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**COMMISSION STAFF WORKING PAPER**

**IMPACT ASSESSMENT**

*Accompanying document to the*

**Proposal for a**

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
On the Hercule III programme to promote activities in the field of the protection of the  
European Union's financial interests**

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## 1. POLICY CONTEXT AND CONTRIBUTION TO EU PRIORITIES

### *Treaty base*

The Treaty reflects public concern about the protection of EU financial interests by providing for the principle of effective and equivalent protection across the Member States and the EU Institutions, bodies, offices and agencies (Article 325 TFEU, ex Article 280 TEC).

The importance of gaining and maintaining public trust in the EU's capacity to protect taxpayers' money from fraudsters cannot be overstated, particularly in the present context of budgetary stringency.

### *Origins of the Hercule programme*

The Hercule programme is the only instrument **specifically** dedicated to protecting the financial interests of the EU by supporting the fight against fraud to the detriment of the EU Budget.

Hercule is administered by the European Anti-Fraud Office (OLAF) which is a Directorate-General of the European Commission.

The **Hercule I** programme was based on Decision 804/2004/EC which essentially put on a proper footing and expanded a number of activities which had developed from the 1990s.

Decision 878/2007/EC extended this programme over the period 2007 to 2013, as **Hercule II**. The 2007 decision introduced a specific emphasis on the fight against cigarette smuggling and counterfeiting to reflect the support by the Commission to the objectives of the Anti-Contraband and Anti-Counterfeiting Agreement with Philip Morris International, signed in 2004, and provided an additional €6 million per year.

The Hercule II overall budget is €98.5 million over 2007 – 2013, with annual provision rising from € 13 million in 2007 to €15 million in 2011. (Details of the breakdown of spending between the main sectors of activity are in Annex 2.)

### *The protection of the financial interests of the EU*

The concept of the protection of the financial interests of the EU (PFI) covers the prevention, detection and investigation of fraud against the EU Budget and can extend also to measures to address other serious irregularities. Action to protect the financial interests covers the whole

of the expenditure side of the Budget. On the revenue side of the Budget, action mainly relates to traditional Own Resources (mainly Customs duties).

Protection of EU funds goes alongside the protection of national funds. This is particularly obvious where projects are co-financed. But it is also the case that general improvements in ethical standards, reduced corruption and better administration benefit public finance at all levels. On the revenue side of the budget, action to fight smuggling benefits Member States directly because it protects (national) excise revenue as well as (EU) Customs duty.

### *Details of the Hercule programme (except cigarette smuggling)*

The main sectors of expenditure under the present Hercule II are as follows;

1. Technical assistance in order to assist the Member States to acquire highly sophisticated and transnationally compatible technical equipment used to protect, mainly, the revenue side of the budget; and also to promote common technical standards, training and cooperation between the services which use this equipment. This heading is also used to support joint operations and to acquire commercially available databases needed by Member State and OLAF investigation services.

Examples are the financing of vehicle and container number plate reading equipment at the external frontier and of scanners of various types at sea ports, airports and postal depots to detect in particular smuggling of products shipped by container

Present annual spending under this heading is € 9.1 million; about 60% of the Hercule Budget.

2. Specialised training in the protection of EU financial interests for Member State services and sometimes third country partners. This training is intended to help Member States ensure that their officials who have responsibilities for decisions on and control of the spending of EU funds have an adequate knowledge of the protection of EU financial interests' aspect of their jobs. It also promotes the spread of best practice and networking between Member State services with similar responsibilities or shared responsibilities where cross-border issues arise. This is in line with the objectives of the Commission's Anti-Fraud Strategy (CAFS) which the Commission adopted earlier this year (COM (2011)376, 24.06.2011).

Some training covers protection of the financial interests in a wider sense, for example the prevention of irregularities in the cohesion funds. Other training may focus more on the specific issue of (criminal) fraud against the Budget; for example, a conference bringing together public prosecutors from Member States, candidate countries and sometimes third countries who are responsible for dealing with particular aspects of this category of economic crime or who act as national contact points with OLAF.

Present annual spending under this heading is € 5.2 million; about 35% of the Hercule Budget.

3. Support of the Associations for European Criminal Law and for the Protection of the EU Financial Interests (hereinafter: European Lawyers' Associations (ELA)).

These academic and professional groups undertake research and discussion on the legal issues involved, in the main, in bringing the different national criminal justice to bear on the protection of EU finances. This also serves as a forum for the dissemination of information about this area of EU law and potential developments therein. The long-term strategic objective is to develop sufficient professional consensus about the necessity of harmonised or coordinated criminal law approaches to the issue. It is reasonable to speculate that without the work financed in this area over the past two decades important ground work reflecting on how best to achieve criminal law protection of the EU finances would not have been possible: for example the “Corpus iuris” (2000) developed by a study group composed of the members of the ELA influenced the preparation of the Green Paper on the European Public Prosecutor in 2001 and as a consequence also the consultation process at an institutional level for the preparatory work of the Convention on the Constitution.

Present annual spending under this heading is €0.7 million; about 5% of the Hercule Budget.

### *Details of the Hercule programme; cigarette smuggling*

In July 2004, the Commission and 10 Member States signed a legally binding Anti-Contraband and Anti-Counterfeit Agreement with Philip Morris International (PMI). The aim of the 12 year Agreement was to give higher priority to the fight against cigarette smuggling which is estimated to result in financial losses to the EU and Member States of €10 billion a year. As well as building on measures to prevent the products of PMI entering the illegal supply chain, the Agreement enhanced the Commission’s role in anti-contraband and anti-counterfeiting of cigarettes insofar as it provides for sharing of data on seizures of illegal product by the manufacturers... The Agreement provides for payments by PMI of up to \$1.25 billion over the lifetime of the Agreement.

Similar Cooperation Agreements were concluded with Japan Tobacco International (JTI) in December 2007, with British American Tobacco (BAT) in July 2010 and with Imperial Tobacco Limited (ITL) in September 2010. All 27 Member States have signed the PMI and JTI Agreements, 26 Member States have signed the Agreements with BAT and ITL<sup>1</sup>.

The four tobacco manufacturers will pay a collective total of \$2.15 billion over 20 years, of which 10% is paid to the Commission and the rest is paid to Member States.

These Agreements were in some cases concluded against the background of actual or potential litigation. The full text of all the Agreements concluded with tobacco manufacturers can be found at: [http://ec.europa.eu/anti\\_fraud/budget/index\\_en.html](http://ec.europa.eu/anti_fraud/budget/index_en.html)

The PMI Agreement (Article 3, Section 3.01) refers specifically to the Commission’s anti-contraband and anti-counterfeit initiatives and intention to intensify efforts to prevent the introduction, sale and distribution of contraband and counterfeit cigarettes:

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<sup>1</sup> Sweden has not signed the Agreements with BAT and ITL

*“It is the policy of the EC and the Member States to vigorously combat the introduction, sale and distribution of Contraband Cigarettes and Counterfeit Cigarettes within or through the Territory of the Member States. Subject to budgetary constraints, the EC intends to intensify efforts to curb the introduction, sale and distribution of Contraband Cigarettes and Counterfeit Cigarettes; apply appropriate equipment for monitoring and tracking the introduction, sale, distribution, storage, and shipment of Contraband Cigarettes and Counterfeit Cigarettes; and continue to train law-enforcement personnel in how best to detect and seize Contraband Cigarettes and Counterfeit Cigarettes”.*

Since 2007 the Hercule programme has served as the means by which the Commission has carried out its side of these Agreements by spending at least €6 million per year on actions to fight cigarette smuggling. These actions are taken under the headings of technical assistance and of specialised training, described above. The largest area of spending, reflecting consultation with Member States in 2007 has been on the co-financing of scanners to detect concealed cigarettes in transit (whether at EU ports, border crossings, postal hubs or by mobile detection teams). Other spending has been on specialist conferences and seminars and laboratory services.

OLAF coordinates operational matters relating to these Agreements with the specialist services of Member States through the Task Force Cigarettes which brings together the OLAF and national officials concerned.

## 2. CONSULTATION OF INTERESTED PARTIES

The current Hercule programme includes a heterogeneous group of actions involving stakeholders who are all important to the fight against fraud but whose contribution takes different forms. The format of consultation has taken account of these differences.

OLAF carried out in 2011 an **informal consultation of the following stakeholders**, in part on the basis of questionnaires;

- OLAF's **Task Group Cigarettes partners** (specialist services in Member States concerned in particular with the agreements with the tobacco manufacturers);
- **Member state services which access the specialist databases** which OLAF procures under the technical assistance sector of Hercule;
- The Associations for Criminal Law and the Protection of the EU Financial Interests (**European Lawyers' Associations – ELA**). These stakeholders were asked to evaluate the implementation of the Hercule II programme and to provide ideas for future objectives.

In respect of other activities financed under Hercule, there has been a continuous dialogue between OLAF and stakeholders over the life of the programme, in particular in the sensitive sector of **technical assistance**, some of which is confidential for operational reasons.

Discussions have also been held during the development of the existing programme with other institutions/bodies, including Eurojust and Europol, as well as with EU agencies. These have led, in particular, to suggestions for the wider availability of databases funded by Hercule, and to the cooperation with the Joint Research Centre (JRC) described in chapter 7.

This Impact Assessment also draws on the Intermediate Review carried out within OLAF in late 2010.

All this feedback has been taken into account in this impact assessment.

### 3. PROBLEM DEFINITION AND INTERVENTION LOGIC

#### Size of the problem

The Commission's Annual Reports under Article 325 TFEU for 2009 (COM (2010) 382) and 2010 (COM (2011) 595) on the protection of the EU's financial interests confirm that further action is required to ensure that EU taxpayers' money is correctly spent and that measures are in place to improve the prevention, detection, investigation and prosecution of fraud

Whereas the actual level of (criminal) fraud against the EU Budget by nature of the phenomenon is not known. The Commission's Annual Reports provide two sets of figures which give an indication of the extent of the problem. These are

- total irregularities reported by Member States or EU authorities; and
- the subset of that total which has been identified as suspected fraud.

The Report for 2010 shows that reported irregularities varied from 0.23% of the agriculture budget to 5.26% of pre-accession funds, via 0.27% of direct expenditure and 3.15% of cohesion policy expenditure (the latter heavily influenced upwards by cyclical considerations). The corresponding figures for irregularities suspected to constitute fraud were 0.12% of agriculture spending, 0.74% of cohesion policy spending, 2.6% of pre-accession spending, and 0.02% of direct expenditure (the latter probably influenced downwards because of the relative newness of the data source). The overall financial impact of reported irregularities was €1.8 billion of which suspected instances of fraud accounted for nearly €0.5 billion.

The table at Annex 6 gives more details.

Another statistical demonstration of the scale of the problem can be found in the data on OLAF's casework in OLAF's annual independent operational report. The report for 2010 shows that at end-2010 OLAF was conducting 339 investigations on its own account and was assisting national authorities with a further 154 cases. Between the creation of OLAF in 1999 and July 2011, OLAF completed more than 1,500 of its own investigations. Further data is in Annex 6. The Annual Accounts of the EU (Note 6 on financial corrections and recoveries following the detection of irregularities)<sup>2</sup> give also an indication of the size of the problem.

#### Consequences of the problem

Fraud against the expenditure side of the EU budget makes spending less effective and has similar social and economic consequences to those of other economic crime; distortion of competition, growth of organised crime, pervasive effects of corruption on society and economic growth etc. However, there is in surplus also a significant reputational risk to the credibility of the EU Institutions and of the European project itself. This risk is proportionately greater than reputational risk at national level since "EU fraud" has at times been instrumentalised as an argument against EU policies and spending programmes and indeed the European project generally.

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<sup>2</sup> OJ C 308, 12.11.2010, p.1 (128)



On the revenue side of the Budget, where Hercule interventions concentrate on traditional own resources, the reputational risk is lesser but the sums at stake are larger, with individual cases in the tens of millions or more, sometimes involving organised criminal groups.

The enlargement process has significantly increased the level of the problem, as is shown by the proportion of OLAF's caseload in certain new Member States relative to their size. Future enlargements may have similar consequences.

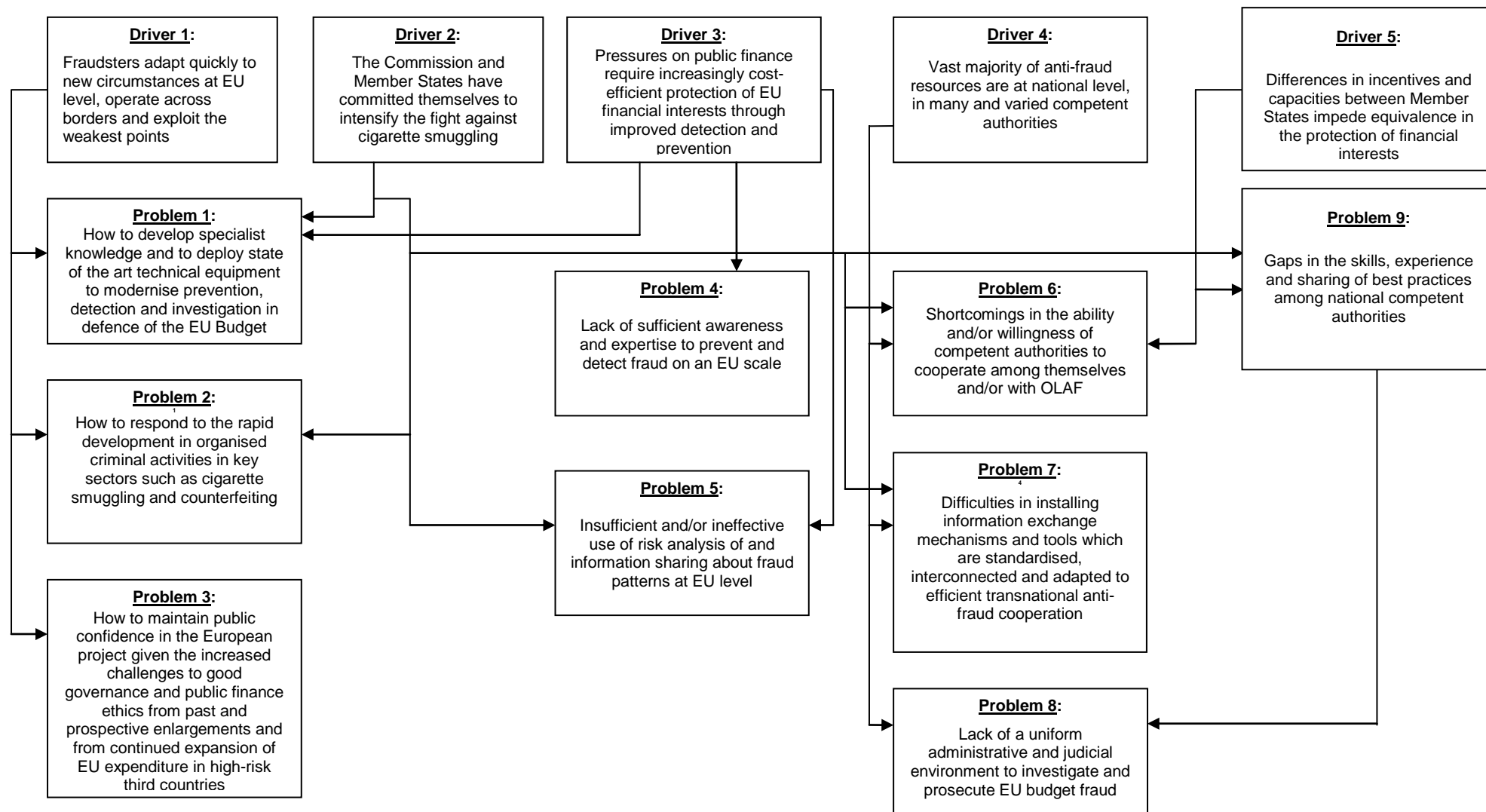
In addition, there is a third country dimension. The EU spends money in jurisdictions with a weak administrative and judicial environment where corruption is a substantial and structural problem.

Fraud prevention and awareness-raising are therefore a key issue under the Commission's Anti-Fraud Strategy (CAFS) (COM (2011) 376, 24.06.2011). In this Anti-Fraud Strategy the Commission has identified the current context of the preparation of the new multi-annual financial framework (MFF) as an opportunity to reinforce anti-fraud approaches across different EU policies. Fraudsters, in particular organised crime, adapt quickly to new circumstances. The Commission must be in a position to face such new challenges. The changing context requires continuous adjustment to EU anti-fraud policies.

### **Drivers**

A number of drivers have been identified which have a negative effect on the joint efforts of the EU Institutions and the Member States to work together to protect the EU Budget against fraud in close and regular cooperation, as required by the Treaty. These are summarised in Figure 1.

**Figure 1: Hercule III Drivers and problems**



## Driver 1

***Fraudsters adapt quickly to new circumstances at EU level, operate across borders and exploit the weakest points.***

Crime, especially organised economic crime, knows no borders. It is quick to exploit the removal of internal frontiers and to search for the weakest points in the external border.

The Commission Anti-Fraud Strategy, COM (2011) 376 emphasises that the changing context of fraud requires continuous adjustment to EU anti-fraud policies.

In recent years, OLAF has uncovered sophisticated networks which defraud the expenditure side of the Budget through complex structures operating in several member states and neighbouring countries, using devices such as multiple invoicing, hidden relationships and inflated cost claims. There have also been many instances of collusion between the beneficiaries of EU funding in one MS (typically a new MS benefiting from pre-accession funding) and the suppliers of the equipment funded (typically situated in an “old” MS). The investigation and prosecution of such offences requires close cooperation between the authorities of the Member States involved, generally involving OLAF and sometimes also EUROJUST.

Similar patterns of criminal behaviour have long existed on the revenue side of the Budget, but now enjoy enhanced opportunities as a result of globalisation, increased trade and new more complex international business models.

Law enforcement authorities, on the other hand, remain constrained to a significant extent by internal borders, and have not yet sufficiently developed structures, networks and skills on the scale or with the flexibility rapidly to investigate cross-border crime and to prosecute it in the appropriate jurisdiction(s).

This situation presents a particular threat to the EU Budget, on the revenue side, through Customs fraud (notably misdescription of goods, false declaration of origin or value and through smuggling). On the expenditure side of the Budget, there is a particular threat to funds under shared management in certain Member States with weak administrative and/or judicial structures, and to funds under direct expenditure in respect of which Member State judicial authorities are, in practice, less likely to intervene than in respect of national funds.

*Problem 1: how to develop specialist knowledge and to deploy state of the art technical equipment to modernise prevention, detection and investigation in defence of the EU Budget.*

*Problem 2: how to respond to the rapid development in organised criminal activities in key sectors such as cigarette smuggling and counterfeiting.*

*Problem 3: how to maintain public confidence in the European project given the increased challenges to good governance and public finance ethics from past and prospective enlargements and from continued expansion of EU expenditure in high-risk third countries.*

**Driver 2: The Commission and the Member States have committed themselves to intensify the fight against cigarette smuggling**

The Commission and the Member States have committed themselves to intensify the fight against cigarette smuggling in the Cooperation Agreements with four major international cigarette manufacturers which are described in chapter 1 above. As that chapter explains, the companies have committed themselves to pay over \$ 2 billion to national and EU Budgets over up to 20 years. The Agreements are legally binding and Hercule II is the chosen instrument through which an annual sum of €6 million is targeted at cigarette smuggling.

The Agreements signed with the four tobacco manufacturers contain a number of provisions (for example the tracking and tracing of cigarettes, know-your-customer, anti-money laundering provisions) which have been successful in reducing the availability of their products to criminal gangs engaged in smuggling. This supply shortfall has been filled with cheap cigarettes from countries bordering the EU, and counterfeit cigarettes from the Far East, particularly the People's Republic of China but also Malaysia, Vietnam and the Philippines. Production of cheap cigarettes in the Middle East, most notably the United Arab Emirates, has also expanded considerably in the last three years, and a presence of cigarettes produced in the Middle East on the illicit market in the EU has increased.

The primary driver of cigarette smuggling is the intent and ability of criminal elements to supply the unofficial market for tobacco at prices below the official market prices in member states. The relatively high cigarette prices in the EU are a major incentive for smugglers.

Smugglers can expect very high profits and a relatively low risk of detection. If caught and prosecuted, the penalties are much lower than for other forms of serious organised crime. Evasion of customs and other duties is therefore a serious problem.

Losses to the EU and Member States' budgets as a result of cigarette smuggling are estimated to be approximately €10 billion per year.

The new Member States have all signed the Agreements with the tobacco manufacturers. However, before joining the EU many of these Member States had limited experience with cigarette smuggling investigations and traditionally had seized very few illicit cigarettes. The situation has changed quite rapidly and both the Balkan route and the Baltic route are being used to smuggle substantial quantities of cigarettes. Member States which in the past were source/transit countries for illicit cigarettes are now transit/destination points for illicit consignments of cigarettes.

*Problem 3 (see under Driver 1 above) and problem 5 (see under Driver 3 below)*

**Driver 3: pressures on public finance require increasingly cost-efficient protection of EU financial interests through improved detection and prevention**

It is generally not possible for Member States or indeed EU Institutions to increase their funding of control or investigation services to match the increase in the threat; on the contrary, especially in some of the Member States more vulnerable to fraud, previous levels of funding cannot be maintained.

There is a particular issue with the lack of incentive for Member States, in some circumstances, to give sufficient priority to protecting EU funds. For example, failure to collect Customs duties effectively in one Member State will, in the absence of identification

and recovery by the Commission, lead to an increase in national contributions to the EU Budget financed by general taxation through the GNI mechanism in all Member States. Or the regional law enforcement authorities, even in a rich Member State, as OLAF has recently experienced, may be reluctant to allocate resources to deal with an alleged fraudster in their territory whose criminal activities target the EU budget rather than local residents,

In these circumstances it is necessary to devise more cost-effective ways of protecting public money and to take further steps to reduce the risk that increasing resource pressures do not have disproportionate consequences for the protection of EU funds relative to national funds.

The Commission Anti-Fraud Strategy (CAFS) acknowledges the importance of cost/benefit considerations and resources available when implementing anti-fraud measures. Improved fraud risk management and intelligent IT based controls should boost fraud prevention and detection. Fraud awareness-raising is another key action to support prevention and detection.

*Problem 4: lack of sufficient awareness and expertise to prevent and detect fraud on an EU scale.*

*Problem 5: insufficient and/or ineffective use of risk analysis of and information sharing about fraud patterns at EU level.*

*...and also Problem 1, which is aggravated by budgetary pressures*

**Driver 4: the large number and varied nature of competent authorities in Member States and candidate or associated countries. The vast majority of resources available to fight EU budget fraud are at national not EU level.**

Administrative and law enforcement structures differ between Member States. Operational responsibility for the protection of EU financial interests can involve national, local or specialist police forces; Customs services; public prosecutors who may or may not be specialists in fraud; national audit Courts or Offices; national or regional inspection services; the audit or control functions of national and regional administrations; and sometimes other agencies such as those dealing with security or organised or economic crime.

These bodies have varying competences, capacity, priorities and expertise, not to mention resources. Some authorities find it relatively easy to work together across frontiers; for example, neighbouring Customs administrations, or national police forces organised on a paramilitary basis, where these exist. In other cases, for example where Customs in one country need to work with the police in another, or where a specialist economic crime agency cannot identify a natural "opposite number" or partner in another Member State, cooperation is much more difficult. OLAF has an essential role in facilitating and coordinating such contacts.

Only Member States who joined in 2004 or later, and candidate countries, are obliged to have formal structures for national coordination of measures to fight EU budget fraud and to liaise with OLAF ("AFCOS" – Anti Fraud Coordination Structures). However, the proposal to reform the Regulation governing OLAF (1073/99) which is currently under discussion between the Council and the Parliament (COM (2011)135) would extend this to the older Member States.

The application of the criminal law and penal sanctions in the fight against fraud remains the exclusive prerogative of the Member States. Despite the – slow - progress made with third pillar instruments over the past 15 years or so, differences in national legal structures and approaches continue to constitute a significant obstacle to more effective use of the criminal law to deal with the threat of fraud to the EU Budget. The Commission Communication on the protection of the financial interests of the EU by criminal law and by administrative investigations (COM (2011) 293) drew attention in May 2011 to the problems that continue to be caused by the absence of a level playing field in criminal law and by insufficient cooperation between national authorities.

In all these circumstances there can be considerable practical difficulties in making a reality of the Treaty duty towards close and regular cooperation between the Commission and Member States (and indeed on occasion between services of the same Member State).

*Problem 6: shortcomings in the ability and/or willingness of competent authorities to cooperate among themselves and/or with OLAF*

*Problem 7: difficulties in installing information exchange mechanisms and tools which are standardised, interconnected and adapted to efficient transnational anti-fraud cooperation.*

*Problem 8: lack of a uniform administrative and judicial environment to investigate and prosecute EU budget fraud.*

**Driver 5: Differences in incentives and capacities between Member States impede equivalence in the protection of financial interests.**

The equivalent protection of EU financial interests across the EU and between EU and national budgets is a fundamental principle which is an essential reassurance to the taxpayer and should be a guarantee that the solidarity which is explicit in EU financial mechanisms is not abused.

However, the capacity of individual Member States and their services to achieve equivalence varies very substantially. This is shown in successive Commission article 325 (formerly 280) Reports, in reports of the Court of Auditors and of the Internal Audit Service, in the monitoring of the most recent Member States, and elsewhere. For example, the Annual Report of the Commission on the protection of EU financial interests for 2010, COM (2011)595, points out that the performance of Member States in identifying and reporting instances of irregularity which are likely to constitute suspected fraud continues to vary significantly.

*Problem 9: gaps in the skills, experience and sharing of best practice among national competent authorities.*

## **4. PROGRAMME OBJECTIVES**

### **General objective**

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

The programme will respect the distinct traditions of each Member State and will aim to strike a geographical balance across all Member States and candidate countries, without undermining operational effectiveness.

### **Specific objective**

The specific objective of the Programme shall be to prevent and combat fraud, corruption and any other illegal activities against the Union's financial interest.

This objective will be measured, inter alia, through the amount of recoveries following fraud cases detected by joint actions and cross border operations, the increased percentage of successful joint operations, and the increased number of cases accepted by the criminal investigative authorities.

### **Operational objectives**

Specific objectives are designed to address one or more of the problems identified in the intervention logic chart.

#### **Operational objective 1**

To enhance transnational and multidisciplinary cooperation between Member State authorities, the Commission and OLAF in the prevention and investigation of fraud.

*Mainly addresses problems 2, 3, 4, 6 and 7*

#### **Operational objective 2**

To facilitate the exchange of information, experience and best practices related to the protection of the financial interests of the EU.

*Mainly addresses problems 4, 5, 7 and 9*

#### **Operational objective 3**

To provide technical and operational support for the law enforcement authorities of the Member States in their fight against illegal cross border activities, emphasising support for customs authorities.

*Mainly addresses problem 1*

#### **Operational objective 4**

To enhance actions directed specifically at cigarette smuggling and the counterfeiting of cigarettes, in line with the Agreements signed with cigarette manufacturers.

*Mainly addresses problems 1, 2 and 5*

Operational objective 5

To support academic analysis of strategic legal issues with implications for the law enforcement area, with a view to the development of a broad consensus on how better to use legal resources in the protection of EU financial interests.

*Mainly addresses problem 8, also problem 3.*



## **Operational sub-objectives**

Operational sub-objectives objectives are set separately for each of the sectors of the Hercule programme. They relate to one or more of the specific objectives above.

Operational sub-objective 1: To extend the protection of the external frontier through the deployment of technical equipment with common technical specifications.

*Relates mainly to operational objective(s) 3, 4*

Operational sub-objective 2: To support joint operations which bring together national resources in a focussed manner on targets of shared interest to EU and, where appropriate, third countries.

*Relates mainly to operational objective(s) 1, 4*

Operational sub-objective 3: To increase the number of fully trained and up-to-date forensic IT examiners in Member State services who are available to investigate fraud.

*Relates mainly to operational objective(s) 2, 3*

Operational sub-objective 4: To identify and procure the most suitable databases to support investigations at prices reflecting OLAF's capacity to buy in bulk on behalf of EU and national services; to make these available efficiently to Member States.

*Relates mainly to operational objective(s) 3*

Operational sub-objective 5: To develop with the JRC mechanisms enabling the identification of significant changes in trade, and to distribute the resulting alert signals to Member State authorities as soon as possible.

*Relates mainly to operational objective(s) 1, 3*

Operational sub-objective 6: To develop with the JRC an instrument for calculating acceptable price ranges that will serve as de facto EU reference prices and signal trade outside those ranges.

*Relates mainly to operational objective(s) 3*

Operational sub-objective 7: To develop with the JRC an advanced risk-analysis system capable of automatically checking the origin of the merchandise declared by importers, in order to detect potential fraudulent cases of the type "false declaration of origin".

*Relates mainly to operational objective(s) 3*

Operational sub-objective 8: To implement the Commission's commitments under the Agreements with international cigarette manufacturers.

*Relates mainly to operational objective(s) 4*

Operational sub-objective 9: To ensure that EU law enforcement agencies engaged in the fight against tobacco contraband and counterfeiting are equipped with appropriate, up-to-date equipment to detect illegal consignments.

*Relates mainly to operational objective(s) 3, 4*

Operational sub-objective 10: To develop closer collaboration between the national law enforcement agencies responsible for investigating the illegal tobacco product imports

*Relates mainly to operational objective(s) 1, 4*

Operational sub-objective 11: To provide training on and exchange best practice in relation to contraband and counterfeit tobacco products.

*Relates mainly to operational objective(s) 2, 4*

Operational sub-objective 12: To improve monitoring, analysis and dissemination of data on trends, modus operandi and criminal gangs active in the illegal tobacco trade.

*Relates mainly to operational objective(s) 1, 4*

Operational sub-objective 13: To ensure that conferences and training events are designed to strengthen compliance by Member States with EU legislation.

*Relates mainly to operational objective(s) 2*

Operational sub-objective 14: To communicate EU policies to targeted audiences who need to implement these policies; to achieve and maintain a sufficient level of awareness.

*Relates mainly to operational objective(s) 1, 2*

Operational sub-objective 15: To facilitate mutual understanding and sharing of best practices among national administrations.

*Relates mainly to operational objective(s) 2*

Operational sub-objective 16: To raise public awareness of the risk of fraud while providing reassurance that the EU is determined to deal with fraud and has the means to do so.

*Relates mainly to operational objective(s) 2*

Operational sub-objective 17: To facilitate strategic discussions and academic consensus with a view to identifying topics for possible future legislation in the field of the protection of the EU financial interests.

*Relates mainly to operational objective(s) 5*

Operational sub-objective 18: To build networks of academics and practitioners throughout the Member States, acceding countries and candidate countries with an interest in the protection of EU financial interests

*Relates mainly to operational objective(s) 5*

Operational sub-objective 19: To facilitate the exchange of information between EU Institutions, legal practitioners, and academics

*Relates mainly to operational objective(s) 5*

Operational sub-objective 20: To develop together with Member States more reliable statistics on irregularities and fraud

*Relates mainly to operational objective(s) 1 and 2*

Operational sub-objective 21: To find ways to develop a coherent analysis of irregularities and fraud within the COM (esp. annual reporting under Art. 325 TFEU and Annual Accounts)

*Relates mainly to operational objective(s) 1 and 2*

## 5. SUBSIDIARITY AND EU ADDED VALUE

The Treaty states that the protection of the financial interests of the EU is the shared responsibility of the Union and of the Member States (articles 310 (6) and 325 TFEU). The execution of the Budget, whatever the form of management might be, remains the ultimate responsibility of the Commission. The Treaty also lays down the principle of equivalence, which requires a comparable level of protection across the EU. Under the assimilation principle Member States are obliged to afford the same level of protection to EU funds as to national funds.

The Hercule programme relates in part to activities of the European Commission and more particularly OLAF, and cooperation with the other European Institutions and bodies, as well as with Member States. Therefore, by definition, some objectives could not be achieved by action at the national level alone.

Where a Member State fails to collect Customs duties, the impact falls on more efficient Member States since the shortfall in revenue for the EU is made up by an increase in the GNI contribution financed by general taxation.

Expenditure at EU level on the protection of EU financial interests is therefore justified in terms of subsidiarity where it facilitates cooperation between the EU and Member States or between Member States, without impinging on Member States' responsibilities (for example, to pay the salaries of their control staff).

Expenditure at EU level is also justified where it clearly assists Member States collectively to protect their national finances and the use of EU structures is more efficient than informal national cooperation.

The most obvious example of this is action against cigarette smuggling; most of the revenue protected is national revenue, and 90% of the payments made by the cigarette manufacturers under the Agreements which are administered by the Commission go to national budgets. And Failure by Member States on the external frontier to prevent the smuggling of cigarettes may have minor impact on their own finances but significant impact on the finances of other Member States which were the intended destination of the smuggled cigarettes.

It is therefore justifiable for the EU to provide some assistance to enable more vulnerable / affected Member States to provide the same level of protection as less vulnerable Member States. Criminals will exploit any weak point in the system, so EU interventions which are targeted at vulnerable points are in the common interest.

In concrete terms, added value can be demonstrated by

- savings from collective procurement of specialised equipment and databases
- savings from collective specialised training (forensic IT training, seminars on irregularities/fraud detection and reporting)
- improved operational cooperation following training events, including networking at conferences and staff exchanges

- more effective cross-border operations on the basis of common technical standards and joint training

## 6. DESCRIPTION OF POLICY OPTIONS

This Section lists and briefly describes the options. Section 7 will then assess the impact of each option against the baseline and also against the option of discontinuation (option 4) since the latter comparison best illustrates the value of the different sectors of activity under Hercule.

### Option 1: Baseline scenario

The baseline option (1) is to maintain overall spending at the current level with the assumption, not set out in legislation, that the distribution between spending sectors would be broadly the same.

### Option 2

Option 2 is to maintain overall spending at the present level and renew the programme with improved objectives and methodology.

### Option 3

Option 3 is to maintain overall spending at the present level but significantly to alter the distribution of spending towards greater support for operational activities with less spending on activities with less or no immediate impact on operations. .

The main challenge would be to devise interventions which support operational actions and OLAF's operational work without crossing into areas which should properly be financed by OLAF's administrative budget or by the administrative budgets of Member States.

***It would be necessary under options 1, 2 and 3 to respect the objectives under the Agreements with the cigarette manufacturers to spend some €6 million annually on cigarette-related activities.***

### Option 4

Option 4 is to discontinue the programme in whole or in part. The consequences of reductions should be assessed in terms of the individual sectors affected and of any decision not to continue funding of work against cigarette smuggling at the agreed level.

### Discarded options:

Another option, which could in theory be combined with any other option except total discontinuation, could be to combine the Hercule and Pericles programmes (Pericles is the programme, also managed by OLAF, which finances measures to combat the counterfeiting of the euro). There would in principle be advantages of management and synergy for the Commission and Member States in combining Hercule with Pericles. However, this is not possible because of the different legal bases in the Treaty for the euro and for the protection of the Budget (Art. 133 TFEU) and because of the problems which would arise from the need for separate legislative instruments for euro and non-euro Member States. This option is therefore not further considered.

Finally, another option could be to increase the level of spending on Hercule III. This would be inconsistent with decisions already taken on the Medium Term Financial Framework in the communication 'A Budget for Europe 2020' (COM (2011)500), and is therefore not further considered.

## 7. ANALYSIS OF IMPACTS BY OPTION: CHOICE OF PREFERRED OPTION

### Option 1

This is the baseline option; continue with the same level of funding and the same approach to projects as at present under Hercule II. The impact of the baseline option is best assessed by reference to the existing programme. Specific impact can only sensibly be assessed by sector.

Overall, feedback from the stakeholders in the different sectors of the programme has been positive. The Intermediate Review in late 2010 evaluated output in detail; the main data is summarised in the Annex to this Impact Assessment.

#### **1. Technical assistance and information technology projects**

##### Technical equipment (except scanners)

The purchase of technical equipment for law enforcement agencies combating fraud aims at:

- achieving a better level of technical equipment across the EU and increased compatibility to facilitate cross-border cooperation and achieve procurement savings;
- efficient use of the equipment acquired;
- facilitating joint operations and international support for operations;
- better disclosure of offences and higher quality evidence for the courts.

Good operational results were obtained. Over the period from 2007 to 2011 (part), Member State services attributed the seizure of 374 million cigarettes, 9 million litres of alcohol and over 1 million litres of fuel to the use of equipment funded by Hercule II. The financial impact exceeded €100 million. See Annex 3.1 for more detail.

##### Scanners

Since discussions with member States in 2007, and to date, Hercule II has co-financed 21 X-Ray scanners intended primarily for the detection of illicit cigarettes in 16 Member States. Because of long lead times for procurement and installation, complete and informative data on the results of this deployment is not yet available. There will also, increasingly, be a deterrent effect which cannot be measured.

Spending on scanners constitutes the greater part of expenditure targeted at the illicit trade in cigarettes.

#### **Examples of practical results: Ireland and Malta**

*A mobile scanner, co-funded with a grant from Hercule (cost: approximately €3million has been deployed in the in the Port of Dublin since December 2009. Between January 2010 and June 2011, almost 4,000 scans have been performed, resulting in the seizure of over 6 million cigarettes, 2,111 litres of spirits, 5,877 litres of wine and 48kgs of cannabis, as well as many counterfeit items. This scanner in Dublin Port was been involved in the detection of several other large consignments of illegal cigarettes which were subsequently seized at their final destination, for example 8 million cigarettes in January 2010 and 6.5 million cigarettes in April 2010. The financial impact of these seizures, in terms of revenue protected, would over a few years exceed by a factor of several times the cost of the scanner. Another grant from Hercule was used to co-fund a mobile scanner in Malta Freeport (cost: approximately*



€3million€). The scanner, which is capable of scanning a 40ft shipping container in just 1.5 minutes, was inaugurated in May 2009 and led to the seizure of over 50 million contraband cigarettes and over 16,000 kilos of tobacco in 2009. Over 20 million contraband cigarettes were seized in 2010 and nearly 5 million contraband cigarettes in the first half of 2011. Again, the benefit in terms of revenue protected exceeds by a factor of several times the cost of the scanner.

### Forensic IT training

Cutting edge computer forensic tools and techniques are essential in the investigation of fraud so that evidence can be acquired, searched and analysed in a manner which will later be accepted as evidence in court. Computer forensic training organised by OLAF and funded by Hercule has brought law enforcement forensic experts from all Member States together for joint training courses which are not otherwise available in Europe and are expensive for national services (in excess of €2,000 per officer per week). In addition to technical skills acquired, these training courses have developed networking and provided the basis for operational cooperation notably but not only in the context of complex OLAF investigations.

It is estimated that by 2013 some 460 officers will have attended the basic training programme and a further 500 will have participated in specific advanced modules. More detail in Annex 3.3.

### Monitoring of international container movements

An agreement between OLAF and the EU Joint Research Centre (JRC) will provide for tools, funded by Hercule, to support investigations which need data on container movements (current and past) and which can also provide more realistic and effective scenarios for joint customs operations. It will also provide the possibility for more effective risk analysis in the domain of trade flows. There are two specific projects: Automated Monitoring Tool (AMT) and Contraffice

#### **The Automated Monitoring Tool (AMT)**

*The AMT has specific operational objectives<sup>3</sup> ; to increase OLAF's operational anti-fraud effort by providing automated analysis of trade flow data at EU level; to further develop a tool to be used to detect signals in customs declaration data provided by Member States with prioritization of signals detected in customs declarations; and, to continue develop the ground-breaking software so that the deployment of this kind of automated tool can be widened.*

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<sup>3</sup> A further objective (the development of a web based version of ARIADNE) has been dropped from the arrangement due to its cost.

## Contraffric; better risk analysis in maritime transport

*The Contraffric project supports the activity of customs authorities at EU level. About 90% of the world's cargo is transported by a fleet of around 15 million containers. Less than 2% are physically inspected by custom authorities, due to obvious resource constraints. It is thus imperative to develop advanced risk analysis in order to focus customs controls on those movements most likely to be fraudulent. Feedback from users in Member States suggest that half find it useful in routine operational work, and a quarter consider it to be crucial.*

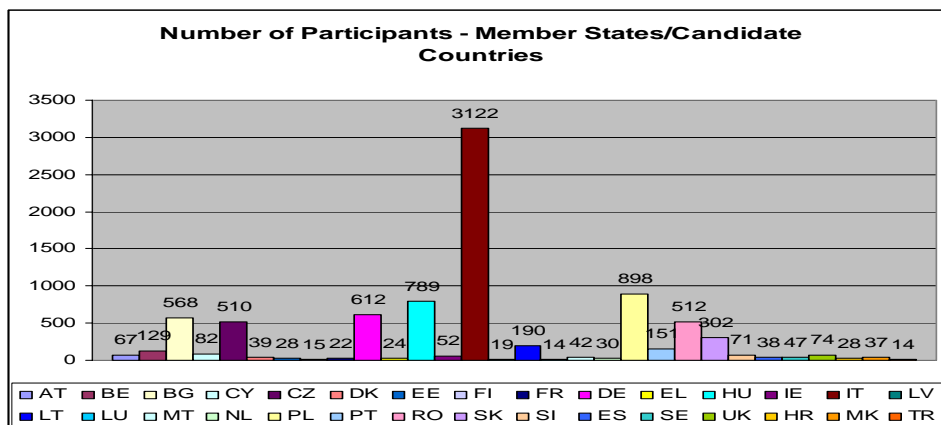
*More details in annex 3.4).*

### Procurement of databases

The procured access to external data bases (see annex 3.5) provides essential information to investigators from Member States and OLAF. This includes data necessary for protecting the revenue side of the budget, relating to trade flows and shipping and container movements. Three recent OLAF cases which relied on the extraction of data from one of these databases identified evaded Customs duties of €14 million. Data relating to companies is also essential for investigations and analysis relating to the expenditure side of the budget. More details in Annex 3.5.

## 2. Specialised anti-fraud training

The projects co-financed involved participants from all MS, candidate countries and a large number of third countries. From 2007 to 2010, in total, 41 projects were realised under Hercule II, involving 8.773 participants from all EU Member States (8.447), Candidate Countries (79) and Third Countries (247).



Through the training activities, there was a wider dissemination of anti-fraud and anti-corruption measures affecting the EU financial interests. In particular, good cooperation between the EU and national authorities, and between the services of all the institutions concerned, is a prerequisite for efficiently combating fraud. Attendees were principally from national authorities: police, Customs, Ministries of Finance and Justice, law enforcement

bodies, audit bodies, the judiciary etc. There was also some attendance from private bodies: NGO representatives, students, company representatives.

The results in this area reflect knowledge obtained in the field of fraud prevention and combat against fraud detrimental to the EU financial interests, specific skills in prevention, detection and investigation capacity in fighting against fraud, input for further development and improvement of the activities of the organisation, including legislative work, dissemination of information about the latest developments, methods, techniques in the field of combat against fraud and corruption as well as information obtained through networks established between the organisations and exchange of the latest information. These were listed in the 2010 Intermediate Review.

#### **Conference by the European Law Academy (ERA) (2010 grant agreement)**

*The “Annual Forum on Combating Corruption in the EU 2011 - How best to ensure the protection of whistleblowers” was designed as a discussion forum where international, European and national experts could present the topic from their own point of view. This objective was met. The conference brought together approximately 110 legal practitioners and experts (mainly of lawyers, prosecutors and anti-fraud investigators) from 24 Member States and EU Institutions. The results of the conference were used inter alia to prepare for the specific objectives to be inserted in the Commission's Anti-Fraud Strategy (CAFS) (COM (2011) 376) on informants and whistleblowers (2.3.2.).*

#### **Eucriim 2010 (2009 grant agreement)**

*Eucriim is a quarterly review of the Associations for European Criminal Law and the Protection of the EU Financial Interests (ELA). It includes an extended news letter section and serves as a platform of discussions between academics and practitioners publishing scholarly articles on relevant topics of EU criminal law and the protection of the EU financial interests. Four issues of the journal Eucriim were published in 2010 by the Max-Planck-Institute. The following topics were covered: “Data Protection”, “The Lisbon Treaty”, “The External Dimension of Criminal Justice”, “Procedural Rights in Criminal Proceedings”. Eucriim raises the awareness of legal practitioners (those working in judicial, police or administrative authorities, universities, law offices, etc.) of relevant legal provisions associated with the protection of the EU financial interests and European criminal law. Eucriim conveys information on the protection of the financial interests and supports networks of the European Lawyers Associations in this area.*

#### **Annual Task Group Cigarettes Conference**

*Each year OLAF holds a Task Group Cigarettes Conference, bringing together investigators, analysts and policy makers working on tobacco crime to discuss the latest trends and issues in this ever changing environment. In 2011 the 16th Annual Task Group Cigarettes Conference will be held in Vienna from 8-12 October. Not only are the 27 Member States represented but key third countries (Russia, Ukraine, Egypt, and Moldova) and international organisations (WCO, EUROPOL) attend the conference. It is an important event for participants to maintain and enhance their expertise, as well as for developing and nurturing valuable contacts in other Member States and key third countries. As a result of the contacts made during this conference, OLAF and the Member States are able to deal swiftly and*

*effectively with operational issues, as demonstrated consistently over the years (for example more recently Joint Customs Operation SIROCCO, see OLAF (eleventh) Annual Report 2011, point 3.1.4).*

Further examples of Hercule spending on training are listed in Annex 4.

### **3. The Associations for Criminal Law and the Protection of the EU Financial Interests (ELA)**

Financial support has been granted to legal academic projects such as legal studies, legal academic conferences and publications dealing with particular issues of the protection of the EU financial interests. The group of eligible beneficiaries is not limited to the 32 Associations belonging to the ELA. Other entities (universities, research institutes, Member State administration and non-profit making bodies...) may also compete in the calls for applications.

The events have a wide international dimension. The audiences are mainly composed of judges, prosecutors, lawyers, policemen, national Law Enforcements Agencies, academics, researchers, national civil servants, as well as members and officials of the EU institutions. As regards the 6 conferences per year that have been held on average, the regional spread of participants was satisfactory with, however, a very high number of Italian participants<sup>4</sup>, due to the fact that a very big conference was organized in Italy each year in Milan where relevant topics on the development of EU law and the transnational protection of the financial interests against fraud were included into a continuous training scheme including Italian lawyers, prosecutors and judges and participants from other Member States.

Feedback has been positive; the six conferences organised under the 1999 Budget were rated as good or excellent in 97% of completed evaluation forms.

Through its influence on the selection of topics, the Commission has a certain influence on the debate between the specialists, promoting a more comprehensive approach and encouraging the dissemination of legal information on the latest developments in the area of fraud prevention and fight against fraud.

Projects give input and motivation for preparatory strategic work, research, teaching and the exchange of practical experience. Each conference is in principle attended by speakers and participants from OLAF, other Commission services or other European Institutions. The annual meetings of the Presidents of the ELA give OLAF a further opportunity to initiate discussion among professionals and ideas for future legal projects and this is much appreciated. These consultations were at the origin of several forward looking comparative law studies, the “Corpus iuris” on penal provisions for the purpose of protecting the financial interests of the EU, the study on “Criminal justice systems” relevant to developing a European institutional frame for the penal law protection of the financial interests of the EU, the “Euronneeds” stakeholder review study on the practical experiences by anti- fraud prosecutors and the study.

#### **Option 2**

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<sup>4</sup> Budget 2007: 352 out of 605, budget 2008: 471 out of 988 and budget 2009: 436 out of 770.

Option 2 is to renew the programme at the present level of spending with improved objectives and methodology taking into account feedback from stakeholders as well as the Commission's experience in managing Hercule II.

The most significant change would be to **increase the share of Hercule funding in co-financed activities**. This would be a response to a development which has become evident in 2011, namely that Member States are less able to co-finance Hercule projects. So far as procurement of technical equipment is concerned, those Member States which most need this equipment are the least able to co-finance this. In some instances, notably on eastern and southern borders, the areas affected are also those potential or actual weak points where there is the greatest common interest in strengthening the EU's defences. However, due to the specific co-financing requirements of the Hercule programme some Member States which are particularly exposed to the risks of smuggling have not been able to benefit from the funding for the acquisition for instance of container scanning equipment.

The consequence of an increase in the EU share of financing would be that fewer projects could be funded. This would require prioritisation and tougher choices at the selection stage; at present most projects which meet the eligibility criteria are accepted. These could include departing from the principle of geographical balance.

The impact on individual sectors of reductions in spending is discussed under option 4.

In theory, an increase in the EU share of financing could reduce the overall level of spending on anti-fraud because the Member States would reduce their contribution. In practice, however, the risk is that unless the cofinancing ratios are changed upwards the volume of antifraud spending would be even lower – and its quality would fall – since there will be a sharp reduction in bids from the Member States. Unless the ceilings are raised total spending under Hercule could actually fall.

Another change would be greatly to **simplify the administration of small grants, under €50,000**, to take account of criticisms that the bureaucracy required to demonstrate the eligibility of expenditure in detail is disproportionate. Lighter procedures, reduced requirements in terms of detailed breakdown of costs and more flexible criteria for eligibility are needed. For smaller training projects the level of administrative burden for the beneficiaries should be kept proportionate.

Other changes could clarify the scope of Hercule in the sense of explicitly promoting flexibility **to extend present areas of activity where there is a strong EU wide interest as for example:** The action plan to fight against smuggling of cigarettes and alcohol along the EU Eastern Border (SEC (2011) 791 which accompanies the CAFS envisages for example that Hercule III “*could be modified in order to facilitate acquisition of relevant equipment for a project which has wider European interest*” (see action plan in the annex , point 1.3). This would imply readiness also to **fund essential equipment which is of a specialist technical nature** such as automated recognition tools. Another change which could be facilitated by more flexible scope could **extend the concept of training towards communication to a wider public** than the specialists who are currently targeted.

### **Option 3**

Option 3 is to maintain overall spending at the present level but significantly to alter the distribution between spending sectors towards greater support for operational activities; and to

reduce the level of spending on activities with less or no immediate impact on operations. This would be facilitated by changes to the financial management procedures to allow very rapid decisions, outside the conventional approach to calls for proposals, for the financing of operational support - effectively a “war chest” for OLAF.

Option 3 would imply placing more weight on specific objective 3 (technical operational support) and specific objective 1 (enhanced cooperation), and less weight on specific objectives 2 and 5 (information and best practice exchange, and improved academic analysis). The implications of reduced spending in these areas are discussed under option 4.

The main challenge would be to devise interventions which support operational actions and OLAF’s operational work without crossing into areas which should properly be financed by OLAF’s administrative budget or by the administrative budgets of Member States. There would also be a need to avoid overlap with the operational activities of EUROPOL (coordinating law enforcement actions) and EUROJUST (coordinating judicial procedures), as these develop. They each manage a budget to support specific law enforcement actions.

Movement in this direction therefore needs to be exercised with caution.

#### **Option 4**

Option 4 is to discontinue all or part of the programme. The analysis below would also apply, proportionately to the scale of the reduction, to changes in the allocation of funds to particular sectors under Options 2 and 3

##### *General observations*

If EU spending in this area were simply discontinued, the principles of the protection of the Budget as set out in the Treaty would be less respected; indeed the Commission would be sending a stark signal to that effect. While costs at EU level would be reduced, it is unlikely especially in present circumstances that the efforts of individual Member States could collectively make good the difference and on the revenue side of the Budget the cost of less effective protection in some Member States would be met by greater financial contributions from all Member States. There would also be negative impacts on national finances.

Some elements could be maintained under other programmes in the areas of justice, customs cooperation and security, either by the transfer of part of the Hercule funding currently foreseen in the MFF or at the expense of other activities under those programmes, about which this Impact Assessment does not attempt to speculate.

However, this would inevitably lose the advantage of the focus of the present Hercule programme on the key issue, central to the European project, of the defence of the EU Budget. Apart from the political implications of appearing to weaken commitment to the principles of equivalence and close cooperation between the Union and the Member States in the Treaty, OLAF’s operational effectiveness would suffer from the loss of its ability to use Hercule to network with operational partners and so to multiply its own value by bringing the resources available in the Member States to bear on the problem of fraud against the EU Budget in a coordinated way.

To some extent, Member States would replace some of the activities consistent with the principle of subsidiarity; for example, to procure technical equipment and commercial databases for their own purposes and to train forensic IT staff, both of which could have real

or tangential benefits for the protection of the EU Budget. But these activities would lose the focus of the present Hercule programme and could well cost more because of the loss of collective purchasing power.

The likelihood is that for reasons of budgetary stringency and lack of incentive (Drivers 2 and 5) the absence of EU funding would mean that in some critical areas differences in the effectiveness of the defences of the EU Budget between Member States would increase. Not only would the overall level of protection be lower, but the **equivalence of protection would be less**. There could be critical problems on the Eastern border, and the opportunities for criminals to move across borders to seek out the weakest points in the EU would increase rather than diminish.

Reduction in the overall amount spent on prevention of cigarette smuggling and counterfeiting would, beyond an immediate negative impact on public finances through reduced revenue, would not be consistent with the specific anti-fraud, anti-smuggling and anti-counterfeiting objectives of the Agreements with the cigarette manufacturers which were at the basis of their willingness to make out of the pocket payments of more than US \$ 2 billion into national and the EU Budgets over the next two decades. These should serve targeted action to improve the chances of effective law enforcement against fraud and smuggling.

#### *Observations on individual sectors*

Technical assistance: In addition to the points made above about the consequences for Member States, OLAF's own investigations would suffer seriously from the loss of data sources currently financed for the Member States and OLAF and mainly used on the revenue side of the Budget. The cost in terms of reductions of Own Resources recovered (not to mention reduced deterrence) would exceed the financial savings many times over. The loss of ground-breaking work currently under development with the Joint Research Centre to automate analysis of trade flows so as to identify potential fraud against the revenue side of the Budget through systematic analysis of massive data sets would deprive the EU of what is potentially a powerful new defence for the Budget. No single Member State has the incentive to undertake this work on its own.

Specialist anti-fraud training: The loss of this activity would greatly reduce opportunities for networking and exchange of best practice between the services of Member States and/or with their Commission counterparts. Such contacts would be reduced to those which necessarily occur in an immediate operational context; indeed there would probably be fewer even of the latter since experience shows that operational exchanges are fostered by prior networking. The level of compliance of Member States with EU law on matters such as the timely reporting of irregularities, and their duties of cooperation with OLAF and each other on investigations would fall. Realistically, Member States would not make up the gap and to the extent that some might attempt to? do so this would inevitably be more from a national or (selective) intergovernmental standpoint than from an EU perspective.

Associations for European Criminal Law and for the Protection of the EU Financial Interests (ELA): This activity can, realistically, only be maintained at EU level. Its loss would reduce the volume and the specificity of the academic and professional work which is necessary in order to prepare the ground for more integrated use of criminal and administrative law assets in defence of EU financial interests. A reduction in spending would have a proportionate

effect. The transfer of support to the ELA to another programme would reduce its focus on the protection of the financial interests of the EU.

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## Analysis of Options

### *Methodology*

The range of options has been checked against the specific and operational objectives:

	<u>Option 1</u> Continue with the same level of funding Baseline scenario (BS)	<u>Option 2</u> Improved objectives and methodology, increase the share of Hercule funding in co-financed activities for the procurement of technical equipment	<u>Option 3</u> Significantly alter the distribution between spending sectors towards greater support for operational activities	<u>Option 4</u> Discontinue all or part of the programme
<p>To enhance transnational and multidisciplinary cooperation between Member State authorities, the Commission and OLAF in the prevention and investigation of fraud.</p> <p><i>Relates mainly to operational objectives</i></p> <p><i>1: protect external frontier with technical equipment</i></p> <p><i>4: procure databases to support investigations,</i></p>	<p>BS, has currently not the full intended positive impact as co-financing rates do not always allow to achieve a balanced geographical distribution of funds facilitating targeted projects in high risk geographical areas</p> <p>-</p>	<p>Improved impact, as increased co-financing will allow to achieve a geographically more balanced distribution of funds facilitating targeted projects in high risk geographical areas</p> <p>++</p>	<p>Improved impact on investigations, but limits potential of the programme for implementing a consistent policy in support of prevention,</p> <p>+/-</p>	<p>Adverse impact on chances to implement in a consistent way the action plan to fight against alcohol and cigarettes smuggling along the Eastern boarder</p> <p>—</p>

<p>To facilitate the exchange of information, experience and best practices related to the protection of the financial interests of the EU.</p> <p><i>Relates mainly to operational objectives</i></p> <p><i>13: conferences to strengthen MS compliance</i></p> <p><i>,14: communicate EU-anti fraud policies,</i></p> <p><i>15 : facilitate sharing of best practices,</i></p> <p><i>16 : raise public awareness of the risk of fraud,</i></p>	<p>BS,</p>	<p>Improved impact, as increased co-financing will allow to achieve a geographically more balanced distribution of funds</p> <p>++</p>	<p>Adverse impact on a consistent policy for exchange of best practices</p> <p>--</p>	<p>Adverse impact on technical support offered to Member States</p> <p>--</p>
<p>To provide technical and operational support for the law enforcement authorities of the Member States in their fight against illegal cross border activities, emphasising support for customs authorities.</p> <p><i>Relates mainly to operational objectives</i></p>	<p>BS</p>	<p>Positive impact facilitating targeted projects in high risk geographical areas</p> <p>++</p>	<p>Improved impact on joint operations, but limits potential of the programme for a consistent policy in support of prevention,</p>	<p>Adverse impact on possibilities to facilitate the exchange of best practices</p> <p>--</p>

<p>2: support joint operations</p> <p>3: increase number of forensic examiners</p> <p>5: develop with JRC mechanisms identifying significant changes in trade</p> <p>6: develop with JRC advanced risk analysis,</p> <p>7: develop with JRC an advanced risk analysis system</p>			+/-	
<p>To enhance actions directed specifically at cigarette smuggling and the counterfeiting of cigarettes, in line with the Agreements signed with cigarette manufacturers.</p> <p><i>Relates mainly to operational objectives</i></p> <p>8: implement agreements with cigarettes manufacturers,</p> <p>9: provide up to date equipment to detect tobacco contraband consignments</p>	<p>BS, has currently not the full intended positive impact as co-financing rates do not always allow to achieve a balanced geographic distribution of funds and do not sufficiently facilitate targeted projects in high risk geographical areas</p> <p>-</p>	<p>Positive impact facilitating targeted projects in high risk geographical areas</p> <p>+</p>	<p>Positive impact in as much as the cooperation between law enforcements authorities is concerned, negative impact on implementation of non-law enforcement related objectives and exchange of best practices</p> <p>+/-</p>	<p>Adverse impact on a coherent implementation of the convened actions to fight against alcohol and cigarettes smuggling, in particular along the Eastern boarder</p> <p>--</p>

<p><i>10: close collaboration between anti- tobacco contraband law enforcement agencies</i></p> <p><i>11: exchange of best practices related to contraband tobacco products</i></p> <p><i>12: dissemination of data on modus operandi in the illegal tobacco trade</i></p>				
<p>To support academic analysis of strategic legal issues with implications for the law enforcement area, with a view to the development of a broad consensus on how better to use legal resources in the protection of EU financial interests.</p> <p><i>Relates mainly to operational objectives</i></p> <p><i>17: facilitate strategic discussion and academic debate</i></p> <p><i>18: Build networks of academics,</i></p> <p><i>19: facilitate exchange with practitioners and</i></p>	<p>BS</p>	<p>Positive impact as an improved methodology and objectives will allow to simplify procedures thereby facilitating attribution of grants</p> <p>+</p>	<p>Adverse impact</p> <p>-</p>	<p>Disruptive impact on possibilities to facilitate exchange with academics and practitioners</p> <p>--</p>

<p><i>academics</i></p> <p><i>20: Develop reflection on reliable statistics about fraud,</i></p> <p><i>21:Develop coherent quantitative analysis of fraud phenomenon</i></p>				
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### *Choice of option*

**On the basis of the analysis and evaluation made the preferred option is option 2, which scores best.**

**It is essentially an improved version of the status quo (option 1), but taking into account feedback and experience.** . It is in general positive to move into the direction of more support for operational activities but Art. 325 TFEU does not only oblige the Member States and the Union to fight against fraud, but also to prevent fraud. As recently emphasised through the CAFS (COM (2011) 376, 24.6. 2011) a distinct effort needs to be developed on specific prevention and detection of fraud. This includes actions for an improved exchange of best practices, more systematic risk analysis and exchange of strategic intelligence, awareness raising and training. A more cautious move towards greater emphasis on operational support could be determined within the concept of Option 2, through an increased co-financing for technical assistance and by increasing the share of the amounts attributed to operational support in the implementation measures under the annual financing decisions.

Option 3 (to alter significantly the distribution between spending sectors towards greater support for operational activities): To concentrate on specific investigations and law enforcement actions would be problematic as Member States are with their national authorities and budgets responsible for the fight against fraud by means of justice and law enforcement. It might therefore lead to confusion with regard to the attribution of responsibilities between Member States and the EU. The obligation to prevent fraud under Art. 325 TFEU could not be followed-up in such an effective manner as until now. This could lead to less and less well designed prevention measures in the Union and the Member States and limit the chances to achieve a better awareness raising on the need to proactively identify fraud risks and exchange of best practices.. Therefore, the potential advantages of option 3 for cooperation on investigations are by large outweighed by its disadvantages

Option 4 (discontinuation) would have the undesirable effect of costing much more than it would save: The actions which are supported in a cost effective way at a European level and which serve the development of improved conditions under which close and regular cooperation between nation authorities may be organised could no longer be assisted. It would also signal lack of commitment to the key principles of budgetary anti-fraud protection in the Treaty.

## **8. LINKS BETWEEN THE INTENDED INITIATIVE AND OTHER POST 2013 MULTIANNUAL FINANCIAL FRAMEWORK RELATED INITIATIVES**

In a very wide sense, the Hercule proposal underpins the MFF by strengthening the protection of the Budget.

In a number of specific areas, there is a potential interlink with other measures, at least in relation to the areas of justice, security and of customs cooperation.

Most obviously, the deployment of additional technical, analytical and training resources to fight cigarette smuggling will also strengthen the EU's capacity to protect the external border effectively not only against smuggling of high value goods but also against other forms of serious organised crime such as trafficking in human beings, and even terrorism.

Equally, the development of the capacity of interested legal professionals to address the complex issues involved in using criminal law resources more effectively in pursuit of the common the European objective of protecting the budget will (continue to) have implications for wider work on justice and security. Indeed the conceptual basis for the ongoing work on a possible European Public Prosecutor's Office is firmly rooted in past work on the protection of EU financial interests through the use of the criminal law. To that end, the programme will also be useful in the context of the implementation of recent Commission communications on Anti-Fraud Strategy as well as on anti-corruption and synergies between the Commission services involved will be reinforced.

From the opposite angle, the fight against fraud to the detriment of the EU Budget can to some extent be reinforced, tangentially or more directly, by measures with wider application in the justice and security areas, and customs cooperation; for example, through the development of Europol and Eurojust, through better procedures for enforcing civil law judgments across national borders, and through improving the administration of justice and reducing corruption notably in areas of the EU – and third countries in receipt of EU funds – which are at high risk.

The indirect economic and social impact of Hercule is not measurable as such, but instruments whose effect is to protect public funds, improve law enforcement, reduce the availability of counterfeit goods notably cigarettes, and fight corruption clearly have a positive social and economic impact. In sectors particularly at risk from smuggling, such as some agricultural products (eg garlic) and industrial products at risk from unfair competition (anti-dumping), the positive economic impact can be more substantial.

Steps have been taken during the development of the Hercule programme both to guard against the risk of overlapping between Hercule and other programmes and to promote the effective use of Hercule funding in combination with funding from other programmes where this is appropriate. In relation to justice and security issues, this has involved discussions with DGs TAXUD, JUST and HOME (see also annex 3.3 as regards DG HOME funding of cybercrime training under ISEC<sup>5</sup>). For example, in 2011 OLAF verified with DG HOME that

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<sup>5</sup> Previously AGIS.

there was no overlap between the purchase of scanners for Member State border services and actions envisaged by DG HOME. Another example is in the protection of the external aid budget, where Hercule funds have been used in conjunction with funds administered by the former DG AIDCO to improve cooperation with the relevant services of third countries through networking, training and staff exchanges.

Support from programmes designed for wider impact would be less effective in addressing the specific issues relating to the protection of the Budget (or would be distracted from their main purpose) . All of them target a specific policy area to which correspond particular groups of stakeholders and authorities. However, anti- fraud requires support of a variety of multidisciplinary objectives to prevent, counter and fight against illegal activities thereby requiring cooperation between many different stakeholders and authorities at a regional, national and at a European level.

All this said, there are strong arguments of a beneficial effect on multidisciplinary capacity building, technical assistance and training for an instrument **specifically** dedicated to fighting fraud against the EU Budget.



## **9. SIMPLIFICATION AND REDUCTION OF THE ADMINISTRATIVE BURDEN**

As part of a general approach to improve the efficiency of the support granted under the Hercule programme and to reduce disproportionate administrative burden on beneficiaries the proposal will adapt the Hercule programme to reflect simplification of the current rules which apply to this form of spending. Consultations confirm that stakeholders would particularly welcome simplification.

Specifically, revised financial management procedures could envisage lighter procedures for grants under €50,000, an increase in the proportion of co-financing provided from the EU Budget, and reduced requirements in terms of detailed breakdown of costs and estimates, more flexible criteria for eligibility, and more flexibility in the requirements for application and for the reporting of outcomes.

In terms of communication and coordination, the increased use of working groups and other channels of communication between the national authorities concerned and the Commission/OLAF could accelerate feedback and improve the targeting of spending, at some administrative cost.

Procedures for activities to be supported in third countries should also be simplified so as to facilitate operational support in one of the highest areas of risk to the budget.

Some other suggestions made by stakeholders are worth consideration, such as the possibility to finance, in the same call, complementary actions (for instance, supply of technical equipment, training of the users and maintenance) or the possibility to promote annual grants to support the execution of multiannual activities (which are currently subject to a declining scale of payment).

In addition, there is a need to address the problems caused by the exclusion of VAT from eligible costs for the purpose of calculation of the co-financing percentage where national administrations are beneficiaries.

## 10. MONITORING AND EVALUATION

There will be a mid-term and yearly evaluation report produced on the implementation of the programme. OLAF also intends to continue its presence at the majority if not all events financed so as to obtain immediate feedback and ensure quality. Next to this the use of a standard clause requesting beneficiaries to provide the necessary feedback on the impact of the funds provided will continued to be used and received data will be structured and analysed.

The performance of Hercule II has already largely been measured in terms of output, through feedback from clients and stakeholders described in the Annex and also by a policy of managing the quality of spending closely. In an effort to check the quality of the events and to verify target achievement nearly all conferences and training events financed are attended by OLAF staff with financial management responsibilities and many are also attended by OLAF staff who actively contributes with subject relevant expertise. All technical equipment funding is discussed between the OLAF experts and the national services concerned.

This policy will continue. However, Specific, Measurable, Achievable, Relevant and Timed (SMART) objectives which were already used in the intermediate review on the achievement of the objectives of the Hercule II programme submitted on 21, December 2010 under Article 7 second sub-paragraph (Decision 878/2007/EC) and prepared by the OLAF internal audit capability, will be further developed on the basis of the intervention logic above to the extent that this is possible in each sector of the programme. Where the nature of some of the actions financed, particularly the support of the ELA and some training activities, is such that output indicators have to be used, particular attention will be paid to stakeholder feedback balanced by assessment from OLAF staff who participate in the events

Data will systematically be collected on the use of financed equipment and services such as access to databases including, where this is cost-effective, operational results which can be attributed to the equipment or services in question. Feedback from participants and beneficiaries will be sought on a continuous basis.

In relation to the acquisition of technical equipment, where there is a particular need for confidentiality and discretion, OLAF will systematically control beneficiaries in order to check that the equipment exists and is properly used for the co-financed activity.

In addition to these monitoring activities an independent mid and final evaluation is foreseen, in which the Commission's evaluation standards are used in order to assess the programmes' effectiveness, efficiency, utility, acceptability, sustainability and consistency.

The internal reorganisation of OLAF at the beginning of 2012 will concentrate the management of Hercule (and Pericles) in a single unit in order to reinforce programme management skills, including capacity to evaluate.

## **ANNEXES**

### **ANNEX 1.**

#### **BUDGETARY ENVELOPE OF THE HERCULE II PROGRAMME (2007-2011):**

2007 13,725,000

2008 13,800,000

2009 14,000,000

2010 14,100,000

2011 15,000,000

## ANNEX 2.

### COMMITMENTS MADE UNDER THE HERCULE II PROGRAMME (2007- 2010):

The HERCULE II budget was committed in 2007-2010 as shown in the table below. Commitment amounts correspond to the amounts stated in the grant agreements as a part to be financed by OLAF. Final payment can be less than the committed amount, as actual costs are sometimes less than initially envisaged.

BUDGET	TOTAL COMMITTED	Execution (%)*
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Technical assistance		50%	of the budget	
2007	Grants	9.455.208	9.414.489	99,6%
	Procurements	0	0	
2008	Grants	7.089.000	7.155.941	100,6%
	Procurements	0	0	
2009	Grants	7.570.000	7.547.636	99,7%
	Procurements	200.000	240.000	120%
2010	Grants	6.150.000	6.757.726	109,9%
	Procurements	100.000	0	
<b>TOTAL</b>		<b>30.564.208</b>	<b>31.115.792</b>	<b>98,23%</b>

<b>Training seminars conferences and 30% of the budget</b>				
2007	Grants	1.372.997	1.477.713	107,6%
	Procurements	1.325.911	1.269.237	95,7%
2008	Grants	1.102.000	1.100.818	99,9%
	Procurements	2.965.000	2.867.321	96,7%
2009	Grants	1.400.000	1.396.122	99,7%
	Procurements	2.610.000	1.917.132	73,5%
2010	Grants	2.200.000	2.219.599	100,9%
	Procurements	2.900.000	2.575.298	88,8%
<b>TOTAL</b>		<b>15.875.908</b>	<b>14.823.240</b>	<b>93,37%</b>

<b>IT - Information technology 20% of the budget</b>				
2007	Procurements	1.570.883	1.563.561	99,5%
2008	Procurements	2.644.000	2.675.920	101,2%
2009	Procurements	2.220.000	2.203.663	99,3%
2010	Procurements	2.750.000	2.544.904	92,5%
<b>TOTAL</b>		<b>9.184.883</b>	<b>8.988.048</b>	<b>97,86%</b>

\* Hercule annual programme allows 20% budget flexibility between headings

**Hercule II programme: consumption level on a yearly basis:**

<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>100%</b>	<b>100%</b>	<b>97,22%</b>	<b>99,98%</b>

### ANNEX 3.

#### TECHNICAL ASSISTANCE AND INFORMATION TECHNOLOGY: RESULTS

##### 3.1 OPERATIONAL RESULTS OF TECHNICAL EQUIPMENT CO-FINANCED BY HERCULE II

Results per year (cases where technical equipment co-financed has been used)<sup>6</sup>

Year	Quantity (tons) : agricultural products or tobacco	Quantity (liters) : Alcohol	Quantity (liters) : Fuel	Quantity (pieces): cigarettes	Amount (EUR)
Summary for 2007 (77 detail records)					
<b>Total year:</b>	<b>6,57</b>	<b>5.500</b>	<b>1.262.900</b>	<b>21.491.440</b>	<b>3.462.821</b>
Summary for 2008 (38 detail records)					
<b>Total year:</b>	<b>0</b>	<b>500.000</b>	<b>10.030</b>	<b>266.766.634</b>	<b>81.175.024</b>
Summary for 2009 (29 detail records)					
<b>Total year:</b>	<b>11,08</b>	<b>8.575.885</b>	<b>0</b>	<b>51.166.469</b>	<b>4.252.315</b>
Summary for 2010 (65 detail records)					
<b>Total year:</b>	<b>0</b>	<b>26.635</b>	<b>0</b>	<b>24.978.060</b>	<b>12.224.885</b>
Summary for 2011 (16 detail records)					
<b>Total year:</b>	<b>0</b>	<b>4.786</b>	<b>0</b>	<b>10.126.254</b>	<b>1.508.544</b>
<b>Grand Total</b>	<b>17,6 tons of agricultural products or tobacco</b>	<b>9.113.000 liters of alcohol</b>	<b>1.273.000 liters of fuel</b>	<b>374.529.000 pieces of cigarettes</b>	<b>102.623.000 EUR</b>

##### 3.2 X-RAY SCANNING EQUIPMENT SUPPORTED BY HERCULE II

Various types of scanners have been purchased with financial support, including large fixed scanners at key entry point (sea ports and border crossings) to scan suspect containers and lorries, mobile scanners which can be deployed wherever there is an operational need and smaller scanners to scan pallets and small loads. One Member State was awarded a grant to fund specialist scanning equipment to scan freight entering the EU by train. Scanning technology has proved to be a very effective weapon in enforcing customs legislation. It is used on a daily basis to examine suspect loads and has been invaluable in detecting illicit consignments of cigarettes concealed in containers, vehicles and packages. It is too early to give comprehensive figures on the number of scans performed and the number of seizures made. This is because of the considerable time-delay between the award of a grant and a scanner being fully operational. Public procurement procedures must be followed, the equipment must be ordered, delivered and tested and staff must receive appropriate training.

<sup>6</sup> This information, obtained from Member States, cannot be considered as complete and the results could therefore be superior.

Member State	Number of Scanners
Austria	2
Cyprus	1
Denmark	2
Estonia	1
Finland	1
Germany	1
Greece	1
Ireland	1
Lithuania	1
Malta	1
Poland	2
Portugal	2
Slovenia	1
Spain	1
Sweden	1
United Kingdom	2

### 3.3 *COMPUTER FORENSIC TRAINING*

OLAF facilitates training for European Law Enforcement (LE) officers on how to collect, retrieve and analyse data on any electronic data carrier. It is a vast domain, requiring specialised knowledge and a very high degree of IT literacy.

OLAF has been co-financing this kind of training since 2007. So far, this opportunity has been provided to 323 LE officers ("basic" training) and 320 officers (two weeks of high level advanced training) to 93 LE bodies/services in the EU and even to 5 acceding countries. This training is in line with the US based IACIS standard (International Association of Computer Investigative Specialists), a non-profit organisation composed by LE people (or retired from LE) with a worldwide reputation. It is complementary to other forensic training actions financed by DG HOME (cybercrime training under ISEC).

OLAF can count on their pool of high level forensic trainers and offers the Member States a unique opportunity to raise their technical level and readiness to investigate complex financial fraud and corruption cases. Additionally, OLAF has created a real network of forensic specialists all over Europe who have received the same kind of training. Each training session is also focused to bring people together and to reinforce this networking established since 2007. OLAF can call upon the participating LE services, should its own forensic resources fall short in a specific on-the-spot check. As the staff of these services have been trained according to OLAF' own standards, the retrieval of evidence will be done in a forensically correct manner.

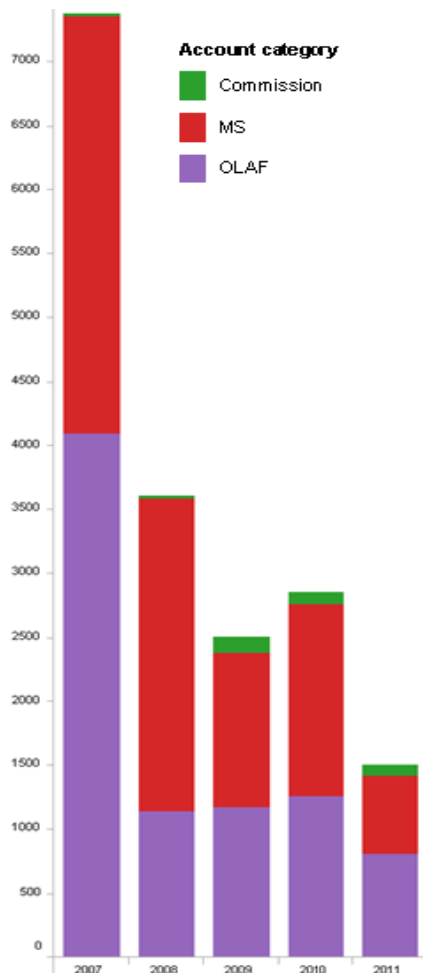
### 3.4 *INFORMATION TECHNOLOGY: AMT AND CONTRAFFIC*

a) Automated monitoring tool (AMT): number of records

Access is by OLAF, DG JRC and Member States.

Results: € 25,506,432 estimated revenue (Customs duty) at risk from OLAF examples. € 86,461.53 recovered, € 8,404,939 identified, but not recovered. These figures include VAT domain of sea-transportation.
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Satisfaction is indicated by discussion and feedback from the last workshop, leading to a decision to draft a 4<sup>th</sup> administrative arrangement. There is an interesting development on prices, supported by Member States at the last workshop. The tool can now identify low price outliers (i.e. potential under declarations) for all Tariff chapters. Results will shortly be published to Member States.



This figure illustrates the count of number of records consulted in Theseus, broken down by number of records for each date year. The colour shows details about account category i.e.: Commission, Member States and OLAF. The downward trend may give a wrong impression, but the project went through a learning curve. AMT now offers more alerts than ever before, but filtering tools guide the user to the more relevant alerts.

## b) Contraffice

Contraffice aims to develop and test an advanced risk-analysis system in the maritime transportation domain capable of automatically checking the origin of the merchandise declared by importers, in order to detect potential fraudulent cases of the type "false declaration of origin". The benefits at EU level are to complement national risk analyses. Established national risk analyses are based on "local data" that mainly derive from information about the entities involved in the transaction and on the declarations given by the importer. This national risk-analysis can be enhanced if global risk-indicators - related with the itineraries of the containers are used. In order to use the itineraries of containers as a first-class risk-indicator, there is the need to develop a repository of container movements on a global scale. Clearly, to achieve economies of scale, this type of development should be done centrally and made available for national customs organizations.



## Contraffric: results obtained so far

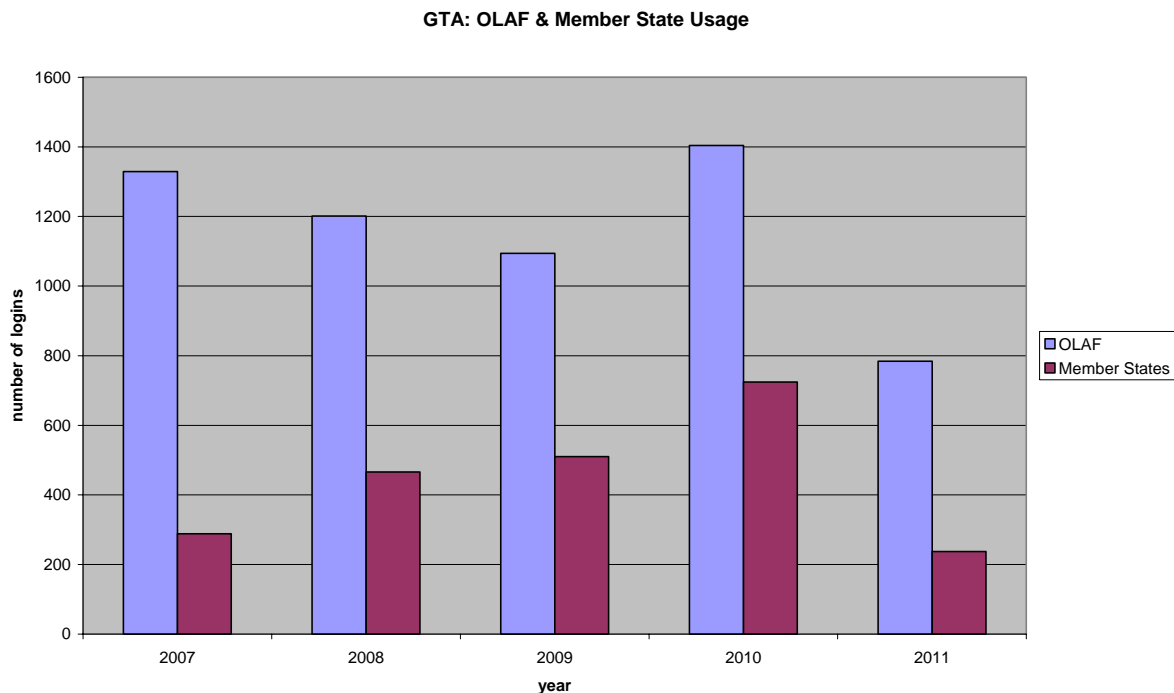
Currently the central repository of Contraffric handles over 660 millions of container events (around 30% of the current worldwide activity), referencing over 12 million containers. This repository is regularly used by EU customs authorities: 33% of users declared to use it on a weekly basis, and 22% consult it daily. The usefulness of the system is also recognized by the user community: 50% consider that the information extracted from Contraffric is useful in their operational customs work, while 22% consider it of crucial importance. In addition, a total volume of more than one million customs import-declarations have been analyzed, and 2251 instances of mismatches between the origin declared by the importer and the geographically origin inferred by Contraffric were detected. Out of these, 244 concerned the transport of "sensitive goods". By taken into account the TARIC regime applicable to importation of sensitive goods, the abnormal declarations were further manually analyzed by OLAF in order to attribute a "suspicious level" (none, high, medium and low). On the data analyzed until May 2010, out of 206 declarations, 14 were considered highly suspicious and transmitted to a national customs authority for further investigation. Contraffric has demonstrated that route-based risk analysis can be effective in the detection of fraud of the type "false declaration of origin".

### 3.5 PROCURED ACCESS TO DATABASES

#### a) Global Trade Atlas Database (GTA)

GTA is used to help identify potential Customs fraud and support, either directly or indirectly, the Member States. Access is by OLAF and Member States. There is an increasing Member States database access (see below).

#### Total usage split by OLAF and 11 Member States:



Results: € 14,275,000 from 3 OLAF cases.

#### OLAF case example

A product declared as country A origin, suspected to be country B origin subject to anti dumping and countervailing duties € 9,100,000 ADD and € 1,500,000 Customs duty. Information was received from Member State authorities about a shipment of suspect country A product. GTA checks revealed the exact same quantity being shipped from country B to country A shortly before the country B to EU shipment, active investigation.

## b) China Trade Information (CTI) and Tips Software Services

The information extracted from the Chinese database (CTI) is valuable, not only during the investigation itself, but also in the evaluation stage of a case. It helps OLAF case handlers decide whether or not a case should be opened, provides a support for evidence in cases where several fraud mechanisms are involved and it is also useful to identify the Chinese exporters concerned. Some OLAF cases were dependent on the Chinese database to prove the fraud. The use of the information contained in the database has led to the success of many operational cases, which in turn led to the recovery of important amounts, some leading to jail penalties for the individuals involved in the fraud scheme.

### **OLAF case example**

*A specific case fully depended on the Chinese database (and GTA). The case concerned the evasion of customs duties (12%) for textile garments, which had been falsely declared as originating in Country A (preferential origin, 0% duty). Thanks to the Chinese database, OLAF could demonstrate that, for example, cashmere pullovers exported from Country B were cleared for customs purposes in Country A as yarn in order to deceive the Customs of that Country. The aim was to pretend that the companies concerned in Country A produced textiles from Country B yarn and thus obtained the Country A preferential origin. Instead, however, these companies merely re-exported the Country B ready made garments previously imported. The fact that also the bills of lading contained wrong information concerning the description of the goods exported from Country B to Country A made the Chinese data base valuable. It was the only source of obtaining data to demonstrate the actual nature (i.e. ready made garments instead of raw-material) of the goods supplied from Country B to Country A and from there to the EU. The duties evaded were about € 30 million. The case faced a number of appeals and the Commission is now defending it at the ECJ.*

The same principle and results apply for detailed shipment records of Indian imports and exports (Tips).

## c) Access provided to other main databases

These databases, supporting the customs activities in the Member States as well as OLAF activities, cover the following information domains: Maritime - transportation (Lloyds – SEAWEB (SEADATA) and AISDATA); Manifest - data (Tradebytes – C-HAWK); Companies search tool (DUN & Bradstreet GRS); Companies information (full report) (DUN & Bradstreet DBAI).

### **Lloyds – SEAWEB (SEADATA) and AISDATA:**

*This database is maintained to support the requirement of OLAF and the Member States to information about ship characteristics, ownership, casualty, ship movements current and historic and AIS - automatic identification System - information. The AIS module rounds up with real-time positions of individual vessels and fleets from the AIS network receivers. This gives the possibility to OLAF and the Member states to identify and monitor in real time suspected vessels and goods that are carried. This database also gives the possibility to check in the historical movements of the ships where a particular ship was in the past. This is mostly used when a fraud investigation is carried out.*

### **Tradebytes – C – HAWK (Manifest data):**

*This Allows special searches based on container number, bill of lading number, vessel name, consignee & address name, shipper, lading Port & Country, departure or arrival date, description, harmonised code etc. (unique in combining the most possibilities with search criteria). The information represented in the database is important for OLAF and the Member States for risk assessment and targeting. The company has focused its data source acquisition efforts on geographic regions that are of interest for the investigation partners in the Member States.*

### **GRS (Global Reference Solution) - (Search Tool):**

GRS has a worldwide coverage of more than 196 million companies (more than 81 million in Europe); it includes historical information on active companies as well as on out-of-business companies. GRS, a customized application, contains more detailed features and advanced searches in the identification of related business, for instance in fraud tracking. Owners, Shareholders and company trees can be immediately displayed. The subject of the GRS is the acquisition of “Basic Company Information”, to be used primarily in support Member States investigative work.

### **DBAI (Detailed companies information):**

After company identification via the GRS database, a full financial in depth analysis is available. DBAI allows the verification of the existence and background of any business anywhere in the world, quickly and easily (and therefore the verification of the existence, history and financial stability of a potential recipient of subsidies, funds, grants, etc.).

### **OLAF cases**

*Intelligence support is essential for investigations, for example as regards the most current fraud mechanisms applied in poultry cases (misdescription of the species and of the origin), by establishing the origin of a container consignment through container tracking and company intelligence on parties concerned (the shipper/producer in a third Country, the consignee in the EU and possible links to other economic operators involved). In the initial phase of a new OLAF case, such logistical information is vital in order to take further appropriate actions with OLAF partners in the Member States.*

*In the context of one OLAF investigation into international cigarette smuggling, the support provided through data collected in the Dun and Bradstreet database, led one Member State Customs to investigate and identify assets of almost € 14 million that had been generated from cigarette smuggling. Without this information from the database it would not have been possible to identify the money laundering circuit which extended through several countries and fiscal heavens. Information on suspect containers is also a vital tool for OLAF and the Member States to fight international cigarette smuggling. Several hundred million illicit cigarettes are seized each year as a direct result of information on container movements provided by OLAF's Information Support Office (ISO).*

## ANNEX 4

### TRAINING: SOME HERCULE II SUCCESS STORIES

#### **Guarda di Finanza (IT): specialised anti-fraud training (2010 grant agreement)**

*The training activities were organised between the Italian and the Bulgarian authorities to pass on to the latter the experience acquired by the Guardia di Finanza. The aim was to raise awareness and share knowledge in the areas of investigation techniques, money laundering, fight against fraud in the structural funds and common agricultural policy. All participants were of the opinion that the training was a very challenging experience; they learnt a lot about the Italian system. The event was attended by high level representatives: the Bulgarian Deputy Prime Minister and Minister of Interior and the Italian ambassador. The ambassador will explore further possibilities of cooperation between the two countries (in particular regarding further cooperation between the Guardia di Finanza and the Bulgarian AFCOS). The project was published on various websites.*

#### **SK Customs Directorate (2010 grant agreement)**

*This action focused on improving the skills, qualifications and work of customs officers at the Bratislava Customs Office to detect tax fraud, smuggling and counterfeiting of tobacco products, as well as to prevent counterfeiting of tobacco products and related crime on the territory of Slovakia and in the EU. Twenty customs officers from the Slovak Customs administration were trained in order to fight fraud more effectively, to improve the quality of their investigation and to ensure that they take effective measures. These two one-week cycles are a good example of efficient training.*

#### **Conference dbb Akademie (DE) (2010 grant agreement)**

*This conference in Germany included workshops on "Corruption prevention in the midst of a crisis" and 4 specialised workshops on "Whistle-blowing", "Corruption prevention in the German municipalities", "Human resources development in corruption prevention efforts" and "Ethics offices for the public administration" with the aim to provide a wide range of participants with up-to-date information on OLAF's work on protecting the EU's financial interests, bring together all involved in the fight against fraud and corruption in Europe, solidify the joint fight against fraud and corruption and facilitate establishment of networks between Member States, acceding countries, candidate countries and third countries, exchange information, strategies and examples of good practice in combating fraud and corruption in Europe and thereby provide greater transparency, in order to minimise fraud and corruption and protect the EU's financial interests as well as hold intensive discussions and make suggestions. The conference had a transnational character with 34 nationalities represented, 17 Member States, 3 candidate countries, 3 Balkan countries, 1 EFTA/EEA Country, 1 Russian participant, 1 Neighbourhood policy-country, 2 other countries (CH, USA) and a range of high-level speakers. An evaluation study was published.*

#### **Presidency Conference (SE) (2009 grant agreement)**

*This seminar was organised in the framework of the Swedish Presidency to debate and exchange ideas on combating financial crime in the EU, including the protection of the financial interests of the EU (from a practical perspective). The conference mainly discussed the operational challenges in investigations for police and judicial authorities. It also sought to provide up-to-date information on new institutional tools and to inform on the work of the other national law enforcement organisations in the EU. The partnership between the private and the public sector was also discussed. There was a lot of discussion of the Lisbon Treaty (Establishment of a European Public Prosecutor's Office (Article 86 TFEU)). 18 Member States and 1 representative of Liechtenstein participated in the event. The participants were from policy making bodies, EU Institutions (OLAF, Eurojust, Europol), Council of the EU), Law enforcement (operational and training), judges and prosecutors.*

#### **Universidade de Lisboa (PT) (2009 Grant agreement)**

*This conference was the first co-financed Hercule II project organised by a university on external aid fraud. 31 of nationalities were represented in the framework of ANCORAGE-NET, dealing with a new domain of intervention for national law-enforcers which requires a solid network of cooperation at the international level, as well as an understanding of the dynamics of laws, institutions and procedures across different jurisdictions. The main objective was to raise awareness and understanding for the agencies involved, in the issues associated with aid funding, and the problems associated. Information regarding the co-financed conference was published on-line and the materials were distributed amongst Portuguese*

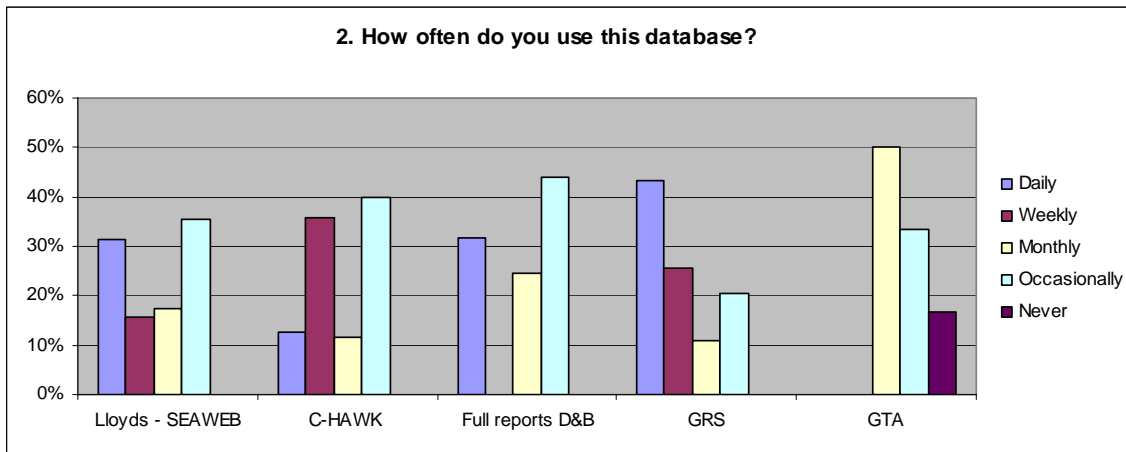
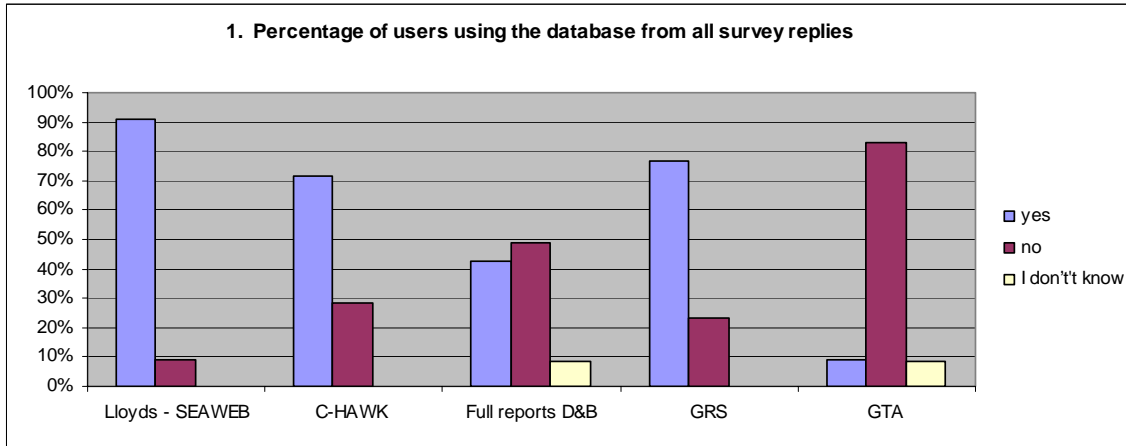
*university departments, embassies, EU representation in Lisbon, media and state agencies and published at the ICS-UL website. Transparency International (TI), Centre for Public Integrity (CIP) and the Portuguese Platform of NGO's were asked to disclose the results of the conference.*

**PL Ministry of Finance Internal Control Dept. (2008 Grant agreement)**

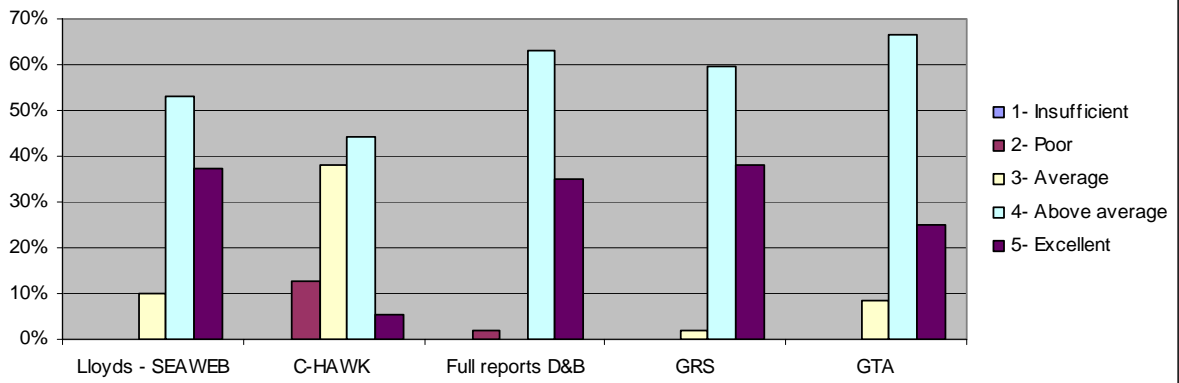
The objective of this action was to improve the co-operation between DE and PL surveillance teams, specifically in the area of cross-border movements of excise goods (mainly cigarettes). This co-operation comprised determining phraseology, communication methods, lines of responsibility, equipment and ultimately the procedures to be adopted in terms of covert surveillance. DE and PL officials from the border areas were involved in the action. Post-event feedback has shown that this event was very effective: OLAF was advised of two occasions on which the procedures were applied in live situations, underlining the value of the training. It was a highly operational matter fully in line with what Hercule II is targeting. This event was beneficial to both sides. With these results in mind, it is very likely that wider use will be made for future joint actions.

**ANNEX 5**

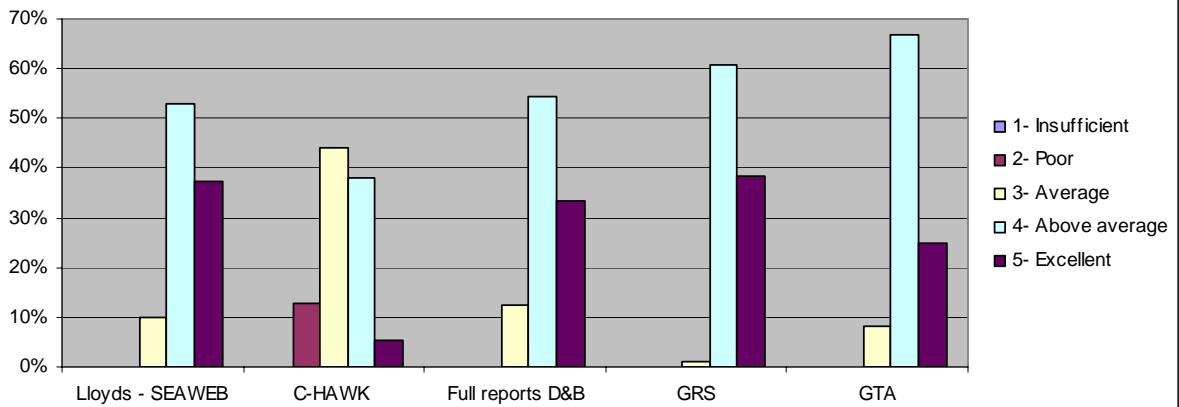
**REPLIES TO THE 2011 SURVEY ON THE USE OF DATABASES SUPPORTED BY HERCULE II**



### 3. Rate the quality of provided information in this database.



### 4. Rate the usefulness of this database



## ANNEX 6

### DATA ON THE EXTENT OF FRAUD

*Number of irregularities values — 2010 —*

Area	Number of irregularities reported		Total estimated financial impact of irregularities, including suspected fraud (€ million)		Estimated financial impact of suspected fraud only (€ million)		Recovered amounts (€ million)
	2009	2010	2009	2010	2009	2010	2010
<b>Agriculture</b>	1621	1825	125 (~0.24 % of allocations)	131 (~0.23% of allocations)	13.3 (~0.03% of allocations)	69 (~0.12% of allocations)	175
<b>Cohesion Policy</b>	4737	7062	1 183 (~2.44% of allocations)	1550 (~3.15% of allocations)	109 (~0.23 % of allocations)	364 (~0.74% of allocations)	611
<b>Pre-accession funds</b>	706	424	117 (~ 3.8% of allocations)	83 (~5.26% of allocations)	57 (~0.78% of allocations)	41 (~2.6% of allocations)	14
<b>Direct expenditure</b>	705	1021	27.5 (~0.17 % of allocations)	43 (~0.27% of allocations)	1.5 (~ 0.01 % of allocations)	4 (~0.02% of allocations)	25
<b>Total expenditure</b>	7769	10332	1.452,5 (~1.13% of allocations)	1.807 (~1.27% of allocations)	180.8 (0.13 % of allocations)	478 (~0.34% of allocations)	825

Source Commission Annual Report on the Protection of the Financial Interests of the EU for 2010



*Headline data on OLAF investigations and operations (Source, OLAF Operational Report for 2010)*

*Investigations and operations by sector and type and cases under assessment at the end of 2010*

Major sector	Co-ordination Case	Criminal Assistance Case	External Investigation Case	Internal Investigation Case	Mutual Assistance Case	Total	Assessment
Agriculture (expenditure revenue) +	37	44	29	0	7	117	101
Cigarettes	16	9	0	0	0	25	4
Customs	17	1	13	0	6	37	8
Direct Expenditure	0	2	43	0	0	45	58
EU Institutions + EU Bodies	0	7	24	108	0	139	94
External Aid	0	3	74	0	0	77	82
Structural Funds	2	5	46	0	0	53	201
<b>Total</b>	<b>72</b>	<b>71</b>	<b>229</b>	<b>108</b>	<b>13</b>	<b>493</b>	<b>548</b>

*Amounts recovered from closed financial follow ups in €million*

Major Sector	2010
Agriculture	11,9
Customs	7,1
Direct Expenditure	10,6
EU Institutions + EU Bodies	0,1
External Aid	5,3
Structural Funds	32,9
<b>Total</b>	<b>67,9</b>

***Total cases completed by OLAF by 31/12/2010***

- **Cases concluded at the end of the assessment phase: 2890**
- **Investigation cases: 1447**
- **Assistance and coordination cases: 812**

**Total amounts recommended by OLAF for recovery by 31/12/2010: €1.922 bn**

**Total amounts recovered by 31/12/2010: €1.089 bn**

***Recorded Court decisions on OLAF-related cases***

Recorded Court Decisions	2010	
	Cases	Values
Suspended Sentence (months)	15	1.201
Imprisonment (months)	22	1.503
Financial Penalty (€millions)	133	1.467,7