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## **Specifications– Tender No VT/2010/031**

### **Implementation of Directive 2005/47/EC on the Agreement [...] on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector**

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#### **1. Title of contract**

**Implementation of Directive 2005/47/EC on the Agreement [...] on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector**

#### **2. Background**

##### **a) General context**

Progress<sup>1</sup> is the EU's employment and social solidarity programme, set up to provide financial support for the attainment of the European Union's objectives in employment, social affairs and equal opportunities as set out in the Social Agenda<sup>2</sup>. A combination of various EU instruments will be used to implement the Social Agenda, ranging from EU legislation to open methods of coordination in various policy fields and financial incentives, such as the European Social Fund.

The purpose of the PROGRESS programme is to strengthen the EU's contribution in support of Member States' commitments and efforts to create more and better jobs and to build a more cohesive society. To that end, PROGRESS will help in:

- providing analysis and advice on PROGRESS policy areas;
- monitoring and reporting on the implementation of EU legislation and policies in the PROGRESS programme areas;
- promoting policy transfer, learning and support among Member States on EU objectives and priorities; and
- passing on the views of the stakeholders and society at large.

More specifically, PROGRESS supports:

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

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<sup>1</sup> Decision No 1672/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity — Progress, OJ L 315, 15.11.2006.

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Renewed social agenda: Opportunities, access and solidarity in 21st century Europe, COM(2008) 0412 final of 02.07.2008.

- effective implementation of the principle of gender equality and promotion of its mainstreaming in all EU policies (section 5).

This call for tenders is issued in the context of the implementation of the 2010 annual work programme, which can be consulted at:

<http://ec.europa.eu/social/main.jsp?catId=658&langId=en>

## **b) Specific context**

The railway transport sector in Europe has undergone a great many economic, social and regulatory changes over a number of years. The market share of the railways in freight and passenger transport has fallen regularly since 1995 in EU-27. EU policy on rail transport is therefore intended to revitalise it and make it more competitive within European transport policy. The EU has therefore adopted three ‘railway packages’, the objectives of which include opening up the international railway freight and passenger transport markets and fostering safety and interoperability between high-speed and conventional railway systems<sup>3</sup>. The freight transport market has been open to competition since 1 January 2007, and the passenger transport market since 1 January 2010. According to recent data,<sup>4</sup> 62 companies are involved in international rail transport in Europe, and the number of mobile workers within those companies making international journeys is estimated to be 10 240 (20 000 by 2020).

This policy was to be supported by social measures intended, in particular, to protect the health and safety of mobile workers by avoiding competition based solely on differences in working conditions. On 27 January 2004, the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) therefore concluded an Agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector (hereinafter referred to as ‘the Agreement’). This Agreement provides for minimum standards concerning working conditions, driving times, breaks and daily and weekly rest periods. Because these standards are more specific requirements under Article 14 of Directive 2003/88/EC concerning certain aspects of the organisation of working time, that Directive does not apply to these particular points. On 18 July 2005, the Council adopted Directive 2005/47/EC (hereinafter referred to as ‘the Directive’), making the Agreement binding in all EU Member States.

*The main provisions of the Agreement are as follows:*

- Clause 3: daily rest at home of 12 consecutive hours per 24-hour period; possibility of reduction to nine hours once every seven-day period.
- Clause 4: daily rest away from home of eight consecutive hours per 24-hour period, which has to be followed by a daily rest at home. The social partners agreed that a second

<sup>3</sup> Train interoperability means their ability to run on all parts of the international network.

<sup>4</sup> ‘Economic and social impact of the agreement concluded between social partners on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector’, TNO Quality of Life, September 2008. The report is available at: [http://ec.europa.eu/employment\\_social/labour\\_law/docs/2008/final\\_report\\_r08678\\_en.pdf](http://ec.europa.eu/employment_social/labour_law/docs/2008/final_report_r08678_en.pdf)

consecutive rest away from home as well as compensation for rest away from home could be negotiated between social partners at company or national level<sup>5</sup>.

– Clause 5: break of at least 45 minutes for a working time longer than eight hours, and of at least 30 minutes for a working time of between six and eight hours.

– Clause 6: weekly rest period of 24 hours, plus 12 hours of daily rest.

– Clause 7: maximum driving time of nine hours for day shifts, and eight hours for night shifts.

The Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 27 July 2008, after consulting the social partners.

To date five Member States have yet to transpose the Directive in full, namely Italy, Portugal, Estonia, France and Luxembourg.

During discussions on the Directive, particular attention was given to Clause 4 of the Agreement, according to which a daily rest period away from home must be followed by a daily rest period at home, with the option for the social partners of negotiating a second consecutive rest period away from home at railway company or national level. Some national delegations expressed fears that this provision would slow development in the sector in view of the length of certain routes and the time necessary for their operation. Pursuant to Clause 4 of the Agreement, the social partner organisations which signed the Agreement at European level have initiated negotiations on the number of consecutive rest periods away from home and compensation for rest periods away from home.

In order to monitor the impact of the Agreement and Clause 4 thereof on the development of the market, the Commission undertook, in a declaration made when the Directive was adopted,<sup>6</sup> to submit a report to the Council, taking account of the economic and social impact of the Agreement on companies and workers and of the discussions between social partners on all the relevant topics, including Clause 4. The Commission has declared itself willing to take any measures necessitated by any new agreement between the social partners, by proposing an amendment to the Directive.

The Commission met its commitment on 15 December 2008 by adopting the Communication from the Commission to the Council on the ‘Economic and social impact of the Agreement appended to Directive 2005/47/EC concluded on 27 January 2004 between the social partners on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector’,<sup>7</sup> COM(2008) 855 final, 15.12.2008.

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<sup>5</sup> The Agreement also provides that, at European level, the question of the number of consecutive rest periods away from home and of compensation for rest away from home will be renegotiated two years after its signature.

<sup>6</sup> PV/CONS 46, Addendum to draft minutes, 2676th meeting of the Council of the European Union held in Brussels on 18 July 2005.

<sup>7</sup> Communication from the Commission to the Council on the ‘Economic and social impact of the Agreement appended to Directive 2005/47/EC concluded on 27 January 2004 between the social partners on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector’, COM(2008) 855 final, 15.12.2008.

The Communication, based on a study by TNO, describes the economic and social impact of the Directive on the international railway sector. At the time that the study was undertaken, 62 railway companies were operating in the EU international railway sector in goods and passenger transport. Many new companies have entered the goods transport market since its full opening in 2007. The number of mobile workers covered by the Directive represented the equivalent of 10 240 full-time workers across the sector; this was expected to increase by an additional 10 000 workers by 2020.

Since the current rules in the Member States already seem to comply with the provisions of the Agreement, its short-term social impact should be limited.

The economic impact of the Agreement on the development of the sector appears to be limited, as human resources account, on average, for an estimated 8.5% of the total operating costs of a cross-border rail freight business. Any staff increase due to the Agreement would therefore have a negligible influence in comparison with other operating costs, such as the energy bill or infrastructure costs. Very few companies have entered into negotiations at company level for a second consecutive day of rest away from home as permitted by the Agreement. It would be very useful to ascertain whether this is still the case today. This would provide a vital indication of the sector's needs in this area.

Under Clause 4 of the Agreement, the social partners at European level have initiated renegotiations on the number of consecutive rest periods away from home and on compensation for rest periods away from home.

The negotiations have now run into difficulties and seem to be practically suspended. One of the problems raised by the social partners is the lack of information concerning interoperable cross-border transport operations. The signatories had agreed to evaluate the provisions of the Agreement two years after it had been signed (Clause 11 of the Agreement) in the light of initial experience in developing interoperable cross-border transport, but the evaluation has not yet been completed.

In this respect, the Commission must meet its obligation under Article 3 of Directive 2005/47/EC to report before 27 July 2011 to the European Parliament and the Council, after consulting management and labour at European level, on the implementation of the Directive in the context of the development of the railways sector. As well as the legal aspects linked to the implementation of the Directive, the report must assess its economic and social impact, so that the Commission can be given the power to judge whether a legislative initiative is necessary to revise the Directive.

### **3. Subject of the contract**

The purpose of the contract is to carry out a study with three objectives:

1. To describe and analyse the national legislative measures transposing Directive 2005/47/EC into the national law of all the Member States concerned. This includes assessing the compatibility of the relevant national legislation with EU legislation and providing an overview of recent research, studies and case-law on this subject.

2. To provide an overview of the development of interoperable cross-border activities in the railway sector within the European Union, in particular by updating the data contained in the TNO study<sup>8</sup> carried out for the Commission in 2008.
3. To assess the economic and social impact of the Agreement annexed to the Directive on cross-border mobile workers, taking particular account of health and safety aspects and the need to reconcile working time and family life, and on companies by examining the impact on the development of cross-border activities. The data from the above-mentioned TNO study must be taken into account.

#### **4. Participation in the tendering procedure**

Please note that:

*Participation is open on equal terms to all natural or legal persons coming within the scope of the Treaties and any other natural or legal persons from a third country which has concluded a specific agreement with the EU in the area of public contracts, subject to the conditions provided for in that agreement.*

*Where the Multilateral Agreement on Public Contracts concluded within the framework of the World Trade Organisation applies, the contracts are also open to nationals of States which 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 to Directive 2004/18/EC, are not covered by this Agreement.*

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

##### **a) General provisions for carrying out the activities and tasks**

The PROGRESS Programme aims to promote gender mainstreaming in its five policy sections and in commissioned or supported activities. Consequently, the contractor must take the necessary steps to ensure that:

- gender equality issues, including the situation and needs of women and men, are duly taken into account when necessary for the drafting of the technical bid;
- the gender dimension is systematically taken into account when providing the service;
- performance monitoring includes the collection and compilation of data broken down by gender when needed;
- the proposed team and/or staff respect(s) the gender balance at all levels.

Equally, the needs of disabled people must be duly acknowledged and respected in providing the requested service. This will in particular entail ensuring that, when the contractor organises training sessions or conferences, issues publications or develops dedicated websites, people with disabilities have equal access to the facilities or services provided.

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<sup>8</sup> 'Economic and social impact of the agreement concluded between social partners on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector', TNO Quality of Life, September 2008. The report is available at: <http://ec.europa.eu/social/BlobServlet?docId=2804&langId=en>

Lastly, the contracting authority encourages the contractor to promote equal employment opportunities for all its staff and team. The contractor is therefore encouraged to ensure an appropriate mix of people, regardless of their ethnic origin, religion, age or qualifications.

In its activity report accompanying the request for the final instalment, the contractor will be required to detail the steps and achievements it made towards meeting these contractual requirements.

### **Methodology:**

The study will require theoretical and methodological approaches appropriate to the subject matter described. The proposed methodology for the collection of the information and its analysis should be explained and justified in the bid.

The tenderer will submit a work plan and a detailed breakdown of how the tasks are distributed among the research team members.

To carry out the study, the contractor shall:

- identify and make use of existing sources of information, documentation, reports and studies on these matters, including statistical data;

- carry out its own research in all EU Member States and EEA countries. Information will be gathered from the competent authorities of the Member States, employers' organisations, businesses and unions in the sector in question. To this end, the contractor will send out questionnaires (drawn up by the contractor and approved by the Commission) to those bodies asking them for information relating to the implementation of the Directive in practice, and will conduct interviews with the stakeholders should this be deemed necessary.

- as regards the point raised in parts 3(3) and 5(b)(iii) of this document, the contractor must also carry out field research in at least 10 EU Member States or EEA countries and establish contact with stakeholders in the sector. The 10 countries in which a more thorough field study will be carried out must always include Germany, France, the Netherlands, the United Kingdom, Hungary and Poland. The tenderer will then explain its choice of the four other countries and ensure a fair balance taking account of geographical, economic and demographic factors, the specific characteristics of the rail sector organisation and particular experiences on the questions raised in certain countries. The questionnaire must be adapted to those countries and will lead to interviews on the ground with the interested parties;

- identify and contact the interested parties at European and national level.

- The contractor must arrange to take part in at least one of the sectoral dialogue meetings attended by the signatories to the Agreement.

### **b) Specific provisions for carrying out the activities and tasks**

#### **(i) Analysis of the Directive's implementation**

The contractor must prepare a first part of the report covering the EU Member States' transposition into their national legislation and application of Directive 2005/47/EC and the appended Agreement. All Member States must be covered, except Cyprus and Malta, which

have declared that they do not have a railway on their territory. Particular attention must be paid in this analysis to the non-regression clause in Article 2(2)<sup>9</sup> of the Directive and Clause 9<sup>10</sup> of the Agreement. Any instance of 'regression' found must be identified with a description of the situation preceding the regression, the new situation and why it constitutes a regression. As regards the five Member States that have yet to transpose the Directive in full, namely Estonia, France, Italy, Luxembourg and Portugal, an analysis of the situation, and of any draft transposition measures being adopted, must be carried out.

This part must cover the following aspects:

a) Legal instrument (law, decree, collective agreement, etc.) applicable in each Member State:

Describe and analyse the provisions adopted and put into force by the Member States to comply with Articles 4 and 5 of Directive 2005/47/EC. If there have been difficulties or delays in the process of transposing the Directive, describe and analyse the factors behind the delays or failure to transpose.

b) Scope and definitions:

Describe and examine whether the definitions and scope of the Directive are implemented correctly (Clauses 1 and 2). The Directive covers certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. Describe the criterion chosen by each Member State to apply the Directive to mobile workers, especially for 'mixed-use' workers (those working on the national network and the international network)<sup>11</sup>.

c) Provisions of the Directive on working conditions:

(i) Describe and examine whether the provisions set out below are implemented correctly by the Member States. Reference should be made to any aspects that might constitute breaches of EU law.

– Clause 3: daily rest at home of 12 consecutive hours per 24-hour period; possibility of reduction to nine hours once every seven-day period.

– Clause 4: daily rest away from home of eight consecutive hours per 24-hour period, which has to be followed by a daily rest at home. The social partners agreed that a second consecutive rest period away from home as well as compensation for rest away from home could be negotiated between social partners at company or national level<sup>12</sup>.

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<sup>9</sup> The term 'Article' refers to Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. OJ L 195, 27.07.2005, p. 15.

<sup>10</sup> The term 'Clause' refers to the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services. OJ L 195, 27.07.2005, p. 18.

<sup>11</sup> All other staff employed in the railway sector are covered by Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

<sup>12</sup> The Agreement also provides that, at European level, the question of the number of consecutive rest periods away from home and of compensation for rest periods away from home will be renegotiated two years after its signature.

- Clause 5: break of at least 45 minutes for a working time longer than eight hours, and of at least 30 minutes for a working time of between six and eight hours.
- Clause 6: weekly rest period of 24 hours, plus 12 hours of daily rest.
- Clause 7: maximum driving time of nine hours for day shifts, and eight hours for night shifts.

(ii) Describe how these provisions are applied in practice in companies.

d) Monitoring:

- Describe and analyse whether the requirements with regard to keeping a record of the daily working hours and rest periods of the mobile workers mentioned in Clause 8 have been met.

e) Role of the social partners:

Examine and describe the role of the social partners at national level in implementing the agreement and their opinion on this matter.

### **(ii) Analysis of the development of the sector**

The contractor must draw up a second part of the report updating the previous report written by TNO in 2008. In particular, the contractor must carry out the following tasks:

- to update the data on the number of companies involved in cross-border transport operations, the type of goods transported and the main routes/corridors used by those companies;
- to collect information on the number of workers carrying out cross-border activities, in particular by assessing the number of workers trained and authorised to work on this type of operation and the number of workers actually carrying out this type of operation. Particular attention must be paid to ‘mixed-use’ workers (those working on the national and the international network);
- to collect information on the number of hours worked per day and per week by mobile workers; an analysis must be carried out on the various tasks performed by these workers and the time spent on each task (driving, loading/unloading, service, administrative tasks, etc.) and on working time arrangements.

Please note that the Commission is currently drawing up a report on the situation of and outlook for the international railway market, which is due to be published in 2010. The contractor must take this into account when drawing up this part of the study.

### **(iii) Analysis of the economic and social impact of the Agreement**

The contractor must draw up a third part of the report analysing the economic and social impact of the implementation of the Directive on companies and mobile workers in the international railway sector. As far as possible, a distinction must be drawn between freight companies and passenger companies, small and medium-sized enterprises and new and old businesses on the market.



It should be remembered that the primary objectives of this legislation are to:

- protect mobile workers' health and safety;
- ensure the safety of cross-border traffic;
- prevent competition based solely on differences in working conditions.

The contractor must, by means of a detailed study in the 10 Member States, analyse the impact of the implementation of the Directive with specific regard to these objectives and any other relevant objectives by referring to the EU's social and economic policies, such as the need to reconcile working time with family life, maintaining and creating jobs and the development of competitive railway markets. In particular, the contractor must:

- describe and specify whether agreements were concluded between social partners at company or national level regarding a second consecutive rest period away from home, as well as compensation for rest away from home. Also state whether such agreements are under negotiation and describe the content of the negotiations, including whether they cover other aspects than those of Clause 4.

If no such agreements have been reached, the contractor must indicate, in particular after questioning the social partners:

- ① - whether they were not interested in negotiating such an agreement, and if so why not;
- ② - whether they were interested but negotiations were unsuccessful, and the reasons for such a result;
- ③ - whether arrangements are already in place without being based on an agreement.

- assess the effects on workers' health and safety of applying the minimum requirements of the Directive;

- assess the effects of applying the minimum requirements of the Directive with regard to the need to reconcile workers' working time and family life; highlight, where relevant, any gender-related aspects;

- assess the Directive's impact on job creation in the sector (including by contract type and gender);

- assess whether application of the Directive will bring changes to the operation of current routes or prevent the development of new routes;

- assess whether application of the Directive is helping or hindering the opening up of railway markets to competition;

- estimate the administrative costs for companies, if any, of the application of the Directive and their ratio to the total costs of exploitation.

The study must propose a set of conclusions identifying, *inter alia*, any aspects warranting revision or clarification of the agreement implemented by the Directive.

## **6. Professional qualifications required**

The scientific coordinator must meet the requirements for a Level I or Level II expert. The vast majority of the other experts must be at least Level III.

The general expertise, whether it be academic or gained in the field, must cover all the relevant issues covered by the study (and, in particular, thorough knowledge of EU law and labour law and sufficient language ability to cope with each legal system studied for the part of the study described in point 3(1) of these specifications, knowledge of health and safety in the railway sector, and the ability to analyse the economic and social impact of public policy for the parts of the study described in points 3(2) and 3(3) of these specifications.

See Annex IV to the model contract and part 12 of these specifications

## **7. Time schedule and reporting**

See Article I.2. of the contract.

### **a) Specific deadlines for the performance of tasks**

The work must be completed within a maximum of 9 (nine) months from the date of signature of the contract.

It must cover the following steps:

(i) Within 30 days of signature of the contract, the contractor must submit an initial report, in French or English, to the European Commission (Unit EMPL F/2) containing:

- a detailed presentation of data collection tools and an analytical framework, as well as definitions of key terms and concepts;

- a list of persons and institutions to be contacted and/or interviewed as part of the information-gathering process;

- a revised and more detailed work programme based on the provisional work programme submitted in response to the call for tenders, along with an overall timetable.

(ii) Within 4 (four) months of signature of the contract, the contractor must submit an interim report, in French or English, including the various elements described in Section 5 above to the European Commission (Unit EMPL F/2).

(iii) Within 7 (seven) months of signature of the contract, the contractor must submit a draft final report, in French or English, including the various elements described in Section 5 above to the European Commission (Unit EMPL F/2). The final report will be submitted within nine months of signature of the contract, taking account of, or presenting counter-arguments to, any objections and comments.

As a matter of principle, and in order to enable the European Commission to follow and evaluate all the results obtained under the PROGRESS programme, the contractor will also be required to provide the following:

- a one-page presentation detailing the key points of the service provided. The presentation should be concise, precise and easily understandable. It must be provided in English, French and German;
- a five/six-page executive summary in English and French.

## **b) Additional requirements**

### **i) Meeting requirements**

The tenderer may be invited to take part in three meetings with the Commission in Brussels: the first to open the study, the second to examine the initial report within 30 days of its receipt and the third to examine the interim draft study within 30 days of its receipt.

### **ii) Publicity and information requirements**

In line with the general conditions, all contractors are obliged to acknowledge, in all documents and media produced, in particular in deliverables, reports, brochures, press releases, videos, software, etc., and also at conferences or seminars, that the service concerned has been commissioned by the European Union. As part of the EU programme for employment and social solidarity – PROGRESS – this acknowledgement must be mentioned in the following manner:

*This (publication, conference, training session) has been carried out under the EU programme for employment and social solidarity – PROGRESS –(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.*

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

- *providing analysis and policy advice on its specific areas of activity;*
- *monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;*
- *promoting policy transfer, the exchange of knowledge and support among the Member States as regards EU objectives and priorities;*
- *relaying the views of stakeholders and of society at large.*

*Further information is available at: <http://ec.europa.eu/progress>*

The following reference must be included in all publications: "The information contained in this publication does not necessarily reflect the position or opinion of the European Commission".

In any communication or publication of the information or related material developed under this contract, the contractor must insert the European Union logo and mention the European Commission as the contracting authority.

### **iii) Reporting requirements**

PROGRESS is implemented in line with the principle of results-based management (RBM). Management centred on outcomes and results aims to maximise the impact for European citizens and involves:

- identifying the most important results for European citizens;
- setting clear objectives by implementing plans based on these results and learning about ‘what works’ in the process;
- seizing opportunities to work together whenever this helps meet the objectives.

In this context, a strategic framework for the implementation of PROGRESS has been developed in cooperation with the Member States and civil society organisations. Together with the performance measurement, it sets out the mandate for the PROGRESS programme and its specific short- and long-term outcomes. The performance measurement framework is summarised in the Annex. For more information on the strategic framework, please visit the PROGRESS website.

The Commission monitors the impact of the initiatives supported or commissioned by PROGRESS and considers how these initiatives contribute to the results specified in the strategic framework. Accordingly, the contractor will be asked to work in close cooperation with the Commission and/or persons authorised by it to define the expected contributions and the set of performance measurements against which the contribution will be assessed. He will be expected to compile data on performance and report back to the Commission and/or designated persons, using a model which will be attached to the contract. In addition, he must make available and give right of access to the Commission and/or designated persons to any documents or information making it possible to accurately assess the performance of the PROGRESS programme.

## **8. Payments and standard contract**

Payments under the Contract will 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.

### **a) Pre-financing**

Following signature of the Contract by the final contracting party, a pre-financing payment equal to 20 % of the total amount referred to in Article I.3.1 of the Contract shall be made within 30 days of the receipt by the Commission of a request for pre-financing, accompanied by the relevant invoice.

### **b) Interim payment(s)**

Requests from the Contractor for interim payments will be admissible only if accompanied by:

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

provided that 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 a maximum of 30 % of the total amount referred to in Article I.3.1 of the contract, will be made.

### c) Payment of the balance

The contractor's request for payment of the balance shall be admissible if accompanied by:

- the final technical report in accordance with the instructions laid down in Annex I to the contract;
- the relevant invoices

provided that 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 1.3.1. of the contract will be made.

In drawing up the bid, the tenderer should take into account the provisions of the standard contract comprising the "General terms and conditions applicable to service contracts".

## 9. Cost

The total cost must not exceed **EUR 200 000** for the nine months of the contract. Tenderers should note that any bid exceeding this amount will not be considered.

Under the terms of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the latter is exempt from all charges, taxes and duties, including value added tax; these charges cannot therefore be included when calculating the price. The amount of VAT should be shown separately.

Prices must be in euros (€), excluding VAT (using the conversion rates published in the Official Journal of the European Union, C series, and applicable on the day on which the invitation to tender is issued), and broken down in accordance with the model in Annex III included in the enclosed specimen contract.

### Fees and direct costs

- Fees, expressed in number of persons/days and unit price per day for each expert proposed. The unit price should cover experts' fees and administrative costs

- Travel expenses (other than the cost of local transport)
- Subsistence expenses for the contractor and his personnel (covering expenditure incurred by experts on short trips away from their normal place of work)
  
- Costs of transporting equipment or unaccompanied baggage directly linked to the performance of the tasks set out in Article I.1 of the Contract
  
- Other direct costs

## **10. Groups of economic operators or consortia**

*Tenders can be submitted by groups of service providers/suppliers who will not be required to adopt a particular legal form prior to the contract being awarded, but the consortium selected may be required to assume a given legal form when it has been awarded the contract if this change is necessary for proper performance of the contract<sup>13</sup>. Any consortium of economic operators will have to appoint one party to receive and process payments for all the members and to be responsible for overall management and coordination. The documents required and listed in sections 11 and 12 below must be supplied by every member of the group. Each member of the group must assume joint and several liability towards the Commission.*

## **11. Exclusion criteria and supporting documents**

1) Tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to in Articles 93 and 94(a) of the Financial Regulation.

These articles provide as follows:

*"Article 93:*

1. Candidates or tenderers shall be excluded from participation in a procurement procedure if:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;
- c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;

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<sup>13</sup> These bodies may or may not have their own legal personality, but they must guarantee sufficient protection of the Commission's contractual interests (depending on the Member State concerned, they may be, for example, a consortium or a temporary association).

**The contract must be signed by all members of the consortium** or just one of them, duly mandated by the others (power of attorney or another valid form of authorisation must be enclosed with the contract) if the tenderers have not formed their own legal personality.

- d) they have 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 they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- f) they are currently subject to an administrative penalty referred to in Article 96(1)<sup>14</sup>.

(...)

*Article 94:*

Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:

- a) are subject to a conflict of interest;
- b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information. (...)"

2) The tenderer to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in Article 134 of the Implementing Rules, confirming the declaration referred to in point 1 above.

*Article 134 of the Implementation Arrangements – Supporting documents*

*§3. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in one of the situations described in points (a), (b) or (e) of Article 93 of the Financial Regulations, production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that these requirements are met. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d) of Article 93(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.*

*Where no such document or certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.*

*§4. Depending on the national legislation of the country in which the tenderer or candidate is established, the documents referred to in paragraph 3 shall relate to legal persons and/or natural persons, including, where considered necessary by the awarding authority, company*

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<sup>14</sup> "Article 96(1): The contracting authority may impose administrative or financial penalties on the following:

- a) candidates or tenderers in the cases referred to in Article 94(b);
- b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget. (...)"

*directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.*

**See Annex I (which may be used as a checklist) for the supporting documents accepted by the European Commission to be provided by applicants, tenderers or tenderers to whom the contract will be awarded.**

3) The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in Article 134 of the Implementing Rules, if such evidence has already been submitted to it for the purposes of another procurement procedure launched by DG EMPL and provided that the issuing date of the documents does not exceed one year and that they are still valid.

In such a case, the candidate or tenderer must declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes to his situation have occurred.

## **12. Selection criteria**

### a) Economic and financial capacity:

- turnover during the previous financial year (statement of overall turnover – at least twice the value of the contract, i.e. EUR 400 000);
- balance sheets and profit and loss accounts for the past three financial years, if the legislation of the country in which the tenderer is established requires them to be published;
- regular accounts for the quarter preceding that in which the notice of invitation to tender was published, if the full accounts for the previous financial year are not yet available.

If, for some exceptional reason which the contracting authority considers justified, the tenderer or candidate is unable to provide the references requested by the contracting authority, he may prove his economic and financial capacity by any other means which the contracting authority considers appropriate.

### b) Technical and professional capacity:

Technical and professional capacity to carry out the contract will be assessed on the basis of the following:

- The scientific coordinator must meet the requirements for a Level I or Level II expert. The vast majority of the other experts must be at least Level III.
- The general expertise, whether it be academic or gained in the field, must cover all the relevant issues covered by the study (and, in particular, thorough knowledge of EU law and labour law and sufficient language ability to cope with each legal system studied for the part of the study described in point 3(1) of these specifications, knowledge of health and safety in



the railway sector, and the ability to analyse the economic and social impact of public policy for the parts of the study described in points 3(2) and 3(3) of these specifications.

- the scientific coordinator's proven ability to deal effectively with the tasks of coordination and administration associated with the organisation and management of a team of experts capable of critically assessing legal developments in all countries covered by the contract;

- the scientific coordinator's sufficient knowledge of English and an ability to work, communicate and draw up reports in English, in order also to ensure communication with the Commission and experts;

- solid experience of analysis in the field of labour law concerned, issues relating to health and safety at work and social law, including theoretical and empirical aspects, as attested by published works in the field written by members of the team of experts;

- solid experience of analysis in the field of the economic and social impact of public policies.

Means of proof required:

- name and CV (maximum three pages per person) of the persons responsible for implementing the specific tasks described in point 5 of this document, with the aim of ascertaining their technical skills and practical experience;

- a list of the main services rendered or the main studies carried out in the relevant scientific field in the last five years, indicating amounts, dates and recipients (public or private);

- a declaration by the scientific coordinator certifying the competence of the team to carry out the project study, including professional and linguistic capabilities.

### **13. Award criteria**

The contract will be awarded to the tenderer offering the best quality/price ratio, taking account of the following criteria:

- understanding of the assignment, its context and the results to be achieved (30%)

- quality and consistency of the technical and methodological approach (40%)

- quality of the work programme and project management (30%)

Please note that the contract will not be awarded to any bid that receives less than 70% in the award criteria. The points total will then be divided by the price, with the highest-scoring bid being chosen.

## **14. Content and submission of tenders**

### ***Content of the tenders***

Tenders must include:

- all information and documents necessary to enable the Commission to appraise the bid on the basis of the selection and award criteria (see points 12 and 13 above);
- a bank ID form duly completed and signed by the bank;
- a "legal entity" form duly completed;
- the price;
- the detailed CVs of the proposed experts;
- the name and function of the contractor's legal representative (i.e. the person authorised to act on behalf of the contractor in any legal dealings with third parties);
- proof of eligibility: tenderers must indicate in which State they have their registered office or residence, providing the necessary supporting documents in accordance with their national law.

### ***Submission of tenders***

Tenders must be submitted in triplicate (i.e. one original and two copies).

They must include all the information required by the Commission (see points 9, 10, 11 and 12 above).

They must be clear and concise.

They must be signed by the legal representative.

They must be submitted according to the requirements set out in the letter of invitation to tender, and by the date and time indicated in that letter.

# OVERVIEW OF PROGRESS PERFORMANCE MEASUREMENT FRAMEWORK

## PROGRESS Ultimate Outcome

*Member States implement laws, policies and practices in a manner that contributes to the desired outcomes of the Social Agenda*

PROGRESS works towards its ultimate outcome by helping strengthen the EU's support for Member States' efforts to create more and better jobs and to build a more cohesive society. PROGRESS seeks to contribute to (i) an **effective legal regime** in the EU in relation to the Social Agenda; (ii) **shared understanding** across the EU with regard to Social Agenda objectives; and (iii) **strong partnerships** working towards Social Agenda objectives.

In operational terms, support provided by PROGRESS facilitates (i) provision of analysis and policy advice; (ii) monitoring and reporting on the implementation of EU legislation and policies; (iii) policy transfer, learning and support among Member States; and (iv) relaying to decision-makers the views of the stakeholders and society at large.

### Legal Regime

#### Outcome:

*Compliance in Member States with EU law related to PROGRESS areas.*

#### Performance Indicators

1. Transposition rate of EU law on matters related to PROGRESS policy areas
2. Effectiveness of application in Member States of EU law on matters related to PROGRESS policy areas.
3. EU policies and legislation are grounded in thorough analysis of situation and responsive to conditions, needs and expectations in Member States in PROGRESS areas
4. Extent to which PROGRESS-supported policy advice feeds into the development and implementation of EU legislation and policies
5. Cross-cutting issues are addressed in PROGRESS policy sections
6. EU policies and legislation display a common underlying logic of intervention in relation to PROGRESS issues
7. Gender mainstreaming is systematically promoted in PROGRESS

### Shared Understanding

#### Outcome:

*Shared understanding and ownership among policy/decision-makers and stakeholders in Member States, and the Commission, of objectives related to PROGRESS policy areas.*

#### Performance Indicators

1. Attitudes of decision-makers, key stakeholders and general public regarding EU objectives in PROGRESS policy areas
2. Extent to which national policy discourses or priorities reflect EU objectives
3. Extent to which principles of good governance (including minimum standards on consultation) are respected in policy debate
4. Extent to which the outcomes of policy debates feed into the development of EU law and policy.
5. Greater awareness of policy-and decision-makers, social partners, NGOs, networks regarding their rights/obligations in relation to PROGRESS policy areas
6. Greater awareness of policy-and decision-makers, social partners, NGOs, networks regarding EU objectives and policies in relation to PROGRESS policy areas

### Strong Partnerships

#### Outcome:

*Effective partnerships with national and pan-European stakeholders in support of outcomes related to PROGRESS policy areas.*

#### Performance Indicators

1. Existence of common ground/consensus among policy and decision-makers and stakeholders on EU objectives and policies
2. Identification and involvement by the EU of key actors in a position to exert influence or change at EU and national levels
3. Effectiveness of partnerships in relation to outcomes related to PROGRESS policy areas.
4. Number of individuals served or reached by networks supported by PROGRESS.
5. Extent to which advocacy skills of PROGRESS-supported networks have improved
6. Satisfaction of EU and national authorities with the contribution of networks
7. Extent to which PROGRESS-supported networks take a cross-cutting approach