Commission Delegated Regulation (EU) 2015/1076 of 28 April 2015 laying down, pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council, additional rules on the replacement of a beneficiary and on the related responsibilities, and minimum requirements to be included in Public Private Partnership agreements funded by the European Structural and Investment Funds

COMMISSION DELEGATED REGULATION (EU) 2015/1076

of 28 April 2015

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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 and repealing Council Regulation (EC) No 1083/2006[(1)], and in particular Articles 63(4) and 64(4) thereof,

Whereas:

(1) Article 63(1) of Regulation (EU) No 1303/2013 stipulates that in relation to a Public Private Partnership ('PPP') operation a beneficiary may be a body governed by private law of a Member State ('private partner'). In accordance with Article 63(3) of Regulation (EU) No 1303/2013, the private partner selected to implement the operation may be replaced as beneficiary during implementation where this is required under the terms and conditions of the PPP or of the underlying financing agreement between the private partner and the financial institution co-financing the operation.

(2) In order to specify a complete set of obligations of the partners under a PPP operation, it is necessary to lay down additional rules on the replacement of the beneficiary and on the related responsibilities.

(3) In the case of the replacement of a beneficiary in a PPP operation funded by European Structural and Investment Funds, it is necessary to ensure that after the replacement, the new partner or body provides at least the same service, and with the same minimum quality standards, which was required by the initial PPP contract.

(4) For a PPP operation where the public law body is the beneficiary of the grant, Article 64(1) of Regulation (EU) No 1303/2013 sets out the conditions under which expenditure incurred and paid by a private partner may be considered as incurred and paid by the

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2015/1076. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

beneficiary. Article 64(2) of that Regulation requires the payment in respect of such expenditure to be made into an escrow account in the name of the beneficiary.

(5) It is necessary to lay down the minimum requirements to be included in PPP agreements which are necessary for the application of Article 64(1) of Regulation (EU) No 1303/2013, including provisions related to termination of the PPP agreement and for the purpose of ensuring an adequate audit trail,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Rules on the replacement of a beneficiary under PPP operations funded by European Structural and Investment Funds

(Article 63(4) of Regulation (EU) No 1303/2013)

Article 1

Additional conditions on the replacement of the private partner

The replacement of the private partner or public law body referred to in Article 63(3) of Regulation (EU) No 1303/2013 ('partner or body') shall comply with the following additional conditions:

(a) the partner or body is able to provide at least the service, including at least the minimum quality standards, determined in the Public Private Partnership ('PPP') contract;

(b) the partner or body has agreed to assume the rights and responsibilities of a beneficiary in relation to the support for PPP operations from the date on which the managing authority is notified of the replacement proposal.

Article 2

Proposal to replace the private partner

1 The partner or body shall send the managing authority the proposal to replace the private partner as beneficiary within one month from the date of the decision to replace the private partner.

2 The proposal referred to in paragraph 1 shall contain the following:

a the terms and conditions of the PPP or financing agreement between the private partner and the financial institution co-financing the operation requiring replacement;

b evidence of the fulfilment by the partner or body of the conditions set out in Article 1 of this Regulation and evidence that it fulfils and assumes all the corresponding obligations of a beneficiary under Regulation (EU) No 1303/2013;

c evidence that the partner or body has been provided with a copy of the original support agreement and any amendments made to that agreement.

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Article 3

Confirmation of the replacement of the private partner

Within one month of the receipt of the proposal referred to in Article 2, and provided that the partner or body fulfils and assumes all the corresponding obligations of a beneficiary under Regulation (EU) No 1303/2013 and complies with the conditions set out in Article 1 of this Regulation, the managing authority shall:

(a) register the partner or body as the beneficiary as from the date referred to in Article 1(b) of this Regulation;

(b) inform the partner or body of the remaining amount of support available from the ESI Funds.

CHAPTER II

Minimum requirements to be included in PPP agreements funded by European Structural and Investment Funds

(Article 64(4) of Regulation (EU) No 1303/2013)

Article 4

Escrow account

With regard to the escrow account referred to in Article 64(2) of Regulation (EU) No 1303/2013, the PPP agreement shall contain the following requirements:

(a) where appropriate, the criteria for the selection of the financial institution where the escrow account is to be opened, including requirements regarding its creditworthiness;

(b) the conditions under which payments from the escrow account can be made;

(c) whether the public law body that is a beneficiary may use the escrow account as collateral/security for the performance of its or the private partner's obligations under the PPP agreement;

(d) the obligation for the holders of the escrow account to inform the managing authority, upon its written request, about the amount of funds in the escrow account disbursed and the balance of the escrow account;

(e) rules on how the remaining funds in the escrow account shall be disbursed when the escrow account is closed due to a termination of the PPP agreement.

Article 5

Reporting and audit trail

1 The PPP agreement shall contain provisions on the establishment of a reporting and document retention mechanism. This mechanism shall contain the same reporting and document