



Brussels, 7.1.2014
C(2013) 9651 final

COMMISSION DELEGATED REGULATION (EU) No .../..

of 7.1.2014

**on the European code of conduct on partnership in the framework of the European
Structural and Investment Funds**

{SWD(2013) 540 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Action for growth and jobs and social cohesion requires all relevant actors across the European Union to be mobilised. Involvement of partners has therefore been identified as key to delivering the Europe 2020 Strategy for growth and jobs. Partnership has long been one of the key principles of the European Union funds managed by the EU and Member States together in ‘shared management’. The partnership principle implies close cooperation between public authorities at national, regional and local levels in the Member States and with the private and other sectors.

Partnership must be seen in close connection with a multi-level governance approach and the subsidiarity and proportionality principles: each level of government should play its role, and action should be taken at the right level and be proportionate to the objectives. Various evaluations have drawn attention to the benefits that the involvement of partners can bring in enhancing collective commitment and ownership of EU policies, increasing the knowledge, expertise and viewpoints available when strategies are being designed and implemented, managing the relevant funds, and ensuring greater transparency in decision-making processes. Involvement of partners helps to reduce coordination and capacity gaps in policy making between different levels of government, in terms of information, resources, funding, administrative and policy fragmentation.

Experience shows, however, that Member States implement the partnership principle in very different ways, depending on national institutional set-ups and traditions of stakeholder involvement. The effectiveness of partnership also depends on partners’ capacity to contribute substantively to the process.

Following the entry into force of the Common Provisions Regulation for the European Structural and Investment Funds, the Commission is empowered to adopt a delegated act on a European code of conduct to support Member States in organising the partnership. The code of conduct is intended to provide a framework for partnership, in accordance with Member States’ institutional and legal frameworks, taking account of national and regional competences. The best practices referred to in Article 5(3) of the Common Provisions Regulation of the European Structural and Investment Funds will be set out in a Commission staff working document.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission, appropriate and transparent consultations, including at expert level, have been held on this delegated act.

Two meetings, involving experts from all Member States and duly notified to the European Parliament, were held on 25 January and 21 June 2013. The meetings allowed a full presentation of the Commission’s draft provisions and a thorough exchange of views on all aspects of the draft. The exercise consisted of clarifying the Commission’s approach, hearing experts’ views and further refining the draft text accordingly.

The Commission also held two Structured Dialogue meetings on 5 February and 19 September 2013, where the draft provisions were widely discussed with representatives from European socioeconomic partners, non-governmental organisations (e.g. responsible for

environmental, social, Roma, or gender issues) and associations and networks representing local and regional authorities¹.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 5(3) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Regulation (EC) No 1083/2006 empowers the Commission to adopt a delegated act under Article 142 of the new Regulation to provide for a European code of conduct in order to support and facilitate Member States in the organisation of the partnership.

¹ See Website for the Structured Dialogue with partners at EU level on INFOREGIO (http://ec.europa.eu/regional_policy/informing/dialog/index_en.cfm).

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund repealing Regulation (EC) No 1083/2006², and in particular Article 5(3) thereof,

Whereas:

- (1) The aim of this Regulation is to provide for a European code of conduct in order to support and facilitate Member States in the organisation of partnerships for Partnership Agreements and programmes supported by the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF). These funds now operate under a common framework and are referred to as the 'European Structural and Investment Funds (hereinafter 'the ESI Funds')'.
- (2) Working in partnership is a long-established principle in the implementation of the ESI Funds. Partnership implies close cooperation between public authorities, economic and social partners and bodies representing civil society at national, regional and local levels throughout the whole programme cycle consisting of preparation, implementation, monitoring and evaluation.
- (3) The partners selected should be the most representative of the relevant stakeholders. Selection procedures should be transparent and take into account the different institutional and legal frameworks of the Member States and their national and regional competences.
- (4) The partners should include public authorities, economic and social partners and bodies representing civil society, including environmental partners, community-based and voluntary organisations, which can significantly influence or be significantly affected by implementation of the Partnership Agreement and programmes. Specific attention should be paid to including groups who may be affected by programmes but who find it difficult to influence them, in particular the most vulnerable and marginalised communities, which are at highest risk of discrimination or social exclusion, in particular persons with disabilities, migrants and Roma people.

² OJ L 347, 20.12.2013, p. : Please insert the page reference of the OJ.

- (5) For the selection of partners, it is necessary to take into account the differences between Partnership Agreements and programmes. Partnership Agreements cover all the ESI Funds providing support to each Member State, while programmes refer only to the ESI Funds contributing to them. The partners for Partnership Agreements should be those relevant in view of the planned use of all the ESI Funds, while for programmes it is sufficient that the partners are those relevant in view of the planned use of the ESI Funds contributing to the programme.
- (6) The partners should be involved in preparing and implementing Partnership Agreements and programmes. For this purpose, it is necessary to establish main principles and good practices concerning timely, meaningful and transparent consultation of the partners on the analysis of challenges and needs to be tackled, the selection of objectives and priorities to address them, and the coordination structures and multi-level governance agreements necessary for effective policy delivery.
- (7) The partners should be represented on the monitoring committees of programmes. The rules governing membership and committee procedures should promote continuity and ownership of programming and implementation, and working arrangements that are clear and transparent, as well as timeliness and non-discrimination.
- (8) Through their active participation in the monitoring committees, the partners should be involved in assessing performance on the different priorities, the relevant reports on the programmes and, where appropriate, calls for proposals.
- (9) Effective partnership should be facilitated by helping the relevant partners to strengthen their institutional capacity in view of the preparation and implementation of programmes.
- (10) The Commission should facilitate the exchange of good practice, strengthening institutional capacity and the dissemination of relevant outcomes among Member States, managing authorities and representatives of the partners by setting up a Community of Practice on Partnership covering all the ESI Funds.
- (11) The role of the partners in implementing the Partnership Agreements and the performance and effectiveness of the partnership in the programming period should be subject to assessment by the Member States.
- (12) In order to support and facilitate Member States in the organisation of the partnership, the Commission should make available examples of best practices existing in Member States,

HAS ADOPTED THIS REGULATION:

Chapter I

General provisions

Article 1

Subject matter and scope

This Regulation establishes the European code of conduct on partnership for Partnership Agreements and programmes supported by the European Structural and Investment Funds.

Chapter II

Main principles concerning transparent procedures for identification of relevant partners

Article 2

Representativeness of partners

Member States shall ensure that the partners referred to in Article 5(1) of Regulation (EU) No 1303/2013 are the most representative of the relevant stakeholders and are nominated as duly mandated representatives, taking into consideration their competence, capacity to participate actively and appropriate level of representation.

Article 3

Identification of relevant partners for the Partnership Agreement

1. For the Partnership Agreement, Member States shall identify the relevant partners among at least the following:
 - (a) competent regional, local, urban and other public authorities, including:
 - (i) 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;
 - (ii) national representatives of higher educational institutions, educational and training providers and research centres in view of the planned use of the ESI Funds;
 - (iii) other national public authorities responsible for the application of horizontal principles referred to in Articles 4 to 8 of Regulation (EU) No 1303/2013, in view of the planned use of the ESI Funds; and in particular the bodies for the promotion of equal treatment established in accordance with Council Directive 2000/43/EC³, Council Directive 2004/113/EC⁴ and Directive 2006/54/EC of the European Parliament and of the Council⁵;
 - (b) economic and social partners, including:
 - (i) 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;
 - (ii) national chambers of commerce and business associations representing the general interest of industries and branches, in view of the planned use

³ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).

⁴ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37).

⁵ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

of the ESI Funds and with a view to ensuring balanced representation of large, medium-sized, small and microenterprises, together with representatives of the social economy;

- (c) bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination, including:
 - (i) bodies working in the areas related to the planned use of the ESI Funds and to the application of horizontal principles referred to in Articles 4 to 8 of Regulation (EU) No 1303/2013 based on their representativeness, and taking into account geographic and thematic coverage, management capacity, expertise and innovative approaches;
 - (ii) other organisations or groups which are significantly affected or likely to be significantly affected by the implementation of the ESI Funds, in particular groups considered to be at risk of discrimination and social exclusion.
- 2. Where public authorities, economic and social partners, and bodies representing civil society have established an organisation regrouping their interests to facilitate their involvement in the partnership (umbrella organisation), they may nominate a single representative to present the views of the umbrella organisation in the partnership.

Article 4

Identification of relevant partners for programmes

- 1. For each programme, Member States shall identify the relevant partners among at least the following:
 - (a) competent regional, local, urban and other public authorities, including:
 - (i) 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 contributing to the programme;
 - (ii) national or regional representatives of higher educational institutions, education, training and advisory services providers and research centres, in view of the planned use of the ESI Funds contributing to the programme;
 - (iii) other public authorities responsible for the application of horizontal principles referred to in Articles 4 to 8 of Regulation (EU) No 1303/2013, in view of the planned use of the ESI Funds contributing to the programme, and in particular the bodies for the promotion of equal treatment established in accordance with Council Directive 2000/43/EC, Council Directive 2004/113/EC and Directive 2006/54/EC of the European Parliament and of the Council;
 - (iv) other bodies organised at national, regional or local level and authorities representing the areas where integrated territorial investments and local development strategies funded by the programme are carried out;
 - (b) economic and social partners, including:

- (i) nationally or regionally 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 contributing to the programme;
 - (ii) national or regional chambers of commerce and business associations representing the general interest of industries or branches, with a view to ensuring balanced representation of large, medium-sized, small and microenterprises, together with representatives of the social economy;
 - (iii) other similar bodies organised at national or regional level;
 - (c) bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination, including:
 - (i) bodies working in the areas related to the planned use of the ESI Funds contributing to the programme and to the application of horizontal principles, referred to in Articles 4 to 8 of Regulation (EU) No 1303/2013 based on their representativeness, and taking into account geographic and thematic coverage, management capacity, expertise and innovative approaches;
 - (ii) bodies representing the local action groups referred to in Article 34(1) of Regulation (EU) No 1303/2013;
 - (iii) other organisations or groups which are significantly affected or likely to be significantly affected by the implementation of the ESI Funds; in particular, groups considered to be at risk of discrimination and social exclusion.
2. As regards European territorial cooperation programmes, Member States may involve in the partnership:
- (i) European groupings of territorial cooperation operating in the respective cross-border or transnational programme area;
 - (ii) authorities or bodies that are involved in the development or implementation of a macro-regional or sea-basin strategy in the programme area, including priority area coordinators for macro-regional strategies.
3. Where public authorities, economic and social partners, and bodies representing civil society have established an umbrella organisation, they may nominate a single representative to present the views of the umbrella organisation in the partnership.

Chapter III

Main principles and good practices concerning the involvement of relevant partners in the preparation of the Partnership Agreement and programmes

Article 5

Consultation of relevant partners in the preparation of the Partnership Agreement and programmes

1. In order to ensure transparent and effective involvement of relevant partners, Member States and managing authorities shall consult them on the process and timetable of the preparation of the Partnership Agreement and programmes. In doing so, they shall keep them fully informed of their content and any changes thereof.
2. As regards the consultation of relevant partners, Member States shall take account of the need for:
 - (a) timely disclosure of and easy access to relevant information;
 - (b) sufficient time for partners to analyse and comment on key preparatory documents and on the draft Partnership Agreement and draft programmes;
 - (c) available channels through which partners may ask questions, may provide contributions and will be informed of the way in which their proposals have been taken into consideration;
 - (d) the dissemination of the outcome of the consultation.
3. As regards the rural development programmes, Member States shall take account of the role that the national rural networks established in accordance with Article 54 of the Regulation (EU) No 1305/2013 of the European Parliament and of the Council⁶ can play involving relevant partners.
4. Where formal agreements have been established between the different tiers of government below national level, the Member State shall take account of these multi-level governance agreements in accordance with its institutional and legal framework.

Article 6

Preparation of the Partnership Agreement

Member States shall involve relevant partners, in accordance with their institutional and legal framework, in the preparation of the Partnership Agreement, and in particular concerning:

- (a) the analysis of disparities, development needs and growth potential with reference to the thematic objectives, including those addressed by the country-specific recommendations;

⁶ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 347, 20.12.2013, p. [...]): Please insert the page reference of the OJ).

- (b) summaries of the ex ante conditionalities of the programmes and key findings of any ex ante evaluations of the Partnership Agreement undertaken at the Member State's initiative;
- (c) the selection of the thematic objectives, the indicative allocations of the ESI Funds and their main expected results;
- (d) the list of programmes and the mechanisms at national and regional level to ensure coordination of the ESI Funds with one another and with other Union and national funding instruments and with the European Investment Bank;
- (e) the arrangements for ensuring an integrated approach to the use of ESI Funds for the territorial development of urban, rural, coastal and fisheries areas and areas with particular territorial features;
- (f) the arrangements for ensuring an integrated approach to addressing the specific needs of geographical areas most affected by poverty and of target groups at the highest risk of discrimination or exclusion, with special regard to marginalised communities;
- (g) the implementation of the horizontal principles referred to in Articles 5, 7 and 8 of Regulation (EU) No 1303/2013.

Article 7

Information on the involvement of relevant partners in the Partnership Agreement

Member States shall provide for the Partnership Agreement at least the following information:

- (a) the list of partners involved in the preparation of the Partnership Agreement;
- (b) the actions taken to ensure the active participation of the partners, including actions taken in terms of accessibility, in particular for persons with disabilities;
- (c) the role of the partners in the preparation of the Partnership Agreement;
- (d) the results of the consultation with partners and a description of its added value in the preparation of the Partnership Agreement.

Article 8

Preparation of programmes

Member States shall involve relevant partners, in accordance with their institutional and legal framework, in the preparation of programmes, and in particular concerning:

- (a) the analysis and identification of needs;
- (b) the definition or selection of priorities and related specific objectives;
- (c) the allocation of funding;
- (d) the definition of programmes' specific indicators;
- (e) the implementation of the horizontal principles as defined in Articles 7 and 8 of Regulation (EU) No 1303/2013;
- (f) the composition of the monitoring committee.

Article 9

Information on the involvement of relevant partners in programmes

Member States shall provide for programmes at least the following information:

- (a) the actions taken to involve the relevant partners in the preparation of the programmes and their amendments;
- (b) the planned actions to ensure the participation of the partners in the implementation of the programmes.

Chapter IV

Good practices concerning the formulation of the rules of membership and internal procedures of monitoring committees

Article 10

Rules of membership of the monitoring committee

1. When formulating the rules of membership of the monitoring committee, Member States shall take into account the involvement of partners that have been involved in the preparation of the programmes and shall aim to promote equality between men and women and non-discrimination.
2. As regards the monitoring committees of European territorial cooperation programmes, partners may be represented by umbrella organisations at Union or transnational level for interregional and transnational cooperation programmes. Member States may involve partners in the preparations of the monitoring committee, in particular through their participation in coordination committees at national level organised in the participating Member States.

Article 11

Rules of procedure of the monitoring committee

When formulating the rules of procedure, monitoring committees shall take into account the following elements:

- (a) the members' voting rights;
- (b) the notice given of meetings and the transmission of documents, which, as a general rule, shall not be less than 10 working days;
- (c) the arrangements for publication and accessibility of the preparatory documents submitted to the monitoring committees;
- (d) the procedure for adoption, publication and accessibility of the minutes;
- (e) the arrangements for the establishment and activities of working groups under the monitoring committees;
- (f) the provisions on conflict of interest for partners involved in monitoring, evaluation and calls for proposals;
- (g) the conditions, principles and arrangements for reimbursement rules, capacity building opportunities and use of technical assistance.

Chapter V

Main principles and good practices concerning the involvement of relevant partners in the preparation of calls of proposals, progress

reports and in relation to monitoring and evaluation of programmes

Article 12

Obligations relating to data protection, confidentiality and conflict of interest

Member States shall ensure that partners involved in the preparation of calls of proposals, progress reports and in monitoring and evaluation of programmes are aware of their obligations related to data protection, confidentiality and conflict of interest.

Article 13

Involvement of relevant partners in the preparation of calls for proposals

Managing authorities shall take appropriate measures to avoid potential conflict of interest where involving relevant partners in the preparation of calls for proposals or in their assessment.

Article 14

Involvement of relevant partners in the preparation of progress reports

Member States shall involve relevant partners in the preparation of the progress reports on implementation of the Partnership Agreement referred to in Article 52 of Regulation (EU) No 1303/2013, in particular concerning the assessment of the role of partners in the implementation of the Partnership Agreement and the overview of the opinions given by the partners during the consultation, including, where appropriate, the description of the way in which the opinions of partners have been taken into account.

Article 15

Involvement of relevant partners in the monitoring of programmes

Managing authorities shall involve the partners, within the framework of the monitoring committee and their working groups, in assessing performance of the programme, including the conclusions of the performance review, and in the preparation of the annual implementation reports on the programmes.

Article 16

Involvement of partners in the evaluation of programmes

1. Managing authorities shall involve the relevant partners in the evaluation of programmes within the framework of the monitoring committees and, where appropriate, specific working groups established by the monitoring committees for this purpose.
2. Managing authorities for the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund programmes shall consult the partners on the reports summarising the findings of evaluations carried out during the programming period in accordance with Article 114(2) of Regulation (EU) No 1303/2013.

Chapter VI

Indicative areas, themes and good practices concerning the use of the ESI Funds to strengthen the institutional capacity of relevant partners and the role of the Commission in dissemination of good practices

Article 17

Strengthening the institutional capacity of relevant partners

1. The managing authority shall examine the need to make use of technical assistance in order to support the strengthening of the institutional capacity of partners, in particular as regards small local authorities, economic and social partners and non-governmental organisations, in order to help them so that they can effectively participate in the preparation, implementation, monitoring and evaluation of the programmes.
2. The support referred to in paragraph 1 may take the form of, inter alia, dedicated workshops, training sessions, coordination and networking structures or contributions to the cost of participating in meetings on the preparation, implementation, monitoring and evaluation of a programme.
3. For rural development programmes, the support referred to in paragraph 1 may be provided through the national rural network established in accordance with Article 54 of Regulation (EU) No 1305./2013.
4. For ESF programmes, managing authorities in less developed or transition regions or in Member States eligible for Cohesion Fund support shall ensure that, according to need, appropriate ESF resources are allocated to the capacity building activities of social partners and non-governmental organisations that are involved in the programmes.
5. For European territorial cooperation, support under paragraphs 1 and 2 may also cover support for partners to strengthen their institutional capacity for participating in international cooperation activities.

Article 18

Role of the Commission in the dissemination of good practices

1. The Commission shall set up a cooperation mechanism called the European Community of Practice on Partnership, which shall be common to the ESI Funds and open to interested Member States, managing authorities and organisations representing the partners at Union level.

The European Community of Practice on Partnership shall facilitate exchange of experience, capacity building, as well as dissemination of relevant outcomes.
2. The Commission shall make available examples of good practice in organising the partnership.
3. The exchange of experience on the identification, transfer and dissemination of good practice and innovative approaches in relation to the implementation of interregional cooperation programmes and actions under Article 2(3)(c) of Regulation (EU) No

1299/2013 of the European Parliament and of the Council⁷ shall include experience of partnership in cooperation programmes.

Chapter VII

Final provisions

Article 19

Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7.1.2014

For the Commission
The President
José Manuel BARROSO

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Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (OJ 347, 20.12.2013, p. [...]: [Please insert the page reference of the OJ](#)).