

## Annex 2 – Draft Terms of reference of the LEP Area ESIF Committee

These terms of reference set out the core elements of how a Local Sub Committee should function. The Chair of the Committee and Managing Authorities can develop and agree supplementary working practices in a way which meets local need provided this can demonstrate compliance with EU regulations, fit with the national OP and conformity with these guidelines.

**Annex 2a: Roles of Chair, Deputy Chair and Secretariat** sets out descriptions of the roles of:

- The Chair
- The Deputy Chair
- The Secretariat

These terms of Reference will be regularly reviewed by the Growth programme Board (PMC).

### Governance and purpose of [LEP area] ESIF Committees

The Growth Programme Board is the Programme Monitoring Committee (PMC) for both the ERDF and the ESF Operational Programmes in England. It will assume the formal role of PMC once the Operational Programmes for the relevant Funds are agreed by the EC.

The local sub-Committee, hereafter the [LEP Area] ESIF Committee, is responsible for the strategic oversight of local investments of both the Structural and EAFRD Growth Programme Funds and their operational delivery in line with the Operational Programme. It reports directly to the Growth Programme Board (PMC).

The national PMC will be supported by a number of national thematic and functional sub-committees. The local sub-committees report directly to the PMC, but where relevant will be directed by the national sub-committees as remitted by the PMC.

### Objective of Committees

The [LEP Area] ESIF Committee is responsible for the development and delivery of the (XXXX - *specify local area*) ESIF strategy, ensuring that local strategic aims are considered alongside national strategic and operational objectives and that maximum impact is achieved through the Funds, thereby contributing to delivery of the overall national Operational Programmes. It is responsible for ensuring operational delivery of activity supported by the Funds, overseeing the development of an appropriate pipeline of proposals; agreeing investments; and monitoring performance against targets at the [LEP area] level.

## Status and accountability of the LEP Area ESIF Committee

The [*LEP Area*] ESIF Committee is an integral part of the governance structure required to deliver the England 2014-2020 ERDF and ESF Programmes through its management of ( *XXX - specify local area*) ESIF strategy and demonstrates England's commitment to delivery of ERDF and ESF Programmes and allocated EAFRD in the spirit of the partnership principle that is embedded in the Common Provisions Regulations.

The role of the [*LEP Area*] ESIF Committee is detailed in the Implementing Provisions chapter of the England ERDF and ESF Operational Programmes. The [*LEP Area*] ESIF Committee will act as a sub-committee of the Growth Programme Board (Programme Monitoring Committee) and on its behalf in any formally delegated areas of business.

[*LEP Area*] ESIF Committee decisions will be taken using a consistent and transparent process.

Agreed minutes and relevant documents (such as details of calls, Opt-In arrangements, reports and case studies) will be published on a publicly accessible site or location.

Reports and decisions agreed by the [*LEP Area*] ESIF Committee will be reported to the Growth Programme Board (and/or its relevant national level sub-committees) and, where appropriate, the EAFRD PMC by the Managing Authorities. Decisions by the GPB and its sub-committees will be reported back to the [*LEP Area*] ESIF Committee.

The [*LEP Area*] ESIF Committee will set up and make publicly available a fair and transparent process for dealing with complaints.

These Terms of Reference form the basis for shadow operation of the [*LEP Area*] ESIF Committees. Once the Operational Programmes for Funds for which local ESIF committees are responsible are adopted by the European Commission, Terms of Reference and, thereby, the [*LEP Area*] ESIF Committees will be formally ratified by the Growth Programme Board (as formal PMC).

The EAFRD PMC will be the PMC for all EAFRD funds. The [*LEP Area*] ESIF Committee will not be a sub-committee of the EAFRD PMC but will assist the EAFRD Managing Authority by performing the activities set out in the paragraphs below where those activities are relevant to EAFRD spend which is part of the EU Growth Programme.

### [*LEP Area*] ESIF Committee Functions

The [*LEP Area*] ESIF Committee will act in accordance with the regulations governing ESIF operations and as directed by the Growth Programme Board (PMC). It will support delivery of the Operational Programmes at the local level in the following ways, having due regard to the impact on equalities throughout in accordance with the Public Sector Equality Duty, and making recommendations as to mitigating measures, where appropriate:

- Develop and agree an Implementation Plan with the Managing Authorities (MAs) – a rolling plan reviewed annually setting out how the local ESIF strategy will be delivered and how it will contribute to the Operational Programmes, including any cross-boundary working with other LEP areas.
- Develop and agree with the MAs the entry routes into the Programme and how progress will be tracked, including (1) type of calls for operations, timing of calls, scope and fit with local priorities as identified in the [xxx Area] ESIF Implementation Plan; and (2) delivery through Opt-In organisations, and scope and fit with local priorities as identified in the [xxx Area] ESIF Implementation Plan. This will reflect a clear understanding of the types of project which will attract funding.
- Agree work with the MAs to develop local promotion and publicity for the opportunities that the Funds provide for economic growth. The MAs will also promote calls for investment as part of their MA function. Such promotion must be directed towards all relevant local partners and the Committee must monitor its effectiveness.
- Develop a pipeline of operations that meet local needs in line with the Operational Programmes, [xxxx Area] ESIF strategy and Implementation Plan.
- Discuss and agree with the MA arrangements for oversight of procured provision with Opt-In organisations and wider engagement.
- Assess potential operations at outline and full application stage (including Opt-Ins) against the [xxxx Area] ESIF strategy for their strategic fit, value for money, fit with overall ESIF objectives, alignment with relevant local strategies, policies and context and complementarity with interventions funded through local private and public sector sources in an open and transparent manner. Local intelligence will be provided by committee members and, with the agreement of the [LEP area] ESIF Committee, through written assessment focussing on the above. Any local assessments must use a methodology which is open, fair and transparent and agreed by the Committee.
- Use any local assessment and the MAs' appraisal to make recommendations and agree with the MAs: the selection of operations and Opt-Ins, especially in regard to prioritisation, additional opportunities, and the fit with local needs.
- Agree oversight of delivery of operations and outputs, including working with Opt-In organisations to ensure alignment of procured and competitively selected provision with local priorities and leading discussions with the MAs where performance of operations at a local level is falling behind.
- Agree with the MAs the level and detail of information required to monitor the progress of ESIF implementation against spend, milestones, cross-cutting themes, outputs and results agreed in the [xxxx Area] ESIF strategy and Implementation Plan, recommending remedial actions where necessary and relating progress to local indicators.

- Report progress and feed in to national processes as directed by the Growth Programme Board as appropriate (PMC).
- Inform and oversee programme evaluation as appropriate at the local level which will be agreed with and carried out on its behalf by the MAs, including a mid-term review in 2018, in line with the national Evaluation Strategy.
- Ensure there are clear governance and /or working arrangements agreed with the MA for the operation of CLLD and SUD within their local area where they are using these instruments to ensure that all activities supported by the ESIFs are complementary in planning and execution.
- Have the power to form partnerships with other ESIF committees where both Committees, including the MAs, decide this would be appropriate to secure the delivery of projects.
- Have oversight of delivery of programme objectives through Financial Instruments where investment in these has been agreed by the [LEP area] ESIF Committee and receive reports on their performance.
- Fulfil other functions as appropriate commissioned by the Growth Programme Board or as outlined in the published business process and guidance.
- Propose major ERDF and ESF projects before submission to the Growth Programme Board. Major ERDF and ESF projects agreed at Growth programme Board (PMC) level will be submitted for a decision by the European Commission.
- Consider and influence the contribution which other European programmes in the programme area are making to the overall strategy for the Structural Funds. Complementary actions between the ESI Funds Growth programme and other European programmes will be considered and pursued via the official routes as appropriate.

## Membership

The composition of the [LEP Area] ESIF Committee will reflect the breadth of partners specified in Article 5 of the Common Provisions Regulations and the Code of Conduct on Partnership, and be representative of the population of the geographic area covered by the (XXXX - *select local area*) ESIF strategy. In putting together the [LEP Area] ESIF Committee, the LEP and government will have due regard to the Public Sector Equality Duty, taking account of the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people with and without a protected characteristic.

Partners to be represented (- each below should ideally be represented with a separate individual to minimise potential conflicts of interest. Members may represent more than one grouping in agreement with the Local Enterprise Partnership and the Managing Authority):

- Local Enterprise Partnership
- Local Authority
- Business partners (including small businesses and social enterprise as appropriate to the [xxxx – *specify local area*] area.)
- Voluntary & Community Sector
- Equalities and non-discrimination
- Environment (with relevant expertise in e.g. sustainable development)
- Trade Union and employer representation
- Higher Education
- Education, skills & employment
- SUD city regions (where appropriate to the [xxxx – *specify local area*] area)
- Rural (where appropriate)
- CLLD Local Action Group(s) where appropriate to the [xxxx – *specify local area*] area.
- Managing Authorities for each of the ESI funds and BIS local
- Others as wanted/needed by the [LEP area] ESIF Committee - for example, the Committee will want to consider how equality and diversity advice needs are met. If the Committee so wish, they may also invite representation from the European Commission as an advisory member. (It will be up to the European Commission to decide how to respond to any such requests).

The number of representatives per sector can vary by area, but must be a balanced representation (– individual Terms of Reference to specify numbers and any additional organisations) and consistent with the good practices and principles in the European Code of Conduct on Partnership. Members need to be clear about who they are representing and how. All partners selected should be representative of their sector and/or relevant stakeholders and able to demonstrate accountability to their constituencies.

The Membership recruitment process will be led by the [XXXX] Local Enterprise Partnership with involvement of partners and agreement of the Managing Authorities. The process will be consistent with the good practices and principles in the European

Code of Conduct on Partnership, open, fair and transparent and should encourage the nomination of a diversity of representatives reflective of the cultural, ethnic, age and gender mix of the population.

Membership will be for a three year term. The [*LEP Area*] ESIF Committee will review its membership in 2017 to ensure its composition of skills remain relevant to investments still to come forward through the Programme. Where members leave before that time, representatives will be sought again from the sector/organisation they are representing. Membership will also be refreshed as needed to reflect any changes in relevant EU and national regulations (and policy) as directed by the Growth Programme Board (PMC).

By agreement with the Chair it is possible to invite expert guidance to specific meetings to assist consideration of a specialist proposal.

### **Roles within the [*LEP Area*] ESIF Committee**

Successful delivery of funds within the EU Growth Programme will depend on close working between the MA and Local Enterprise Partnerships and wider partners. This will be based on a clear split of roles and responsibilities and the [*LEP Area*] ESIF Committee will provide a formal basis for this relationship. For the [*LEP Area*] ESIF Committee, the LEP will convene local partners on a fully inclusive basis consistent with the good practices and principles in the European Code of Conduct on Partnership

The Chair will be selected from amongst members of the [*LEP Area*] ESIF Committee by consensus. The LEP will organise the selection process, supported by the Managing Authority. In the absence of a candidate or in the absence of a consensus decision being reached the ERDF or ESF Managing Authority will undertake the role of Chair until such a consensus is reached at which time the consensus candidate will take office and the ERDF or ESF Managing Authority representative will stand down into the Deputy Chair role.

The Managing Authorities are responsible for managing the Operational Programmes in accordance with the principle of sound financial management. The ERDF or ESF MA will act as Deputy Chair, unless the [*LEP Area*] ESIF Committee has appointed the Managing Authority as Chair. The other Managing Authorities (ERDF or ESF and EAFRD) will be members of the committee.

All Members should:

- Be empowered to speak on behalf of their sector and its constituencies, providing the agreed position in relation to issues discussed at meetings
- Have an understanding of the economic context in (XXXX - *specify local area*)
- Understand local investment priorities and have knowledge of the local conditions, needs and opportunities to bring forward operations that meet the strategy and objectives set out in the national Operational Programmes;
- Be familiar with the (XXXX - *specify local area*) ESIF including Cross Cutting Themes and the outputs and results sought
- Work collectively to identify solutions or innovative ways to deliver Programme aims within EU Regulations

- Understand the strategic context for investment decisions taken and be able to take part in discussions around project investment
- Offer analytical input to the issues / investments under discussion
- Access a wider network for advice on specific issues.

## Principles of Engagement

The [LEP Area] ESIF Committee chair will ensure members are aware of their obligations relating to data protection, confidentiality and conflict of interest.

Members will be required to complete a register of relevant interests (including pecuniary and non-pecuniary, personal or other interests, and declaring any gifts or hospitality received in their capacity as Member). Members will also be required to declare an interest in any agenda items where a decision is required and the decision may cause a direct material impact, financial or otherwise, either personally or to the organisation or institution they are representing. In such circumstances it will be a matter for the Chair to decide if the member can attend and/or contribute to the discussion, but Members may also choose to absent themselves for the duration of that discussion to avoid actual or any appearance of undue influence. Conflicts of interest should be identified to the Chair and minuted. At least once in every 12-month period, all Members must review the information relating to him or her contained in the register of interests and declare that the information is correct or make a further declaration if necessary.

Members must also report any suspicions of fraud or malpractice to the Committee so that this can be escalated to the MA and GPB as appropriate.

The [LEP Area] ESIF Committee will objectively review proposals for their ability to deliver the aims of the Operational Programmes, the ESIF strategy and value for money, and their alignment with relevant national policies.

The Managing Authorities cannot agree to the selection of operations that do not fit the Operational Programmes and/or are non-compliant with the regulations governing the Programme. They are obliged to overturn advice from the Committee to invest where a proposal cannot demonstrate compliance with EU Regulations or fit with the national Operational Programmes.

The Managing Authorities will not approve any operations that have not been agreed by the [LEP Area] ESIF Committee as meeting the ESIF strategy for which the [LEP Area] ESIF Committee is responsible.

Collaboration is key to driving economic growth regardless of administrative boundaries, so the [LEP Area] ESIF Committee will commit to investigating opportunities for delivering activity in collaboration with other areas in England where sensible and appropriate.

Decisions will be taken by consensus; by exception dissent from a majority decision will be recorded in the minutes. (The Chair does not hold a deciding vote where consensus is not reached.)

All meetings and decisions will be minuted. Minutes will normally be circulated no later than 10 working days after a meeting for approval by members (with a nil response taken as endorsement). Minutes will be agreed by the [*LEP area*] ESIF Committee as confirmation of a true record of a meeting.

Members must be able to attend regularly and be able to devote necessary time to any preparatory work. Members missing more than 30% of meetings in a twelve month period or three meetings in a row may be asked to step down by the MA in its role as Secretariat after consultation with the Chair.

Recommendations of the [*LEP area*] ESIF Committee in relation to individual investments remain confidential until such time as the MA informs members that a formal decision has been made.

## **Meeting Arrangements**

Meetings will typically take place quarterly, but may be required more frequently. Meeting dates for each calendar year will be provided in advance.

The ERDF/ESF Managing Authority will provide the secretariat for the [*LEP Area*] ESIF Committee, managing dates, venues, minute taking, recording decisions and collating and circulating papers, working closely with the Committee and the Chair.

Agendas will be agreed between the Chair and the lead Managing Authority. Members may propose agenda items via the Chair.

Papers will be electronically circulated a minimum of 5 working days in advance of a meeting. Any paper not so circulated will not be considered without a majority of the Committee agreeing to do so on a case by case basis.

The Managing Authorities will provide and present:

- Appraisal reports and recommendations
- ESIF level performance progress report, identifying any issues for consideration
- Messages from Growth Programme Board (PMC) and, where appropriate, its national level sub-committees
- Minutes of last meeting for approval; decisions will be made publicly available.
- Other items as agreed in advance with the Chair.

The Chair may, where necessary, circulate papers or proposals to members via the Secretariat for agreement by written procedures, with two weeks allowed for comment, unless exceptional circumstances dictate otherwise. Nil responses will be taken as endorsement. It should be assumed that such comments will be considered unless Committee members are advised otherwise.

Members unable to attend are not permitted to send a substitute unless the substitute has been agreed in advance by the Chair; it is suggested that all members should

nominate a deputy for this purpose. Members who cannot attend may either write to the Chair through the Secretariat prior to the meeting expressing views to be taken into account, or mandate their deputy to give views on their behalf.

Meetings of the [*LEP Area*] ESIF Committee may proceed without a quorum of members present, but in those circumstances in principle decisions will be made for ratification at the next quorate meeting or in writing by the full [*LEP Area*] ESIF Committee. For these purposes a quorum is considered to be not less than 60% of the total number of Group members. It is for the Chair to be satisfied that the quorum constitutes a sufficient cross-section of member interests.

The organisation that the member represents shall be responsible for reimbursing any reasonable expenses incurred in attending meetings of the [*LEP Area*] ESIF Committee by that member.

## **Dispute Resolution**

Where the Committee is unable to reach a consensus or is not acting in accordance with the Terms of Reference or the Code of Conduct, such that members wish to escalate this to the Growth Programme Board (PMC), the national level [Performance management] Sub-Committee will be the mechanism for resolving such disputes.

*NB: "Operation" is the term used in the EU regulations to cover a project or group of projects or investment.*

## Annex 2a: Roles of Chair, Deputy Chair and Secretariat

### Role of Chair

The Committee Chair will be chosen by the partnership.

The role of the Chairperson is to:

- Ensure that the [*LEP Area*] ESIF Committee acts in accordance with the regulations governing ESIF operations, and that it fulfils its commitments, including any obligations to the Growth Programme Board and the Managing Authorities, Operational Programme, Local ESIF Strategy and local area, and as outlined in the published business process and guidance.
- Agree the agenda, papers and minutes of meetings
- Ensure that the [*LEP Area*] ESIF Committee is efficient, effective and inclusive.
- Chair and direct the [*LEP Area*] ESIF Committee meetings in accordance with the Terms of Reference.
- Ensure that all partners are able to express their views so that the [*LEP Area*] ESIF Committee is able to make balanced and considered decisions.
- Take soundings from the different parties, both within and outside the meetings of the [*LEP Area*] ESIF Committee, to aid its decision making.
- Commission the Secretariat and/or other partners to undertake specific pieces of work in support of the Committee, as necessary to the running of the Committee, the fulfilment of its functions or as agreed by the Committee at meetings.
- Act as described within the Terms of Reference.

### Role of Deputy Chair

The Deputy Chair will be from the Managing Authority for ERDF or ESF unless the partners have appointed the MA representative to be Chair of the Committee (in which case the Deputy chair will be appointed from within the other members). Their role is to ensure the proper conduct and delivery of the programme within the framework of European legislation. As such they have authority to veto any proposal which does not meet eligibility criteria or contravenes the legislative framework. But, whilst they will be able to advise, they do not have authority to override or reject decisions on local strategic fit and value for money taken by the Committee or any form of casting vote in so doing.

The role of the Deputy Chair is to:

- Chair those meetings of the [*LEP Area*] ESIF Committee at which the election of the substantive Chairperson of the [*LEP Area*] ESIF Committee is an item, chairing the meeting whilst such elections take place, and relinquishing the chair when a substantive Chairperson is elected and takes office, unless the MA concerned is elected Chair.
- Chair the committee meetings in the absence of the appointed Chairperson or chair specific agenda items where the Chairperson deems it is more appropriate for the Deputy Chair to do so (For example, but not limited to, discussions where the Chairperson has declared a conflict of interest.)

- Contribute to decisions and actions of the committee ensuring compliance with EC and national rules and regulations, advising the Chair and committee members accordingly
- Advise the Chair so that the [LEP Area] ESIF Committee acts in accordance with the regulations governing ESIF operations, and that it fulfils its commitments, including any obligations to the Growth Programme Board and the Managing Authorities, Operational Programme, Local ESIF Strategy and local area, and as outlined in the published business process and guidance. (In particular, briefing the Chair about any issue that might be material to the proper future discharge by the [LEP Area] ESIF Committee of any of its functions and responsibilities).
- Act as described within the Terms of Reference.

## Secretariat

The Secretariat will provide administrative support for the LEP Area ESIF Committee. The Secretariat will be drawn from either or both of the ERDF or ESF Managing Authority. In fulfilling this role it will work closely with the Committee and the Chair.

Its responsibilities will include:

- Advising the Committee on governance arrangements.
- Organising meetings, preparing or commissioning agendas and papers for the meetings as agreed with the Chair and lead MA.
- Circulating papers and agendas in advance of meetings.
- Ensuring that all decisions of the [LEP Area] ESIF Committee are accurately recorded so that there is a clear audit trail.
- Writing minutes of all meetings of the [LEP Area] ESIF Committee, getting initial approval of the minutes from the Chair, distributing them to members and, once agreed, making them available on the public site.
- Briefing the Chair on any issues relating to discussions.
- Providing/commissioning the Management Information reports on behalf of the different Managing Authorities (standard reports) and/or the provision/commissioning of particular reports or papers for the committee.
- Supporting the Chair, Committee and MA (in their role as Chair or Deputy Chair) in communicating progress and feeding in to national processes as directed by the Growth Programme Board (PMC) and, where relevant, the EAFRD PMC.
- Supporting communication between the GPB and its national level sub-committees and the [LEP Area] ESIF committee.
- Maintain a record of all the interests of the members of the [LEP Area] ESIF Committee.
- Acting as described within the Terms of Reference.

## **Selection of Chair**

- The Committee Chair will be chosen by a simple majority vote taken by the LEP ESIF Subcommittee in a quorate session and will chair the LEP ESIF Subcommittee from the moment that majority vote for election is achieved. Unless elected as chair, the MA acting chair will step down into the Deputy Chair role.

## **Local Enterprise Partnership**

- The Membership recruitment process will be led by the [XXXX] Local Enterprise Partnership with involvement of partners and agreement of the Managing Authorities. The process will be, in line with European Code of Conduct, open, fair and transparent and should encourage the nomination of a diversity of representatives reflective of the cultural, ethnic, age and gender mix of the population.
- The Chair will be selected from amongst members of the [LEP Area] ESIF Committee by consensus. The LEP will organise the selection process, supported by the Managing Authority. In the absence of a candidate or in the absence of a consensus decision being reached the ERDF or ESF Managing Authority will undertake the role of Chair until such a consensus is reached at which time the consensus candidate will take office and the ERDF or ESF Managing Authority representative will stand down into the Deputy Chair role.

## **Lead Managing Authority (and the MA acting as Chair /Deputy Chair if different)**

- The Lead Managing Authority (and the MA fulfilling the MA functions of the Deputy Chair role above if different) will be responsible for ensuring that the other MAs are consulted and have agreed papers as appropriate where these affect the administration of the different ESI Funds.