.

<sup>12</sup> VOCU: 4 workshops, with participants from: Belgium, Bulgaria, Germany, Spain, France, Ireland, Italy, Malta, the Netherlands, Portugal, Slovakia, and the United Kingdom on 15 & 16 May 2012, 29 & 30 April 2013, 4 & 5 June 2013 and 6 & 7 June 2013.

<sup>13</sup> AFIS MAIL: 2 workshops, with participants from: Germany, Denmark, Spain, France, Malta, the Netherlands, Portugal, and the United Kingdom on 5/6 February 2015 and 2 June 2015.

<sup>14</sup> CIS: 6 workshops, with participants from: Austria, Germany, Denmark, Spain, France, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, and the United Kingdom on 15 March 2016, 6 December 2016, 6 April 2017, 5 October 2017, 27 October 2017 and 15 March 2018.

<sup>15</sup> IMS: 2 workshops took place during the development of IMS5 in which participants of 17 Member States and 1 candidate country participated (16/10/2014 and 3 February 2015). The 4 IMS5-trainings (October – December 2015) were attended by all Member States.

<sup>16</sup> European Court of Auditors, Special Report No 19/2017: "Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU", 5 December 2017.

<sup>17</sup> Run by DG TAXUD's Common Customs Risk Management System.

Like AFIS, **IMS** is not a programme but an operational activity delivered through the AFIS platform and, as such, has not been subjected to formal evaluations. Neither have specific audits been conducted on it yet. However, irregularity reporting via IMS underpins the Commission annual report on the protection of the EU's financial interests (PIF Report)<sup>18</sup>, as the statistical part of the report is based on IMS data<sup>19</sup>. The evaluation of the data is done in close collaboration with the Member States in the framework of the "Reporting and Analysis" expert's Group of the Advisory Committee for Coordination of Fraud Prevention (COCOLAF) which meets twice per year in this respect. The PIF Report is addressed to the Council and the European Parliament. The latter issues an annual Resolution on the Protection of the EU's financial interests in response to on the PIF Report.

IMS is used extensively by national authorities: over 3 500 users in the Member States and candidate countries have reported to the Commission about 58 500 cases of irregularities, including fraud, over the last 5 years. The rationale of such reporting has been adapted over time, moving from a system which recorded the financial amounts unduly paid and needing recovery action to a collection of targeted data and information to perform risk analysis.

The European Court of Auditors special reports no 10/2015 on "Efforts to address problems with public procurement in EU cohesion expenditure should be intensified" and no 24/2016 "More efforts needed to raise awareness of and enforce compliance with State aid rules in cohesion policy" made recommendations with regard to IMS. The Commission should adapt the database's structure so that information on irregularities, including fraud, such as in the areas of public procurement and state aid, can be extracted and analysed respectively by type of public procurement irregularity and across Member States. These recommendations have been accepted and implemented by the Commission (OLAF).

## **2. THE OBJECTIVES**

### **2.1. Challenges for the programmes of the next MFF**

The MFF post-2020 is proposed to amount to EUR 1 279 billion. It will be made up of own resources, among which the customs duties levied on imports, as well as a VAT-based resource.

Past experience shows that the financial interests of the EU are impacted by irregularities, including fraud. Every year, the PIF Report demonstrates that the level of such irregularities, including fraud, although fluctuating, stays at a level that requires action on the part of the EU. Therefore, an important political objective of the

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<sup>18</sup> Overview of all Annual Reports on the protection of EU's financial interests: [https://ec.europa.eu/anti-fraud/about-us/reports/communities-reports\\_en](https://ec.europa.eu/anti-fraud/about-us/reports/communities-reports_en).

<sup>19</sup> Through the main part of the report dedicated to the statistical analysis and the specific Staff Working Document (Statistical evaluation of irregularities) but as well the Staff Working Document "Implementation of article 325 TFEU by the Member States" and the "Follow-up of recommendations to the Commission PIF Report" which accompany this report. For 2016 report see COM (2017) 383 final and SWD(2017) 266, 267 and 270 final.

Commission is to support Member States in countering fraud and other illegal activities, thus ensuring that no taxpayers' money is diverted from its intended goal.

Table 1 presents the number and financial value of the detected fraudulent irregularities, including fraud, as reported in the PIF Report.

**Table 1 –Irregularities reported as fraudulent, 2014 - 2016**

|                    | <b>2014</b>                         |                           | <b>2015</b>                         |                           | <b>2016</b>                         |                           |
|--------------------|-------------------------------------|---------------------------|-------------------------------------|---------------------------|-------------------------------------|---------------------------|
| Budget sector      | Number of fraudulent irregularities | Involved amounts (EUR mn) | Number of fraudulent irregularities | Involved amounts (EUR mn) | Number of fraudulent irregularities | Involved amounts (EUR mn) |
| Natural resources  | 519                                 | 68.6                      | 444                                 | 74.1                      | 413                                 | 61.8                      |
| Cohesion policy    | 306                                 | 274.2                     | 371                                 | 477.5                     | 407                                 | 236.9                     |
| Pre-accession      | 31                                  | 14.47                     | 29                                  | 7.8                       | 28                                  | 3.0                       |
| Direct expenditure | 83                                  | 4.7                       | 5                                   | 0.2                       | 49                                  | 6.3                       |
| Own resources      | 710                                 | 176.2                     | 612                                 | 78                        | 513                                 | 83.0                      |
| <b>Total</b>       | <b>1 649</b>                        | <b>538.2</b>              | <b>1 461</b>                        | <b>637.6</b>              | <b>1 410</b>                        | <b>391.0</b>              |

Source: Protection of the EU's financial interests - Fight against fraud Annual Reports 2014, 2015, and 2016.

Against this backdrop, there is a continued need for a comprehensive approach to combatting fraud affecting the EU's financial interests in all Member States and at EU level.

### **Institutional developments in the area of combatting fraud affecting the EU's financial interests**

The future EU Anti-Fraud Programme will be implemented at a time of significant changes in the legislative and institutional framework for the protection of the EU financial interests.

Firstly, Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO), entered into force on 20 November 2017 (the EPPO Regulation). It provides for the creation of the EPPO, competent to conduct criminal investigations and prosecute cases of suspected fraud affecting the financial interests of the EU, in the participating Member States. The EPPO is expected to bring a more consistent and effective prosecution policy for crimes affecting the EU budget, leading to a greater number of prosecutions, convictions and a higher level of recovery of lost EU funds.

Secondly, the offences for which the EPPO will be competent are defined in Directive (EU) 2017/1371 of the European Parliament and the Council of 5 July 2017 on the fight against fraud to the EU's financial interests by means of criminal law (the PIF Directive). The PIF Directive will strengthen the protection of the EU's financial interests by harmonising the definition of offences affecting them (offences of fraud, corruption, money laundering and misappropriation) as well as harmonising sanctions and time

limitations for such cases. The PIF Directive is set to be transposed in national legislation by July 2019.

Finally, the Commission has recently tabled a proposal<sup>20</sup> to amend Regulation No 883/2013 on OLAF investigations<sup>21</sup> (the OLAF Regulation). The main driver for the proposal is the need to adapt the operation of OLAF to the establishment of the EPPO. In addition, it proposes a number of limited changes that follow from the evaluation of the OLAF Regulation<sup>22</sup> (submitted to the European Parliament and to the Council on 2 October 2017). The EPPO Regulation provides for a close relationship between the EPPO and OLAF, based on mutual cooperation within their respective mandates and on information exchange.

In accordance with Article 120 of the EPPO Regulation, the EPPO will begin its operations on a date to be determined by a Commission decision, not earlier than at least three years after the entry into force of the Regulation. It is expected that the EPPO will become operational at the end of 2020, in time for the implementation phase of the EU Anti-Fraud Programme.

The EU Anti-Fraud Programme will accompany the implementation of these new developments, to contribute to Member States and the EU reaping maximum benefits from these changes. The EU Anti-Fraud Programme will fund actions that support EU-wide cooperation in the field of the protection of the EU financial interests, helping bring together the relevant actors: national authorities in all Member States, the EPPO, OLAF, as well as other EU bodies (in particular Eurojust and Europol), to facilitate cooperation and the exchange of expertise.

### **The need for support in the fight against fraud and for customs cooperation under the next MFF**

The EU and the Member States are responsible for countering fraud and any other activities affecting the financial interests of the EU, in accordance with Article 325(1) TFEU. The need to ensure that the taxpayers' money is legally spent remains one of the pillars of trust in the EU and, as the PIF Reports show, fraud and other illegal activities against the EU's financial interests remains a relevant problem.

On 13 March 2018, the Commission organised a one-day **workshop with relevant stakeholders** in the Member States (representatives of the anti-fraud coordination services and customs administrations), aimed at consulting stakeholders on possible ideas for new forms of support under the future programme. See also Annex 4 (on Procedural information) for a synoptic overview of all consultations, evidence and sources, as well as the organisation of the ex-ante evaluation. The consultation strongly confirmed the

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<sup>20</sup> COM(2018) 338

<sup>21</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning the investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>22</sup> COM(2017) 589 and SWD(2017) 332

need for continued support in the form of an EU anti-fraud programme, especially to counter cross-border fraud affecting EU's financial interests. This echoes the findings of the mid-term evaluation of the **Hercule III** where the majority of stakeholders considered the needs and problems identified in the Hercule III Programme still to be relevant. Furthermore, the workshop also yielded some ideas for new activities which could be supported in addition to the activities currently performed under Hercule III, AFIS and IMS (see Annex 2 and 3).

Regulation 515/97 tasks the Commission with a number of activities in connection with mutual administrative assistance in the customs area. Today more than ever, especially in view of the increasing sophistication of criminal groups, customs fraud can take various forms: there can be undervaluation (a single case discovered following an AFIS-based operation led to a recovery order of more than EUR 2 billion), misclassification of goods, origin fraud and outright smuggling, including notably of tobacco and other excisable products. In addition, recent phenomena like the rise in small value parcels in relation to e-commerce present new challenges. The purpose of **AFIS** is to finance activities to address these challenges in close cooperation with Member States. These activities include the development and maintenance of the AFIS platform, all costs of installing and maintaining the permanent technical infrastructure for the purposes of customs cooperation, operational actions and the reimbursement of transport, accommodation and daily allowance costs of representatives of the Member States taking part in the EU missions, training courses, meetings for administrative investigations or operational actions conducted by the Member States, where they are organised by or jointly with the Commission. AFIS should continue delivering high quality services to the Member States, while at the same time taking account of any new challenges. The needs to be covered by the AFIS operational activity are discussed with the Member States in relevant forums, such as the Expert Group on Mutual Assistance in Customs Matters and the Fight against Illicit Tobacco Trade Expert Group. The AFIS work programme is only approved after prior examination in the Expert Group on Mutual Assistance in Customs matters.

In the illicit trade of tobacco area, in particular, the Council Conclusions on stepping up the fight against illegally traded tobacco products in the EU, adopted by the Council of the European Union in December 2017<sup>23</sup>, have stressed the role of customs authorities as the leading authority for controlling the cross-border movement of goods, especially key inputs for manufacturing cigarettes and tobacco products and highlighted the importance of effective multilateral, multidisciplinary and multinational cooperation between relevant authorities at national, EU level and with third countries and other relevant parties in the fight against illegally traded tobacco products in the EU. The Member States and the Commission have thus been invited to detect and investigate illegally traded tobacco products, including by enhancing the collection of data and information based on advanced analytical IT solutions, and creating interoperability options to fight against illegal tobacco trade.

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<sup>23</sup> Council document no 15638/17 of 11 December 2017.

**IMS** is an activity that the Commission is tasked with by sectorial legislation. The IMS system needs to be adequately maintained and developed in order to allow Member States to comply with their reporting obligations. Going forward, IMS would work on simplifying this process for the Member States, while ensuring that data quality and completeness is continuously improved. Additionally and importantly, the system should enhance the data analysis offer, allowing the widest possible dissemination and accessibility of the analytical results for Member States also in order to improve and focus fraud prevention activities.

### **Synergies and internal and external coherence**

**The Hercule III Regulation** has proved to provide adequate guarantees in terms of internal coherence. As noted by the independent study supporting the mid-term evaluation, the internal coherence of the programme is ensured by how its various components support each other, for example: the forensic training activities enhance the effects of the hardware and software purchases under the programme and the high-level conferences ensure that some key topics for the protection of EU's financial interests are discussed and coordinated at the EU level by relevant authorities from the Member States. The evaluation also found that the implementation of the programme sought to maximise the internal coherence by placing emphasis on the EU external border, the most exposed Member States and the most critical areas<sup>24</sup>.

There are already existing synergies between Hercule, AFIS and IMS, that could be strengthened in the EU Anti-Fraud Programme. In particular, Hercule has supported AFIS-based investigative activities by allowing for the participation of third countries in JCOs. Hercule has paid for non-EU participants in these otherwise EU-only actions. Hercule funds the access by the Member States authorities to certain databases via AFIS and training of national authorities on the irregularity reporting linked to IMS. Moreover, IMS is provided via the AFIS IT platform. These operational synergies should be continued and further elaborated by bringing together the three instruments under one single programme, for example, by financing AFIS and IMS pilot projects through Hercule-type activities (grants or procurement).

During the dedicated workshop in March 2018, the participants from competent national authorities expressed support for further exploiting the underlying synergies between the three components of the EU Anti-Fraud Programme. Ideas were suggested for new AFIS and IMS activities under the future programme, for instance in connection with the analysis of data available in AFIS and IMS databases (Annex 3). More administrative synergies could be achieved in the new programme through conducting joint programming as well as consolidated monitoring and reporting on the performance.

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<sup>24</sup> The maximum co-financed rate could be exceptionally raised from 80% to 90% for very specific actions satisfying at least two of the following criteria: i) taking place at an external EU border (especially the EU's eastern border); ii) taking place at the most vulnerable locations (as regards seizures of cigarettes and tobacco); iii) reflecting the results of the Eurobarometer survey of citizens' attitudes to counterfeited, smuggled cigarettes and "cheap whites"; and iv) reflecting the findings of the 2014 PIF report (e.g. as regards the number of cases of smuggled cigarettes reported and the estimated traditional own resources involved).

The fight against tobacco smuggling is another area where the future programme will provide synergies and internal coherence from a policy point of view. The Commission, with OLAF as lead service, has been stepping up both enforcement and policy action in this regard. In the past some actions were financed under AFIS (notably JCOs), whereas other elements were financed under Hercule, such as measures to promote and implement the Protocol to the Framework Convention on Tobacco Control (FCTC), which was ratified by the EU in 2016, and the laboratory for the chemical analysis of seized tobacco samples. The new programme would support these activities and other policies against tobacco smuggling in a coherent and streamlined way.

Hercule is the only EU programme solely dedicated to support the fight against fraud affecting the financial interests of the EU. The Hercule evaluations have demonstrated that, despite the fact that some other Commission programmes could be seen as possibly competing with the Hercule activities (Customs 2020, Fiscalis, the Internal Security Funds, and the Justice Programme) this was in practice not the case. Currently, each Commission service is called on to approve relevant work programmes through inter-service consultations. Via this mechanism, potential overlaps are avoided, as each service is given the opportunity to review the upcoming activities and identify possible duplication. Other relevant services are also part of the committees evaluating proposals for Hercule grants. Finally, under Hercule III, to limit the potential for overlaps and enhance synergies, applicants are requested to disclose all EU grants, procurement contracts or loans obtained directly or indirectly from a European institution or agency in the three years before the submission.

Under the next MFF, the Commission is proposing the creation of a new instrument dedicated to the purchase of customs control equipment, as part of the Integrated Border Management Fund. The instrument will seek to address the current imbalance between the levels of endowment with control equipment available to the customs administrations. Thus, it will support the provision (acquisition, maintenance and evolution) of relevant, state-of-the-art and reliable control equipment primarily to customs authorities, but also, even in cases of possible dual use, to other law enforcement authorities carrying out customs related duties.

Over the years, part of Hercule funds has been spent on customs equipment, including large ones, such as scanners. In view of the above development, the EU Anti-Fraud Programme will move away from this type of activities under Hercule and will avoid making funds available to finance the purchase of the same type of customs control equipment which will take place under the new instrument. Instead, in the customs area, the EU Anti-Fraud Programme will typically focus on lower-budget equipment which is specifically targeted at the protection of the EU's financial interests, and for the benefit of customs and non-customs authorities.

For example, the following types of equipment will in principle fall only under the EU Anti-Fraud Programme remit: digital forensic equipment, surveillance equipment, intelligence equipment, equipment for combatting cigarettes trafficking, such as sniffer dogs, beacons and others. In addition, unlike the instrument for Customs Control

Equipment, the EU Anti-Fraud Programme will afford support to non-customs authorities, such as tax authorities, judicial authorities, police inspectorates and border police, ministries, various investigative bodies, anti-corruption bodies etc.

Furthermore, in practice, avoiding duplication and ensuring coherence between the programmes will be ensured through inter-service consultations on the annual work programmes (AWPs). When the action supported involves the acquisition of equipment, the Commission shall, where appropriate, set up a coordination mechanism ensuring efficiency and interoperability between all the equipment purchased with the support of Union Programmes.

**The AFIS operational activity** is not a traditional financing programme and, as such, the question of internal coherence has to be tackled from a different angle i.e. that of the coherence of the activities prescribed by Regulation 515/97 and paid for by AFIS.

The activities financed by AFIS are described in Annex 1. These activities, aiming at enhancing administrative customs cooperation in the fight against customs fraud and irregularities, are carried out in a complementary way ensuring coherence in the enforcement of the defined legal provisions:

- The technical and coherent collection, storage and analysis of the AFIS data are the basic source for the identification of fraud trends and the definition of fraud preventive measures.
- The meetings between Commission and Member States and the trainings organised, make possible the planning, execution and evaluation of the related investigative or operational actions.
- The permanent technical infrastructure and AFIS resources made available to the Member States by the Commission, allow for the secure and rapid exchange of anti-fraud related information, essential in the achievement of the investigative and operational goals.

**IMS** is the IT tool designed to allow Member States to comply with reporting obligations, laid down in EU law, concerning irregularities, including fraud, to the shared management expenditure of the EU budget. As such it does not raise any issues in terms of internal coherence. In terms of external coherence, IMS complements the policy arsenal for the fight against fraud to the EU financial interests by providing a facts-based picture of irregularities, including fraud, in Member States and their follow-up (sanctioning). Going forward, external coherence will be further strengthened in light of the activities identified for the EU Anti-Fraud Programme in connection with IMS: for instance, improving IMS data analysis with the help of the EU Anti-Fraud Programme's funding should contribute to better preventing and detecting fraud at EU and Member State level, but would also feed into other strands of activities within this programme, such as training, seminars, and conferences.

**A procedure will be in place to contribute to guaranteeing the external coherence of the EU Anti-Fraud Programme.** Like with the current Hercule III, as evidenced in the mid-term evaluation, both formal and informal mechanisms will be in place across Commission services to avoid overlaps and ensure synergies between EU-funded

programmes. In addition, the consultations of the technical and expert meetings, such as the Expert Group on Mutual Assistance in Customs Matters or the Customs Cooperation Working Party for AFIS, as well as the COCOLAF for expenditure-related activities, also contribute to strengthening external coherence.

## **2.2. Objectives of the programme for the next MFF**

The Programme will have two **general objectives**:

1. The protection of the financial interests of the Union.
2. Support to 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.

Deriving directly from the general objectives, **the specific objectives** of the Programme will be threefold:

1. Preventing and combatting fraud, corruption and any other illegal activities affecting the financial interests of the European Union.
2. Supporting the reporting of irregularities, including fraud, with regard to the shared management and pre-accession assistance funds of the Union budget.
3. Providing tools for information exchange and support for operational activities in the field of mutual administrative assistance in customs matters.

More concretely, the Programme could address the following categories of activities<sup>25</sup>:

- to improve the prevention and investigation of fraud and other illegal activities by fostering transnational and multi-disciplinary cooperation;
- to identify, promote and support existing and new avenues for cooperation, including across borders, between the relevant authorities in the Member States, third countries and EU bodies;
- to promote and support the cooperation and the provision of mutual administrative assistance between the customs administrations in EU, as well as providing assistance to the customs authorities in third countries;
- to support data analysis initiatives and targeted studies about new trends and phenomena;
- to increase the protection of the financial interests of the EU against fraud by facilitating the exchange of best practices, including staff exchanges;
- to provide the national authorities and the Commission with the necessary information systems and databases allowing for efficient information exchange and effective cooperation;
- to facilitate access to know-how in anti-fraud investigations for the relevant national authorities and EU bodies;
- to strengthen the fight against fraud and other illegal activities by providing technical and operational support to national investigations, and in particular customs and law enforcement authorities;

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<sup>25</sup> This list is indicative only.

- to limit the currently known exposure of the financial interests of the EU 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 EU against fraud by promoting comparative law analysis.

The above operational objectives as well as the suggestions received during the workshop with stakeholders will be further defined in the AWP and in connection with the delivery mechanisms (e.g. calls for grant proposals).

### **3. PROGRAMME STRUCTURE AND EU ADDED VALUE**

#### **Legal basis**

The proposal will be based on Articles 33 and 325 TFEU.

Article 325 TFEU concerns the protection of the financial interests of the EU and is the current legal basis for the Hercule III Regulation.

Regulation 515/97, which provides for the activities financed under AFIS, is based on Article 33 TFEU on customs cooperation and Article 325 TFEU. AFIS covers certain activities which do not all fall under article 325 TFEU (e.g. customs cooperation in connection with regulated products such as drug precursors). Therefore, the proposal should be based on both Article 33 and Article 325 TFEU.

The CIS is established by Regulation 515/97, adopted on the basis of Articles 33 and 325 of the Treaty on the Functioning of the European Union for the administrative cooperation aspects, and Council Decision 2009/917/JHA, adopted on the basis of 30(1)(a) and 34(2)(c) of the Treaty on the European Union for the police cooperation aspects. The CIS covers both administrative and police cooperation cases under a single information system. The police cooperation dimension of the CIS can technically not be dissociated from the administrative one as both aspects are operated under one single information technology system. Considering that the number of police cooperation cases is significantly lower than the number of administrative cooperation cases in the CIS and that the CIS itself is only one of several information systems run under AFIS, the police cooperation dimension of AFIS is deemed accessory to its administrative one. The legal basis for the AFIS component of the new Regulation should therefore be limited to Article 33 and 325 TFEU.

The IMS is based on the relevant sectorial legislation, while also serving the objective of the protection of the EU financial interests.

#### **Programme structure**

Considering that Hercule, AFIS and IMS have all proved overall positive, the EU Anti-Fraud Programme will largely roll them over in a single, combined, programme.

Bringing together these three instruments under a single programme has the advantage that, on the one hand, each of them will continue to provide the specialised service for which it has been created while, on the other hand, the conditions for simplification and maximising synergies will be put in place, towards the overarching objectives of supporting fight against fraud affecting the financial interests of the EU as well as mutual administrative assistance. This would entail continuing and deepening existing synergies between the three instruments (as described in Section 2, sub-section on Internal and external coherence).

To ensure enough flexibility in the future programme so as to allow it to tackle new challenges and needs, the activities delivered by the EU Anti-Fraud Programme will be essentially specified in the AWP, in accordance with the new Financial Regulation, which is currently in the adoption process and which will be in force during the implementation phase of the Programme. As far as Hercule is concerned, the activities provided for by Hercule III (see Annex 1) have been positively evaluated, in particular in the recent mid-term evaluation. They will therefore be largely maintained, and complemented by new activities that have been identified (Annex 2 and 3), in particular on the basis of the targeted stakeholders' consultation with national competent authorities from both the anti-fraud coordination services (AFCOS) for the expenditure and revenue parts of the EU budget and customs administrations for the revenue and mutual administrative assistance aspects. The outcome of this consultation process covers new activities relevant to the three components of the future programme and can be found in Annexes 2 and 3.

The bulk of AFIS costs relate to the AFIS IT system. In order to ensure continuity with current practice under Regulation 515/97, the EU Anti-Fraud Programme Regulation needs to provide the list<sup>26</sup> of the AFIS costs that are covered, today, under Article 42a of Regulation 515/97 and should continue being covered under the new programme. This will also an adequate level of predictability for the users and beneficiaries of AFIS, be they the Member States' authorities or Commission services in charge of the IT systems underpinning AFIS. Such systems require stable financing over the years to retain critical, experienced IT staff and to cover maintenance and necessary developments. The AFIS envelope under the Programme will need to ensure such stability and predictability, which will be pursued during the implementation phase.

### **EU added value of Hercule**

The many years of experience with the implementation of the EU budget have revealed that fraud is not a local phenomenon, but often and increasingly has a cross-border dimension, with many fraudulent schemes involving participants from two or more Member States. The future programme is meant to address this cross-border dimension that can only insufficiently be tackled by Member States alone.

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<sup>26</sup> See Annex I of the proposal.

The independent mid-term evaluation of Hercule III showed that 76% of the beneficiaries and all of the Commission and national services interviewed recognised the added value of the Hercule programme and its essential contribution to generating unique results and benefits. The analysis per type of added value further reveals the positive role played by the programme in the Member States:

- almost 60% of the users of services provided by the Hercule III who participated in the online survey emphasised that their organisation would (either probably or definitely) not be able to benefit from the same service without the support of the Programme;
- the majority of informed stakeholders from all categories also confirmed that the Programme allows for better protection of EU external borders from smuggling with positive spill over effects for other Member States;
- the majority of beneficiaries and institutions consulted stressed that the Programme enables cross-border cooperation, cross-border exchange of information and cross-border exchange of best practices either to a high extent or to the fullest extent.

Other elements of EU added value are a result of the way the programme itself was designed. For example, the Hercule III Regulation provides for the collective procurement of specialised equipment and databases to be used by the stakeholders and those derived from specialised training (Article 2), which would not be achieved had the national authorities and the EU acted in isolation.

### **EU added value of AFIS**

Uniform and effective application of customs rules, in the context of the EU customs union, calls for close cooperation and mutual assistance between the responsible administrative authorities in each Member State and between these and the Commission. Such effective cooperation also strengthens the protection of the financial interests of the EU, mainly on the revenue side. To ensure the effectiveness of this cooperation and of control procedures, the relevant data must be made available centrally both to Member States and the Commission in a secure and rapid manner.

AFIS was set up by the Commission in 1997, essentially as the single technical infrastructure hosting the various IT applications for the storage and exchange of the information for the purposes of Regulation 515/97. The AFIS system is available to more than 8 600 registered end-users in nearly 1 800 competent services from Member States, partner third countries, international organisations, Commission services and other EU institutions. The costs of these activities are borne by the Commission as provided by Regulation 515/97.

The EU added value of AFIS is linked to the critical importance of the good performance of the national customs authorities' missions, together with the Commission, and also considering that the coordination dimension provided by AFIS, especially in terms of collection and access to data, could not be achieved at national level.

## **EU added value of IMS**

IMS is established under separate sectorial legislation. The instrument is used by Member States and candidate countries to report cases of irregularities, including suspected and established fraud in the areas of shared management and pre-accession assistance. IMS is the only database in the EU which consolidates reported information about irregularities, including fraud, in the shared management and pre-accession funds, per field of EU action and per Member State. It allows for various types of analyses and helps develop an evidence-based EU anti-fraud policy. The added value of such an EU-wide picture resides in the opportunity it provides for identifying common risks and patterns, defining and implementing common approaches to fighting fraud, in view of the effective and equivalent protection of the EU financial interest.

In addition, since January 2017, IMS is also used to feed the Early Detection and Exclusion System (EDES). EDES is the new system established to reinforce the protection of the EU's financial interests and to ensure sound financial management. From January 2016 it replaced the previous Early Warning System and Central Exclusion Database as a repository of information on potentially unreliable contractors and beneficiaries.

As of 1 January 2017, the Commission (an authorising officer/contracting authority), and other institutions, agencies, and bodies are able to verify, through EDES, in the context of e.g. a procurement procedure, if there is a 'hit' for that economic operator with the information contained in IMS.

## **4. DELIVERY MECHANISMS OF THE INTENDED FUNDING**

One of the goals of the future EU Anti-Fraud Programme is to strengthen and streamline the support to the efforts to protect the EU's financial interests and identify synergies, simplification and flexibility between various actions (see Section 2). The ultimate aim is to ensure a cohesive and coherent approach to fighting fraud related to the EU budget and customs cooperation.

As demonstrated by the mid-term evaluation of Hercule III and the results of the AFIS operations, there is a clear EU added value of the actions supported under these instruments. They have proven relevant, mechanisms are in place to ensure their coherence, the activities of the programme have been found largely sustainable and it has been effective and efficient. In view of this positive track-record, the EU Anti-Fraud Programme will replicate to a large extent the existing framework of the Hercule III programme, as proven and tested, to assist the Member States in the fight against fraud affecting EU budget (see Section 1.2 on Lessons learned) with the addition of the financing mechanisms foreseen to cover the AFIS operational activities and IMS. This will also be the case for the delivery mechanisms.

For the **Hercule** component, the programme will continue to provide support to eligible actions which are grouped in three categories, as was done under Article 8 of Hercule III Regulation, with the aim of reaching the general and specific objectives:

- a) provision of specialised technical assistance for the competent authorities of the Member States;
- b) organisation of targeted specialised training, and risk analysis training workshops, as well as, where appropriate, conferences;
- c) any other action not covered under point (a) or (b).

These delivery mechanisms could entail challenges for small beneficiaries due to the administrative burden involved in the application process and regarding financing of smaller actions (such as conferences), which have to be above a certain amount. The solutions for these challenges will be pursued following the adoption of the new Financial Regulation in the course of 2018. The proposed changes which would have an impact on the delivery mechanisms under the Hercule component of the programme are i.a.: simplified forms of grants (i.e. lump sums, unit costs, flat-rate financing), and the fact that beneficiaries will be required to provide less, but more targeted, information. Any simplification process will have to be weighed against the resources required to implement the required solutions and the effect it would have on the overall application process. The AWP's will provide more detail in this regard.

**The current AFIS financing mechanisms<sup>27</sup>** will be replicated. They are mainly in the form of procurement contracts (implemented under direct management) and reimbursement of costs of Member States representatives taking part in the activities foreseen by Regulation 515/97.

For AFIS, the eligible financed actions are currently defined under Article 42a of Regulation 515/97, to ensure the correct application of EU customs and agriculture legislation and in particular, preventing and combating fraud:

- a) all costs of installing and maintaining the permanent technical infrastructure making available to the Member States the logistical, office automation and IT resources to coordinate JCOs;
- b) the reimbursement of transport, accommodation and daily allowance costs of representatives of the Member States taking part in the Community missions, JCOs organised by or jointly with the Commission and training courses, ad hoc meetings and preparatory meetings for administrative investigations or operational actions conducted by the Member States, where they are organised by or jointly with the Commission;
- c) expenditure relating to the acquisition, study, development and maintenance of computer infrastructure (hardware), software and dedicated network connections, and to related production, support and training services for the purpose of carrying out the actions provided for in the Regulation, in particular preventing and combating fraud;

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<sup>27</sup> Based on the yearly Commission Decision on the adoption of the work programme and the financing for the implementation of AFIS.

- d) expenditure relating to the provision of information and expenditure on related actions allowing access to information, data and data sources for the purpose of carrying out the actions provided for in the Regulation, in particular preventing and combating fraud
- e) expenditure relating to use of the CIS provided for in instruments adopted under Article 87 TFEU and in particular in Decision 2009/917/JHA on the use of information technology for customs purposes, in customs matters drawn up by the Council Act of 26 July 1995, in so far as those instruments provide that that expenditure shall be borne by the EU's general budget.

As well as expenditure relating to the acquisition, study, development and maintenance of the Union components of the common communication network used for the purposes of point (c).

**IMS** is delivered through the AFIS IT-system. It allows for:

- expenditure relating to the maintenance and development of the system;
- maintaining a help-desk function to assist Member States and candidate countries in complying with their obligations;
- the reimbursement of transport, accommodation and daily allowance costs of representatives of the Member States taking part in workshops;
- keeping the supporting documentary material;
- training of country and liaison-officers.

## **5. PERFORMANCE MONITORING AND EVALUATION**

The number of indicators under all programmes for the next MFF will be simplified to reduce the burden and improve the impact of reporting on the results achieved with the EU budget.

### **5.1. Performance indicators under the 2014-2020 financial cycle**

The **Hercule III** Regulation measures its success through four key performance indicators (KPI) spelled out in Article 4 (see below). The mid-term evaluation of the Hercule III regulation has found that the beneficiaries' experience the first three indicators as burdensome and difficult to measure:

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

In addition to the administrative burden of collecting relevant data for reporting purposes, outcomes cannot be always and entirely attributed to the Hercule III intervention. The independent study underpinning the mid-term evaluation suggested that ad hoc performance indicators could be left to the calls for proposals or grant agreements, thus ensuring the selection of indicators that are fit to measure the outcome of specific actions,

reducing the burden of the reporting phase. This finding was also echoed by the participants of the targeted workshop with relevant stakeholders in the Member States in March 2018.

For the MFF 2014-2020 two specific objectives have been defined for **AFIS**: supporting mutual assistance in customs and agricultural matters and facilitating the reporting of irregularities, including fraud, by Member States. For the support of mutual assistance in customs and agricultural matters the following KPIs have been defined:

- a) the number of active customs fraud cases for which information is available in the Mutual Assistance databases;
- b) the number of JCOs (including EU wide and regional operations) supported/year;
- c) the coverage of A-TIS (Anti-Fraud Transit Information System).

These key performance indicators rather measure certain outputs of the programme than its effectiveness, efficiency and impact. Direct indicators such as the number of seizures, value of goods seized and prevented revenue loss resulting from AFIS information, knowledge acquired from training or recommendations from an investigative or operational meeting seem to be more appropriate to evaluate the effect of the programme's intervention. However, it is difficult for the Member States authorities to determine the number of seizures and their financial impact which are resulting from information provided by AFIS, if they are not performed in the context of a JCO, and burdensome to feed this information back to OLAF. Therefore it will be necessary to rely on indirect performance indicators, such as the number of fraud cases or the coverage of imports, exports or transits on which information is available in AFIS.

The success in achieving the second specific objective for AFIS (related to **IMS**), the facilitation of the reporting of irregularities by Member States, for the MFF 2014-2020, is measured through the following key performance indicators:

- a) the availability of new irregularities reporting modules for the new programming period 2014-2020;
- b) the number of Member States complying with obligations for reporting of irregularities, including fraud.

## **5.2. Performance indicators for the EU Anti-Fraud Programme**

Under the MFF 2014-2020 there were nine indicators (four for Hercule, three for AFIS and two for IMS) measuring performance of the three components which will be combined in the new Programme.

Taking into account the objective to reduce the overall number of indicators under the next MFF and to address the feedback received during the mid-term evaluation of Hercule III and from AFIS stakeholders, the achievement of the specific objectives of the Programme will be monitored and evaluated according to three comprehensive indicators linked to the activities.

- (1) Support in preventing and combatting 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.
  - Percentage of Member States receiving support each year of the programme.
- (2) User satisfaction rate for the use of Irregularities Management System.
- (3) The number of mutual assistance information made available and the number of supported mutual assistance-related activities.

The more specific performance indicators for all three components of the new programme may be detailed in the AWP. These could include: number of times equipment was used, prevented revenue loss, volume and value of goods seized, cross border cooperation (number of events), number of investigations opened, number of prosecutions, savings (purchase of equipment compared to leasing the equipment and vice-versa), and number and type of entities involved in anti-fraud control. The identification of *ad hoc* indicators could in addition be left to the calls for proposals or grant agreements, thus ensuring the selection of indicators that are fit to measure the outcome of specific actions, reducing the burdensomeness of the reporting phase. This was suggested by the external evaluator as part of the mid-term evaluation of Hercule III programme.

### 5.3. Evaluations under the EU Anti-Fraud Programme

In line with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016<sup>28</sup>, where the three institutions confirmed that evaluations of existing legislation and policy should provide the basis for impact assessments of options for further action, the Commission will carry-out **an interim and a final evaluation**. The evaluations will assess the Programme's effects on the ground based on the Programme indicators and targets and a detailed analysis of the degree to which the Programme can be deemed relevant, effective, efficient, provides enough EU added value and is coherent with other EU policies. The evaluations will include lessons learnt to identify any lacks/problems or any potential to further improve the actions or their results and to help maximise their exploitation/impact. The conclusions of the evaluations accompanied by observations will be communicated to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Court of Auditors.

The timing of the interim evaluation of the Hercule III programme was one of the main limitations identified by the external evaluator, as the evaluation came at a time when relatively few results of the funded actions were available. Nonetheless, the mid-term evaluation of the EU Anti-Fraud Programme will be concluded not later than four years into the programme and, possibly, combined with the *ex-ante* evaluation of the next generation of the programme. Joining the two evaluations will ensure better results as more data will be available, as well as save costs and reduce administrative burden to the beneficiaries contributing to these exercises.

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<sup>28</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).

## **Annex 1**

### **Description of Hercule, AFIS and IMS**

#### **Hercule**

The Hercule Programme is the sole EU programme specifically designed to protect the EU financial interests by fighting fraud, corruption and irregularities, through support to national and regional administrations, and activities that strengthen cross-border cooperation. First established in 2004, under the current MFF the programme is at its third generation: Hercule III.

The programme covers both the expenditure and revenue sides of the EU budget. With a budget of approximately EUR 105 million over 7 years, the financial support mostly consists of grants awarded to Member States' authorities to strengthen their capacity to carry out investigations into activities affecting the EU financial interests.

The Programme contributes to:

- developing activities at EU level and the Member States' level to counter fraud, corruption and any other illegal activities affecting the financial interests of the EU, including the fight against cigarette smuggling and counterfeiting;
- increasing transnational cooperation and coordination at EU level, between Member States' authorities, OLAF, and in particular the effectiveness and efficiency of the cross-border operations;
- the effective prevention of fraud, corruption and any other illegal activities affecting the financial interests of the EU, by offering joint specialised training for staff of national and regional administrations, and to other stakeholders.

#### **Legal base**

The legal base for the programme is Regulation 250/2014 establishing Hercule III programme<sup>29</sup>.

#### **Delivery method**

The Programme has a budget of EUR 104.9 million for the period 2014-2020. It is implemented on the basis of AWP's setting out the budget and the funding priorities for a given calendar year. The AWP for 2018 made available a budget of EUR 14.95 million.

The eligible actions are grouped in three categories:

- a) provision of specialised technical assistance for the competent authorities of the Member States;

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<sup>29</sup> 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).

- b) organisation of targeted specialised training, and risk analysis training workshops, as well as, where appropriate, conferences;
- c) any other action not covered under point (a) or (b).

The financial and co-financing mechanisms under the programme:

- a) grants;
- b) public procurement;
- c) the reimbursement of costs for participation in activities under the Programme incurred by the representatives from non-EU countries.

### **The Anti-Fraud Information System (AFIS)**

AFIS is an umbrella term for a set of anti-fraud IT applications operated by the European Commission (OLAF) which create contacts with the competent authorities in the Member States. These ensure the timely and secure exchange of fraud-related information between national and EU competent administrations. The AFIS Project encompasses two major areas: Mutual Assistance in Customs Matters and Irregularities Management.

AFIS supports Mutual Assistance in Customs Matters with the secure real-time information exchange system V-OCU (Virtual Operations Coordination Unit) used for JCOs, secure web mail (MAB-Mail), specific information exchange modules and databases like MAB (Mutual Assistance Broker), CIS and FIDE (Customs Investigation Files Identification Database); and analysis tools like A-TIS. AFIS delivers its services to more than 8 600 users in nearly 1 800 competent services.

AFIS is not an EU spending programme in the traditional sense, whose implementation is done via calls for proposals, with rules for national and EU co-financing, like in the case of Hercule.

AFIS is being offered to the national authorities on a permanent basis, unrelated to the MFF cycle. It is also continuously developed to meet the needs of customs administrations. For example, since 1 September 2016, a new application allowing the tracing and tracking of containers is available by means of the AFIS platform (CSM). It contains movements of containers entering and leaving the EU territory reported directly to a central repository by sea-carriers.

#### **Legal bases**

Legal bases for AFIS are Council Regulation 515/97, as lastly amended by Regulation 2015/1525<sup>30</sup>, and Council Decision 2009/917/JHA.

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<sup>30</sup> Regulation (EU) 2015/1525 of the European Parliament and of the Council amending Council Regulation (EC) No 515/97 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 243/1, 18.9.2015, p. 1).

### **Delivery method**

The financial appropriations for AFIS are made available on the basis of AWP, which describe the priorities for the upcoming years taking into account the requirements of the relevant legal act.

The budgetary envelope foreseen for the AFIS programme in 2018 increases from EUR 7.2 million in 2017 to EUR 7.7 million (+7.17%), but in 2019 it will decrease again to the level of 2017, according to the financial programming adopted by the budgetary authority. In comparison to the previous years, the budget allocated in 2018 to technical assistance/training to Member States and application development (+11% compared to 2017) increased, while the budget for production services constantly decreased (-11% compared to 2017).

### **Irregularity Management System (IMS)**

IMS is a secure electronic tool for the reporting, management and analysis of irregularities, including fraud, affecting the financial interests of the EU. The IMS is currently being technically delivered as part of the AFIS platform. The Electronic Communication Registry (ECR - predecessor of IMS) was created in 2001 within the AFIS portal for the reporting of irregularities, which provided the national authorities with a secure electronic communication tool for the reporting of irregularities. In 2006 IMS replaced the previous system, but continued to be delivered via the AFIS platform.

In accordance with the relevant sectorial legislation, the competent national authorities report in IMS irregularities, including fraud, related to the EU funds in the areas of agriculture, structural and cohesion policy, fisheries, the funds in the field of asylum, the European Fund for the most deprived people, as well as in the area of pre-accession assistance.

The IMS has over 3 500 users in the Member States and candidate countries and about 58 500 cases of irregularities have been reported to it over the last 5 years. The nature of reporting has evolved over time, moving from a tool resembling an accounting system of the amounts unduly paid to beneficiaries, to a collection of targeted data and information to perform risk analysis.

According to the reporting provisions IMS data is used to perform risk analysis, using information technology support, and may, on the basis of the information obtained, produce reports and develop systems serving to identify risks more effectively.

More concretely, the Commission used the IMS data for the following purposes:

- They constitute the statistical basis for the Commission Annual Report on the protection of the EU financial interests and the fight against fraud. The underpinning statistical analysis highlights major trends in the fight against fraud and other irregularities affecting the EU funds and allows pointing out, among others, emerging

patterns and areas at higher fraud risk. On the basis of the results of the statistical analysis specific recommendations are issued to Member States.

- Focussed analysis are regularly performed and presented by OLAF in occasion of seminars and meetings with national authorities. For example, in 2017 the results of a specific analysis concerning conflict of interests and infringements linked to ethics and integrity was presented in the framework of the "Annual coordination meetings" with the Audit Authorities of the ESI funds.

## ANNEX 2

### **Possible new activities which could be financed by the future anti-fraud programme, post-2020<sup>31</sup>**

(based on the views expressed during the Workshop with national competent authorities on 13 March 2018 - see Annex 3 – and Commission internal assessment)

1. Data analysis: to make better use of the information currently reported to / collected in various databases to increase fraud detection and step up fraud prevention. Possibly launch pilot projects and create focus groups to analyse specific aspects. Identify synergies between the data collected under various components of the programme (AFIS-IMS).
2. Overall need to incentivise cross-border cooperation:
  - a. Staff exchanges: to reinforce cooperation between the national authorities.
  - b. Participation of third countries: to deepen regional cooperation, use the Hercule component to finance, i.a. certain Regulation 515/97 activities (JCOs). Make possible applications from groups of Member States and third countries (candidates or neighbourhood countries - joint applications for regional initiatives). Especially targeted assistance to strengthen customs anti-fraud cooperation with relevant third countries, especially in the EU's Eastern, South-Eastern and Southern wider neighbourhood, including through relevant events.
3. Awareness-raising:
  - a. About general matters related to the protection of EU's financial interests.
  - b. To better inform the national authorities about the existing EU-support, including the opportunities offered by AFIS and IMS.
4. Support for small customs equipment,<sup>32</sup>
5. Support EU-wide cooperation in the field of the protection of EU's financial interests, with a view to bring together all actors involved: the national authorities in all Member States, the EPPO, OLAF, as well as other EU bodies (e.g. Eurojust and Europol), in particular to facilitate the exchange of expertise.
6. Support the fight against the illicit tobacco trade including support for the FCTC Protocol and its Secretariat.
7. Technical, logistical and financial support to operational activities to address customs anti-fraud challenges, such as JCOs and joint customs-police operations

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<sup>31</sup> This list is indicative only, as the policy orientation for the programme's actions will be provided for in the AWP.

<sup>32</sup> Currently, the Hercule III programme provides grants for equipment including large customs equipment (scanners) for the benefit of customs authorities. Considering that a new programme will be established under the next MFF for customs equipment, the EU Anti-Fraud Programme will, as a rule, no longer support the acquisition of large equipment for customs authorities.

(JPCO) including relevant preparatory, briefing, debriefing and training events, developed in cooperation with third countries.

8. Technical, logistical and financial support to investigations, including special forms of cooperation, and joint investigation teams (JIT) to address fraud on the expenditure and revenue side.

## ANNEX 3

### Summary minutes of the workshop on the proposal for the future anti-fraud programme

On 13 March 2018, OLAF organised a workshop on the future anti-fraud programme in Brussels, which gathered competent authorities from the Member States to cover both the expenditure and revenue sides of the protection of the EU financial interests. Participants included officials from the AFCOS services and custom authorities. The workshop delivered forward-looking outcomes and a fruitful discussion on the current shortcomings and future needs of the new anti-fraud programme, which are summarised below<sup>33</sup>:

#### Expenditure-side support

- **Data analysis:**
  - In general, the future anti-fraud programme should support activities to better use data available in existing databases, including in **IMS**. The future programme could finance activities to improve the collection and analysis of IMS data, as well as simplified IT tools that allow for better communication and dissemination of information between Member States.
  - Explore possibilities created by e-government initiatives: in particular in the context of public procurement information e-tools in particular, participants suggested the future anti-fraud programme could make use of e-government data in the form of new tools for better anti-fraud prevention and detection.
- The future anti-fraud programme should improve, simplify and facilitate the **exchange of information** amongst Member States, which includes fraud trends and best practices, by funding **joint investigative activities**.
- **Cooperation with third countries:** Participants acknowledged the importance of cooperation with third countries and suggested **regional cooperation** as a solution, especially on the revenue side.
- **Awareness-raising:**
  - **"Off-the-shelf" or information packages** for all the Member States to be funded by the future anti-fraud programme. These products could contain sets of best practices in different Member States and they could be subscribed to. This would contribute to awareness raising and better horizontal communication.
  - Trainings and conferences on the different anti-fraud tools and IT databases available to increase awareness and effectiveness.
  - Specific awareness-raising activities in connection with IMS.
- **Cross border cooperation between Member States:**
- The future anti-fraud programme should consider incentivising Member States to collaborate amongst each other when applying for funding.

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<sup>33</sup> The workshop was also the opportunity to discuss general issues relevant to the procedures and performance of Hercule. These minutes summarise only those discussions which are relevant to the activities under the future EU Anti-Fraud Programme.

- **Staff exchange** was mentioned as important and an under-used opportunity to reinforce cooperation between Member States authorities.
- Introduction of the **Simplified Cost Options** approach with regards to the implementation of projects.

### Revenue-side support

- General agreement to maintain the current possibility to finance **small customs equipment** within the future anti-fraud programme (*example*: beacons). Gaps in the availability of funding should be avoided when transitioning to the future customs equipment programme.
- **Activities concerning AFIS**: Participants stressed the importance of continuity of AFIS services and activities in support of national authorities by ensuring budgetary stability. Furthermore, the next programme should finance the promotion of AFIS possibilities among the Member States. The new programme should develop or finance an **AFIS interface** for Member States currently lacking one – suggested b2b interface to increase access and usage.
- **Cooperation with third countries**: Strong support for **financing participation of non-EU countries in JCOs**.
- **Big data analysis**: the programme could finance tailor-made software for Member States to conduct big data analysis where there is none existing on the EU level. These should be PIF related. For example: on e-commerce (import taxes and VAT – affecting the revenue side of the budget) as there is no database at the EU level.
- Purchasing of **access to databases**: participants underlined it would be useful to consult the beneficiaries ahead of the purchase, in order to ensure that the most useful datasets are included in the purchase.

### Delivery Mechanisms for the future anti-fraud programme

- **The current delivery mechanisms under Hercule III were considered appropriate**, given the objectives of the programme.
- **Renting or leasing equipment**: The participants mentioned Europol's EMPACT programme which allows to rent or leasing equipment, instead of purchasing it. This service is appreciated by the national authorities as it is flexible and can be requested on a short term.
- **Simplification of application process**: the existing **application process is too restrictive** in terms of deadlines and should be simplified. Participants also requested **earlier publications** of AWP's to prepare better applications and meet the relevant deadline. Additionally, some applicants are still in the process of getting used to the E-grants system, which is why further guidance would be needed. Participants suggested that the Commission could provide better guidance on (annual) priorities in order to give a **specific emphasis on the types and themes of projects** that will be more likely to qualify for the grants in the calls for applications.
- **Increased transparency**: participants asked for better **feedback** on their applications.

- **Staff exchanges:** participants insisted on the relevance and the added-value of staff exchanges. The future anti-fraud programme should **simplify the application** process and try to incentivize more cross border staff exchange in the future by **extending costs covered**.
- **Low budget applications:** the future anti-fraud programme should consider raising the EU co-financing rate for **smaller projects**, in order to facilitate access of authorities with limited resources.

### **Measuring Performance**

- **Performance indicators** suggested: prevented revenue loss, volume and value of goods seized, cross border cooperation (number of events), number of investigations opened, number of prosecutions, number of convictions, number of times equipment was used, savings (purchase of equipment compared to leasing it and vice-versa), and number and type of entities involved in anti-fraud control.
- The current key performance indicator in Article 4(a) of Hercule III regulation could be modified to "Meeting the operational objectives of the **JCOs**".

## ANNEX 4: PROCEDURAL INFORMATION

### 1. LEAD DG

OLAF is the lead Commission service in charge of the proposal for a new anti-fraud programme. The three components of the proposed programme (Hercule, AFIS and IMS) are all currently managed by OLAF.

### 2. ORGANISATION AND TIMING

Four inter-service steering group (ISSG) meetings were held on 13 March, 11 and 26 April and 15 May 2018. The following services participated in at least one: Secretariat General, Legal Service, Directorate-Generals for Budget, Taxation and Customs Union, Home Affairs, Justice and Consumers, Maritime Affairs and Fisheries and the Joint Research Centre. The final drafts of the legislative proposal and the ex-ante evaluation were circulated prior to the launch of the inter-service consultation (ISC) to the ISSG members.

Two stakeholders' consultations were carried out, an open public consultation for the preparation of several future sectorial legislations that will accompany the proposal for the MFF post 2020 and a targeted one. More details can be found below under Point 4.

#### Ex-ante evaluation chronology:

|                                                                                                               |            |
|---------------------------------------------------------------------------------------------------------------|------------|
| Upstream meeting with the Regulatory Scrutiny Board                                                           | 6 February |
| First meeting of the ISSG                                                                                     | 12 March   |
| Workshop with stakeholders from Member States' authorities                                                    | 13 March   |
| Second meeting of the ISSG                                                                                    | 11 April   |
| Third meeting of the ISSG                                                                                     | 26 April   |
| Fourth meeting of the ISSG                                                                                    | 15 May     |
| ISC                                                                                                           | 4 – 17 May |
| Adoption COM (Explanatory Memorandum, Ex-ante evaluation SWD, Draft legal act and Budgetary impact statement) | [TBC]      |

### 3. CONSULTATION OF THE REGULATORY SCRUTINY BOARD

Due to the continuity in terms of content and structure and size of the budget of the proposal, an ex-ante evaluation was requested instead of an impact assessment. Therefore no further consultation with the Regulatory Scrutiny Board was needed.

#### 4. EVIDENCE, SOURCES AND QUALITY

The ex-ante evaluation underpinning the legislative proposal is based on the existing instruments and the information available on their performance. The Section 1.2 on Lessons learned from previous experiences provides a comprehensive overview of the relevant evidence and sources used in the evaluation. Below is a summary overview:

For **Hercule**: the Commission *ex post* report on the evaluation of Hercule II programme<sup>34</sup> and the Commission mid-term evaluation report of Hercule III<sup>35</sup>. Both evaluations have been concluded and transmitted to the co-legislators, in May 2015 and January 2018 respectively.

For **AFIS**: the European Court of Auditors special report no 19/2017 on "Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU", OLAF's Internal Audit Capability audit assessing the performance of AFIS and the relevant part of the Commission reports on the protection of the EU's financial interests (the PIF Report), where the Commission reports annually on AFIS activities, pursuant to Article 51a of Regulation 515/97.

For **IMS**: the European Court of Auditors special reports no 10/2015 on "Efforts to address problems with public procurement in EU cohesion expenditure should be intensified" and 24/2016 "More efforts needed to raise awareness of and enforce compliance with State aid rules in cohesion policy". Furthermore, the PIF Report is based on irregularity reporting by the Member States through IMS.

On 13 March 2018, a **targeted consultation** of relevant stakeholders in the Member States (representatives of the anti-fraud coordination services and customs administrations) was conducted through a one-day workshop. It aimed at consulting stakeholders on options for the activities of the future programme. The workshop yielded ideas for new activities which could be supported in addition to the activities currently performed under Hercule III, AFIS and IMS (see Annex 2).

The Commission conducted an **open public consultation** for the preparation of the future sectorial legislation that will accompany the proposal for the MFF post 2020. EU citizens had a possibility to express views right from the start of the Commission's work by providing answers to the questionnaires per policy area and available in all EU languages. Only four contributions were received which had very limited relevance to the proposal for a new anti-fraud programme.

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<sup>34</sup> Report from the Commission to the European Parliament and the Council on the achievement of the objectives of the Hercule II Programme, COM(2015) 221 final

<sup>35</sup> Report from the Commission to the European Parliament and the Council, Mid-Term evaluation of the 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, COM(2018) 3 final