

EUROPEAN AGRICULTURAL FUND FOR RURAL DEVELOPMENT (EAFRD)

RDPE 2014-2020 LEADER GUIDANCE NOTE GN102

DEALING WITH CONFLICTS OF INTEREST IN THE LEADER PROGRAMME

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Version Control

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Dealing with Conflicts of Interest in the LEADER Programme

Each Accountable Body must ensure that the operation of the LEADER programme is not affected by any conflicts of interest. It must devise and implement a written **Conflict of Interest Policy** setting out its approach to dealing with any potential conflicts of interest that may arise in the course of the LEADER programme.

A conflict of interest arises when an individual's other interests could give rise to real or perceived bias in relation to a decision they are asked to take on the LEADER programme.

Conflicts of interest exist when either:

- A. There is a potential financial or measurable benefit either directly to the individual, or indirectly through a connected individual or organisation; or
- B. A person's duty to the LAG may compete with a duty or loyalty they owe to another organisation or person.

Conflicts of interest can arise at any stage in the life-cycle of an application or project, not simply in the decision to award public funds. Accountable bodies must ensure that the risk of conflicts of interest is addressed at all stages, including:

- Assessing an application for eligibility for programme funds
- Approving a project application
- Supporting or sponsoring a project through the application process
- Appraising a project application
- Making a decision on an application, whether or not grant is awarded
- Recommending payment of a project claim
- Authorising payment of a project claim
- Agreeing any variations to an approved project
- Conducting project inspections, and
- Quality controlling, quality assuring or monitoring checks on any of the above functions

It is the responsibility of the Accountable Body to ensure that anyone involved in the programme is fully conversant with the Conflict of Interest Policy and understands their role and responsibilities in putting it into practice.

The Conflict of Interest Policy must be submitted to RPA Rural Development for approval with the first Delivery Plan, and any subsequent changes must be approved by RPA Rural Development.

RPA Rural Development will check that arrangements are in place for the implementation of the policy at its Set-up Evaluation Visit, and will check that it is being followed at subsequent annual inspections.

The Accountable Body will maintain a Register of Interests, which must be updated whenever a new interest is identified and reviewed annually. This register must be submitted to RPA Rural Development with the first Delivery Plan, and the current updated version should accompany each subsequent Annual Report and Delivery Plan.

The Accountable Body must ensure that each and every conflict of interest, and the actions taken to deal with them, are recorded in detail. This will include

- On forms and checklists, and on DORA, as set out in the LEADER National Operations Manual
- In the minutes of meetings
- On project files

The Conflict of Interest Policy

It is for each Accountable Body to determine the exact format and wording of their Conflict of Interest Policy, and many of them will already have such a policy in operation covering their other activities. At a minimum, it must:

- Set out who is covered by the policy in respect of the LEADER programme
- Define what constitutes a potential conflict of interest, and the circumstances in which one might arise
- Set out the actions that must be taken to deal with each potential conflict of interest, and how these actions and decisions will be recorded

Who Is Covered?

The policy must cover anyone who is involved in the implementation of the LEADER programme, for example:

- The chair and members of the LAG and any sub-groups, including any co-optees and/or non-voting members
- Accountable Body personnel
- All others who contribute to the delivery of the programme, for example those commissioned on a paid or voluntary basis to undertake appraisals

Defining Conflicts of Interest

This section should include a definition of Conflict of Interest, and the circumstances in which an individual's other interests, connections or relationships could lead to a conflict with their duties in relation to the LEADER programme. It should note that potential conflicts of interest may be real or perceived, and may specify varying degrees of severity of a potential conflict.

It should cover all aspects of the programme's operation, with particular reference to the applications for funding, and should include supporting, assessing and appraising applications, issuing funding agreements, processing claims and undertaking monitoring activity as well as the decision-making process itself

If the Accountable Body's Governance Arrangement allow for decisions to be made by written procedures, then the policy should refer specifically to how potential conflicts of interest will be dealt with under these circumstances.

It should set out the process by which a possible conflict of interest is adjudicated, for example by the ruling of the Chair in a meeting, or by referring it to a senior member of staff in the Accountable Body for determination. It should clarify whether the Accountable Body, with its overall responsibility for the compliance of the LEADER programme, has the ability to overrule a decision of the LAG or Chair, and if so under what circumstances.

The policy may include reference to the potential for conflicts of interest arising from the offering or receipt of gifts or hospitality. This could also be dealt with in a Code of Conduct.

How a conflict of interest is to be dealt with, and the actions recorded

The policy should set out the range of possible actions to be taken in response to a conflict of interest, and how the correct course of action is to be decided on.

For example, in relation to a conflict arising at a meeting taking a decision on a funding application, the individual could

- Leave the room for that item
- Remain but take no part in the discussion
- Remain but contribute only factual information and clarifications

- Contribute to the discussion but not take part in the decision, and therefore not be counted towards a quorum
- Remain as a full member of the meeting

depending on the nature and severity of the conflict of interest.

How the Accountable Body and LEADER group deals with potential conflicts of interest will be the subject of considerable scrutiny, both from Auditors and from interested members of the public. The policy should set out how the Accountable Body will maintain clear and detailed records of any conflict of interest and how each one was addressed.

This will include:

- The agendas and minutes of meetings
- Notes on project files
- Checklists and forms in the LEADER National Operations Manual, and electronic records on DORA
- The Register of Interests

An example Code of Conduct incorporating a Conflict of Interest Policy is included as an annexe to this Guidance Note

Annexe to LEADER Guidance Note GN102

EXAMPLE Code of Conduct including Conflict of Interest Policy

This document includes both a general Code of Conduct (clauses 3-6) and a specific code relating to potential Conflicts of Interest (clauses 7-10)

Clause 1 sets out that the code applies to LAG members, employees and volunteer appraisers; and clause 2 that it applies to any activity connected with the operation of the programme, and not solely to meetings.

It was based on a template code of conduct for Parish Councils, and adapted to the needs of LEADER.

XX LOCAL ACTION GROUP

Part 1

General provisions

Introduction and interpretation

1.—(1) This Code applies to **you** as a member of the Local Action Group, appraiser or employee of the Accountable Body.

(2) You should read this Code together with the general principles annexed hereto.

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

“meeting” means any meeting of—

(a) the LAG;

(b) any of the LAG’s committees or sub-committees, joint committees or joint sub-committees;

(c) “member” includes a co-opted member and an appointed member of the Management Team.

(d) “Appraiser” is anyone who has been approved and agreed to act in such post whether already a member of the Management Team or independent of such;

(e) “Employee” is any person in the direct employ of the AB or providing services for the AB.

(5) Any complaint received by the Management Team in writing stating that there has been a breach of this Code will be dealt with in accordance with the AB Complaints procedure

Scope

2.—(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of or consider a project for the LAG or

(b) act, claim to act or give the impression you are acting as a representative of the LAG, and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of the LAG on any other body, you must, when acting for that other body, comply with the LAG's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject or a more stringent code.

(6) It is however important that funding applicants receive structured, fair and consistent feedback on their projects. Thus all communications with the project applicant will be directed through the LAG 'staff' Team and Appraiser names will not be divulged, unless otherwise agreed.

General obligations

3.—(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause the LAG to breach any of the equality enactments (as defined in Equality Act 2010);

(b) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with LAG's code of conduct; or

(c) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the LAG.

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the LAG; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing you and/or the LAG into disrepute.

6. You—

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of the SDCLAG ensure that such resources are not used improperly for political purposes (including party political purposes).

Part 2
Interests

Personal interests

7.—(1) You have a personal interest in any project or business to be considered by the LAG where either—

(a) it relates to or is likely to affect—

- (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated;
 - (ii) any employment or business carried on by you;
 - (iii) any person or body who employs or has appointed you;
 - (iv) any person or body, other than the LAG has made a payment to you in respect of your election or co-option or any expenses incurred by you in carrying out your duties;
 - (v) any person or body who has a place of business or land in the LAG's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vi) any contract for goods, services or works made between the LAG and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (vii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £500;
 - (viii) any land in the LAG's area in which you have a beneficial interest;
- (b) a decision in relation to that project or business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of your the LAG's area.

(2) In sub-paragraph (1)(b), a relevant person is—

- (a) a member of your family or any person with whom you have a close association; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

8.—(1) Subject to sub-paragraphs (2) to (3), where you have a personal interest in any project or business of the LAG and you attend a meeting of the LAG at which the project or business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any project or business of the LAG which relates to or is likely to affect a person described in paragraph 7(1)(a)(i), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that project or business.

(3) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

Prejudicial interest generally

9.—(1) Subject to sub-paragraph (2), where you have a personal interest in any project or business of the LAG you also have a prejudicial interest in that project or business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard it so significant, such as providing matched funding personally, or from your representative group or organisations, and is such that it is likely to prejudice your judgement of such interest.

(2) You do not have a prejudicial interest in any project or business of the LAG where that business—

- (a) does not affect your financial position or the financial position of a person or body described in paragraph 7;
- (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8.

Effect of prejudicial interests on participation

10.—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of the LAG—

- (a) you must withdraw from the room or chamber where a meeting considering the project or business is being held—
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the project or business is being considered at that meeting;unless you have obtained a dispensation from the Management Team; and
- (b) you must not seek improperly to influence a decision about that project or business.

(2) Where you have a prejudicial interest in any project or business being considered by the LAG, you may be allowed to attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the project or business, provided that others are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Appraisers

11.—(1) In line with the EU guidance for the Rural Development Programme, where you have carried out a project appraisal, you must declare this at a meeting considering this project—

- (a) you may remain within the room or chamber where a meeting considering the project or business is being held
- (b) you must not vote on whether or not that project should be granted funding.

(2) This does not apply to you if you only carry out an environmental appraisal on the project.

Annex - The Ten General Principles

The general principles governing your conduct:

Selflessness

1. You should serve only the wider interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. You should not place yourself in a situation where your honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. You should make decisions on merit, including when making appointments, awarding project contracts, or recommending individuals for such project rewards or benefits.

Accountability

4. You should be accountable to the public for your actions and the manner in which you carry out such responsibilities, and should co-operate fully and honestly with any scrutiny appropriate.

Openness

5. You should be as open as possible about your actions and those of SDCLAG, and should be prepared to give reasons for those actions.

Personal Judgement

6. You may take account of the views of others, including their political groups, but should reach your own conclusions on the issues before you and act in accordance with those conclusions.

Respect for Others

7. You should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. You should respect the impartiality and integrity of the SDCLAG's statutory officers, and its other employees.

Duty to Uphold the Law

8. You should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in SDCLAG.

Stewardship

9. You should do whatever you are able to do to ensure that SDCLAG use their resources prudently and in accordance with the law.

Leadership

10. You should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

I agree to abide by this Code of Conduct

Signed..... Date.....

Name (in Caps).....

Organisation.....