

The New Union Anti-Fraud Programme



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ABSTRACT

As part of its current Multiannual Financial Framework (MFF), the European Union (EU) adopted a new Anti-Fraud Programme on 29 April 2021. It merges the support previously offered under the Hercule III Programme with the Anti-Fraud Information System. Both the increased MFF budget and the launch of a dedicated Customs Control Equipment Programme shift the focus of support under the new programme towards fighting expenditure fraud, including fraud related to the Recovery and Resilience Facility. This article provides an overview of the main features of the new Anti-Fraud Programme and compares it to the Hercule III Programme.

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I. Introductory Remarks

The Union's new Multiannual Financial Framework (MFF) foresees a budget of some €1.8 trillion for the period 2021-2027, if one includes the Recovery and Resilience Facility (RRF)¹ created in response to the coronavirus pandemic. This is a record level of funding and inevitably raises questions as to whether all funds will achieve their intended purpose.

In an effort to limit any losses incurred as a result of fraud, corruption, or other activities affecting the EU's financial interests, the MFF is accompanied by a modernised EU framework to fight fraud. Notably, this encompasses the start of operations by the European Public Prosecutor's Office (based on Regulation 2017/1939,² and the reform of "OLAF Regulation" 883/2013³ by modifying Regulation 2020/2223),⁴ which particularly intends to enhance the effectiveness of the administrative investigations carried out by the European Anti-Fraud Office (OLAF).

These developments, without doubt, mark a qualitative step forward in protecting the EU's financial interests – something the EU is required to achieve by virtue of Art. 325(1) of the Treaty on the Functioning of the European Union (TFEU). However, this obligation is shared by Member States. The EU is thus well advised not only to strengthen its own tools but also to pursue a double track by also equipping Member States in legal, operational, and material terms, so that they can deliver on their respective obligations.

In this context, the Union has moved forward in approximating national provisions of criminal law at the regulatory level via Directive 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law, the "PIF Directive."⁵ The deadline for transposition of the PIF Directive into national law was 6 July 2019. As part of its examination of the Directive's transposition in all Member States, the European Commission adopted a transposition report on 6 September 2021.⁶ In addition, the recent reform of Council Regulation 515/97 on mutual administrative assistance in customs and agricultural matters⁷ provides Member States with enhanced operational support, for example in the form of increased access to data. In parallel, the EU is also providing direct financial support to Member States based on Regulation 2021/785 establishing the new Union Anti-Fraud Programme (hereinafter UAFP).⁸ The following will give a brief overview of the main features of the programme (II.) and explain the main changes in comparison to the previous funding scheme, the "Hercule III Programme" (III.).

II. The Main Features of the EU Anti-Fraud Programme

The UAFP is the only spending programme specifically dedicated to fighting fraud affecting the EU's financial interests. It brings together two previously separate support schemes under one set of rules: firstly, the financial support previously offered under the Hercule III Programme⁹ and, secondly, the support provided to Member States for both the Anti-Fraud Information System (AFIS) and the Irregularity Management System (IMS). The support for AFIS and IMS was previously established under Art. 42a of Regulation 515/97.

The new common framework for all of these activities is expected to facilitate a more integrated and strategic use of financial resources and to simplify their management. The new design of the support scheme also strengthens the visibility of the EU's activities in the anti-fraud field. The merger of the three financing components allows for more budgetary flexibility in case of emerging needs and political priorities, as the anti-fraud landscape is constantly changing.

De ratione temporis, the support provided by the UAFP Regulation is aligned with the seven-year period (2021-2027) covered by the current MFF. Over this period, the amount of €181 million will be made available

to beneficiaries. This represents about 0.1% of the total MFF package. The Commission's first Implementing Decision¹⁰ under the UAFP allocated a budget of around €24 million for the year 2021.

In substance, the UAFP essentially maintains previous operational objectives of the Hercule III programme. Support is provided for technical assistance to Member States, on the one hand, and, on the other, for training, conferences, staff exchanges, and legal studies in areas relevant to the protection of the Union's financial interests. Financial intervention is ensured through grants as well as procurement and administrative arrangements with the Joint Research Centre, the Commission's scientific arm. The programme will finance practical projects with a high added-value for its beneficiaries, such as the purchase of investigative equipment, IT and forensic tools, data analytics technologies, the organisation of specialised trainings in anti-fraud matters, and the acquisition of access to commercial databases used in analytical work.

III. Key Changes Compared to the Former Hercule III Programme

The new programme consistently builds upon the success and experience of the previous Hercule Programmes, as will be confirmed by the Final Evaluation to be published in December 2021. At the same time, the legal basis of the new programme introduces novel elements to better address additional needs and priorities in the anti-fraud area.

As for the major changes introduced by the UAFP compared to the Hercule III Programme, the new Regulation clarifies, firstly, the circle of **entities eligible** for support. As a matter of principle, pursuant to Arts. 4 and 10 of the UAFP Regulation, the eligibility of third countries now generally depends on the conclusion of agreements binding these countries to the implementation of the UAFP. As a novelty, Art. 10(2)(c) of the Regulation also opens up participation in the programme to international organisations.¹¹

Another change that will impact the practical focus of UAFP support arises out of the parallel adoption of Regulation No 2021/1077 establishing a **Customs Control Equipment Programme** (CCEP).¹² Equipped with a substantial budget of €1 billion for the current MFF period, support now can be offered in an area that had received substantial support under past Hercule Programmes. The Commission pointed out¹³ that technical assistance under the UAFP will be targeted at the acquisition of types of equipment not covered by the new CCEP, in order to avoid any duplication of Union support.

As a result, the implementation of the UAFP will **focus on expenditure fraud** to a much greater extent. At the time of writing, it remained to be seen which priorities Member States choose when presenting their first set of applications in response to the first call under the new programme. The possibility exists, however, that some of them might wish to use the funding to build up their national capacities in order to protect expenditure against fraud under the new RRF.

In a shift away from costly customs equipment, the UAFP will also free up resources to strengthen support for other state-of-the-art equipment for operational anti-fraud work, such as advanced data analytics technologies or data mining tools. This more data-orientated approach is also in line with the Commission's updated Anti-Fraud Strategy¹⁴ ("CAFS II"), which emphasises **data analysis** as a tool for detecting fraud.

1. Established on the basis of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, O.J. L 57, 18.2.2021, 17.↵

2. Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), O.J. L 283, 31.10.2017, 1.↵

3. Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, *O.J. L* 248, 18.9.2013, 1.↵
4. Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations, *O.J. L* 437, 28.12.2020, 49. For a summary of the Regulation, see T. Wahl "OLAF's New Amended Legal Framework", (2020) *eucrim*, 276-277.↵
5. *O.J. L* 198, 28.7.2017, 29. For details, see A. Juszczyk and E. Sason, "The Directive on the Fight against Fraud to the Union's Financial Interests by means of Criminal Law (PFI Directive), Laying down the foundation for a better protection of the Union's financial interests?", (2017) *eucrim*, 80-87.↵
6. European Commission, "Report from the Commission to the European Parliament and the Council on the implementation of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law", COM(2021) 536 final. For a summary, see the article by Dr. Wouter van Ballegooij in this issue.↵
7. Council Regulation No. 515/97, *O.J. L* 82, 22.3.1997, 1, as notably amended by Regulation No 2015/1525, *O.J. L* 243, 18.9.2015, 1, with an overview by E. Porebska, "Paving the Way for Improved Mutual Assistance in the Context of Customs Fraud", (2016) *eucrim*, 52-55.↵
8. Regulation (EU) 2021/785 of the European Parliament and of the Council of 29 April 2021 establishing the Union Anti-Fraud Programme and repealing Regulation (EU) No 250/2014, *O.J. L* 172 17.5.2021, 110.↵
9. Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC, *O.J. L* 84, 20.3.2014, 6.↵
10. Commission Implementing Decision C(2021) 5338 of 23.7.2021.↵
11. Recital 22 of Regulation 2021/785 specifically mentions in this regard the "Secretariat of the World Health Organisation Framework Convention on Tobacco Control in its functions to the relevant to Protocol to Eliminate Illicit Trade in Tobacco Products" (the so-called "FCTC Protocol").↵
12. Regulation (EU) 2021/1077 of the European Parliament and of the Council of 24 June 2021 establishing, as part of the Integrated Border Management Fund, the instrument for financial support for customs control equipment, *O.J. L* 234, 2.7.2021, 1.↵
13. See Commission Implementing Decision C(2021) 5338 of 23.7.2021, section 4.2.1.1.↵
14. COM(2019) 196 final of 29.4.2019. For details, see the article by C. Makri and O. Marin, "The Commission's New Anti-Fraud Strategy – Enhanced Action to Protect the EU Budget", (2019) *eucrim*, 218-222.↵

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