



## EUROPEAN COMMISSION

Employment, Social Affairs and Equal Opportunities DG

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

### **SPECIFICATIONS TENDER N° VT/2010/084**

#### **Study on precarious work and social rights**

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

Study on precarious work and social rights

#### **2. Background**

##### **2.1. General background and context**

The model of work organization typical of the industrial society was largely based on the standard full-time, indefinite duration, individual work contract. Young people exiting school or technical education could aspire to a job for life in the same company, or at least the same industrial sector after receiving some kind of traineeship or apprenticeship endowing them with the basic skills needed to start a profession.

With the profound changes in work organization patterns brought about by the knowledge-based society, the standard model of work contract has started to lose ground, and alternative, more flexible forms of work contract have developed instead. While for the large majority of workers, the full-time, life secure job still brings more advantages than disadvantages, for the average employer, on the other hand, the balance tilts increasingly against the standard model of individual work contract.

In a more open and competitive economy, employers need to adapt to a rapidly evolving environment and restructure continuously their workforce in terms of size and skills. High firing costs make indefinite duration contracts a hindrance for restructuring and increase the attractiveness of temporary contracts. Furthermore, the rise of the service economy, with a much higher focus on direct consumer needs, has greatly increased the demand for part-time jobs so as to enhance working time flexibility. On the other hand, the advantages of a stable, experienced and highly skilled workforce, normally associated with the standard work contract, seem less attractive for many employers, when key skills become increasingly horizontal, i.e. are common to a large range of sectors and activities and therefore more easily transferable.

Today in the EU in each three declared jobs only two correspond to the standard work contract; and this proportion is continuously decreasing. The third job is either part-time, fixed-term or provided through a temporary work agency. It is a heated issue of debate whether this trend should be resisted, for the sake of egalitarian principles, or else promoted, in order to increase the flexibility of the labour market. A parallel line of debate concerns the degree of protection that should be afforded to workers on non-standard or atypical jobs, and the extent to which social rights should be the same for all workers regardless of the type of employment contract.

While the large majority of fixed-term and temporary jobs are involuntary, suggesting that the workers' preference would be for more secure types of jobs, the opposite happens with part-time jobs. This seems to demonstrate the existence of a large pool of workers eager to work part-time in order to reserve more time for other activities (study, caring for children or dependent relatives, or another work).

The debate about "precariousness" has arisen out of an increasing concern with the social consequences of these changes in work organisation and the development of more flexible forms of work, which are labelled as "precarious" in comparison with standard employment contracts providing a higher degree of stability and security to the jobholder. Several negative social effects have been imputed to the rise of such "precarious" forms of work, such as the inequality of treatment among workers, the increasingly unequal income distribution, the implicit discrimination against the social groups more exposed to such forms of work, such as young people and women, or the lack of motivation or engagement of an insecure workforce. But also negative economic effects have been identified, such as the loss of work-based skills, a downward bias in private consumption, especially of durables, caused by increasing uncertainty about future income, a rise in private debt payment defaults or an increasing burden for unemployment assistance and other welfare schemes.

The notion of precariousness in employment relationships is not used as a legal term. It is used to characterise a situation where basic employment or social protection rights may be significantly reduced, giving rise to uncertainty about the future employment prospects of the workers concerned and also affecting crucial choices in their private lives (e.g. securing accommodation, planning a family, etc). However, this notion may be understood differently depending on the national and legal context; precariousness in employment relationships is a complex phenomenon with multiple causes and this very concept remains open to interpretation.

A number of provisions have been adopted at EU level<sup>1</sup> and in the Member States with a view to improving the protection of certain categories of workers in atypical employment relationships who may otherwise be at a disadvantage in comparison with standard, full-time workers employed under open-ended contracts. The EU common principles on flexicurity attempt to reconcile the need for flexibilisation of individual employment contracts with a fair degree of employment security.

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<sup>1</sup> In particular:- Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, OJ L 14, 20.1.1998, p.9;- Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, OJ L 175, 10.7.1999, p. 43;- Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, OJ L 327, 5.12.2008, p. 9.

The recent economic and financial crisis has made the issue of precarious employment even more relevant. Indeed, workers employed under precarious contracts have generally been among the first affected by the consequences of the crisis on the employment situation. Besides, the nature and quality of the jobs being created in the EU after the crisis is currently subject to a debate.

In recent years a number of studies have been devoted to the issue of precarious and atypical employment in Europe, notably:

- *Precarious Employment and Working Conditions in Europe*, European Foundation for the Improvement of Living and Working Conditions, 1998: <http://www.eurofound.europa.eu/publications/htmlfiles/ef9815.htm>
- *Precarious Employment in Europe: a Comparative Study of Labour Market related Risks in Flexible Economies*, ESOPE – EU research on social sciences and humanities, 2004: [ftp://ftp.cordis.europa.eu/pub/citizens/docs/kina21250ens\\_final\\_esope.pdf](ftp://ftp.cordis.europa.eu/pub/citizens/docs/kina21250ens_final_esope.pdf)
- *Flexicurity: Indicators on the coverage of certain social protection benefits for persons in flexible employment in the European Union*, VC/2007/0870, Alphametrics, 2009: <http://ec.europa.eu/social/BlobServlet?docId=4239&langId=en>
- *Flexible forms of work: 'very atypical' contractual arrangements*, European Foundation for the Improvement of Living and Working Conditions, 2010: <http://www.eurofound.europa.eu/ewco/studies/tn0812019s/index.htm>
- *Very atypical work – Exploratory analysis of fourth European Working Conditions Survey – Background paper*, European Foundation for the Improvement of Living and Working Conditions, 2010 (complementing the above-mentioned study): <http://www.eurofound.europa.eu/publications/htmlfiles/ef1010.htm>
- *Working poor in Europe*, European Foundation for the Improvement of Living and Working Conditions, 2010: <http://www.eurofound.europa.eu/ewco/studies/tn0910026s/tn0910026s.htm>

Furthermore, the European Parliament has recently turned its attention to questions linked to the problem of precarious employment. A recent resolution notably tackled the issue of atypical contracts<sup>2</sup>; besides, the Committee on Women's Rights and Gender Equality has been elaborating a draft report on precarious women workers<sup>3</sup> which is due to be submitted to the plenary in October 2010.

## **2.2. On the pilot project**

The study will be funded by Article 04 04 08 of the EU Budget – Pilot project to encourage

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<sup>2</sup> European Parliament resolution of 6 July 2010 on atypical contracts, secured professional paths, and new forms of social dialogue (2009/2220(INI)).

<sup>3</sup> Draft report on precarious women workers (2010/2018(INI)) – Committee on Women's Rights and Gender Equality (Rapporteur: Britta Thomsen), 2.6.2010.

conversion of precarious work into work with rights. 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 relating to the issue of precarious work in the EU and the ways and means to improve the social rights of the jobholders concerned.

The aims of the pilot project are amongst others:

- gaining a better understanding of the spread of precarious work and its role in the overall functioning of the economy;
- promoting the analysis of innovative measures recently adopted in Member States to improve the social rights of workers in precarious employment;
- developing, to the extent possible, a clear concept of precariousness in employment relationships by identifying features and trends common to several Member States;
- identifying what could constitute a floor of basic social rights that would be common to all workers or to whole categories of workers in the EU.

With the same funding a call for proposals will be launched. The European Commission will co-finance transnational projects (e.g. surveys, seminars, exchange of information, case studies) having at least one of the following objectives:

- to promote the analysis and/or monitoring of concrete measures taken in Member States to improve the rights of precarious workers;
- to exchange and disseminate relevant information on national practices or cooperation initiatives designed to address the issue of converting precarious work into work with rights;
- to analyse the role of precarious work in the general framework of social, economic and demographic developments, with a focus on social exclusion and in-work poverty, as well as its specific impact on working and living conditions of young workers, women and migrants;
- to analyse the economic significance, causes and effects of precarious work against the background of today's working patterns, and to what extent it contributes to the flexibility of the labour market.

### **3. Purpose and subject of the contract**

The objective of the contract is to study how Member States have responded to the social and economic issues raised by increasing precariousness in employment relationships while at the same time pursuing the flexibilisation of labour markets. The study should also help to

develop a clearer concept of precariousness in work contracts and an identification of what could constitute a floor of basic (social) rights for all workers regardless of their employment contract.

The study shall deal with a vast range of precarious forms of work, in particular part-time work, fixed-term work, temporary agency work, zero-hour work, on-call work and non-subordinate forms of work carrying some form of economic dependence. It shall also include in its scope undeclared work and "bogus" self-employment.

- (1) The study shall identify and describe the major types of employment contracts or relationships in use in the Member States covered by the study and indicate whether they can be generally considered as precarious or not, and assess their degree of precariousness. Differences as well as similarities among Member States should be underlined. Features common to several or all of those Member States shall be analysed with a view to identifying a common concept of precariousness in employment relationships.
- (2) The study shall describe and analyse policy measures taken in Member States in the last ten years, including in the context of the recent crisis, in order to address the problems created by an increasingly heterogeneous and segmented labour market. Such measures may aim at facilitating or encouraging the transformation of precarious employment relationships into employment relationships carrying more social rights, in particular in the field of labour law and social security. They may also be aimed at flexibilising the labour market, by withdrawing some of the rights traditionally associated to standard forms of work contract, and therefore equalize workers' rights across the spectrum of the different work contracts. Or else, they may be aimed at encouraging the transformation of undeclared work or bogus self-employment into regular employment.

Measures directed at the unemployed or persons outside the labour market are excluded from the scope of the study.

- (3) The study should, on the basis of the observation and discussion of major policy trends in Member States as in (2) formulate general conclusions of interest for the EU as a whole. It should in particular investigate whether there is an identifiable trend towards the establishment of a floor of basic rights for all workers, regardless of the nature of their employment relationship, and which social rights are included in such floor.

#### **4. Participation**

Please note that:

- The participation and competition in this tender 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.

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

### **5.1. Description of the tasks – General obligations**

#### *Definition of "precarious work"*

For the purposes of the Pilot project, the notion of "precarious work" should be considered in the widest sense as covering all types of employment relationships which are atypical in the sense that they differ from the open-ended, full-time employment contract, in particular part-time contracts, fixed-term contracts, "zero hour" contracts and temporary agency work. Undeclared work in the meaning of paid, lawful activities that are not declared to the public authorities shall also be taken into consideration as a type of "precarious work". Those among the self-employed who are in fact "bogus" self-employed or are economically dependent workers in spite of their being formally self-employed shall be covered as well.

#### *Methodology*

As a starting point a methodological plan will be developed, presenting in a coherent manner the different phases of work by the contractor, within a time schedule.

The contractor shall propose in the inception report a representative, geographically balanced list of 12 EU Member States which will be covered by the study. This list shall include France, Germany, Italy, Poland, Spain and the United Kingdom.

The contractor is expected to review relevant specialised literature, reports and studies where information can be extracted from. Information shall also be collected by surveying the competent authorities and/or offices of the Member States covered by the study, employers' associations, businesses and trade unions, especially in sectors where precarious employment is widespread. For this purpose, the contractor shall notably conduct interviews with stakeholders and send questionnaires (to be drafted by the contractor and agreed by the Commission) requesting relevant information when deemed helpful.

In addition, the study shall be illustrated by case studies on issues deemed of particular relevance, notably measures aimed at improving the rights of workers in precarious employment, or else at equalizing social rights by reducing the levels of protection afforded to workers under standard contracts.

### **5.2. Description of the tasks - Specific obligations**

The study will include the following tasks:

- (1) A typology of employment relationships and an assessment of their degree of precariousness;
- (2) A description and an analysis of recent policy measures taken in a representative set of Member States in order to deal with increasing labour market segmentation and heterogeneity of social rights;
- (3) Policy conclusions on what could constitute a common floor of basic rights.

#### *1. Typology of employment relationships and assessment of their degree of precariousness*

The study shall identify all types of employment contracts and relationships currently in use in the 12 Member States covered by the study, describe their features and functioning and indicate their incidence in the country concerned. The contractor shall examine all categories of employment relationships, regardless of their legal basis (e.g. legislative provisions, administrative measures, collective labour agreements), and include undeclared work, "bogus" self-employment as well as economically dependent work.

The study shall, for each Member State covered, indicate to what extent, in the national context under consideration, certain types of employment relationships may be generally considered as precarious (in comparison to what is considered as standard relationship). The contractor shall explain the objective reasons for this situation, taking into account the specificities of the system of employment relations of the Member State, and assess whether this "reputation" of precariousness can be considered as justified.

The study shall compare the perception of the notion of precarious work in the 12 Member States covered by the study and analyse differences as well as similarities across them in this respect. The contractor shall identify, to the extent possible, a concept of precariousness in employment relationships which would be common to part or all of these Member States.

#### *2. Description and analysis of recent innovative steps to encourage the conversion of precarious work into work with rights*

The study shall describe and analyse policy measures put in place in the Member States under consideration with a view to address the consequences of segmented labour markets, where workers have access to different sets of rights in accordance with their employment contract, while ensuring flexible labour markets. They may facilitate or encourage the transformation of employment relationships considered as precarious into employment relationships associated with more social rights, or else equalize social rights by reducing the levels of protection afforded to workers under standard contracts.

Any type of measures may be taken into consideration, be they adopted for instance by legislation, regulation, administrative provision or collective agreement. The notion of social rights is to be understood in the widest possible sense, notably covering fundamental social rights, provisions of labour law (e.g. working and employment conditions, information and

consultation, collective representation of workers) and social security legislation (notably in the fields of health care, pensions and unemployment protection).

Only measures implying a certain degree of innovation and specificity should be considered; for instance, measures to encourage employers to convert fixed-term contracts into open-ended employment relationships would be worth examining, whereas the decision to increase a pre-existing national minimum wage, consequently improving the situation of precarious workers, would not.

As explained above, the study shall mainly deal with measures aimed at atypical and very atypical workers, in particular part-time workers, fixed-term workers, temporary agency workers, workers employed under a zero-hour contract or doing on-call work. Nevertheless, it shall also include in its scope the situation of workers carrying out undeclared work (for instance, by examining incentives to transform undeclared work into regular employment). It shall as well cover those among the self-employed workers who are in need of special protection because they qualify either as "bogus" self-employed, being employees who are classified otherwise to conceal their true status and avoid costs, or as workers who, in spite of their being formally self-employed, are economically dependent on a single client for their source of income.

Measures directed at the unemployed or persons outside the labour market are excluded from the scope of the study.

Although relevant measures dating back to 2001 can be taken into consideration, the study will focus on more recent initiatives which have notably been taken in the context of the economic and financial crisis.

### *3. Recommendations on possible basic social rights*

The study shall identify best practices as regards the conversion of precarious work into work with rights in the Member States under consideration, based on sound evaluation. On that basis, it shall formulate recommendations for improvements which could realistically be brought to the social rights enjoyed by precarious workers. The contractor shall explain to what extent the proposed measures are likely to lessen the precarious nature of the employment relationships to which they would apply, while ensuring the necessary flexibility in individual employment contracts.

The study shall indicate precisely which social rights, including fundamental rights in the social field, could constitute a floor of basic rights to be granted to all workers, regardless of the nature of their employment relationship, including self-employed workers. The study shall explain the advantages and drawbacks of defining such a core of basic rights and may suggest the definition of several sets of social rights which would differ depending on the type of employment relationship involved.

## **6. 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 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 is encouraged to 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.

## **7. Professional qualifications required**

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

The team co-ordinator and members of the scientific committee (if any) must satisfy the requirements for Level I experts and the other experts proposed 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.

The team must demonstrate linguistic capacity, ability for comparative analysis at European level, and knowledge of the relevant countries, which are demonstrably sufficient for the tasks required.

## **8. Time schedule and reporting**

The duration of the contract shall not exceed **10 months** from the date of signature of the contract.

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

### **8.1. Specific deadlines for the performance of tasks**

The deliverables comprise an inception report, an interim report, a draft final study and a final study, including an executive summary and annexes. Unless otherwise provided, draft and final versions of all deliverables shall be transmitted by the contractor in electronic version

compatible with Commission standards (texts in Word, spreadsheets in Excel), in English, and must be expressed in a clear and understandable way.

The contractor may be required to attend up to 4 meetings with the Commission in Brussels, including one meeting to launch the study, one to discuss the draft interim report, and one to discuss the draft final study.

#### **a. Inception report**

Within **1 month** of the signature of the contract by the Commission, the contractor will deliver an inception report setting out in detail the finalised methodology for the study (subject to approval by the European Commission). It will include, in particular:

- the updated data collection tools and analytical framework;
- definitions of key terms and concepts where relevant;
- a representative list of 12 Member States to be covered by the study, in compliance with the conditions set out in part 5.1. under "Methodology";
- a list of persons and institutions to be contacted and/or interviewed as part of the information collection process;
- a detailed time schedule and work plan for the remainder of the work.

This report will be regarded as a draft until it has been approved by the Commission.

#### **b. Interim report**

Within **4 months** of the signature of the contract by the Commission, the contractor will submit to the European Commission (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, and indicating activities planned for the rest of the work until submission of the draft final study. The report will be accompanied by a detailed table of contents of the draft final study.

This report will be regarded as a draft until it has been approved by the Commission.

#### **c. Draft final study**

**8 months** after the signature of the contract by the Commission, the contractor will submit to the European Commission (Unit EMPL.F.2) a 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 days of receipt of this draft final study.

#### **d. Final study**

The final study – taking into account the observations and comments made by the European Commission on the draft final study – will be submitted at the end of the contract. It will be

accompanied by an executive summary in English, German and French, of no more than 8 pages. The executive summary will present a clear overall synthesis of the conclusions and recommendations found in the main body of the study. Appended to the final study will be a series of annexes presenting in detail the methodology, along with statistical data, analyses of interview data, bibliographies, etc. and any other relevant background information.

The final study will be delivered both in electronic (texts in Word, spreadsheets in Excel) and paper form (3 copies). Each paper copy will correspond in full with the electronic version. The aforementioned documents must arrive at the Commission no later than the last day of the period of execution of the tasks. The final study will be regarded as a revised draft until it has been approved by the Commission.

## **8.2. 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.

## **9. Payments and standard contract**

See Article I.4 and II of the attached draft study 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".

Modalities applicable to this contract will be:

### **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 of the draft contract shall be made.

### **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 of the draft contract,

- 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 of the draft contract, shall be made.

### **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 of the draft contract,
  - 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 of the draft contract shall be made.

*Performance guarantee: not applicable*

## **10. Prices**

The maximum amount available for this contract is € 350,000.00 (three hundred and fifty thousand euro).

*Tenderers should note that any bid exceeding this limit will not be considered.*

Under the terms of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the latter 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 Union 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.

### **Part A: 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

- Any translation expenses
- 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)
- Unavoidable expenses necessary to the achievement of the contract

## **Part B: Reimbursable expenses**

Not applicable.

Total price = Part A

## **11. 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 contract<sup>4</sup>. However, a grouping of economic operators must nominate one party to be 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 12 and 13 must be supplied by every member of the grouping.

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

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

1) Bidders must provide a declaration on their honour, duly signed and dated, that they are not in one of the situations 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;

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<sup>4</sup> 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 members of the group, or by one of the members, which has been duly authorised by the other members of the grouping (a power of attorney or sufficient authorisation is to be attached to the contract), when the tenderers have not formed a legal entity.

- 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 Union's financial interests;
- f) they are currently subject to an administrative penalty referred to in Article 96(1)<sup>5</sup>.

(...)

#### Article 94:

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

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

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

#### Article 134 of the 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

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a)<sup>5</sup> "Article 96(1): The contracting authority may impose administrative or financial penalties on the following: (a) candidates or tenderers in the cases referred to in 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. (...)"

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.

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.

### **13. Selection criteria**

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

#### **13.1. 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 €350,000.00 in the last financial year for which accounts have been closed;

(ii) balance sheets or extracts from balance sheets from the last three 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 or candidate is unable to provide the references requested by the contracting authority, he may prove his economic and financial capacity by any other means which the contracting authority considers appropriate.

#### **13.2. Professional and technical capacity**

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

- Detailed CVs 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 relevant field of labour and social law, including the theoretical and empirical aspects, as attested by the published work accredited to the members of the expert team in these fields;
- For the co-ordinator (and members of the scientific committee), this will require distinguished academics and/or practising lawyers with: proven expertise and at least 15 years professional experience with at least 7 years experience in dealing with legal issues in the area of labour and social law, including the theoretical and empirical aspects;
- For the other experts, this will require distinguished academics and/or practising lawyers with: proven expertise of team members on the basis of experience as lawyers, academics or practitioners with a minimum of 5 years professional experience of which at least 2 years experience in relevant areas of labour and social law, including the theoretical and empirical aspects;
- Proven ability on the part of the co-ordinator(s) to deal effectively with the co-ordination and administrative tasks involved in organising and managing a team of experts capable of critically assessing legal developments in all the countries concerned by the contract;
- Sufficient knowledge of languages on the part of the co-ordinator 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).

Tenderers considered by the European Commission not to meet the above-mentioned requirements on financial and operational capacity will be eliminated without further assessment.

#### **14. Award criteria**

The contract will be awarded to the tenderer whose offer represents the best value for money, taking account of the criteria listed below:

#### **14.1. Quality of the offer**

*Approach* - Depth of conceptual understanding of the nature of the assignment, its context and the results to be achieved, creativity and quality of the approach to the tasks to be performed. To this end, the bid should clearly indicate suggestions, options and alternatives for the research to be undertaken. (30 points)

*Methodology* – The tenderer should describe clearly the way, as well as the methods to be used, in which the tasks will be performed and the analyses will be undertaken, i.e. the various steps envisaged for collecting the necessary data, the methodology for organising and coordinating the research and analytical work, the documentary efforts to be undertaken etc.. The tenderer should also explain how the various parts of the analysis will be integrated into the conceptual approach and final outcome and recommendations. (40 points)

*Work organisation* - Quality of the proposed arrangements for organising and coordinating the work, in particular the administrative and logistical tasks involved, and feasibility of the time schedule provided; this criterion also includes clarity and coherence of the work programme and the overall management of the project as well as appropriateness of the technical, managerial and linguistic expertise proposed for achieving the results required. (30 points)

#### **14.2. 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 then be divided by the price, with the highest-scoring bid being chosen.

### **15. Content and presentation of bids**

#### **15.1. Content of bids**

Tenders must include:

- a signed and dated letter of introduction;
- the tenderer's name, full address, telephone and fax numbers and e-mail address;
- all information and documents necessary to enable the Commission to appraise the bid on the basis of the exclusion, selection and award criteria (see points 12, 13 and 14 above);
- a bank ID form duly completed and signed by the bank;
- a "legal entity" form duly completed;

- the price;
- the detailed CVs of the proposed experts;
- the name and function of the contractor's legal representative (i.e. the person authorised to act on behalf of the contractor in any legal dealings with third parties);
- proof of eligibility: tenderers must indicate the State in which they have their registered office or are established, providing the necessary supporting documents in accordance with their national law.

## **15.2. Presentation of bids**

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

They must include all the information required by the Commission (see points 10, 11, 12 and 13 above).

They must be clear and concise.

They must be signed by the legal representative.

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