



## EUROPEAN COMMISSION

Employment, Social Affairs and Equal Opportunities DG

Social Dialogue, Social Rights, Working Conditions, Adaptation to Change  
**Labour Law**

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### Study Service Contract

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*Contract title* **Comparative study of the legal regulation of the employment relationship in the EU-27 with a view to identifying good practice in the determination and use of employment relationships to ensure compliance with national and Community law**

*Contract reference No* **VC/2008/0516**  
The above title and reference No **must** be quoted in **all** correspondence with the Commission.

*Contractor* .....  
.....

#### Other administrative information

*Department* **DG EMPL/F/2**

*Prior information* O.J. ref. No of notice publication: .....  
*Call for tender* DG EMPL ref. No: VT/2008/053 of .....

*Tender information* O.J. ref. No of notice publication: .....  
*EPIC* Record No: ...../.../.....  
*Databases* SMART record No: 2008/0006  
*Service category* No: A11

#### Other accounting information

*Commitment No* **SI2. ....**  
This commitment No **must** be quoted in correspondence relating to **invoices / payments.**

*Type of Contract* V/SE/STUSEC02

The European Community (hereinafter referred to as “**the Community**”),  
represented by the Commission of the European Communities (hereinafter referred to as “**the Commission**”),  
which is represented for the purposes of the signature of this Contract by Armindo SILVA,  
Acting Director - EMPL/F/2, Employment, Social Affairs and Equal Opportunities DG,

on the one part,

AND

.....(*official name in full*),  
registered legal form: .....,  
statutory registration number: .....,  
official address in full: .....,  
VAT registration number: .....,  
(hereinafter referred to as “**the Contractor**”),  
represented for the purposes of the signature and management of the present Contract by  
.....(*forename and name in full*), .....(*function*),

of the other part,

HAVE AGREED

the Special Conditions and the General Conditions below and the following Annexes:

- **Annex I** Tender Specifications (Invitation to Tender No. VT/2008/053 of ..... ) and Monitoring
- **Annex II** Contractor's Tender (Registre CAD Ref. No. .... of .....
- **Annex III** Breakdown of prices
- **Annex IV** CVs and classification of experts
- **Annex V** Fiscal provisions regarding invoicing by the Contractor

which forms an integral part of this Contract (hereinafter referred to as “**the Contract**”).

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the Tender Specifications (Annex I) and in the Breakdown of prices (Annex III) shall take precedence over those in the Tender (Annex II).

Subject to the above, the several instruments forming part of this Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Commission, subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

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## I. **Special conditions**

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### Article I.1 **Subject**

**I.1.1.** The subject of the Contract is the following study: **Comparative study of the legal regulation of the employment relationship in the EU-27 with a view to identifying good practice in the determination and use of employment relationships to ensure compliance with national and Community law.**

**I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex I).

### Article I.2 **Duration**

**I.2.1.** The Contract shall enter into force on the date on which it is signed by the last contracting party. The date of signature of the present Contract is that of the date stamp applied by the postal services of Employment, Social Affairs and Equal Opportunities DG on the title page of the present Contract after it has been signed by both parties.

**I.2.2.** Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.

**I.2.3.** The duration of the tasks shall not exceed 12 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

The Commission is not obliged to react to any request for extension of the duration of the tasks received less than 30 days before expiry of the period of execution or with less than one third of the period of execution left to run, whichever period is the shorter.

### Article I.3 **Contract price**

**I.3.1. *Maximum total amount***

The maximum total amount to be paid by the Commission under the Contract shall be EUR ..... (*amount in figures*) covering all tasks executed.

**I.3.2. *Price revisions***

Not applicable.

**I.3.3. *Travel, subsistence and shipment expenses***

Not applicable.

### Article I.4 **Payment periods and formalities**

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.

#### **I.4.1. Pre-financing**

Following signature of the Contract by the last contracting party, within 30 days of the receipt by the Commission of a request for pre-financing with a relevant invoice, a pre-financing payment equal to 30% of the total amount referred to in Article I.3.1 shall be made.

#### **I.4.2. Interim payment**

Requests for interim payment by the Contractor shall be admissible if accompanied by

- an interim technical report in accordance with the instructions laid down in Annex I,
- the relevant invoices,

provided the report has been approved by the Commission.

The Commission shall have 60 days from receipt to approve or reject the report, and the Contractor shall have 30 days in which to submit additional information or a new report.

Within 30 days of the date on which the report is approved by the Commission, an interim payment corresponding to the relevant invoices, up to maximum 40% of the total amount referred to in Article I.3.1, shall be made.

#### **I.4.3. Payment of the balance**

The request for payment of the balance of the Contractor shall be admissible if accompanied by:

- the final technical report in accordance with the instructions laid down in Annex I,
- the relevant invoices,

provided the report has been approved by the Commission.

The Commission shall have 60 days from receipt to approve or reject the report, and the Contractor shall have 30 days in which to submit additional information or a new report.

Within 30 days of the date on which the report is approved by the Commission, payment of the balance of the total amount referred to in Article I.3.1 shall be made.

#### **I.4.4. Performance guarantee**

Not applicable.

### **Article I.5 Bank account**

Payments shall be made to the Contractor's bank account denominated in euro <sup>1</sup>, identified <sup>2</sup> as follows:

- Name of bank: .....
- Address of branch in full: .....
- Exact designation of account holder: .....
- Full account number including codes: .....
- IBAN or, if non available, BIC code: —

### **Article I.6 General administrative provisions**

Any communication relating to the Contract shall be made in writing and shall bear the Contract number. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

#### **Commission**

European Commission  
Directorate-General Employment, Social Affairs and Equal Opportunities  
EMPL/F/2  
B-1049 Brussels (Belgium)

<sup>1</sup> Or local currency where the receiving country does not allow transactions in EUR.

<sup>2</sup> By a document issued or certified by the bank.

**Contractor**

..... (Mr/Mrs/Ms + forename and name)

..... (function)

..... (company name)

..... (official address in full)

**Article I.7 Applicable law and settlement of disputes**

**I.7.1.** The Contract shall be governed by the national substantive law of Belgium.

**I.7.2.** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

**Article I.8 Other special conditions****Definition of the term “payment request” regarding the interests for late payments**

It is understood that a payment request, as mentioned in Article II.5.3, will only be considered as complete, if all specific documents mentioned in Article I.4; are joined to this request. If these specific documents are not sent to the Commission all together with the payment request, the 60 days shall only run from the date of the first registered receipt of the last document, making the payment request complete. As regards payments subject to the prior approval of a report (or to the signature of a certificate of final acceptance for supplies delivery) by the Commission, according to Article I.4, the period of 60 calendar days shall start only on the date when both the complete payment request has been registered and the report has been approved (or the certificate of final acceptance has been signed) by the Commission, provided the Commission has itself respected the time limits set in the present Contract and its annexes for such approvals.

**Data protection**

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by Employment, Social Affairs and Equal Opportunities DG without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to Employment, Social Affairs and Equal Opportunities DG. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

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## **II. General conditions**

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### **Article II.1 Performance of the Contract**

**II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.

**II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.

**II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.

**II.1.4.** The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.

**II.1.5.** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.

**II.1.6.** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
- the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.

**II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.

**II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

**II.1.9.** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

## Article II.2 Liability

**II.2.1.** The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.

**II.2.2.** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.

**II.2.3.** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.

**II.2.4.** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.

**II.2.5.** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

## Article II.3 Conflict of Interests

**II.3.1.** The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Commission in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Commission reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Commission, any member of his staff exposed to such a situation.

**II.3.2.** The Contractor shall abstain from any contact likely to compromise his independence.

**II.3.3.** The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

**II.3.4.** The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Commission should it so request.

## Article II.4 Payments

### **II.4.1. Pre-financing**

Where required by Article I.4.1, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same article to cover pre-financing under the Contract. Such guarantee

may be replaced by a joint and several guarantee by a third party. The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on his part. The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the Contractor). The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The Commission shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

#### **II.4.2. Interim payment**

At the end of each of the periods indicated in Annex I the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- an interim technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

If the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed. Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

#### **II.4.3. Payment of the balance**

Within sixty days of completion of the tasks referred to in Annex I the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

If the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed. Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

## **Article II.5 General Provisions concerning Payments**

**II.5.1.** Payments shall be deemed to have been made on the date on which the Commission's account is debited.

**II.5.2.** The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount



is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Commission shall notify the Contractor accordingly and set out the reasons for the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

**II.5.3.** In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (*“the reference rate”*) plus seven percentage points (*“the margin”*). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

## Article II.6 Recovery

**II.6.1.** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.

**II.6.2.** In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

**II.6.3.** The Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

## Article II.7 Reimbursements

**II.7.1.** Where provided by the Special Conditions or by Annex I, the Commission shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.

**II.7.2.** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.

**II.7.3.** Travel expenses shall be reimbursed as follows:

- (a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- (b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- (c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
- (d) travel outside Community territory shall be reimbursed under the general conditions stated above provided the Commission has given its prior written agreement.

**II.7.4.** Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:

- (a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
- (b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;

- (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- (d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.

**II.7.5.** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Commission has given prior written authorisation.

## **Article II.8 Ownership of the Results – Intellectual and Industrial Property**

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Community, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

## **Article II.9 Confidentiality**

**II.9.1.** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

**II.9.2.** The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

## **Article II.10 Use, Distribution and Publication of Information**

**II.10.1.** The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.

**II.10.2.** Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.

**II.10.3.** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Community. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

**II.10.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

## **Article II. 11 Taxation**

**II.11.1.** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

**II.11.2.** The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.

**II.11.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.

**II.11.4.** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

## Article II.12 **Force Majeure**

**II.12.1.** *Force majeure* shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as *force majeure* unless they stem directly from a relevant case of *force majeure*.

**II.12.2.** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with *force majeure*, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

**II.12.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by *force majeure*. Where the Contractor is unable to perform his contractual obligations owing to *force majeure*, he shall have the right to remuneration only for tasks actually executed.

**II.12.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum.

## Article II.13 **Subcontracting**

**II.13.1.** The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.

**II.13.2.** Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.

**II.13.3.** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.17.

## Article II.14 **Assignment**

**II.14.1.** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.

**II.14.2.** In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

## Article II.15 **Termination by the Commission**

**II.15.1.** The Commission may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject

- of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
  - (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
  - (d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
  - (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
  - (f) where the Contractor is in breach of his obligations under Article II.3;
  - (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
  - (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
  - (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
  - (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
  - (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

**II.15.2.** In case of *force majeure*, notified in accordance with Article II.12, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

**II.15.3.** Prior to termination under point e), h) or k), the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

#### **II.15.4. Consequences of termination**

In the event of the Commission terminating the Contract in accordance with this article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Commission may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Commission may engage any other contractor to complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

## **Article II.16 Liquidated Damages**

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to

impose liquidated damages of 0.2% of the amount specified in Article I.3.1 per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

## **Article II.17 Checks and Audits**

**II.17.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance.

**II.17.2.** The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.

**II.17.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

## **Article II.18 Amendments**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

## **Article II.19 Suspension of the Contract**

Without prejudice to the Commission's right to terminate the Contract, the Commission may at any time and for any reason suspend execution of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgement of receipt or equivalent, or at a later date where the notification so provides. The Commission may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

**Signatures**

1. For the Contractor,  
..... (forename and name)  
..... (position)  
..... (company name)

2. For the Commission,  
Armando SILVA  
Acting Director - EMPL/F/2  
Employment, Social Affairs and Equal  
Opportunities DG

Done at ..... (place), Done at Brussels,  
..... (date) ..... (date)

In duplicate in English.



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## Tender Specifications and Monitoring

ANNEX I Tender No. VT/2008/053 of .....

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Comparative study of the legal regulation of the employment relationship in the EU-27 with a view to identifying good practice in the determination and use of employment relationships to ensure compliance with national and Community law.

### 1. Background.

The Social Agenda (2005-2010) has fixed as its overall strategic goal to promote more and better jobs and to offer equal opportunities for all. The realisation of the Social Agenda relies on a combination of instruments comprising EU legislation, the implementation of open methods of coordination in various policy fields and financial incentives such as the European Social Fund.

The Decision n°1672/2006 establishing a Community programme for employment and social solidarity – PROGRESS was adopted by the European Parliament and the Council on 24 October and published in the OJ on 15 November.

PROGRESS aims at supporting the core functions of the European Community towards fulfilling its Treaty-delegated tasks and powers in its respective areas of competence in the employment and social sphere. The mission of PROGRESS is to strengthen the EU contribution in support of Member States' commitments and efforts to create more and better jobs and to build a more cohesive society. To that effect, PROGRESS will be instrumental in:

providing analysis and policy advice on PROGRESS policy areas;

monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;

promoting policy transfer, learning and support among Member States on EU objectives and priorities; and

relaying the views of the stakeholders and society at large.

More specifically, PROGRESS will support:

- (1) the implementation of the European Employment Strategy (section 1);
- (2) the implementation of the open method of coordination in the field of social protection and inclusion (section 2);
- (3) the improvement of the working environment and conditions including health and safety at work and reconciling work and family life (section 3);
- (4) the effective implementation of the principle of non-discrimination and promotion of its mainstreaming in all EU policies (section 4);
- (5) the effective implementation of the principle of gender equality and promotion of its mainstreaming in all EU policies (section 5).

The present Call for Tender is issued in the context of the implementation of the 2008 annual plan of work which is consultable at: [http://ec.europa.eu/employment\\_social/progress/annwork\\_en.htm](http://ec.europa.eu/employment_social/progress/annwork_en.htm).

The question of whether an employment relationship exists between an employer and an employee is recognised as pivotal in ensuring that workers are afforded the protection offered by national laws and regulations and collective agreements. In most legal systems access to social security is also linked to a worker's status as party to an employment relationship. The determination of the existence of an employment relationship has implications for ensuring security in employment and in living conditions,

respect for the fundamental rights of workers, gender equality and the efficient and flexible use of labour resources and skills.

### Developments at European Union level

The improvement of living and working conditions has long been a core objective of the European Community. While this objective has evolved over time and been reflected in strengthened competences through Treaty revisions (see Article 137 TEC), the regulation of the framework and content of the employment relationship remains very much a national concern, that is usually addressed through collective agreements and/or by jurisprudence and national legislation.

In the Social Agenda, 2005-2010, the European Commission had announced its intention to publish a Green Paper on the development of labour law where it would analyse current trends in new work patterns and the role of labour law in tackling these developments by providing a more secure working environment and encouraging more efficient transitions on the labour market. In November 2006 the Commission launched its Green Paper entitled "Modernising labour law to meet the challenges of the 21st century"<sup>3</sup> as a means of generating debate especially as regards uncertainties in labour law which reflected a clear deficit between the existing legal and contractual framework, on one hand, and the realities of the world of work on the other.

The Green Paper considered how legislative and political actions at the level of the EU had assisted Member States in ensuring that new more flexible forms of work are accompanied by minimum social rights for all workers, thereby boosting the effect such alternative contractual models can have in promoting economic activity and higher productivity. It noted, however, that the emergence of diverse forms of non-standard work could also contribute to blurring the boundaries between labour law and commercial law. The Green Paper noted that the traditional binary distinction between "employees" and the independent "self-employed" no longer represented an adequate depiction of the economic and social reality of work. As a consequence, disputes concerning the legal nature of the employment relationship occur where that relationship has either been disguised or where a genuine difficulty arises in seeking to fit new and dynamic work arrangements within the traditional framework of the employment relationship. The Green Paper also noted how the growing incidence of temporary agency work and the resulting 'dual employer' situation also contributed to the complexity of the employment relationship. The Green Paper addressed questions to stakeholders concerning, inter alia, whether greater clarity is needed in Member States' legal definitions of employment and self-employment and whether the responsibilities of the various parties within multiple employment relationships might need to be clarified to determine accountability for compliance with employment rights. The public consultation also provided an opportunity for stakeholders to consider the appropriateness of further initiatives at an EU level as a means of advancing labour law reform.

In October 2007, the Commission's Communication on the outcome of the public consultation on the Green Paper on Labour Law<sup>4</sup> was adopted. It presented the results of the public consultation which had prompted over 450 responses from a wide range of stakeholders in the EU-27 and beyond – including Member States, national parliaments, social partners, social NGOs, enterprises, legal experts and individuals. All of the responses have already been made available on the Commission's Europa website<sup>5</sup>. A Commission Services Report also provides a detailed summary of the responses received<sup>6</sup>.

The Commission's follow up communication<sup>7</sup> noted that contributors to the public consultation on the Green Paper had expressed a preference for finding solutions primarily through action at national level – involving a variety of approaches reflecting national legal traditions, industrial relations and practice. However, the Commission also noted a strong willingness on the part of stakeholders to put that experience to the test through dialogue and an exchange of good practice at an EU level. While the majority of Member States commented upon the complexity of attempting to define what are workers and self-employed persons at Community level, the associated problems were acknowledged to have increased as a consequence of the cross-border provision of services. Most Member States wanted to rely upon national law and well-tested legal procedures to resolve such problems. Together with many social partner organisations, they continue to favour the position whereby the definition of worker under most labour law directives remains at the discretion of the Member States. The European Parliament called for an initiative towards convergence in the national definitions of worker

<sup>3</sup> COM (2006) 708 of 22.11.2006.

<sup>4</sup> COM (2007) 627 of 24.10.2007

<sup>5</sup> [http://ec.europa.eu/employment\\_social/labour\\_law/green\\_paper\\_responses\\_en.htm](http://ec.europa.eu/employment_social/labour_law/green_paper_responses_en.htm)

<sup>6</sup> Commission Services Working Document [SEC(2007) 1372/2]

<sup>7</sup> *ibid*, COM (2007) 627



status to ensure a more coherent and efficient implementation of the Community *acquis*<sup>8</sup>. While the Commission confirmed in its follow up communication that no legislative initiatives were under consideration on the issues that featured in the public consultation, it nonetheless identified five areas that, in its view, warranted further attention so as to achieve more cooperation, clarity and better information and analysis. One of the areas identified for further attention is the clarification of the nature of the employment relationship to promote greater understanding and facilitate cooperation across the EU.

#### Developments at international level

The development and regulation of the individual employment relationship under the national labour law and collective bargaining systems among the EU member States have been significantly influenced by ILO conventions. The development of EC labour law, including the Framework Agreements of the EU social partners covering individual employment conditions, has been influenced by ILO conventions and by the experience gained at Member State level through incorporating these conventions within their national labour laws and collective agreements. After nine years of deliberations at international level, the overwhelming support of 113 governments, and of worker interests from countries throughout the world, resulted in the adoption by the International Labour Conference of a Recommendation on the Employment Relationship in June 2006<sup>9</sup>. The adoption of the Recommendation was, however, opposed by the employer interests primarily because they considered that their fundamental concerns had been disregarded and because governments are urged in the Recommendation, *inter alia*, to identify criteria and indicators establishing the existence of an employment relationship. A significant majority of EU Member State governments supported the adoption of Recommendation No.198 as a non-binding international instrument giving guidance to governments, employers and workers (only the UK and Czech Republic abstained in the final vote at the Conference). It is noteworthy that the European Parliament has urged the Member States to promote the implementation of the 2006 ILO Recommendation on the employment relationship<sup>10</sup>. Some Member States also suggested in their responses to the Commission's Green Paper that the ILO Recommendation be used as a basis for discussion among the Member States and social partners about how to cope better at a European level with the phenomenon of concealed employment relationships<sup>11</sup>.

In the light of the above developments, the European Commission has decided to initiate a study of the legal regulation of the employment relationship as a contribution to promoting further dialogue with the Member States, social partners and other stakeholders on the clarification of the nature of the employment relationship in the interest of promoting greater understanding and facilitating cooperation across the EU.

## **2. Subject of the Contract**

This call for tender concerns the conduct of a comparative study of the legal regulation of the employment relationship in the EU-27 having regard to the scope of such regulation, the impact of the legislative provision, the quality of enforcement and the experience of employer compliance in discharging employees' entitlements under national and Community law.

The aim of the study is to establish how the EU Member States and stakeholders at national level can develop an exchange of good practice which will better enable them to utilise ILO Recommendation No.198 as (i) a basis for clarifying and adapting their national labour legislation, taking into account current labour market and employment realities and in consultation with employers and workers organisations, and also as (ii) a template for ensuring that such legislation is applied in practice. The study will, accordingly, focus on the significance of coherent and well-designed legislation, judicial decisions, codes of practice, collective agreements, studies, etc, as a basis for elaborating good practice on the determination of the employment relationship that could serve a tool in implementing

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<sup>8</sup> European Parliament Resolution of 11 July 2007 : P6\_TA-PROV (2007) 0339

<sup>9</sup> ILO Recommendation No. 198 concerning the employment relationship, adopted at the Ninety-fifth Session of the International Labour Conference on 31 May 2006

<sup>10</sup> *ibid*, European Parliament Resolution of 11 July 2007

<sup>11</sup> see COM (2007) 627 of 24.10.2007, page 7.

the Common Principles on Flexicurity<sup>12</sup> endorsed by the Council and the Integrated Guidelines for Growth and Jobs (notably Guideline 21<sup>13</sup>).

The call for tender and its anticipated outputs should provide an authoritative assessment of the existing legal protection of the employment relationship in the national law of the EU Member States. The study will build upon the series of completed monographs and reports commissioned by the International Labour Office<sup>14</sup>, as well as the discussions leading to the adoption of ILO Recommendation No.198 by the International Labour Conference in June 2006<sup>15</sup> and the annotated Guide to Recommendation No. 198 that was subsequently prepared for the ILO by a group of eminent expert labour lawyers<sup>16</sup>.

It is envisaged that the results of the study should assist in developing good practice models and in promoting more effective dissemination of knowledge about such practice within the framework of social dialogue and the mutual learning process<sup>17</sup>, thereby complementing the international guidance and monitoring role of the International Labour Office and assisting EU Member States in the implementation of national policies in line with ILO Recommendation No.198.

The study will review, *inter alia*, the roles played by key actors (e.g. national policy makers, labour law administrators, adjudicators, social partners and industrial relations practitioners, individual employers and workers, labour law experts and academics) and the scope for improved cooperation on the part of all those involved in different aspects of the determination of the employment relationship. It should provide useful information for policy makers at all levels with regard to the role and functioning of the judicial authorities and labour court systems, as well as the labour inspection services and their collaboration with the social security administration, tax authorities and social partners where appropriate.

The study will cover all EU Member States and the EFTA/EEA countries Iceland, Norway and Liechtenstein.

### Participation

The competition is open to any physical person or legal entity coming within the scope of the Treaties and any other physical person or legal entity from a third country which has concluded with the Communities a specific agreement in the area of public contracts, under the conditions provided for in that agreement.

Where the Multilateral Agreement on Public Contracts concluded within the framework of the WTO applies, the contracts are also open to nationals of States that have ratified this Agreement, under the conditions provided for therein. It should be noted that research and development services, which come under category 8 of Annex II A of Directive 2004/18/CE, are not covered by this Agreement.

In practice, the participation of applicants from third countries that have concluded a bilateral or multilateral agreement with the Communities in the area of public contracts must be allowed, under the conditions provided for in that agreement. Bids submitted by applicants from third countries that have not concluded such an agreement may be accepted, but may also be rejected.

## **3. Tasks to be carried out by the contractor**

### **3.1. General tasks**

The contractor will be expected to establish a team of experts capable of reviewing legal provisions and practice throughout the 27 Member States and EEA countries. Thus the contractor will be

<sup>12</sup> Adopted by EPSCO on 05.12.2007 and endorsed by European Council (see Presidency Conclusions of December 2007).

<sup>13</sup> See Employment Guidelines 2005-2008 (adopted on 12/07/2005), O.J. L 205/21 of 06.08.2005

<sup>14</sup> See details of the series of studies in ILO Report V(1) The Employment Relationship (2005), footnote 8, page 5.

<sup>15</sup> ditto, also see ILO: *Record of Proceedings*, International Labour Conference, 95<sup>th</sup> Session, Geneva, 2006, Provisional Record Nos. 21 and 21a

<sup>16</sup> The Employment Relationship: an annotated guide to ILO Recommendation 198, ILO, 2007

<sup>17</sup> An instrument of the open method of coordination developed for the exchange of good practice under the European Employment Strategy.

required to manage and co-ordinate a team of independent experts assembled to complete the comparative study and will be responsible for the planning of work, the distribution of tasks within the team, the delivery of outputs in respect of the all EU-27 Member States, and the overall co-ordination of the project, including the internal communications and translation services necessary to ensure the completion of the comparative study. The contractor shall be responsible for ensuring the coherence of the comparative perspective of the study and guaranteeing the overall quality of the project work.

### 3.2. Specific tasks

The contractor will make sure that the following specific tasks are performed:

a) The contractor will provide a comprehensive overview of the legal notion of the employment relationship and of trends and problems encountered in the regulation of the employment relationship at both Member State and Community level in the EU. This description of current problems and challenges within the EU -27 should build upon the comparative analysis undertaken by the International Labour Office<sup>18</sup> and the follow up work it has already initiated to assist the implementation of ILO Recommendation No.198.<sup>19</sup>

b) The contractor should identify the contribution made at national level by social dialogue mechanisms and collective bargaining to resolving difficulties affecting the employment relationship and the scope for effecting further improvements in that regard. This exercise should also have regard to any legal obstacles that may have been encountered in some Member States by efforts to exercise union representation and collective bargaining rights on behalf of categories of workers (freelance personnel, and specific categories of self-employed professionals or "economically dependent workers") other than those employed under traditional contracts for dependent employment.

c) The contractor will assess the extent to which national law, judicial rulings and social dialogue have sought to ensure that the specificities of particular sectors, such as the entertainment, media and sport sectors, are taken into account in the law and practice relating to employment status and how these in turn can affect social security rights. This assessment should take account of any apparent trends within such sectors whereby the status of employees may have been unilaterally changed from one associated with a standard employment relationship in order to facilitate alternative contractual arrangements with self-employed professionals or economically dependent workers with a different set of employment rights.

d) The contractor will conduct a survey on good practice amongst the Member States. The aim is to start with a description of the methodology to be used for the detection of good practice in this field. The focus will be on measures devised at national level for the determination of the existence of an employment relationship, viz.

The practical methods and criteria used to establish the existence of an employment relationship  
The proof of an employment relationship  
Efficient and speedy services of guidance, mediation, settlement of disputes and enforcement of legislation  
The role of collective bargaining

Having regard to the coverage of ILO studies, reference can be made to good practice examples in states other than those of the EU-27 and EFTA/EEA countries if, on the basis of the literature review, examples of best practice in these countries are found to be of outstanding quality and exemplary value.

e) The contractor will identify good practice examples which can provide an input to the conduct of mutual learning exercises involving the Member States and social partners and prepare proposals for the further development of an exchange of information on good practice in the regulation of the employment relationship through the open method of coordination in the sphere of employment and social policy.

### 3.3. Guide on how the activities shall be carried out.

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<sup>18</sup> See the comparative analysis contained in ILO Report V(1) The Employment Relationship (2005)

<sup>19</sup> See the *Annotated Guide*, referred to in footnote 14 above.

The PROGRESS Programme aimed at promoting gender mainstreaming in all its five policy sections and commissioned or supported activities. Consequently, the Contractor will take the necessary steps to ensure that:

Gender equality issues are taken into account when relevant for the drafting of the technical offer by paying attention to the situation and needs of women and men;  
Implementation of the requested tasks includes a gender perspective by considering systematically women and men dimension;  
Performance monitoring includes the collection and gathering of data disaggregated by sex when needed.  
its proposed team and/or staff respects the gender balance at all levels.

Equally, needs of disabled people shall be duly acknowledged and met while executing the requested service. This will in particular entail that where the Contractor organises training sessions, conference, issues publications or develops dedicated websites, people with disabilities have equal access to the facilities or the services provided.

Finally, the Contracting Authority encourages the Contractor to promote equal employment opportunities for all its staff and team. This entails that the Contractor shall foster an appropriate mix of people, whatever their ethnic origin, religions, age, and ability.

The Contractor will be required to detail in its activity report accompanying the request for the final instalment the steps and achievements it made towards meeting these contractual provisions.

#### **4. Professional qualifications required**

See **Annex IV** of the draft contract, CVs and classification of experts.

The contractor or team coordinator must satisfy the requirements for at least Level II experts and the other experts on the team must satisfy the requirements for at least Level III experts.

The Contractor will need to involve experienced lawyers and/or academics, specialised in national legislation in the areas of labour, industrial relations, social security, commercial or constitutional law, with an emphasis on individual and collective aspects of labour law, capable of covering all the countries concerned by the contract. They should also have knowledge of European Community law, in particular the labour law *acquis*.

The contractor will need to show the capacity to assemble and manage a collaborative team of experts operating at European level and have a proven capacity to manage the administrative aspects of such a project.

#### **Publicity and information requirements**

As a matter of principle, with a view to favouring appropriate monitoring and valorisation by the European Commission of all results obtained and outputs delivered under PROGRESS programme, the contractor will be required to provide for each of the activities co-financed under the present Call for Tender:

Presentation of their key points in one page. Key points should be concise, sharp and easily understandable. They shall be provided in English, French and German. Other Community languages would be welcome even if not compulsory.

And an executive summary in 5/6 pages in English, French and German unless otherwise more precisely described in section 10.3 below.

In accordance with the General conditions, the Contractor is under the obligation to acknowledge that the present service is delivered on behalf of the Community in all documents and media produced, in particular final delivered outputs, related reports, brochures, press releases, videos, software, etc, including at conferences or seminars, as follows.

*This (publication, conference, training session) is supported for under the European Community Programme for Employment and Social Solidarity (2007-2013). This programme is managed by the Directorate-General for Employment, social affairs and equal opportunities of the European*

*Commission. It was established to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.*

*The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA-EEA and EU candidate and pre-candidate countries.*

*PROGRESS mission is to strengthen the EU contribution in support of Member States' commitments and efforts to create more and better jobs and to build a more cohesive society. To that effect, PROGRESS will be instrumental in:*

*providing analysis and policy advice on PROGRESS policy areas;*

*monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;*

*promoting policy transfer, learning and support among Member States on EU objectives and priorities; and*

*relaying the views of the stakeholders and society at large*

*For more information see:*

*[http://ec.europa.eu/employment\\_social/progress/index\\_en.html](http://ec.europa.eu/employment_social/progress/index_en.html)*

For publications it is also necessary to include the following reference: "The information contained in this publication does not necessarily reflect the position or opinion of the European Commission"

With regard to publication and any communication plan linked to the present service, the Contractor will insert the European Union logo, and if any another logo developed for the employment and social solidarity fields, and mention the European Commission as the Contracting Authority in every publication or related material developed under the present service contract.

#### Reporting requirements

PROGRESS will be implemented through a results-based management - RBM. Managing for outcomes and results is about working to maximise results for European citizens. This includes:

Identifying the most important results for European citizens;

Managing for these results, including setting clear desired results, implementing plans based upon these results and learning about 'what works' in the process;

Seizing opportunities to work together whenever this helps achieve the results.

As a first step, a Strategic Framework for the implementation of PROGRESS has been developed in collaboration with Member states and organisations from the civil society. The Strategic Framework provides the framework for implementing PROGRESS, complemented by the Performance Measurement, which defines the PROGRESS mandate, its long-term and specific outcomes. See at Annex II attached an overview of the PROGRESS performance measurement framework. For more information on the strategic framework, please visit PROGRESS website.

The Commission will in that context monitor the effect of PROGRESS supported or commissioned initiatives and considers how these initiatives contributes to PROGRESS outcomes as defined in the Strategic Framework. In that context, the Contractor will be asked to loyally work in close cooperation with the Commission and/or persons authorised by it to define their expected contributions and the set of performance measures against which their contribution will be assessed. The Contractor will be asked to collect and report on its own performance on a regular basis to the Commission and/or persons authorised by it. In addition, the Contractor will make available to the Commission and/or persons authorised by it all documents or information that will allow PROGRESS performance measurement to be successfully completed and to give them the rights of access.

#### **5. Time schedule and reporting**

See Article I.2 of the contract.

Additional requirements (specific deadlines for the performance of tasks):

The full duration of the contract will be 12 months, from the date of contract signature. At the beginning of the project a first note specifying the plan of work, a time schedule, the distribution of tasks in the team and the methodology of the study should be submitted within 1 month after the signature of the contract.

An intermediate report, covering work progress and first results should be submitted within 6 months after the signature of the contract. The intermediate report should explain progress made so far, covering the general tasks as well as the more specific tasks identified at points a),b),c),d), and e) under section 6.2 above.

A draft final report in English of maximum 100 pages accompanied by an executive summary of maximum 10 pages in English, French and German should be submitted within 10 months after the signature of the contract. The draft final report should cover the general tasks as well as the more specific tasks identified at points a) to e) under point 6.2 above and contain

descriptive country fiches, incorporating good practice examples, which can be published on the website for dissemination purposes and

proposals on inputs to the conduct of mutual learning exercises for the Member States and social partners on developing good practice at national and international levels which should be presented in a very clear and concise way.

The contractor will also prepare a PowerPoint Presentation explaining the context and the results of the study, as well as speaking points (30 minutes presentation) in English, French and German. The final report will be submitted at the end of the contract. It will also include an article in English, French and German, of approximately 5/6 pages, presenting the main conclusions in the form of an editorial version for extensive media coverage to the wider public.

#### **1. Additional information to the Tender specifications and monitoring**

See attached document(s): 1 pages.

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## Contractor's Tender

ANNEX II

Registre CAD Ref. No. .... of .....

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See attached document: ..... pages.

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Draft

## ANNEX III Breakdown of prices

### 1. Breakdown of prices

| <i>Description</i>  | <i>Unit price<br/>in €</i> | <i>Max.<br/>No of<br/>units</i> | <i>Unit<br/>type</i> | <i>Sub-total<br/>per item</i> | <i>Total amounts<br/>in €</i> |
|---|----------------------------|---------------------------------|----------------------|-------------------------------|-------------------------------|
| <b>FEES AND DIRECT COSTS</b> <span style="float: right;"><i>(fixed prices)</i></span> |                            |                                 |                      |                               |                               |
| <i>Experts' fees (to be specified for each expert)</i>                                |                            |                                 |                      |                               | <i>0,00</i>                   |
| <i>Details</i>  | 0,00                       | 0                               | w.d.                 | 0,00                          |                               |
| <i>Other direct cost (to be specified)</i>  |                            |                                 |                      |                               | <i>0,00</i>                   |
| <i>details</i>  | 0,00                       | 0                               | unit                 | 0,00                          |                               |
| <b>Sub-total "Fees and Direct Costs" (Art. I.3.1)</b>                                 |                            |                                 |                      |                               | <b>0,00</b>                   |
| <b>Overall Total</b>  |                            |                                 |                      |                               | <b>0,00</b>                   |

w.d. = 1 working day for 1 expert

### 2. Calculation of amounts due under the present Contract

#### 2.1. Fees

Initial calculation based on unit price(s) per w.d. of expert(s) depending on the level of qualification of the expert(s) executing the mission. The unit price(s) is (are) expected to cover the expert(s) fees, the Contractor's administrative expenses, as well as the costs of producing the contractual number of copies of the required report(s)<sup>20</sup> in the required format(s), but does not include the reimbursable expenses defined below.

*N.B. Duration of the services:* This includes, besides the time necessary for the carrying out of the services themselves, the necessary time for preparatory work, trips and travelling back and forth between the offices of the Contractor and/or the expert(s) and the places where the services are being carried out and for meetings with the services of the Commission, as well as time for the preparation of reports and output documents related to the work.

#### 2.2. Reimbursements

If the reimbursement of expenses is foreseen in the Special Conditions, the Commission will reimburse only:

- the subsistence expenses of the Contractor and his staff,
- travel expenses (other than local transport costs),
- expenses for the shipment of equipment or unaccompanied luggage,

directly connected with performance of the tasks specified in Article I.1. of this Contract.

##### 2.2.1 DSAs (Daily Subsistence Allowances)

The daily subsistence allowance (DSA) is paid as a flat-rate amount and is considered to cover breakfast and two main meals, local travel, the cost of telecommunications, including fax and Internet, and all other sundries. They will be paid for each calendar day spent on mission away from the usual place of work, provided that the corresponding assignment is of a short-term nature. The DSA will vary according to the country in which the missions are to be carried out.

<sup>20</sup> All details on Monitoring and Reporting are to be indicated and included in the Tender Specifications.



Daily subsistence allowances (DSA) are to be calculated as follows according to the length of the mission:

- 6 hours or less: reimbursement of actual expenses (on production of supporting documents);
- more than 6 hours but not more than 12 hours: 0.5 DSA;
- more than 12 hours, but not more than 24 hours: 1 DSA;
- more than 24 hours but not more than 36 hours: 1.5 DSA;
- more than 36 hours but not more than 48 hours: 2 DSA;
- more than 48 hours but not more than 60 : 2.5 DSA, and so on.

The agreed rates (in EUR per calendar day) to be used for the purposes of the present Contract are set as follows:

| Destinations |                | DSA in EUR | Maximum hotel price in EUR | Destinations |                     | DSA in EUR | Maximum hotel price in EUR |
|--------------|----------------|------------|----------------------------|--------------|---------------------|------------|----------------------------|
| AT           | Austria        | 95,00      | 130,00                     | IT           | Italy               | 95,00      | 135,00                     |
| BE           | Belgium        | 92,00      | 140,00                     | LT           | Lithuania           | 68,00      | 115,00                     |
| BG           | Bulgaria       | 58,00      | 169,00                     | LU           | Luxembourg          | 92,00      | 145,00                     |
| CY           | Cyprus         | 93,00      | 145,00                     | LV           | Latvia              | 66,00      | 145,00                     |
| CZ           | Czech Republic | 75,00      | 155,00                     | MK           | F.Y.R. of Macedonia | 50,00      | 160,00                     |
| DE           | Germany        | 93,00      | 115,00                     | MT           | Malta               | 90,00      | 115,00                     |
| DK           | Denmark        | 120,00     | 150,00                     | NL           | The Netherlands     | 93,00      | 170,00                     |
| EE           | Estonia        | 71,00      | 110,00                     | PL           | Poland              | 72,00      | 145,00                     |
| EL           | Greece         | 82,00      | 140,00                     | PT           | Portugal            | 84,00      | 120,00                     |
| ES           | Spain          | 87,00      | 125,00                     | RO           | Romania             | 52,00      | 170,00                     |
| FI           | Finland        | 104,00     | 140,00                     | SE           | Sweden              | 97,00      | 160,00                     |
| FR           | France         | 95,00      | 150,00                     | SI           | Slovenia            | 70,00      | 110,00                     |
| HR           | Croatia        | 60,00      | 120,00                     | SK           | Slovakia            | 80,00      | 125,00                     |
| HU           | Hungary        | 72,00      | 150,00                     | TR           | Turkey              | 55,00      | 165,00                     |
| IE           | Ireland        | 104,00     | 150,00                     | UK           | United Kingdom      | 101,00     | 175,00                     |

### 2.2.2 Travel expenses

Travel expenses shall be reimbursed following the provisions of Article II.7.3.

### 3. Additional provision

It is understood that the Parts “Fees and Direct Costs” and “Reimbursable Expenses” are set as provisions only. They constitute a maximum for the overall cumulative value of all services rendered by the Contractor under the present Contract – they will be due only if services are actually rendered to the Commission according to this Contract and its Annexes, both in quantity and in quality.

## ANNEX IV CVs and classification of experts

### 1. Classification of experts according to level of expertise

| <i>Level of qualification</i> | <i>Category of personnel</i>   |
|-------------------------------|--|
| I                             | Highly qualified expert having assumed important responsibilities in his/her profession, recruited for his/her management/supervisory, thought and creativity skills as regards professional practise.<br>He/she must have at least 15 years professional experience of which at least 7 must be connected with the professional sector concerned and the type of tasks to be performed. |
| II                            | Highly qualified expert having assumed responsibilities in his/her profession, recruited for his/her management/supervisory, thought and creativity skills as regards professional practise.<br>He/she must have at least 10 years professional experience of which at least 4 must be connected with the professional sector concerned and the type of tasks to be performed.           |
| III                           | Certified expert having received a high-level training in his/her profession, recruited for his/her thought and creativity skills as regards professional practise.<br>He/she must have at least 5 years professional experience of which at least 2 must be connected with the professional sector concerned and the type of tasks to be performed.                                     |
| IV                            | Junior expert, newcomer to the profession but holding a university degree or equivalent training related to the professional sector concerned and the type of tasks to be performed.   |

### 2. List of experts assigned

| <i>Full names of experts assigned</i> | <i>Level of Qualification<br/>(I to iv, see above)</i> |
|---------------------------------------|--|
|                                       | II   |
|                                       | III  |
|                                       |  |
|                                       |  |

### 3. CVs of experts assigned

See Annex II.

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## Fiscal provisions regarding invoicing by the Contractor

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Choose 1 out of 4 options:

- **(option 1: the Contractor is subject to VAT and his place of fiscal imposition is in Belgium)**

### Local supplies and services

Supplier with fiscal imposition place in Belgium – delivery address in Belgium

#### 1. VAT exemption – Exemption level

In Belgium, the terms of the present Contract have the same value as the VAT exemption request No 450 (VAT exemption – Article 42, par. 3.3, VAT Code).  
The European Commission benefits of a direct VAT exemption for all invoices EUR 123.95 and more.

#### 2. Invoicing the Commission

An invoice will be made for each payment related to the present Contract. The applied VAT rate and amount shall be specified.

In view of VAT exemption, invoices addressed to the European Commission should bear the mention: “Exonération de la TVA, article 42, § 3.3, du code de la TVA” or “Vrijstelling van BTW, artikel 42, § 3.3, BTW-Wetboek”.

The above indication is given only as piece of information. The Contractor must refer to the Belgian national laws.

- **(option 2: the Contractor is subject to VAT and his place of fiscal imposition is a Member State other than Belgium)**

### Intra-community supplies and services

Supplier with fiscal imposition place in a Member State other than Belgium – delivery address in Belgium

#### 1. VAT exemption level

The European Commission benefits of a direct exemption of VAT for all invoices of EUR 123.95 and more.

#### 2. Use of form 15.10

To allow the Contractor to justify to the fiscal authorities an invoicing to the European Commission using a 0% VAT rate (direct exemption) or to enable the benefit of the exemption by reimbursement, it is necessary to use the form 15.10.

These forms have recently been up-dated, and the new versions are the only ones to remain in official use. They entered into force on 01.04.1997, with a new ref. XXI/03278 – 01.04.1997.

See attached document: 2 pages and 1 page of explanatory notes.

### **3. Signature of the form 15.10 – Delegation of signature**

The forms must normally be signed by the fiscal authorities of Belgium. However, a delegation of signature has been awarded by the Belgium authorities to the European Commission – ref. ET 76430 of 22.12.1992 (this ref. No. should be inserted in box 7 of new form 15.10). The Commission being represented for the present Contract by Armindo SILVA, Acting Director - EMPL/F/2 of Employment, Social Affairs and Equal Opportunities DG, form 15.10 will therefore be signed by the latter.

### **4. Invoicing the Commission**

An invoice will be made for each payment related to the present Contract. The applied VAT rate and amount shall be specified. Concerning the direct VAT exemption or VAT exemption by the way of reimbursement, the invoice shall bear all the necessary mentions.

The above indication is given only as piece of information. The Contractor must refer to the national laws in force in his Member State of fiscal imposition.

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- ▶ **(option 3: the Contractor is not subject to VAT)**

Not applicable to the present Contract.

- ▶ **(option 4: the country of fiscal imposition of the Contractor is unknown)**

Provisions to be applied depending on the country of fiscal imposition of the Contractor..

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