FICHE NO 6
IMPLEMENTING ACT ON THE RULES CONCERNING ELECTRONIC INFORMATION EXCHANGE WITH BENEFICIARIES ("E-COHESION")
VERSION 2 – 4 JUNE 2013

Regulation	Article
Common Provisions Regulation [COM(2012) 496]	112(3) Responsibilities of Member States – chapter Management and control systems

This document is provisional, without prejudice to the on-going Trilogues between the Council and the European Parliament (in line with the principle that "nothing is agreed until everything is agreed"). This document is a draft that shall be adjusted following the expert meeting.

It does not prejudge the final nature of the basic act, nor the content of any delegated or implementing act that may be prepared by the Commission.

1. *EMPOWERMENT*

Article 112(3) of the CPR provides for the following empowerment[1].

*3. Member States shall ensure that no later than 31 December 2014 [**2016**], all exchanges of information between beneficiaries and managing authorities [**a** managing authorit**y**], certifying authorities [certifying authorit**y**], audit authorities [audit authorit**y**] and intermediate bodies can be carried out solely [*Presidency Compromise - without *"solely"] by means of electronic data exchange systems.*

The systems shall facilitate interoperability with national and Union frameworks and allow for the beneficiaries to submit all information referred to in the first sub-paragraph only once.

The Commission shall adopt, by means of implementing acts, detailed rules concerning the exchanges of information under this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 143(3).

2. *MAIN OBJECTIVES AND SCOPE*

Main objective of the implementing act is to provide uniform conditions for Article 112(3) of the proposed Common Provisions Regulation ('CPR') concerning the application of electronic data exchange systems for the exchange of information between beneficiaries and relevant bodies during the next programming period 2014-2020.

The implementing act will:

- define the electronic data exchange system and its scope (as set out in sections 4.1.1, 4.3.1 , 4.4.1 and 4.5.1 of this fiche);
- set up minimum requirements for the electronic exchange of information that shall be put in place at the regulatory deadline (as set out in sections, 4.2.1, 4.2.2, 4.2.3, 4.3.2 , 4.4.2 and 4.5.2 of this fiche).

3. *MAIN ELEMENTS*

The fiche comprises following main elements:

- Empowerment provided in Article 112 of the CPR
- Definition and scope of electronic data exchange
- Characteristics of the electronic data exchange system
- "Only once" encoding principle

[1] Please note that the elements set out in square brackets are still subject to discussion between the co-legislators.

- Interoperability with national and Union frameworks
- All exchanges of information between beneficiaries and authorities
- Main changes compared to the period 2007-2013

4. CONTENT

In pursuance of the administrative burden reduction for beneficiaries of the ERDF, ESF and Cohesion Fund[2], it is necessary to precise detailed rules with respect to practical implementation of the e-Cohesion initiative by Member States.

The rules in the legislative package 2014-2020 linked to e-Cohesion initiative are formulated in a way to enable Member States and regions to find solutions according to their organisational and institutional structure and particular needs while defining uniform minimum requirements.

4.1. Electronic data exchange

4.1.1. Electronic data exchange - definition

Electronic data exchange refers to a medium of exchange of documents (see definition in Article 2(16) of Commission proposal for the Common Provisions Regulation - CPR), including both structured and unstructured data (such as audio/visual data, scanned documents).

The definition of electronic exchange of information given by Article 112(3) covers the relationship between the authorities (managing authority and any intermediate bodies as well as the certifying authority and audit authority) and beneficiaries. An entity is considered to become a beneficiary (in the meaning of Article 2 of the CPR)[3], once the decision on support within the cohesion policy operational programme has been made and the managing authority has provided this entity with a document setting out the conditions for support for each operation mentioned in Article 114(3) (c) of the CPR.

4.1.2. Electronic data exchange - scope

This means that the scope of electronic exchange of information is limited. There is no requirement to set up a facility enabling electronic submission of applications for support. However, once support to the beneficiary has been awarded, any information requirements applicable to the beneficiary should be possible to fulfil via electronic exchange. This includes reporting on progress, declaration of expenditure and exchange of information related to management, verifications and audits.

The exclusion of applicants for support from the scope of these provisions reduces:

- the variety of documents that need to be exchanged and stored;

[2] Article 112(3) is included in Part Three of the CPR – General Provisions Applicable to the ERDF, the ESF and the CF

[3] The beneficiary can be, depending of the Member State choice, either the lead partner only or its delegate or each partner (including the lead one) or their delegates

- the cost and complexity of systems;
- the need for a sophisticated system of electronic signature (see below);
- the requirements for the size of storage;
- the requirement for interoperability between data systems;
- security risks.

This means that the feasibility of having such a system being put in place by the end of the regulatory deadline is increased.

4.1.3. Optional or compulsory use of electronic data exchange by beneficiaries

Article 112(3) implies that Member States have to implement the necessary electronic data exchange system by the deadline set out in that Article. It leaves open the possibility for Member States to make its use by beneficiaries compulsory or optional.

If it is optional, the beneficiaries need to have a possibility to indicate in their application for support, whether or not they opt for an electronic exchange of data without parallel paper exchange and where appropriate, this should also be indicated in the document setting out the conditions for support for each operation referred to in Article 114(3)(c) of the CPR. This is essential in cases where user rights need to be attributed to the beneficiary in order to secure access to the system. However, this is also important for other cases because communication is a two-way process and the managing authority (and other bodies) will need to know whether to communicate with the beneficiary through the electronic information exchange system set up or by other means.

Member States could also impose a compulsory use of electronic data exchange upon beneficiaries at their own initiative following their own schedule, as well as taking into account the cost/benefit analysis and potential legal constraints. It should then be ensured that this would not disrupt smooth implementation of the Funds and not restrict access for certain beneficiaries.

If the decision of compulsory use is not taken at the beginning of the programming period, the Member State concerned will have to clarify the impact of such decision on already established *documents setting out the conditions for support for each operation* mentioned in Article 114(3) (c) of the CPR.

4.1.4. Use of e-Government functionalities by applicants

Member States, at their own initiative, may decide for a use of electronic exchange of information already at the stage of submission of an application. In that context, it is recommended that documents and data exchanged at applicant stage are reused at beneficiary stage if they are still valid. It is also recommended that the electronic signature used at application stage is reused at beneficiary stage, hence ensuring simplification for beneficiaries.

4.1.5. Evolution

The legal framework put in place, nor the clauses in the *document setting out the conditions for support for each operation* mentioned in Article 114(3) (c) of the CPR, should prevent the Member State or region from improving, after the regulatory deadline,

the service provided to beneficiaries by the system of electronic exchange of information or adapt it following the afore-mentioned decisions to extend its scope.

4.2. Characteristics of the electronic data exchange system

4.2.1. Technical characteristics

For the functioning of the computer system for data exchange it will be necessary to ensure compliance with the following aspects:

- data integrity and confidentiality;
- authentication of the sender within the meaning of Directive 1999/93/EC[4];
- storage in compliance with retention rules defined in accordance with Article 132 of the proposed CPR[5];
- secure transfer of data;
- availability during and outside standard office hours (almost 24/7, except for technical maintenance activities);
- accessibility by the Member States and the beneficiaries either directly or via an interface for automatic synchronisation and recording of data with national, regional and local computer management systems;
- protection of privacy of personal data for individuals and commercial confidentiality for legal entities with respect to the information processed (according to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector and Directive 1995/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data).

The beneficiary will have to, together with the authorities referred to in Article 112 of the CPR, record into the computer system for data exchange the documents and data for which they are responsible, and any updates thereto, in the electronic format determined by the Member State.

All necessary detailed terms and conditions of electronic exchange defined by the Member State or the region and linked to the afore-mentioned minimum requirements shall be mentioned in the document setting out the conditions for support for each operation mentioned in Article 114(3) (c) of the Common Provisions Regulation directly or by reference to other applicable legal acts.

[4] The IA will give the Member State, region, programme freedom to establish its own level of security for electronic signature in the context of the Directive. In particular, a simple login/password can be seen sufficient after a cost/benefit analysis and following acceptance by the beneficiary of linked terms and conditions of use mentioned in the document mentioned in Article 114(3)

[5] A separate empowerment has been envisaged for CPR Art 132: Commonly accepted data carriers.

In cases of *force majeure*[6], and in particular in the case of a malfunction of the computer system for data exchange, or a lack of a lasting connection, other means of exchanging information may be acceptable, where duly justified.

4.2.2. Characteristics linked to reduction of administrative burden for beneficiaries

Moreover, the requirements set out in the CPR and the Fund specific rules need to be taken into account including the requirement set out in Article 46 (2) (g).

This point would imply that Member States are able to provide information on the effect of e-Cohesion on the administrative burden of beneficiaries.

In practical terms, it means that the electronic exchange of data referred to in Article 112(3) of the CPR will need to take place in the most effective, efficient and satisfactory for the beneficiary manner enabling her/him to interact with the minimal outlay in terms of work, time and costs. To ensure this, the computer system should be equipped with at least the following functionalities:

- interactive and/or pre- filled forms by the system on the basis of the data which is stored at consecutive steps of the procedures,
- automatic calculations preventing mistakes and speeding up the work, where appropriate,
- automatic embedded controls which reduce as much as possible back-and forth exchange of documents,
- system generated alerts to inform the beneficiary of the possibility to perform certain actions ,
- on-line status tracking: beneficiary can follow up the current state of the project, which results in more transparency,
- availability of all the history of the file.

The afore-mentioned requirements concerning electronic data exchange of information, including in particular e-signature, would remain the same regardless of the nature of the operational programme (it does not matter whether it is an "Investment for growth and jobs" or a "European territorial cooperation" operational programme).

4.2.3. Other characteristics of the electronic data exchange system

Moreover, the legislative framework set up should ensure that:

6 According to the ECJ, certain criteria need to be fulfilled in order for an event to qualify as a force majeure event. Essentially, this concept covers abnormal and unforeseeable circumstances beyond the control of the person invoking force majeure (i.e. of an insurmountable character) whose consequences could not have been avoided in spite of the exercise of all due care. The criteria are cumulative, i.e. force majeure is deemed to occur only when all conditions are met. See McNicholl v Ministry of Agriculture (Case 296/86)

- Electronic data exchange of information option shall be offered to beneficiaries without any charge;

- This exchange of documents and data shall be without prejudice of the storage by the beneficiary within its premises of any supporting paper documents during the retention period;

Finally, electronic exchange of information with beneficiaries should be organised in a way that it contributes to the fulfilment of requirements of Article 114(2)(d) of the CPR[7].

4.3. "Only once" encoding principle

4.3.1. "Only once" encoding principle - definition

The "only once" encoding principle is referred to in the Small Business Act in Europe adopted on 25/06/2008[8].

4.3.2. "Only once" encoding principle - minimum requirement

The "only once" encoding principle should be applied, at a minimum, at the level of operation, in the framework of the same operational programme[9] (regardless of whether this is an 'Investment for growth and jobs' or 'European territorial cooperation' programme). This means that where a beneficiary has submitted certain information to an authority involved in the management and control of a programme for a particular operation, the same information should not be requested again by the same or another authority involved in the management and control of that programme. This is without prejudice of processes allowing the beneficiary or authorities to update erroneous or obsolete data[10].

This is the minimum requirement to be attained by 31/12/2014 [2016] but Member States may wish to apply this principle at a higher level, before or after the deadline of the end of 2014 [2016].

[7] A separate empowerment has been envisaged in Art 114 (2) (d) of the CPR: for "Modalities of the exchange of information". However, the precise content of this empowerment is still under discussion by the co-legislators.

[8] SEC(2008) 2101

[9] This minimum requirement is a balance between the ambition to reduce the administrative burden for beneficiaries and the magnitude of coordination efforts needed between all authorities, including intermediate bodies, within the deadline.

[10] Practical example how to update beneficiary's or project's data: In the contract signed on paper a beneficiary has chosen to exchange information with authorities electronically. It means he/she will use an online portal provided by the authorities to send and receive information. When the beneficiary is asked to submit the first form (e.g. progress report, request for reimbursement), relevant information provided by him/her in the contract should already be reused by authorities (pre-filled) in the form to be submitted. Beneficiary shouldn't be asked to repeat again his name, address, name of the project, name of the OP, etc. Nevertheless, the beneficiary should check correctness of this information pre-filled by authorities in the form and should be able to edit relevant fields in the form to correct or update the information. Some fields which have a legal value could be updated following a particular process (e.g. validation of the change by one particular authority in charge of the programme).

4.4. Interoperability with national and Union frameworks

4.4.1. "Interoperability" - definition

Interoperability, within the context of European public service delivery, as specified in the European Interoperability Framework (EIF) *is "the ability of disparate and diverse organisations to interact towards mutually beneficial and agreed common goals, involving the sharing of information and knowledge between the organisations, through the business processes they support, by means of the exchange of data between their respective ICT systems".*

To this purpose, Article 112(3) of the CPR refers to the need to assure the conformity of the implemented ICT systems with the:

- National Interoperability Frameworks (described under Action 26 to implement the Digital Agenda for Europe: *Member States to implement European Interoperability Framework*[11]);

- European Interoperability Framework (EIF)[12] and the European Interoperability Strategy (EIS)[13] established under the Interoperability Solutions for European Public Administration (ISA) Programme[14].

4.4.2. "Interoperability" - minimum requirements

The concept of interoperability should be implemented by bodies involved in the implementation of cohesion policy (managing authorities, certifying authorities, audit authorities, intermediate bodies) to reduce the burden for beneficiaries. According to the concept, the relevant bodies should work together at organisational, semantic and technical levels ensuring effective communication, as well as the exchange and re-use of information and knowledge.

Each Member State is free to establish its own interoperability approach but this approach should be in line with the National Interoperability Framework and the European Interoperability Framework (EIF) established under the Interoperability Solutions for European Public Administration (ISA) Programme.

The minimum requirements concerning interoperability would remain the same regardless of the nature of the operational programme:

- national interoperability: interoperability between different administrative layers dealing with Cohesion Policy irrespective of institutional arrangements;

[11] *Implementation of the Digital Agenda for Europe, Actions under the responsibility of Member States, Action 26: Member States to implement European Interoperability Framework* http://www.daeimplementation.eu/dae_actions.php?action_n=26&id_country=1

Please, see also National Interoperability Framework Observatory (NIFO) which provides assistance to the EU public administrations to apply the EIF at national level, http://joinup.ec.europa.eu/elibrary/case/national-interoperability-framework-observatory

[12] For more information, please see: http://ec.europa.eu/isa/documents/eif_brochure_2011.pdf

[13] For more information, please see : http://ec.europa.eu/idabc/en/document/7772.html

[14] For more information, please see : http://ec.europa.eu/isa/

- cross-border interoperability (for European Territorial Cooperation programmes): interoperability between neighbouring and non-neighbouring Member States irrespective of the administrative layer concerned.

Member States and regions should decide to what extent national and regional institutions and bodies engage in electronic exchange of information between themselves. In light of Article 112(3) the systems of national and regional institutions and bodies involved in the monitoring, control or implementation of a programme need to be interoperable in such a way that at least the minimum requirement for the 'only once' encoding principle is ensured.

4.5. All exchanges of information between beneficiaries and authorities

4.5.1. "All exchanges of information" - definition

As mentioned previously, once a grant has been awarded, any information requirements applicable to the beneficiary should be possible to fulfil via electronic exchange. This includes reporting on progress, declaration of expenditure and exchange of information related to management, verifications and audits (audit requests and results, change to project management related documents, project-related official messages between beneficiary and relevant bodies).

In particular, this has an impact on:

- administrative verification in respect of each application for reimbursement by beneficiaries pursuant Article 114(5) of the CPR;
- relationship between beneficiaries and audit authorities.

4.5.2. "All exchanges of information" - minimum requirements

- Administrative verification in respect of each application for reimbursement by beneficiaries pursuant Article 114(5) of the CPR shall rely on information and documents available through the computer system. Only for exceptional cases, following a risk analysis, the beneficiary may be asked to send paper documents (originals or certified true copies of the originals) for verification. This is without prejudice to any on-the-spot verification of documents.

  In that respect Member States should reflect on how to organise the procedure of administrative verifications of each application for reimbursement to maximise the reduction of administrative burden for beneficiaries.

- Relationship between beneficiaries and audit authorities:

  The electronic audit trail must be in compliance with Articles 112 and 132[15] of the CPR as well as with any national requirements on the availability of documents.

  Only in exceptional cases, following a risk analysis, the beneficiary may be asked to send paper documents (originals or certified true copies of the originals) for a desk review performed by auditors. This is without prejudice to any on-the-spot control of documents, thus paper documents (originals or certified true copies) - if they exist - should remain available in the beneficiary premises for the purpose of an on-the-spot audit.

[15] A separate empowerment has been envisaged under Article 132 CPR for "Commonly accepted data carriers".

5. MAIN CHANGES COMPARED TO THE PERIOD 2007-2013

Article 112(3) is a new provision. There is no equivalent in the current or in previous programming periods. The concept of electronic exchange between beneficiaries and relevant bodies involved in the implementation of cohesion policy (managing authorities, certifying authorities, audit authorities, intermediate bodies) is intended to support a reduction of the administrative burden for beneficiaries and belongs to the elements that would provide simplification and streamlining to implementation of ERDF, ESF and CF.