



EUROPEAN COMMISSION

Employment, Social Affairs and Equal Opportunities DG

Social Dialogue, Social Rights, Working Conditions, Adaptation to Change

Study Service Contract

Contract title **Complementary study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union**

Contract ref. no. **VC/2010/0662**
The above title and reference no. **must** be quoted in **all** correspondence with the Commission.

Contractor

Other administrative information

Department **DG EMPL/F/2**

Pre-information notice O.J. publication ref. no:
Call for tenders DG EMPL ref. no: VT/...../..... of
Contract notice O.J. publication ref. no:
EPIC (CIAME) ref. no:/.....
Databases SMART ref. no:
Service category no: A10

Other accounting information

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

Type of Contract V/SE/STUSEC02

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

on the one part,

AND

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

of the other part,

HAVE AGREED

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

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

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

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

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

I. **Special conditions**

Article I.1 **Subject**

I.1.1. The subject of the Contract is the following study: **Complementary study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union.**

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

Article I.2 **Duration**

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

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

I.2.3. The duration of the tasks shall not exceed 6 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

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

Article I.3 **Contract price**

I.3.1. *Maximum total amount*

The maximum total amount to be paid by the Commission under the Contract shall be EUR 150 000.00 covering all tasks executed.

I.3.2. *Price revisions*

Not applicable.

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

Not applicable.

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

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

I.4.1. Pre-financing

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

I.4.2. Interim payment

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

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

provided the report has been approved by the Commission.

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

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

I.4.3. Payment of the balance

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

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

provided the report has been approved by the Commission.

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

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

I.4.4. Performance guarantee

Not applicable.

Article I.5 Bank account

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

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

Article I.6 General administrative provisions

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

Commission

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

¹ Or local currency where the receiving country does not allow transactions in EUR.

² By a document issued or certified by the bank.

Contractor

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

..... (function)

..... (company name)

..... (official address in full)

Article I.7 Applicable law and settlement of disputes

I.7.1. The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Belgium.

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

Article I.8 Data protection

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by Employment, Social Affairs and Equal Opportunities DG without prejudice to possible transmission to internal audit services, to the Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Union.

The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to Employment, Social Affairs and Equal Opportunities DG. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

Article I.9 Termination by either contracting party

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 30 days formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

II. General conditions

Article II.1 Performance of the Contract

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

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

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

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

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

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

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

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

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

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

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

Article II.2 Liability

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

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

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

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

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

Article II.3 Conflict of Interests

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

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

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

II.3.3. The Contractor declares:

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

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

Article II.4 Payments

II.4.1. Pre-financing

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

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

II.4.2. Interim payment

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

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

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

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

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

II.4.3. Payment of the balance

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

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

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

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

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

Article II.5 General Provisions concerning Payments

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

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

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

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

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

Article II.6 Recovery

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

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

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

Article II.7 Reimbursements

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

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

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

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

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

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

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

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

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

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

Article II.9 Confidentiality

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

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

Article II.10 Use, Distribution and Publication of Information

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

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

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

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

Article II. 11 Taxation

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

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

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

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

Article II.12 **Force Majeure**

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

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

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

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

Article II.13 **Subcontracting**

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

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

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

Article II.14 **Assignment**

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

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

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

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

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

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

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

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

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

II.15.4. Consequences of termination

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

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

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

Article II.15a Substantial errors, irregularities and fraud attributable to the Contractor

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the Commission may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

Article II.16 Liquidated Damages

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3.1 per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

Article II.17 Checks and Audits

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

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

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

Article II.18 Amendments

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

Article II.19 Suspension of the Contract

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

Signatures

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

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

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

In duplicate in English.



Tender Specifications and Monitoring

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

1. TITLE OF THE CONTRACT

Complementary study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union

2. BACKGROUND

2.1 General background and context

The Posting of Workers Directive 1996/71/EC aims to reconcile the exercise of companies' fundamental freedom to provide cross border services under Article 49 EC, on the one hand, with the appropriate protection of the rights of workers temporarily posted abroad to provide them, on the other. In order to do that it identifies the mandatory rules of general interest at Union level that must be applied to posted workers in the host country and establishes a hard core of clearly defined terms and conditions of work and employment for minimum protection of workers (laid down in article 3 (1) a - g) that must be complied with by the service provider in the host Member State.

The Directive thus provides a significant level of protection for workers, who may be vulnerable given their situation (temporary employment in a foreign country, difficulty to obtain proper representation, lack of knowledge of local laws, institutions and language). The Directive also plays a key role in promoting the necessary climate of fair competition between all service providers (including those from other Member States) by guaranteeing a level playing field, as well as legal certainty for service providers, service recipients, and workers posted within the context of the provision of services.

The Directive applies to undertakings which post workers in the framework of the provision of services to work temporarily in a Member State other than the State in which they habitually carry out their work and whose legislation governs the employment relationship (excluding merchant navy undertakings as regards seagoing personnel). It covers three transnational posting situations, namely:

- posting under a contract concluded between the undertaking making the posting and the party for whom the services are intended,
- posting to an establishment or an undertaking owned by the group,
- posting by a temporary employment undertaking to a user undertaking operating in a Member State other than that of the undertaking making the posting,

with the proviso, in all three situations, that there is an employment relationship between the undertaking making the posting and the posted worker.

Furthermore, the Directive stipulates that undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State (article 1(4))³.

The hard core of rules to be respected, which are laid down in article 3(1) of the Directive, include in particular the following:

maximum work periods and minimum rest periods,

minimum paid annual holidays,

minimum rates of pay,

the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings,

health, safety and hygiene at work,

protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people.

These rules must be laid down either by law and/or by collective agreements or arbitration awards which have been declared universally acceptable⁴ in the case of activities in the building work sector (referred to in the annex), while Member States are left the choice of imposing such rules laid down by collective agreements in the case of activities other than building work. They may also, in compliance with the Treaty, impose the application of terms and conditions of employment on matters other than those referred to in the Directive in the case of public policy provisions⁵.

To ensure the practical effectiveness of the system established, Article 4 of the Directive provides for cooperation on information between the Member States. Liaison offices and authorities are designated to monitor the terms and conditions of employment and to serve as correspondents and contact points for authorities in other Member States, for undertakings posting workers and for the posted workers themselves.

The Directive also contains a jurisdiction clause, in Article 6, which states that judicial proceedings may be initiated in the Member State in whose territory the worker is or was posted.

The possible tension between the application of internal market rules and the need to respect the protection of the rights of workers, led to the adoption of guidelines to clarify the prevailing European Union law as regards administrative requirements and control measures in 2006⁶.

³ See also Recital 20 of the Directive which indicates that the Directive does not affect either the agreements concluded by the Community with third countries or the laws of Member States concerning the access to their territory of third-country providers of services. The Directive is also without prejudice to national laws relating to the entry, residence and access to employment of third-country workers.

⁴ See in this respect also article 3 (8) which provides for further possibilities in the absence of a system for declaring collective agreements universally applicable.

⁵ Article 3 (10). See for further details also the Communication of the Commission on the implementation of Directive 96/71/EC, COM (2003) 458 final, 25.7.2003.

⁶ COM (2006) 159, "Guidance on the posting of workers within the framework of the provision of services" and the accompanying Staff Working Document SEC (2006) 439.

The monitoring exercise launched on the basis of the Commission's Communication of April 2006⁷ showed that many Member States rely solely on their own national measures and instruments to control service providers and in a way which does not always appear to be in conformity neither with Article 49 EC, as interpreted by the ECJ, nor with the Directive. This situation may well be related to, if not caused by, the virtual absence of administrative cooperation, the still unsatisfactory access to information as well as cross-border enforcement problems.

The results of the monitoring exercise launched in 2006 furthermore highlighted that the Directive's main — if not all its — shortcomings can be traced to a range of issues relating to its implementation, application and enforcement in practice⁸.

Moreover, recent judgments of the European Court of Justice in the Viking-Line, Laval, Ruffert and Commission against Luxembourg case have fuelled an intense debate on the implementation and application of the Posting of Workers Directive and, amongst others, led to a quest for clarification on a number of points.

Debates about the issues raised by the implementation of the Directive have also taken place in the European Parliament which has adopted several resolutions⁹. The last one, adopted in 2008¹⁰ asks the Commission to continue examining the implementation, correct application and enforcement of the Directive and suggests that this should not exclude a partial revision of the Directive.

Adequate and effective implementation and application, as well as compliance with and enforcement of the legislation in practice are key elements in protecting posted workers rights, whereas poor enforcement undermines the effectiveness of the Union rules applicable in this area. Close co-operation between the Commission and the Member States is therefore essential, without neglecting the important role of labour inspectorates.

In line with the conclusions laid out in its Communication of October 2007, the Commission considers that urgent action is required to remedy shortcomings in implementing, applying and enforcing Directive 96/71/EC. It recognizes that properly functioning administrative cooperation among the Member States is essential for monitoring compliance. However, the problems encountered cannot be solved unless the Member States improve the way they cooperate with each other and, in particular, comply with their obligations regarding administrative cooperation and access to information under the Directive.

On 3 April 2008, the Commission published a Recommendation calling on Member States to take urgent action to improve the situation of posted workers through better cooperation between national administrations. It sets out a series of practical measures to remedy shortcomings in the way the existing legislation is implemented, applied and enforced. It calls in particular for more effective exchange of information, better access to information and exchange of best practice. The Recommendation was endorsed by Council conclusions on 9

⁷ COM (2006) 159 and the accompanying Staff Working Document SEC (2006) 439, as well as the follow-up communication COM (2007) 304, "Posting of workers in the framework of the provision of services: Maximising its benefits and potential while guaranteeing the protection of workers" and the accompanying Staff Working Document SEC (2007) 747.

⁸ See for further details COM (2007) 304, SEC (2007) 747, as well as COM (2003) 458.

⁹ European Parliament resolution on the implementation of Directive in the Member States (2003/2168(INI)), OJ C 92E, 16.4.2004, p. 404-407; Resolution on the application of Directive 96/71/EC on the posting of workers (2006/2038(INI)), OJ C 313E, 20.12.2006, p. 452-457; Resolution of 11 July 2007 on the Commission Communication on the Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers (P6_TA(2007)0340).

¹⁰ European Parliament resolution of 22 October 2008 on challenges to collective agreements in the EU (2008/2085(INI)).

June 2008, and followed up by a Commission Decision on 19 December 2008, establishing an Expert Group on Posting of Workers.

2.2. On the pilot project

The complementary study will be funded by Article 04 03 09 of the EU Budget — Pilot Project Working and living conditions of posted workers. The Pilot project is within the meaning of Article 49(6) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1).

This appropriation is intended to fund initiatives which help exploring the real working and living conditions of posted workers and how the Member States, social partners and labour inspectorates work in practice. The pilot project focuses on few specific sectors with a high number of posted workers e.g. construction, agriculture and healthcare sectors.

The aims of the pilot project are amongst others:

- promoting the analysis and/or monitoring of the working and living conditions of posted workers in specified sectors or countries;
- discussing relevant aspects of the legislation or the jurisprudence, at EU or national level, concerning the rules applicable to posted workers [...] which should lead to
- improved knowledge on the working and living conditions of posted workers,
- clarification of the legal aspects concerned with the implementation and application of Directive 96/71/EC on posting of workers [...].

3. Subject of the contract

With this study the Commission intends to complement the Study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union (VT/2009/063) launched under the 2009 Pilot Project on posting¹¹ with respect to the remaining Member States not covered by it. The Member States which should be covered are the following: Austria, Bulgaria, Cyprus, Czech Republic, Greece, Finland, Hungary, Ireland, Latvia, Lithuania, Malta, Portugal, Slovenia, Slovakia and Spain (hereinafter referred to as "the Member States").

Therefore the task is the same as in the previous study, namely to examine any questions and difficulties which might arise in practical application of the posting of workers legislation, as well as in its enforcement in practice. In this respect the study should carry out further analysis of the main problems regarding the implementation, application and enforcement of the Directive 96/71/EC on the posting of workers in the context of cross-border provision of services. It should also identify cases of good practice and outline suggestions to address such problems and improve the legal and practical situation in the respective Member States covered by the complementary study in that respect.

¹¹ See further: <http://ec.europa.eu/social/main.jsp?catId=626&langId=en&callId=229&furtherCalls=yes>

The study shall investigate not only the role of Member States authorities (labour inspectorates) in enforcing adequately the directive, including the frequency of their controls, but also the relevant activities of social partners in this respect. In this context, particular attention should be paid to existing practices and initiatives that have been established with the aim to ensure enforcement (e.g. cross-border cooperation between Social Partners).

4. Tasks to be carried out by the contractor

4.1 Description of the tasks - General obligations

The study will include the following tasks:

- (1) A stock-taking of existing problems in the implementation and application in practice of the Directive;
- (2) A stock-taking of existing problems in enforcing rights conveyed by the Directive;
- (3) Assessment and recommendations.

Methodology

As a starting point a methodological plan will be developed presenting in a coherent manner the different phases of work by the contractor. The contractor is expected to review relevant literature, reports and studies from which information can be extracted. Information shall also be collected by surveying the competent authorities and/or offices of Member States, employer's associations, businesses and trade unions in sectors with a high number of posted workers (e.g. construction, transport, hotel, restaurant and catering, agriculture, fisheries and temporary agencies). For this purpose, the contractor shall send questionnaires (to be drafted by the contractor and agreed by the Commission) requesting relevant information on the implementation, application and enforcement of the Directive in practice and conduct interviews with stakeholders when deemed helpful.

4.2 Description of tasks – Specific obligations

4.2.1. Stock-taking of existing problems in the implementation and application of the Directive

The contractor shall look into existing problems and difficulties encountered in the implementation and application of the Directive, in particular by undertakings posting workers to another Member State as well as by monitoring authorities, and social partners, in the host Member State.

It shall examine the problems created by the application of Article 3 of the Directive. The study shall look in particular into the difficulties created by the implementation and application of Articles 3 (7), (8), (10) of the Directive, and possible different interpretations in this respect by Member States. It shall further provide an overview regarding the application of derogations foreseen in Article 3 (2) – (5) and how the calculation of the length of the posting (Article 3 (6)) is applied in practice. It shall also indicate whether and how Member States have implemented Article 3 (9) as well as how it is applied in practice.

The study shall describe the different systems applied and present explanations in case the stock-taking exercise proves the existence of discrepancies in the interpretation and application of the provisions of the Directive between the different Member States.

The study shall further examine whether the problems in the application of the Directive differ depending on the different modalities of posting of workers (Article 1 (3) (a), (b) and (c)) of the Directive. Furthermore, it shall investigate whether, and if so for how long, workers need to have been employed in their country of origin by the same or another employer before being able to be posted in the context of the provision of services to another Member State. Moreover, it shall examine whether a distinction should be made between posted workers from member and non-member States, taking in consideration that the Directive stipulates that undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State (article 1(4)).

The study shall, to the extent possible, be illustrated by references to concrete situations and examples, such as cases having led to the judgments of the European Court of Justice¹², or the incidents in Porcheville regarding Polish workers (December 2006), 'site de construction navale' in St Nazaire, the Galmet case in Denmark¹³, as well as Lindsey, Lincolnshire on the Total site (2009), which could serve as examples for illustrating situations where the interpretation, application and/or enforcement of the Posting of Workers Directive has been controversially debated.

4.2.2. Stock-taking of existing problems in enforcement of rights conveyed and/or obligations imposed by the Directive

The study shall also look into and describe existing problems, difficulties and obstacles encountered by posted workers when intending to enforce their rights stemming from the Directive, as well as by monitoring authorities in the host Member States when controlling the respect of the working conditions under Article 3 of the Directive and its enforcement in practice. Special attention shall be given to any difficulties possibly created by the need to conciliate enforcement duties with legal obligations resulting from international agreements or other EU-legislation.

In this respect the contractor shall examine possibilities for the posted workers and/or workers' representatives of seeking remedy for breaches of contract in the host country or the country of origin (e.g. mediation, joint and several liability of the employer). He/She shall further study whether posted workers' are affiliated to trade unions both in the host country and the country of origin and whether collective bargaining takes place in view of securing (better) working conditions while being posted.

The contractor shall also take stock of existing cross-border cooperation arrangements regarding enforcement of the Directive between Social Partners in different Member States and assess their effectiveness.

Furthermore, the study shall examine specific problems raised by posting for labour inspectorates and bodies responsible for enforcement of law (including social security). Therefore, the contractor shall investigate how frequently labour inspectorates control sites where posted workers are employed and examine how labour inspectorates assess self-employed rendering services in the receiving Member State and how they verify whether an

¹² such as for instance Laval (C-341/05) and Rüffert (C-346/06)

¹³ QENA 911/08 and 2969/08

undertaking is properly established in the country of origin. He/She shall also look into the question whether the existence and misapplication of transitional measures result in additional problems regarding the enforcement of the Directive.

The contractor shall take stock of existing cross-border agreements between labour inspectorates in different Member States to deal with problems such as the ones stated above and give a summary of their contents.

Moreover, the study shall further examine whether the existence of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties¹⁴ has proven to be useful for administrative sanctions imposed in the context of posting of workers and whether and what kind of cross-border enforcement problems still exist.

To the extent possible, the study shall contain an overview of cases before national courts involving the enforcement of workers rights based on the Directive. It shall indicate what issues were brought in front of the courts, if workers or their representatives initiated procedures and the average duration of the proceedings.

4.2.3. Assessment of whether the Posting of Workers Directive is being effectively implemented applied and enforced.

The contractor shall as a final task produce an overall assessment of the legal situation in the surveyed member States with regard to the implementation, application and enforcement of the Directive.

He/she shall also assess the extent to which the problems encountered in practice may be primarily problems of implementation and/or application, or if and to what extent they may have their roots or are caused by the structure and (lack of) provisions in the Directive itself.

On that basis, the contractor shall make suggestions on whether further clarification is needed on the interpretation of some provisions of the Directive, as well as on measures to improve the implementation, application and enforcement in practice of the Directive.

5. Gender mainstreaming

The Contractor will take the necessary steps to ensure that:

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

Equally, needs of disabled people shall be duly acknowledged and met while executing the requested service. This will in particular entail that where the Contractor organises training

¹⁴ OJ L 76, 22.3.2005, p. 17.

sessions, conference, issues publications or develops dedicated websites, people with disabilities have equal access to the facilities or the services provided.

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

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

6. Professional qualifications required

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

The contractor, team coordinator or Scientific Committee (if any) must satisfy the requirements for at least Level II experts and the other experts must satisfy the requirements for at least Level III experts. They need to be experienced lawyers and/or academics and/or practitioners, specialised in the relevant area in the concerned countries.

7. Time schedule and reporting

The duration of the contract shall not exceed **6 months** from the date of signature of the contract.

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

Specific deadlines

Interim report

Within **3 months** of signing the contract, the contractor will submit to the European Commission¹⁵ (Unit EMPL F/2) a concise and clear interim report describing progress in relation to the timetable laid down, together with a summary of results obtained so far. The interim report should be in English.

Draft final study

4,5 months after signature of the contract, the contractor will submit to the European Commission (Unit EMPL F/2) draft final study in English, along with an executive summary in English, German and French.

The European Commission (Unit EMPL F/2) will examine the draft final study and notify the contractor of possible objections or comments to be made within 30 (thirty) days of receipt of this draft final study.

Final study

The final study – taking into account, where appropriate, the objections or comments made by the European Commission (Unit EMPL F/2) – will be submitted before the end of the contract. It will also include an executive summary in English, German and French. Unless

¹⁵ Official receipt date by DG EMPL, attested by its Archive Department, Internal Mail Service stamp.

otherwise provided, the aforementioned final study 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 the last day of the period of execution of the tasks.

Meetings with the Commission

The contractor may be requested to attend at least three meetings with the Commission in Brussels: one to kick off the study; one to discuss the interim report within 30 days after receipt of the report and one to discuss the draft final study within 30 days of its submission.

Publicity and information requirements

In accordance with the General conditions, all contractors are under the obligation to acknowledge that the present service has been commissioned for the European 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.

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

With regard to publication and any communication plan linked to the present 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.

Contractor's Tender

ANNEX II

Registre CAD Ref. No. of

See attached document: pages.

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ANNEX III Breakdown of prices

1. Breakdown of prices

Description	Unit price in €	Max. No of units	Unit type	Sub-total per item	Total amounts in €
FEES AND DIRECT COSTS (fixed prices)					
Experts' fees (to be specified for each expert)					0,00
Details	0,00	0	w.d.	0,00	
Other direct costs (to be specified)					0,00
Details	0,00	0	unit	0,00	
Overall Total					0,00

w.d. = 1 working day for 1 expert

2. Calculation of amounts due under the present Contract

2.1. Fees

Initial calculation based on unit price(s) per w.d. of expert(s) depending on the level of qualification of the expert(s) executing the mission. The unit price(s) is (are) expected to cover the expert(s) fees, the Contractor's administrative expenses, as well as the costs of producing the contractual number of copies of the required report(s)¹⁶ in the required format(s), but does not include the reimbursable expenses defined below.

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

2.2. Reimbursements

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

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

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

2.2.1 DSAs (Daily Subsistence Allowances)

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

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

¹⁶ All details on Monitoring and Reporting are to be indicated and included in the Tender Specifications.

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

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

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Destinations		DSA in EUR	Maximum hotel price in EUR	Destinations		DSA in EUR	Maximum hotel price in EUR
AL	Albania	50,00	160,00	LI	Liechtenstein	80,00	95,00
AT	Austria	95,00	130,00	LT	Lithuania	68,00	115,00
BA	Bosnia-Herzegovina	65,00	135,00	LU	Luxembourg	92,00	145,00
BE	Belgium	92,00	140,00	LV	Latvia	66,00	145,00
BG	Bulgaria	58,00	169,00	ME	Montenegro	80,00	140,00
CH	Switzerland	80,00	140,00	MK	F.Y.R. of Macedonia	50,00	160,00
CY	Cyprus	93,00	145,00	MT	Malta	90,00	115,00
CZ	Czech Republic	75,00	155,00	NL	The Netherlands	93,00	170,00
DE	Germany	93,00	115,00	NO	Norway	80,00	140,00
DK	Denmark	120,00	150,00	PL	Poland	72,00	145,00
EE	Estonia	71,00	110,00	PT	Portugal	84,00	120,00
EL	Greece	82,00	140,00	RO	Romania	52,00	170,00
ES	Spain	87,00	125,00	RS	Serbia	80,00	140,00
FI	Finland	104,00	140,00	SE	Sweden	97,00	160,00
FR	France	95,00	150,00	SI	Slovenia	70,00	110,00
HR	Croatia	60,00	120,00	SK	Slovakia	80,00	125,00
HU	Hungary	72,00	150,00	TR	Turkey	55,00	165,00
IE	Ireland	104,00	150,00	UK	United Kingdom	101,00	175,00
IS	Iceland	85,00	160,00	XK	Kosovo	80,00	140,00
IT	Italy	95,00	135,00				

2.2.2 Travel expenses

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

3. Additional provision

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

ANNEX IV CVs and classification of experts

1. Classification of experts according to level of expertise

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

2. List of experts assigned

<i>Full names of experts assigned</i>	<i>Level of Qualification (I to iv, see above)</i>

3. CVs of experts assigned

See Annex II.

Fiscal provisions regarding invoicing by the Contractor

Choose 1 out of 4 options:

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

Local supplies and services

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

1. VAT exemption – Exemption level

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

2. Invoicing the Commission

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

In view of VAT exemption, invoices addressed to the Commission should bear the mention:

“Exonération de la TVA, article 42, § 3.3, du code de la TVA” or

“Vrijstelling van BTW, artikel 42, § 3.3, BTW-Wetboek”.

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

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

Intra-community supplies and services

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

1. VAT exemption level

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

2. Use of form 15.10

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

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

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

3. Signature of the form 15.10 – Delegation of signature

The forms must normally be signed by the fiscal authorities of Belgium. However, a delegation of signature has been awarded by the Belgium authorities to the Commission – ref. ET 76430 of

22.12.1992 (this ref. No. should be inserted in box 7 of new form 15.10). The Commission being represented for the present Contract by Armindo SILVA, Acting Director - EMPL/F of Employment, Social Affairs and Equal Opportunities DG, form 15.10 will therefore be signed by the latter.

4. Invoicing the Commission

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

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

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

Not applicable to the present Contract.

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

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

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