

DECISIONS ADOPTED JOINTLY BY THE EUROPEAN PARLIAMENT AND THE COUNCIL

DECISION No 878/2007/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 July 2007

amending and extending Decision No 804/2004/EC establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule II programme)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

interests, and to achieve the objectives of the Hercule programme for the period 2004 to 2006.

Having regard to the Treaty establishing the European Community, and in particular Article 280 thereof,

(4) Article 7(a) of Decision No 804/2004/EC of the European Parliament and of the Council⁽³⁾ requires the Commission to present to the European Parliament and the Council a report by the European Anti-Fraud Office (OLAF) on the implementation of the Hercule programme and the appropriateness of continuing it. The conclusions of this report state that the objectives set by the Hercule programme have been achieved. The report also recommends that the programme be extended for the period 2007 to 2013.

Having regard to the proposal from the Commission,

Having regard to the opinion of the Court of Auditors⁽¹⁾,

(5) In order to consolidate the activities of the Community and the Member States in the field of the protection of the Community's financial interests, including the fight against cigarette smuggling and counterfeiting, the new programme should cover all operational expenditure relating to the Commission's (OLAF's) general anti-fraud activities in a single basic act.

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽²⁾,

(6) The awarding of grants and public procurement contracts to promote and implement the programme must be carried out in accordance with the provisions of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁽⁴⁾ and its implementing rules. It is appropriate to exclude operating grants from the programme as they have not been used to support initiatives in the past.

Whereas:

(1) The Community and the Member States have set themselves the objective of countering fraud and any other illegal activities affecting the Community's financial interests, including cigarette smuggling and counterfeiting. All available means must be deployed to attain that objective, whilst maintaining the current distribution and balance of responsibilities between the national and Community levels.

(7) Acceding countries and candidate countries should be able to participate in the Hercule II programme, on the basis of a memorandum of understanding to be drawn up in accordance with the respective framework agreements.

(2) Activities with the purpose of providing better information, carrying out studies and providing training or technical assistance contribute significantly to improving the protection of the Community's financial interests.

(3) Support for such initiatives in the form of grants has made it possible in the past to enhance the activities of the Community and the Member States in terms of countering fraud and protecting the Community's financial

⁽¹⁾ OJ C 302, 12.12.2006, p. 41.

⁽²⁾ Opinion of the European Parliament of 13 February 2007 (not yet published in the Official Journal) and Council Decision of 28 June 2007.

⁽³⁾ OJ L 143, 30.4.2004, p. 9.

⁽⁴⁾ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

- (8) This Decision lays down, for the entire duration of the programme, a financial envelope constituting the prime reference, within the meaning of Point 37 of the Inter-institutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ⁽¹⁾, for the budgetary authority during the annual budgetary procedure,

understanding — in the activities financed under the programme;

- (e) multiplying and intensifying the measures in the areas identified as the most sensitive, particularly in the field of cigarette smuggling and counterfeiting.’

HAVE DECIDED AS FOLLOWS:

Article 1

Amendments

Decision No 804/2004/EC is hereby amended as follows:

1. Article 1 shall be replaced by the following:

‘Article 1

Objectives of the programme

1. This Decision establishes a Community action programme to promote activities in the field of the protection of the financial interests of the Community. The programme shall be known as the Hercule II programme (hereinafter referred to as the programme).

2. The programme shall promote activities according to the general criteria set out in this Decision. It shall focus on the following objectives in particular:

- (a) enhancing transnational and multidisciplinary cooperation between Member States’ authorities, the Commission and OLAF;
- (b) building networks throughout the Member States, acceding countries and candidate countries — in accordance with a memorandum of understanding — facilitating the exchange of information, experience and best practices, while also respecting the distinct traditions of each Member State;
- (c) providing 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;
- (d) without undermining operational effectiveness, striking a geographical balance by including, if possible, all Member States, acceding countries and candidate countries — in accordance with a memorandum of

2. The following article shall be inserted:

‘Article 1a

Activities

The programme shall be implemented through the following activities in the field of the protection of the Community’s financial interests, including in the field of the prevention of, and the fight against, cigarette smuggling and counterfeiting:

- (a) technical assistance for national authorities through:
- (i) providing specific knowledge, equipment and information technology (IT) tools facilitating transnational cooperation and cooperation with OLAF;
- (ii) support for joint operations;
- (iii) enhancing staff exchanges;
- (b) training, seminars and conferences aimed at:
- (i) fostering better understanding of Community and national mechanisms;
- (ii) exchanging experience between the relevant authorities in the Member States, acceding countries and candidate countries;
- (iii) coordinating the activities of Member States, acceding countries, candidate countries and third countries;
- (iv) disseminating knowledge, particularly of an operational nature;
- (v) supporting high-profile research activities, including studies;
- (vi) improving cooperation between practitioners and academics;
- (vii) raising the awareness of the judiciary and other branches of the legal profession for the protection of the financial interests of the Community;

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

(c) support through:

- (i) developing and providing specific databases and IT tools facilitating data access and analysis;
- (ii) increasing data exchange;
- (iii) developing and providing IT tools for investigations, monitoring and intelligence work.'

3. Article 2 shall be replaced by the following:

'Article 2

Community funding

1. Community funding may take the following legal forms pursuant to Regulation (EC, Euratom) No 1605/2002:

- (a) grants;
- (b) public procurement contracts.

2. To qualify for a Community grant for an activity aimed at protecting the Community's financial interests, grant beneficiaries must comply with the provisions set out in this Decision. The activity must conform to the principles underlying Community activity in the field of the protection of the Community's financial interests and take account of the specific criteria laid down in the related calls for proposals, in accordance with the priorities set out in the annual grants programme which details the general criteria set out in this Decision.

3. Community funding shall cover, through public procurement contracts or by the award of grants, the operational expenditure relating to activities in the field of the protection of the Community's financial interests.

4. The activities carried out by bodies which may receive Community funding (public procurement contract or grant) under the programme shall come under the heading of actions aimed at strengthening Community measures to protect financial interests and shall pursue objectives of general European interest in this field or an objective which is part of the European Union's policy in this area.'

4. The following Articles shall be inserted:

'Article 2a

Bodies eligible for Community funding

The following bodies shall be eligible for Community funding under the programme:

- (a) all national or regional administrations of a Member State or a country outside the Community, as defined in Article 3, which promote the strengthening of Community action to protect the Community's financial interests;
- (b) all research and educational institutes that have had legal personality for at least one year, are established and operating in a Member State or in a country outside the Community, as defined in Article 3, and promote the strengthening of Community action to protect the Community's financial interests;
- (c) all non-profit-making bodies that have had legal personality for at least one year, are established and operating in a Member State or in a country outside the Community, as defined in Article 3, and promote the strengthening of Community action to protect the Community's financial interests.

Article 2b

Selection of beneficiaries

Bodies entitled under Article 2a to receive a grant for an activity shall be selected following a call for proposals, in accordance with the priorities set out in the annual grants programme which details the general criteria set out in this Decision. Grants awarded for an activity covered by the programme shall meet the general criteria set out in this Decision.

Article 2c

Criteria for the assessment of applications for grants

Applications for grants for activities shall be assessed in the light of:

- (a) the consistency of the proposed activity in relation to the objectives of the programme;
- (b) the complementarity of the proposed activity with other assisted activities;
- (c) the feasibility of the proposed activity, i.e. the real possibility that it can be carried out using the proposed means;
- (d) the cost-benefit ratio of the proposed activity;
- (e) the added utility of the proposed activity;

- (f) the size of the public targeted by the proposed activity;
- (g) the transnational and multidisciplinary aspects of the proposed activity;
- (h) the geographic scope of the proposed activity.

Article 2d

Eligible expenditure

Pursuant to Article 2(4), only the expenditure required for the successful implementation of the activity shall be taken into account when calculating the grant.

Expenditure in connection with the participation of representatives of the Balkan countries forming part of the stabilisation and association process for countries of south-eastern Europe (*), the Russian Federation, the countries covered by the European Neighbourhood Policy (**), and certain countries with which the Community has concluded an agreement for mutual assistance in customs matters, shall also be eligible.

(*) Albania, Bosnia-Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia.

(**) Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia and Ukraine.'

5. Article 3 shall be amended as follows:

(a) point (a) shall be replaced by the following:

'(a) acceding countries;'

(b) points (c) and (d) shall be replaced by the following:

'(c) candidate countries associated with the European Union on the basis of the conditions stipulated in the association agreements or their additional protocols on participation in Community programmes concluded or to be concluded with those countries.'

6. Article 4 shall be replaced by the following:

'Article 4

Implementation

Community funding shall be implemented in accordance with Regulation (EC, Euratom) No 1605/2002.'

7. Article 5 shall be amended as follows:

(a) paragraph 1(b) shall be replaced by the following:

'(b) 80 % of eligible expenditure for training measures, promoting exchanges of specialised staff and the holding of seminars and conferences, provided that the beneficiaries are those referred to Article 2a(a);'

(b) paragraph 1(c) shall be replaced by the following:

'(c) 90 % of eligible expenditure for the holding of seminars and conferences, etc., provided that the beneficiaries are those referred to in Article 2a(b) and (c).';

(c) paragraph 2 shall be deleted.

8. The following Article shall be inserted:

'Article 5a

Checks and audits

1. The beneficiary of a grant shall ensure that, where applicable, supporting documents in the possession of partners or members are made available to the Commission.

2. The Commission may have an audit of the use made of the Community funding carried out either by its own staff or by a qualified outside body of its choice. Such audits may be carried out throughout the lifetime of the contract or the agreement and for a period of five years following the last payment. Where appropriate, the audit findings may lead to recovery decisions by the Commission.

3. Commission staff and outside personnel authorised by the Commission shall have appropriate rights of access to sites and premises where the action is carried out and to all the information, including information in electronic format, needed in order to conduct the audits referred to in paragraph 2.

4. The Court of Auditors and OLAF shall enjoy the same rights, especially the rights of access, as the persons referred to in paragraph 3.

5. Furthermore, in order to protect the Community's financial interests against fraud and other irregularities, the Commission shall carry out on-the-spot checks and inspections under this programme in accordance with Council Regulation (Euratom, EC) No 2185/96 (*). Where necessary, investigations shall be conducted by OLAF and governed by Regulation (EC) No 1073/1999 of the European Parliament and of the Council (**).

(*) OJ L 292, 15.11.1996, p. 2.

(**) OJ L 136, 31.5.1999, p. 1.'

9. Article 6 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. The programme is extended from 1 January 2007 and will end on 31 December 2013.;

(b) paragraph 2 shall be replaced by the following:

'2. The financial envelope for the implementation of the programme for the period 2007 to 2013 shall be EUR 98 525 000.'

10. Article 7 shall be replaced by the following:

'Article 7

Monitoring and evaluation

The Commission (OLAF) shall provide annual information on the results of the programme to the European Parliament and to the Council. Information on consistency and complementarity with other programmes and activities at European Union level shall be included.

An independent assessment of the implementation of the programme, including an examination of performance and the achievement of the objectives of the programme, shall be carried out by 31 December 2010.

By 31 December 2014, the Commission (OLAF) shall present to the European Parliament and to the Council a report on the achievement of the objectives of the programme.'

11. The following Article shall be inserted:

'Article 7a

Management of the programme

On the basis of a cost-effectiveness analysis, the Commission may employ experts and make use of any other form of technical and administrative assistance which does not involve public authority tasks outsourced under ad hoc service contracts. It may also finance studies and organise meetings of experts to facilitate the implementation of the programme, and take information, publication and dissemination measures directly linked to fulfilling the objectives of the programme.'

12. The Annex shall be deleted.

Article 2

Entry into force

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 23 July 2007.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

L. AMADO