
Specifications – Invitation to tender No VT/2010/051

Study on the characteristics and legal effects of agreements between companies and workers' representatives

1. Title of the contract

VT/2010/051: Study on the characteristics and legal effects of agreements between companies and workers' representatives

2. General context regarding the line financing this action

PROGRESS¹ 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 Agenda². 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 PROGRESS mission 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 this 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 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 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);

¹ 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, JO L 315 of 15.11.2006.

² 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.

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

The present call for tenders is issued in the context of the implementation of the 2010 annual work plan which can be consulted at: <http://ec.europa.eu/progress>.

3. **Background of the study**

The Commission has issued on 2 July 2008 a staff working document SEC(2008/2155 on "the role of transnational company agreements in the context of an increasing international integration"³. A transnational company agreement in this context means an agreement comprising reciprocal commitments the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers' organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives.

End 2009, the Commission's services had recorded about 200 joint transnational texts in 100 companies employing together 9,8 million employees. These texts include worldwide international framework agreements on fundamental rights and social responsibility as well as texts addressing specific European issues such as anticipation of change and management of restructuring, development of joint health and safety standards, common strategies on equal opportunities, mechanism for transnational financial participation, rules on cross-border data protection, joint principles on human resources policy, training or mobility.

Among other issues relating to the situation of transnational company agreements, the staff working document raises the question of the legal effects of transnational texts. A first review of the existing situation reveals the diversity in the intention of the parties as to the effects of transnational texts. It also reveals that, irrespective of this intention, the issue of the legal effects of transnational texts is a complex matter, which — depending on the content of the texts in question — is conditional on the national framework that may apply, whether or not they are signed by national trade unions and whether or not there is unilateral commitment on the part of the employer⁴.

What makes a collective agreement varies significantly from one Member State to another, in particular as regards the representativeness of the parties signing, compliance with negotiation procedures, requirements as to substance, and registration formalities. National rules differ as to the position of company agreements in relation to other norms and levels of social dialogue. National law also varies as regards the legal effect of collective agreements, e.g. whether or not they have an immediate, imperative and automatic effect on individual working contracts⁵.

³ See <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>

⁴ See also "International private law aspects and dispute settlement related to transnational company agreements", A.van Hoek & F.Hendrickx, 2009 at <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>

⁵ See in particular 2000, 2002 and 2006 reports "Industrial relations in Europe" European Commission, OPOCE at <http://ec.europa.eu/social/main.jsp?catId=575&langId=en> ; "Employee representatives in and enlarged Europe" coord. R.Rodriguez Contreras, Labour asociados, OPOCE, 2008 at <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=128&furtherPubs=yes> and

Therefore, for many actors involved in transnational negotiation⁶, it is a matter of concern and some uncertainty to determine whether the transnational texts concluded by them are coherent or compatible with national norms and to what extent it is possible for signatories to control the legal effects of such agreements. In view of facilitating and promoting the development of transnational company agreements, it becomes necessary to consider mechanisms allowing both management and employees' representatives to determine and control the legal effects of transnational company agreements concluded by them and to link them adequately with norms laid out at the national level.

There is therefore a need for a comprehensive analysis of the legal effects of company agreements in the Member States with a particular focus on the legal effects of transnational agreements. Also further thought should be given to the way transnational company agreements may be reconciled to any national system of norms and allowed to produce expected legal effects in that context.

The Commission has set up an informal expert group on transnational company agreements, with the participation of Member States and social partners. It expects to launch in this framework a debate focused on the question of the effects of transnational company agreements including a review of the legal effects produced by such agreements and the way they interact with national norms. The present study is expected to feed into this process.

4. **Subject of the contract**

The subject of the contract is to:

- Provide a comprehensive and clear overview of the characteristics and legal effects of company agreements between management and employee representatives, in particular agreements concluded in groups of undertakings, as well as their link to other levels of norms in the Member States;
- Analyse the present situation as to the legal effects of transnational texts in the different Member States;
- Identify the practical and legal obstacles to give transnational company agreements certain legal effects; explore several options, in particular the option to give them the same legal effects in Member states as company agreements concluded at national level ;
- Identify and suggest any actions that might be taken to overcome these obstacles.

<http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=130&furtherPubs=yes> , "The evolving structure of collective bargaining in Europe 1990-2004" coord. S.Sciarra, University of Florence, OPOCE, 2005 <http://e-prints.unifi.it/view/subjects/IUS=2F07.html> , documents of XIVth Meeting of European Labour Court Judges, Paris, 2006 at <http://www.ilo.org/public/english/dialogue/ifpdial/events/judges/paris.htm> ; "Multinational companies and collective bargaining ", European Foundation for the improvement of living and working conditions, 2009, at <http://www.eurofound.europa.eu/eiro/studies/tn0904049s/index.htm>

⁶ See in particular Evelyne Léonard et André Sobczack « Les accords transnationaux d'entreprises et les autres niveaux de dialogue social », *Courrier hebdomadaire du CRISP* 5/2010 (n° 2050-2051), p. 5-84 at <http://www.cairn.info/revue-courrier-hebdomadaire-du-crisp-2010-5-page-5.htm> and "International private law aspects and dispute settlement related to transnational company agreements", A.van Hoek & F.Hendrickx, 2009 at <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>

The study should provide Commission services and the expert group with a sound knowledge basis, putting them in a position to assess the situation and the need for any action in this area as well as highlighting relevant aspects such action would have to take account of.

5. Participation

Please note that:

- 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 Union 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.

6. Tasks to be carried out by the contractor

6.1 Specific tasks

The contractor has to prepare a study report addressing the following aspects and organised along them.

The different situations present in the Member States need to be covered in the study report. The contractor may however chose to group Member States together and analyse more in-depth the situation of specific Member States only. In the later case, the rationale for the grouping and the in-depth analysis needs to be duly justified and all Member States clearly associated with the situations covered by the analysis on every aspect of the study.

Examples of existing company agreements may be taken to illustrate the analysis.

a. Overview of the characteristics and legal effects of company agreements in the Member States

In the context of agreements comprising reciprocal commitments which are concluded by one or more representatives of a company or a group of companies on the one hand, and one or more representatives of the employees on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives, the contractor will provide a clear and comprehensive comparative presentation of:

- What makes a company agreement in the Member States and the requirements in its conclusion (signatories, content and procedural requirements,..);

- The legal status -contractual or statutory- of a company agreement in the Member States;
- The legal effects of company agreements in the Member States, notably whether or not they have an immediate, imperative and automatic effect on individual working contracts.

In doing so, the contractor will:

- Address the particular situation, if any, of agreements concluded at the level of groups of undertakings;
- Carefully identify the scope (territorial, personal, material) to be considered;
- Compare the characteristics and legal effects of company agreements with the ones of unilateral commitments of the company/employer and the ones of customs
- Where appropriate, differentiate between the subjects covered (mainly restructuring, mobility, training, equal opportunities, employee share ownership, health and safety, data protection, fundamental rights, procedures for social dialogue).

b. Overview of the relationship between company agreements and other norms in the Member States

The contractor will provide a clear and comprehensive comparative presentation of:

- The relationship of company agreements with other levels of collective agreements: (hierarchy of levels, derogations, principle of favour,..) in the Member States;
- The relationship of company agreements with other sources of law (respect of laws, consequences of conflicting provisions, approval mechanism, possibility of derogation, mechanism of delegation,...) in the Member States;

In doing so, the contractor will:

- Address the particular situation, if any, of agreements concluded at the level of groups of undertakings;
- Address the particular situation of the European level of agreements and laws;
- Compare the situation of company agreements with the one of unilateral commitments of the company/employer and the ones of customs
- Where appropriate, differentiate between the subjects covered.

c. Analysis of the situation relating to the characteristics and legal effects of transnational company agreements in the Member States

The contractor will analyse the present situation regarding the characteristics and legal effects of transnational company agreements in the Member States, in particular as to:

- The conditions under which a transnational company agreement can be considered as a company agreement under national law;
- The conditions under which a transnational company agreement or elements or provisions thereof can be considered as a unilateral commitment of the company/employer under national law;
- The conditions under which the implementation of a transnational company agreement can be considered as a custom under national law;
- The legal effects of a transnational company agreement.

In doing so, the contractor will:

- Differentiate between transnational company agreements concluded under the law of the Member State considered, of another Member State and of a non-Member State;
- Where appropriate, cover the specific situation of transnational company agreements concluded in particular countries or sectors
- Where appropriate, differentiate between the subjects covered.

d. Identification of the practical and legal obstacles to give transnational company agreements certain legal effects

The contractor will identify and assess the options to give a transnational company agreement certain legal effects and identify any related practical and legal obstacles, in particular:

- Assess the possibility to give uniform legal effects to transnational company agreements throughout the Member states;
- Assess the possibility to make legal effects of transnational company agreements vary according to the will of the parties;
- Examine the option to give transnational company agreements the same legal effects in Member states as company agreements concluded at national level.

In doing so, the contractor will:

- Analyse in particular the question of immediate, imperative and automatic effect on individual working contracts;
- Address in particular the situation of agreements concluded at the level of groups of undertakings;
- Where appropriate, differentiate between the subjects covered;
- Where appropriate, detail the specific situation in particular Member States or sectors.

e. Possible solutions

The contractor shall make suggestions as to what action might be taken and at which level to overcome any practical or legal obstacles that have been identified and allow for transnational company agreements to have effects comparable to the ones of company agreements concluded at national level. The contractor will identify the main arguments in favour and against such actions, analyse the difficulties that may arise in their implementation and make appropriate proposals to solve them.

6.2 General - Guide how the tasks shall be carried out

The PROGRESS Programme aims to promote 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 the 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 ensure in particular entail that where the Contractor organises training sessions and conferences, issues publications or develops dedicated websites, people with disabilities will 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 is encouraged to foster an appropriate mix of people, whatever their ethnic origin, religion, age, and ability.

The Contractor will be required to detail in its final activity report the steps and achievements made towards meeting these contractual requirements.

7. Publicity and information requirements

In accordance with the General conditions, all contractors are under the obligation to acknowledge that the present service has received funding from the Union in all documents and media produced, in particular final delivered outputs, related reports, brochures, press releases, videos, software, etc, including at conferences or seminars. In the context of the European Union's Programme for Employment and Social Solidarity – PROGRESS, the following formulation shall be used:

This (publication, conference, training session etc) is commissioned by the European Union's 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.

PROGRESS' mission is to strengthen the EU contribution in support of Member States' commitment. PROGRESS is 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/progress>

For publications it is also necessary to include the following reference:

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"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 activity, the Contractor will insert the European Union logo and mention the European Commission as the Contracting Authority in every publication or related material developed under the present contract.

8. Professional qualifications required

See Annex IV of the draft contract "CVs and classification of experts" and additional requirements under point 13 (selection criteria) below.

9. Time schedule and reporting

The duration of the tasks shall not exceed 7 (seven) months from the entry into force of the contract.

For further details see Article I.2 of the draft contract.

9.1 Specific deadlines for the performance of tasks

a. Interim report

The contractor will prepare a concise, clear interim report in English, presented as follows: summary of the work carried out according to the present contract; work programme planned for the following period; present status of expected output documents, and comments on the degree of achievement; any comments, suggestions or recommendations judged useful or necessary by the contractor. This report will be accompanied by a detailed table of contents of the draft study report. The original interim report accompanied by the detailed table of content must arrive⁷ at the Commission no later than three months after the date of the signature of the contract by the Commission.

b. Final reports

A draft of the study report requested has to be presented to the Commission no later than six months after the date of the signature of the contract by the Commission, in one of the EU languages with a translation in English if the original is written in any other language. The draft study report, followed by the study report, shall include a summary.

In addition, the contractor will prepare, in English, a technical report, presented as follows: concise, full description of the overall work carried out according to the

⁷ Official receipt date by Employment and Social Affairs DG, attested by its Archive Department, Internal Mail Service stamp.

present contract; presentation of the results obtained according to the present contract for the whole period of performance; technical comments on the content, presentation and value of output documents realised and submitted for approval to the Commission; any comments, suggestions or recommendations judged useful or necessary by the contractor..

The aforementioned study report and technical report shall be transmitted by the contractor in both paper and electronic versions compatible with Commission standards (texts in Word, spreadsheets in Excel). Each paper copy will correspond in full with the electronic version. The aforementioned documents, plus two copies of them, must arrive at the Commission no later than seven months after the date of the signature of the contract by the Commission.

c. Meetings with the Commission

The contractor may be requested to attend three meetings with the Commission in Brussels : one to kick off the study within the first month of the execution of the tasks, one to discuss the interim report within the fourth month of the execution of the tasks and one to discuss the draft final report within the seventh month of the execution of the tasks.

9.2 General reporting requirements under PROGRESS

PROGRESS is 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 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.

The Strategic Framework developed in collaboration with Member States and civil Society organisations sets out the intervention logic for Progress-related expenditure and defines PROGRESS' mandate and its long-term and immediate outcomes. It is supplemented by performance measures which serve to determine the extent to which PROGRESS has delivered the expected results. See in Annex the overview of PROGRESS performance measurement framework. For more information on the strategic framework, please visit PROGRESS website:

<http://ec.europa.eu/social/main.jsp?catId=659&langId=en>

The Commission regularly monitors the effect of PROGRESS-supported or commissioned initiatives and considers how they contribute to PROGRESS outcomes as defined in the Strategic Framework. In this context, the Contractor will be asked to dedicatedly work in close cooperation with the Commission and/or persons authorised by it to define the expected contribution and the set of performance measures which this contribution will be assessed against. The Contractor will be asked to collect and report on its own performance to the Commission and/or persons authorised by it against a template which will be annexed to the contract. 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 necessary rights of access.

10. Payments and standard contract

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".

Payments under the contract shall be made in accordance with articles I.4 and II.4 of the attached draft study contract.

10.1. Pre-financing

Following signature of the contract by the last contracting party, a pre-financing payment equal to 20% of the total referred to in Article I.3.1 of the contract will be paid within 30 days of the date of receipt of a request for pre-financing, accompanied by a corresponding invoice.

10.2. Interim payment

Requests for interim payment by the contractor shall be admissible if accompanied by:

- an interim report in accordance with the instructions laid down in section 9.1,
- the relevant invoices,
- statements of reimbursable expenditure in accordance with Article II.7 of the draft contract,

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 has 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, shall be made.

10.3. Payment of the balance

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

- final reports in accordance with the instructions laid down in section 9.1,
- the relevant invoices,
- statements of reimbursable expenditure in accordance with Article II.7 of the draft contract,

provided the reports have been approved by the Commission.

The Commission shall have 60 days from receipt to approve or reject the reports and the contractor has 30 days in which to submit additional information or new reports.

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

11. Prices

Under the terms of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the latter are exempt from all charges, taxes and duties, including value added tax; such charges may not therefore be included in the calculation of the price quoted. The amount of VAT is to be indicated separately.

The price must be stated in EUR(€), net of VAT (using, where appropriate, the conversion rates published in the C series of the Official Journal of the European Communities on the day when the invitation to tender was issued), and broken down according to the model in Annex III included in the attached standard contract.

Professional fees and direct costs, to be specified:

- Fees, expressed as the number of person-days multiplied by the unit price per working day for each expert proposed. The unit price should cover the experts' fees and administrative expenditure,
- Travel expenses (other than local transport costs),
- Subsistence expenses of the Contractor and his staff (covering the expenditure incurred by experts on short-term trips outside their normal place of work),
- Expenses for the shipment of equipment or unaccompanied luggage, directly connected with performance of the tasks specified in Article I.1 of the Contract,
- Any translation expenses,
- Unavoidable expenses necessary to the achievement of the Contract.

The total price may not under any circumstances exceed 180,000.00 €

Tenderers should note that any bid exceeding these limits will not be considered.

12. Groupings of economic operators or consortia

Tenders can be submitted by groupings 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 contract⁸. However, a grouping of economic operators must nominate one party to be

⁸ These entities can take the form of an entity with or without legal personality, but offering sufficient protection of the Commission's contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association).

The contract has to be signed by all the members of the group or by one of the members, which has been duly authorised by the others members of the grouping (a declaration is to be attached to the contract), when the tenderers have not formed a legal entity.

responsible for the receipt and processing of payments for members of the grouping, for managing the service administration, and for coordination. The documents required and listed in the following points 13 and 14 must be supplied by every member of the grouping.

Each member of the grouping assumes a joint and several liability towards the Commission.

13. Exclusion criteria and supporting documents

13.1. Bidders must provide a declaration on their honour, duly signed and dated, that they are not in one of the situation referred to in Articles 93 and 94 a) of the Financial Regulation.

Those articles are as follows:

"Article 93:

Applicants or tenderers shall be excluded 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 judgement 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;*
- d) they have not fulfilled their 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 Communities' financial interests;*
- f) they are currently subject to an administrative penalty referred to in Article 96(1)⁹.*

(...)

Article 94 :

⁹ "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 point (b) of Article 94;
(b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

(...)"

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 procurement procedure or fail to supply this information;(..."*

13.2 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 Implementing Rules – Evidence

§3. The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. 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 the document or certificate is not 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 candidate or tenderer is established, the documents referred to in paragraph 3 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company 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.

13.3 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 shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his situation have occurred.

14. Selection criteria

The candidates will be selected on the basis of their economic and financial capacity and their professional and technical capacity.

14.1 Economic and financial capacity

Economic and financial capacity to carry out the tasks set out in the tender specification must be demonstrated as follows:

(i) the tenderer (or all partners of the consortium together) must provide proof of a turnover of at least €180 000 in the last financial year for which accounts have been closed.

(ii) balance sheets or extracts from balance sheets from the last two financial years that have been closed, where publication of the balance sheets is required under company law in the country in which the service provider is established; in the case of tenders from consortia, this certificate must be provided by each member of the consortium;

(iii) if one or both of the above mentioned documents cannot be provided because of duly justified reasons, a bank declaration providing evidence of good financial standing may be accepted if the Commission so decides; in the case of tenders from consortia, this declaration must be provided by each member of the consortium.

If, for some exceptional reason which the contracting authority considers justified, the tenderer 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.

14.2 Professional and technical capacity

The experts must satisfy the requirements for at least Level III experts and the coordinator the requirements for at least level II experts. They need to be experienced lawyers and/or academics in the areas of collective labour law and/or industrial relations and/or Union, international and comparative labour law.

The tenderer's professional and technical capacity in the field covered by the contract will be assessed on the basis of the following:

- Detailed CV's of the members of the study team responsible for providing the service, together with a listing of those designated as the co-ordinator(s) and other experts to be used for the study along with their CVs;
- A list of principal services or studies provided in the relevant policy domain over the past five years, with sums, dates and recipients (whether public or private) identified;
- Solid experience of analysis in the field of collective labour law and/or industrial relations and/or Union, international and comparative labour law, as attested by the published work accredited to the members of the expert team in these fields;;
- Proven expertise of team members on the basis of experience as lawyers or academics with a minimum of 5 years professional experience of which at least 2 years experience connected with the tasks to be performed;

- Sufficient knowledge of languages on the part of the coordinator to ensure communication with the Commission and the experts and, in particular, ability to draw up reports in English;
- A declaration by the co-ordinator certifying the competence of the team to carry out the study, including their respective professional and linguistic capabilities;
- In the case of tenders from consortia: clear identification of the co-ordinator of the work who will also be responsible for signing the contract, and written confirmation from each member of the consortium that they would be ready and willing to participate in the execution of the contract, and briefly describing their role(s).

15. Award criteria

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

15.1 Quality of the offer

- Approach - Depth of conceptual understanding of the nature of the assignment, its context and the results to be achieved, notably as to the way to address the specificities of transnational company agreements and the diversity in national legal and industrial relations systems; Clarity, creativity and quality of the approach to the tasks to be performed. (40 points)
- Methodology – Relevance and coherence of the methodology for organising the research work, including the collection, verification, analysis, drafting and presentation of information in the area of the study; notably as to the various steps envisaged, the documentary efforts to be undertaken, the way to integrate different national systems, examples and aspects of the analysis into the conceptual approach and final outcome (30 points)
- Work Organisation - the quality of the strategy for organising the work, in particular the allocation of tasks, the way to address administrative and logistical tasks involved, the way to ensure the coordination of the team, the quality of results and the implementation of the work plan in the defined timetable (30 points)

15.2 Price

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 be divided by the price, with the highest-scoring bid being chosen.

16. Content and presentation of bids

16.1 Content of bids

Tenders must include:

- the declaration on honour (Annex II) duly signed by the legal representative

- all information and documents necessary to enable the Commission to appraise the bid on the basis of the selection and award criteria (see points 14 and 15 above);
- a bank ID form duly completed and signed by the bank¹⁰;
- a "legal entity" form duly completed¹¹;
- the price;
- the detailed CVs of the proposed experts and the list of classification of experts in accordance with annex IV of the model contract;
- 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 the State in which they have their registered office or are established, providing the necessary supporting documents in accordance with their national law;
- in the case of tenders from consortia: declaration signed by each of the partners
- in case of sub-contractors: letter of intend signed by each sub-contractor..

16.2. Presentation of bids

Tenders must be presented in three parts:

Part I: containing all administrative information

Part II: containing the technical content of the bid

Part III: containing the financial part of the bid.

Bids must be submitted in triplicate (i.e. one original and two copies). Please print double-sided where possible and do not bind or glue.

They must include all the information required by the Commission (see points 14 and 15 above).

They must be clear and concise.

They must be signed by the legal representative¹².

They must be submitted in accordance with the specific requirements of the invitation to tender, within the deadlines laid down.

17. Validity of the tender

Period of validity of the tender shall be six months from the closing date of submission of the tender.

¹⁰ Template in each EU language at

http://ec.europa.eu/budget/info_contract/ftiers_en.htm?submenuheader=0

¹¹ Template in each EU language at

http://ec.europa.eu/budget/info_contract/legal_entities_en.htm?submenuheader=0

¹² The signature of the tenderer's authorised representative or representatives (preferably in blue ink) on the administrative identification form (Annex I) will be considered as the signature of the tender, binding the single tendere or the group of partners to the terms included in the tender.

18. No obligation to award the contract

Initiation of a tendering procedure imposes no obligation on the Commission to award the contract. Should the invitation to tender cover several items or lots, the Commission reserves the right to award the contract for only some of them. The Commission shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be liable if it decides not to award the contract.

19. Disclaimer

The following sentence is to be prominently displayed on the cover of each working paper and the final reports of the study. The disclaimer should also be incorporated into the introduction of each working paper and the final reports:

The opinions expressed in this study are those of the authors and do not necessarily reflect the views of the European Commission

Annex I

Exclusion criteria (Article 93(1) FR)	Supporting documents to be provided by applicants, tenderers or tenderers to who the contract will be awarded	
	Procurement (Article 93(2) FR; Article 134 IR)	
1. Exclusion from a procurement procedure, Article 93(1) FR : <i>« Candidates or tenderers shall be excluded from participation in a procurement procedure if:</i>		
1.1. (subparagraph a) <i>they are bankrupt or being wound up,</i> <i>are having their affairs administered by the courts,</i> <i>have entered into an arrangement with creditors have suspended business activities, are the subject of proceedings concerning those matters,</i> <i>or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations¹³;</i>	- Recent extract from the judicial record or recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance or - Where no such certificate is issued in the country concerned : 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	
1.2. (subparagraph b) <i>they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata¹⁴;</i>	Cf. supporting documents for Article 93(1)(a) FR above	
1.3. (subparagraph c) <i>they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;</i>	Declaration by the candidate or tenderer that he is not in the situation described	
1.4. (subparagraph d) <i>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 performed¹⁵;</i>	Recent certificate issued by the competent authority of the State concerned confirming that the candidate is not in the situation described or Where no such certificate is issued in the country concerned : 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	
1.5. (subparagraph e) <i>they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests¹⁶;</i>	Cf. supporting documents for Article 93(1)(a) FR above	
1.6. (subparagraph f) <i>they are currently subject of an administrative penalty referred to in Article 96(1)¹⁷. »</i>	Declaration by the candidate or tenderer that he is not in the situation described	

¹³ See also Article 134(3) IR : Depending on the national legislation of the country in which the tenderer or candidate is established, the documents referred to in paragraphs 1 and 2 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

¹⁴ Cf. footnote n° 19.

¹⁵ Cf. footnote n°19.

¹⁶ Cf. footnote n° 19.

¹⁷ Article 96(1) FR: The contracting authority may impose administrative or financial penalties on the following:

Exclusion criteria (Article 94 FR)	Supporting documents to be provided by applicants, tenderers or tenderers to who the contract will be awarded	
	Procurement	Grants
2. Exclusion from a procurement or grant award procedure Article 94 FR : « <i>Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:</i>		
2.1. (subparagraph a) <i>are subject to a conflict of interest;</i>	Statement by the applicant, tenderer or bidder confirming the absence of conflict of interests, to be submitted with the application, bid or proposal	
2.2. (subparagraph b) <i>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»¹⁸.</i>	<ul style="list-style-type: none"> – No specific supporting documents to be supplied by the applicant, tenderer or bidder – It is the responsibility of the authorising officer, represented by the evaluation committee, to check that the information submitted is complete¹⁹ and to identify any misrepresentation 	

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

¹⁸ Cf. Article 146(3) of the FR Implementing Rules: « ...the evaluation committee may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within the time limit it specifies. » and Article 178(2) of the FR Implementing Rules: « The evaluation committee may ask an applicant to provide additional information or to clarify the supporting documents submitted in connection with the application, in particular in the case of obvious clerical errors. »

¹⁹ Cf. footnote n°24
VT/2010/051

Annex II

Declaration of honour with respect to the Exclusion Criteria and absence of conflict of interest

The undersigned [name of the signatory of this form, to be completed]:

- in his/her own name (if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator²⁰)
- or
- representing (if the economic operator is a legal person)

official name in full (only for legal person):

official legal form (only for legal person):

official address in full:

VAT registration number:

declares that the company or organisation that he/she represents / he/she:

- a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;
- c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- d) has fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;
- e) has not 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 Communities' financial interests;
- f) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

In addition, the undersigned declares on their honour:

- g) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;
- h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;

²⁰ To be used depending on the national legislation of the country in which the candidate or tenderer is established and where considered necessary by the contracting authority (see art. 134(4) of the Implementing Rules).

- i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract.
- k) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.
- l) that in case of award of contract, they shall provide the evidence that they are not in any of the situations described in points a, b, d, e above.

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the tenderer is a legal person and the national legislation of the country in which the tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not 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.

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under art 133 and 134 b of the Implementing Rules (Commission Regulation 2342/2002 of 23/12/02), which may be applied if any of the declarations or information provided prove to be false.

Full name Date Signature

ANNEX III - 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 toward 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 toward 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	Shared Understanding	Strong Partnerships
<p>Outcome: <i>Compliance in Member States with EU law related to PROGRESS areas.</i></p>	<p>Outcome: <i>Shared understanding and ownership among policy/decision-makers and stakeholders in Member States, and the Commission, of objectives related to PROGRESS policy areas.</i></p>	<p>Outcome: <i>Effective partnerships with national and pan-European stakeholders in support of outcomes related to PROGRESS policy areas.</i></p>
<p>Performance Indicators</p> <ol style="list-style-type: none"> 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 	<p>Performance Indicators</p> <ol style="list-style-type: none"> 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 	<p>Performance Indicators</p> <ol style="list-style-type: none"> 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