

**THE EUROPEAN CODE OF CONDUCT ON PARTNERSHIP**

**THE DELEGATED ACT**

**Preparatory Fiche no. 1**

**Brussels, 18 January 2013**

<b>Articles</b>	<b>Commission Proposals</b>
Article 5	Common Provisions Regulation [COM(2012) 496]

*This paper has been drawn up on the basis of the proposals for regulations adopted by the European Commission on 6 October 2011 and the amended proposal for a Common Provisions Regulation on 11 September 2012, taking into account the agreement reached by the Council and the Parliament on 19<sup>th</sup> December 2012. It does not prejudge the final nature of the act, or the content of any delegated or implementing act that may be prepared by the Commission.*

## **The European Code of Conduct on Partnership – The Delegated Act**

Article 5 of the proposed Regulation laying down common provisions on the ERDF, the ESF, the CF, the EAFRD, the EMFF and the general provisions on cohesion policy funds (the 'CPR') provides for a European code of conduct on partnership (ECCP) which will lay down a framework within which the Member States, in accordance with their institutional and legal framework as well as their national and regional competences, shall pursue implementation of the partnership principle. In line with the agreement between the Council and the European Parliament the ECCP will be adopted by the Commission as a delegated act. The purpose of this fiche is to set out the proposed structure and content of this delegated act.

### **1. Introductory elements**

The ECCP will set out that Member States should apply the partnership principle in the ECCP in a transparent manner, in particular with regard to the identification of partners and their access to necessary information.

Partners shall respect the obligations laid down by Member States and managing authorities related to data protection, confidentiality and conflict of interest. Member States should provide the appropriate information, and where appropriate training, on these issues to the persons involved in the partnership.

### **2. Main principles for the identification of relevant partners**

Public authorities, economic and social partners, and bodies representing civil society may establish, in their respective area of intervention, platforms or umbrella organisations to facilitate their involvement in the partnership. They may nominate a single representative to present the views of the platform or the umbrella organisation in the partnership. Principles to consider when partners nominate their representatives would include: competence, capacity to participate actively, and appropriate level of representation.

In order to constitute the partnerships for the purpose of the Partnership Agreement and each programme, the ECCP will provide further details for identifying the three categories of partners laid down in Article 5 of the CPR to be identified by Member States as follows:

#### Partnership Agreement and Programmes

*Competent regional and local authorities, urban and other public authorities:*

- regional authorities, national representatives of local authorities and local authorities representing the largest cities and urban areas, whose competences are related to the planned use of the ESI Funds;
- national representatives of universities, educational facilities and research centres, having regard to the planned use of the ESI Funds; and
- other national public bodies responsible for the application of horizontal principles, having regard to the planned use of the ESI Funds; and in particular the Equality bodies that are established in accordance with Directives 2000/43/EC, 2004/113/EC and 2006/54/EC; and

- for programmes, equivalent bodies organised at national/regional level, where relevant, and authorities representing the areas where integrated territorial investments (ITIs) funded by the programmes are carried out, may also be involved.

*Economic and social partners:*

- nationally recognised social partners' organisations, in particular general cross-industry organisations and sectoral organisations whose sectors are related to the planned use of the ESI Funds;
- national chambers of commerce and business associations, having regard to the planned use of the funds and with a view to ensuring a balanced representation of large, medium, small and microenterprises, as well as representatives of the social economy; and
- for programmes, equivalent bodies organised at national/regional level, where relevant.

*Bodies representing civil society, including environmental partners, non-governmental organisations, and bodies responsible for promoting equality and non-discrimination:*

- bodies working in the areas/fields related to the planned use of the ESI funds and to the application of horizontal principles, based on their representativeness, and taking into account, inter alia, their geographic and thematic coverage, their management capacity, their expertise or their innovative approaches;
- bodies representing local action groups referred to in Article 30(1) of the CPR; and
- other institutional organisations or groups which are significantly affected by the implementation of the ESI Funds, in particular the groups at risk of discrimination and exclusion.

**3. Main principles for involvement of different categories of partners in the preparation of the Partnership Agreement and programmes, the information to be provided on their involvement, as well as at the various stages of implementation**

Member States should consult the partners on the process and timetable and keep them fully informed of the arrangements and any changes. Where formal agreements have been established between the different tiers of government below the national level, the Member State should take account of these multi-level governance agreements.

By way of good practice for the consultation processes Member States should ensure timely disclosure and easy access to adequate information; allow sufficient time for partners to analyse and comment on key preparatory or draft documents; ensure availability of channels for partners through which they may ask questions, provide their contributions and receive feedbacks; and ensure dissemination of the outcome of the consultation process.

As regards the rural development programmes, provision would be made to allow these procedures to be implemented by the National Rural Networks established in accordance with Article 55 of the EAFRD Regulation.

With regard to the **Partnership Agreement** partners should be involved in the following areas:

- the analysis of disparities and development needs with reference to the thematic objectives, including those addressed by the country-specific recommendations;
- the selection of the thematic objectives, the indicative allocations of the ESI Funds and their expected main results;
- the list of programmes and the mechanisms at national and regional level to ensure coordination between the ESI Funds with other Union and national funding instruments and the EIB;
- arrangements to ensure an integrated approach to the use of the ESI Funds for the territorial development of urban, rural, coastal and fisheries areas and areas with particular territorial features;
- arrangements to ensure an integrated approach to address the specific needs of geographical areas most affected by poverty or of target groups at highest risk of discrimination or exclusion, with special regard to marginalised communities; and
- the implementation of the horizontal principles defined in Article 7 and 8 of the CPR.

With regard to the preparation of **programmes** partners should be involved in the following areas:

- the analysis and the identification of needs;
- the definition or selection of priorities and related specific objectives;
- the allocation of funding;
- the definition of programme specific indicators;
- the implementation of the horizontal principles as defined in Article 7 and 8 of the CPR;
- and the composition of the monitoring committee.

Member States should determine the most appropriate procedures and timing to ensure involvement as set out above.

#### Information to be provided on partners' involvement

In accordance with the requirement laid down in Article 14.1(c) of the CPR, the description of the partnership in the **Partnership Agreement** shall include: how the partners have been identified; the list of partners involved in the preparation of the Partnership Contract; the actions taken to ensure the active participation of the partners, including actions in terms of accessibility; and the results of the consultation with partners and its added value in the preparation of the partnership contract.

In accordance with the requirement laid down in Article 87(5)(c) of the CPR, Article 9(1)(o) of the EAFRD Regulation and Article 20(1)(m) of the EMFF Regulation the description of the partnership in **programmes** shall include the above elements in respect of the preparation of programmes, the planned actions to ensure the active participation of the partners in the implementation of the programmes, including actions in terms of accessibility, and in particular the use of technical assistance resources and the nature of the planned support.

#### **4. Main principles for rules of membership and internal procedures of monitoring committees**

Member States will ensure the establishment of clear and transparent arrangements concerning membership, taking account of best practice in the following areas:

- When selecting the members of the monitoring committees, the managing authority shall take into account the partners that have been involved in the preparation of the programmes.
- The managing authority and the partners shall aim to promote equality between men and women and equal opportunity in the membership of the monitoring committees.
- The list of members of the monitoring committees and other working groups established by the monitoring committees shall be made public.
- The managing authority shall ask the members of the monitoring committee to sign a statement acknowledging their obligations related to data protection, confidentiality and conflict of interest.

Member States will ensure the establishment of clear and transparent arrangements concerning rules of internal procedure, taking account of best practice in the following areas:

- the members' voting rights;
- the time period for invitations to the meetings and transmission of documents which shall be not less than 10 working days;
- the arrangements for publication and accessibility of the preparatory documents submitted to the monitoring committees;
- the procedure for adoption, publication and accessibility of the minutes;
- the arrangements for the establishment and activities of working groups under the monitoring committees.

#### **5. Main objectives and best practices for the preparation of calls for proposals, progress reports, monitoring and evaluation**

With regard to the partners' involvement in the calls for proposals, the managing authority should set out in advance the procedures to prevent any partner or representative of the partner, who has a direct or indirect interest in a body that participates in a call for proposals, being involved in the design of the call for proposals or in the assessment of the proposals. The managing authority should also organise a regular turnover of partners involved in calls for proposals. Provisions on conflict of interest would also be needed for partners involved in monitoring and evaluation of the implementation of measures to strengthen the institutional capacity of partners.

In line with Article 14.1(c) of the CPR Member States shall involve the partners for the preparation of progress reports in 2017 and 2019. This shall primarily be done through the monitoring committees. The reports shall provide information and assess the role of the partners in the implementation of the Partnership Agreement and should include an overview of the opinions given by the partners during the consultation and how they have been taken into account.

Certain objectives will be laid down on the role of partners in the monitoring of programmes. The managing authority will be encouraged to involve the partners, under the responsibility of the monitoring committees, in the assessment of the performance of the different priorities. Furthermore, partners should be involved by managing authorities, through the monitoring committees and their working groups, in the preparation of the annual implementation reports on the programmes.

As regards evaluation, the managing authority shall involve the partners in the evaluation of programmes through the monitoring committees and where appropriate specific working groups established by the monitoring committees for this purpose. Finally, in accordance with Article 104(2) of the CPR, managing authorities for the ERDF, the ESF and the Cohesion Fund programmes shall consult the partners on the reports summarising the findings of the evaluations carried out during the programming period.

## **6. Strengthening the institutional capacity of relevant partners**

The ECCP will lay down indicative areas, themes and good practice for the use the ESI Funds to strengthen the institutional capacity of partners. Managing authorities could allocate part of their technical assistance to strengthen the institutional capacity in particular of small local authorities, economic and social partners and non-governmental organisations, to effectively participate in the preparation, implementation, monitoring and evaluation of the programmes. This support may take the form of, inter alia, dedicated workshops, training sessions, coordination and networking structures or contributions to partners' costs incurred for the participation in meetings related to the preparation, implementation, monitoring and evaluation of a programme.

For the rural development programmes, this support may be implemented through the National Rural Network established in accordance with Article 55 of the EAFRD Regulation.

For the ESF programmes, it should be noted that managing authorities of an operational programme in less developed or transition regions or in Member States eligible for Cohesion Fund support shall ensure that, according to the needs, an appropriate amount of ESF resources is allocated to capacity-building activities of social partners and non-governmental organisations involved in the programmes.

## **7. Role of the Commission in the dissemination of good practices**

The Commission will monitor the partnership principle with the aim of supporting capacity building, exchange of experience and the dissemination of good practice. A Community of Practice on Partnership will provide a common platform for the ESI Funds. It will be open to all interested Member States, managing authorities and organisations representing the partners at Union level.<sup>1</sup>

## **8. Member States' assessment of the implementation of partnership and its added value**

Finally, the ECCP will lay down the principle that Managing Authorities shall carry out an evaluation of the performance and the effectiveness of the partnership during the programming period, as part of the exercise foreseen in article 49 of the CPR in order to

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<sup>1</sup> This will be based on the experience gained from the Community of Practice (CoP) on partnership in the European Social Fund (ESF) established by the European Commission, together with the EQUAL Managing Authorities of Flanders, Portugal, Austria, Czech Republic and Malta.

facilitate the Member States' assessment of the implementation of partnership and its added value.

## ANNEX - Article 5 as agreed between Council and the EP on 19 December 2012

### *Article 5*

#### **Partnership and multi-level governance**

1. For the Partnership Agreement and each programme respectively, a Member State shall **in accordance with their institutional and legal framework** organise a partnership with the **competent regional and local authorities**. **The partnership shall also include the** following partners:

(a) **competent urban and other public authorities;**

(b) economic and social partners; and

(c) **relevant** bodies representing civil society, including environmental partners, non-governmental organisations, and bodies responsible for promoting **social inclusion, gender** equality and non-discrimination.

2. In accordance with the multi-level governance approach, the partners **referred to in paragraph 1** shall be involved by Member States in the preparation of Partnership Agreements and progress reports **throughout** the preparation and implementation of programmes, **including participation in the monitoring committees for programmes in accordance with Article 42.**

**3<sup>2</sup>. The Commission shall be empowered to adopt delegated act<sup>3</sup> in accordance with Article 142 to provide for a European code of conduct in order to support and facilitate Member States in the organisation of the partnership in accordance with paragraphs 1 and 2. The code of conduct shall set out the framework, within which the Member States in accordance with their institutional and legal framework as well as their national and regional competences, shall pursue the implementation of partnership. The code of conduct, while fully respecting the principles of subsidiarity and proportionality, shall lay down the following elements:**

**a. the main principles for transparent procedures to be followed for the identification of the relevant partners including, where appropriate, their umbrella organisations in order to facilitate Member States to designate the most representative relevant partners, in accordance with their institutional and legal framework;**

**b. the main principles and best practices as regards the involvement of the different categories of relevant partners, as set out in paragraph 1, in the preparation of the Partnership Agreement and programmes, the information to be provided on their involvement, as well as at the various stages of implementation;**

**c. the best practices as regards the formulation of the rules of membership and internal procedures of monitoring committees to be decided, as appropriate, by the Member States or the monitoring committees of programmes in accordance with the relevant provisions of this Regulation and the fund-specific rules;**

**d. the main objectives and best practices in cases where the managing authority involves the relevant partners in the preparation of calls for proposals and in particular the best practices to avoid potential conflicts of interest in cases where relevant partners may be potential beneficiaries, and for the involvement of the relevant partners in the preparation of progress reports and in relation to monitoring and evaluation of programmes in accordance with the relevant provisions of this Regulation and the fund-specific rules;**

**e. the indicative areas, themes and best practices in order that the competent authorities of the Member States may use the CSF Funds including technical assistance in strengthening the institutional capacity of relevant partners in accordance with the relevant provisions of this Regulation and the fund-specific rules;**

**f. the role of the Commission in the dissemination of good practices;**

**g. the main principles and best practices that will facilitate the Member States' assessment of the implementation of partnership and its added value.**

**The provisions of the code of conduct shall not in any way contradict the relevant provisions of this**

<sup>2</sup> The Presidency compromise proposal for the 'Code of Conduct' is accompanied by revised Recital (9) and Joint Declaration by the European Parliament and the Council. The relevant texts are provided in Annex III.

<sup>3</sup> The agreement on a delegated act is subject to an agreement on all provisions related to delegated and implementing acts of the Strategic Programming Bloc.



**Regulation or the Fund specific rules.**

**4. (new paragraph) The Commission shall notify the delegated act on the European code of conduct on Partnership, adopted in accordance with article 142 and as set out in paragraph 3, simultaneously to the European Parliament and to the Council within four months of the adoption of this Regulation. The delegated act cannot specify an earlier day for its entry into force than the day of its adoption after the entry into force of this Regulation.**

**5. (new paragraph ) In the application of this Article, an infringement of any obligation imposed on Member States either by this Article of the Regulation or by the delegated act, adopted in accordance with Article 5(3), cannot constitute an irregularity leading to a financial correction pursuant to Article 77 of this Regulation.**

**6. At least once a year, for each CSF Fund, the Commission shall consult the organisations which represent the partners at Union level on the implementation of support from the Funds and shall report to the European Parliament and the Council on the outcome.**