



EUROPEAN COMMISSION
DG Employment, Social Affairs and Inclusion

Employment and Social Legislation, Social Dialogue
Labour Law

Study Service Contract

Contract title **Study on transfers of undertakings in insolvency situations**

Contract ref. no. **VC/2011/0542**
The above title and reference no. **must** be quoted in **all** correspondence with the Commission.

Contractor
.....

Other administrative information

Department **DG EMPL.B.2**

Pre-information notice O.J. publication ref. no:
Call for tenders DG EMPL ref. no: VT/2011/013 of
Contract notice O.J. publication ref. no:
EPIC (CIAME) ref. no:/.....
Databases SMART ref. no:
Service category no: A11

Other accounting information

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

Type of Contract V/SE/STUSEC02

The European 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 Head of Unit - EMPL.B.2, DG Employment, Social Affairs and Inclusion,

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/2011/013 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
- **Annex VI** Final technical report to be submitted

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: **Study on transfers of undertakings in insolvency situations.**

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 DG Employment, Social Affairs and Inclusion 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 11 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 250 000.00 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 30% 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 Inclusion
EMPL.B.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. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by DG Employment, Social Affairs and Inclusion acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

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.

ARTICLE II.20 – DATA PROTECTION

II.20.1 The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the entity acting as data controller provided for in Article I.8.

II.20.2 The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

II.20.3 Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

II.20.4 The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

II.20.5 The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - aa) unauthorised reading, copying, alteration or removal of storage media;
 - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - ac) unauthorised using of data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;
- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

Signatures

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

2. For the Commission,
Armando SILVA
Acting Head of Unit - EMPL.B.2
DG Employment, Social Affairs and Inclusion

Done at (place), Done at Brussels,

..... (date) (date)

In duplicate in English.

Tender Specifications and Monitoring

ANNEX I Tender No. VT/2011/013 of

1. Title of the contract

Tender No VT/2011/013: Study on transfers of undertakings in insolvency situations

2. Background

2.1. PROGRESS programme

PROGRESS³ is the EU employment and social solidarity programme, set up to provide financial support for the attainment of the European Union's objectives in employment, social affairs and equal opportunities as set out in the Social Agenda⁴, as well as to the objectives of the Europe 2020 Strategy. This new strategy, which has a strong social dimension, aims at turning the EU into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion. The European Union needs coherent and complementary contributions from different policy strands, methods and instruments, including the PROGRESS programme, to support the Member States in delivering on the Europe 2020's goals.

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

- Providing analysis and policy advice on PROGRESS policy areas;
- Monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;
- Promoting policy transfer, learning and support among Member States on EU objectives and priorities; and
- Relaying the views of the stakeholders and society at large.

More specifically, PROGRESS supports:

- The implementation of the European Employment Strategy (section 1);
- The implementation of the open method of coordination in the field of social protection and inclusion (section 2);
- The improvement of the working environment and conditions including health and safety at work and reconciling work and family life (section 3);

³ Decision No 1672/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity — Progress, JO L 315 of 15.11.2006.

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Renewed social agenda: Opportunities, access and solidarity in 21st century Europe COM/2008/0412 final of 02.07.2008.

- The effective implementation of the principle of non-discrimination and promotion of its mainstreaming in all EU policies (section 4);

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

The present call for tenders is issued in the context of the implementation of the 2011 annual work plan which can be consulted at <http://ec.europa.eu/social/main.jsp?catId=658&langId=fr>.

2.1. Background information specific to this contract

Original Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses⁵ did not lay down the provisions specifically regulating the transfers of undertaking in insolvency situations. The European Court of Justice⁶ could not introduce a comprehensive set of rules to be applied to insolvency situations, although it declared, among others, that transfers effected in insolvency liquidation proceedings were excluded from the Directive⁷.

It was only Directive 98/50/EC of 29 June 1998 amending Directive 77/187/EEC⁸ that introduced such provisions. The Commission explained that it decided to initiate a new approach for the transfers as going concerns of undertakings, businesses and parts of businesses in the context of pre-liquidation and liquidation proceedings taking into account the case law of the ECJ, the need to conciliate the survival of insolvent undertaking, the acquired rights of creditors and the rights of employees, notably the right to work⁹.

In accordance with the preamble to Directive 98/50/EC, with a view to ensuring the survival of insolvent undertakings, Member States should be expressly allowed not to apply Articles 3 and 4 of Directive 77/187/EEC to transfers effected in the framework of liquidation proceedings, and certain derogations from that Directive's general provisions should be permitted in the case of transfers effected in the context of insolvency proceedings.

The provisions regulating transfers in insolvency situations set forward by Directive 98/50/EC have been codified in what is now Article 5 of Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses¹⁰.

Article 5 of Directive 2001/23/EC provides:

"1. Unless Member States provide otherwise, Articles 3 and 4 shall not apply to any transfer of an undertaking, business or part of an undertaking or business where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of a competent public authority (which may be an insolvency practitioner authorised by a competent public authority).

⁵ OJ L 61, 5.3.1977, p. 26–28.

⁶ See Case 135/83 Abels (1985), para. 23. See also other cases where the Court tackled the issue of transfers in insolvency situations, notably Case 179/83 Industriebond FNV (1985), Case 189/83 Botzen (1985), Case 105/84 Mikkelsen (1985), Case C-362/89 D'Urso (1991), Case C-472/93 Spano (1995), Case C-319/94 Dethier (1995), Case C-399/96 Europièces (1998) and Case C-561/07 Commission against Italy (2009).

⁷ See the proposal for a Council Directive on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses - COM/94/300 final - CNS 94/0203, p. 8-9.

⁸ OJ L 201, 17.7.1998, p. 88–92.

⁹ See the proposal for a Council Directive - COM/94/300 final - CNS 94/0203, p. 9.

¹⁰ OJ L 82, 22.3.2001, p. 16–20.

2. Where Articles 3 and 4 apply to a transfer during insolvency proceedings which have been opened in relation to a transferor (whether or not those proceedings have been instituted with a view to the liquidation of the assets of the transferor) and provided that such proceedings are under the supervision of a competent public authority (which may be an insolvency practitioner determined by national law) a Member State may provide that:

(a) notwithstanding Article 3(1), the transferor's debts arising from any contracts of employment or employment relationships and payable before the transfer or before the opening of the insolvency proceedings shall not be transferred to the transferee, provided that such proceedings give rise, under the law of that Member State, to protection at least equivalent to that provided for in situations covered by Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (1), and, or alternatively, that,

(b) the transferee, transferor or person or persons exercising the transferor's functions, on the one hand, and the representatives of the employees on the other hand may agree alterations, in so far as current law or practice permits, to the employees' terms and conditions of employment designed to safeguard employment opportunities by ensuring the survival of the undertaking, business or part of the undertaking or business.

3. A Member State may apply paragraph 2(b) to any transfers where the transferor is in a situation of serious economic crisis, as defined by national law, provided that the situation is declared by a competent public authority and open to judicial supervision, on condition that such provisions already existed in national law on 17 July 1998.

The Commission shall present a report on the effects of this provision before 17 July 2003 and shall submit any appropriate proposals to the Council.

4. Member States shall take appropriate measures with a view to preventing misuse of insolvency proceedings in such a way as to deprive employees of the rights provided for in this Directive."

Only paragraphs 1, 2 and 4 of Article 5 concern insolvency situations that should form part of the analyses of the present study. The situation as regards the use of Article 5(3) of the Directive in Italy (none of the other Member States were considered to be concerned by the provision of Article 5(3)) has already been assessed in a separate study. In addition, the scope of this provision is clearly limited¹¹. Hence, Article 5(3) does not need to be covered by the present study.

Insolvency situations stemming from the scope of Article 5 (1) (2) and (4) form a broad group which differ from one Member State to the other. An indicative and certainly not exhaustive list of insolvency proceedings can be found in Annexes A and B to Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, as amended¹².

Three situations can be distinguished following the provisions of Article 5:

1) Articles 3 and 4 of the Directive do not apply to insolvency proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of a competent public authority.

2) Articles 3 and 4 of the Directive apply to insolvency proceedings - whether or not those proceedings have been instituted with a view to the liquidation of the assets of the transferor, and provided that such proceedings are under the supervision of a competent public authority - and the options provided for in Article 5 (2)(a) and/or 5 (2)(b) are used.

3) Articles 3 and 4 of the Directive fully apply to insolvency situations.

¹¹ Cf the judgment of the Court in Case C-561/07 Commission against Italy.

¹² OJ L 160, 30.6.2000, p. 1–18.

It is important to note that fourteen Member States - Belgium, Greece, France, Ireland, Italy, Cyprus, Latvia, Malta, the Netherlands, Austria, Slovenia, the Slovak Republic, Finland and Sweden - declare actually not to apply national provisions implementing Articles 3 and 4 of the Directive to the transfers in bankruptcy proceedings and analogous insolvency proceedings mentioned in Article 5(1) of the Directive¹³. According to the information in the Commission's possession, also Bulgaria and Romania fall within this category.

Seven Member States - Belgium, Germany, Spain, France, Poland, Luxembourg and the United Kingdom - declare to make use of the possibilities offered by Article 5 (2)(a) and/or 5 (2)(b)¹⁴.

However, only the Czech Republic, Denmark, Estonia, Hungary and Portugal declare not to make use of both Article 5 (1) and Article 5 (2)(a)(b) of the Directive and hence do not provide for special provisions regulating transfers in insolvency situations and aiming at the transposition of Article 5 (1) and (2)¹⁵. As the purpose of this study is the analysis of not only the legislative framework but also of the practical application of the provisions applicable to transfers in insolvency situations and of the level of protection of employees in case of the transfers in insolvency situations (see the Member States covered by point 5.2.II below regarding the analytical report), also these Member States need to be included within the scope *ratione personae* of the present study.

It is important for the national authorities, including judges and for the public (especially employers and employees) to know how to apply the relevant provisions, what rights of employees are safeguarded and how to protect them and to compare the way the provisions are applied in other countries. For the Commission the study would provide updated detailed information on the national implementing provisions, their interpretation, application and effects in practice and the problems occurring in the process of application. The study should also propose solutions to the problems incurred. It could also be used as a source of information on possible infringements. In general, the study should answer to the question on how and to what extent are the rights of employees protected in case of transfers in insolvency situations mentioned in Article 5 of the Directive in the EU.

Although Article 5 of the Directive was adopted with a view to ensuring the survival of insolvent undertakings, one cannot forget that the purpose of the Directive is the protection of employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded. This is especially important in the current critical period, when insolvency proceedings have become more frequent and the employees are at greater risk of having their rights not respected. It is thus a right time, in the aftermath of the crisis, to ascertain the effects of the Directive.

In line with the better regulation agenda and the evaluation policy of the Commission, there is need to evaluate whether EU law has actually met the identified needs in an effective, efficient and consistent way, and whether it produced the intended results.

It is also worth mentioning that a study was commissioned on the implementation of the Directive (including the provisions regulating the transfers in insolvency situations) in the EU-25, which was published in 2007¹⁶. Furthermore, recently a study has been carried out regarding the implementation in Romania and Bulgaria. The studies do not concentrate specifically on the issue of the transfers in insolvency situations and therefore, in addition to the information already provided in those studies, updated, more systematic and in depth

¹³ See the questionnaire annexed to Commission report on Directive 2001/23/EC adopted on 18 June 2007 – COM(2007) 334 final. **It is important to note, however, that the declarations by the Member States made in the questionnaire must be treated only as an indication. Therefore, it is for the contractor to ascertain precisely which Member States fall within this category.**

¹⁴ See the questionnaire mentioned in the preceding footnote. **Again, in view of the explanation given in the preceding footnote it is for the contractor to ascertain precisely which Member States fall within this category.**

¹⁵ See the questionnaire mentioned in footnote 9. **Again, in view of the explanation given in the preceding footnote it is for the contractor to ascertain precisely which Member States fall within this category.**

¹⁶ <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPagId=208>.

description of the measures in force and the profound analysis of the application in practice and the effects of the provisions concerned is sought.

3. Subject of the contract

In view of the background described above and in order to ascertain how and to what extent have the rights of employees been protected, the contractor has to (1) describe the measures in force providing for special rules on the transfers of undertakings, businesses or parts thereof in insolvency situations in the Member States of the EU concerned, (2) analyse the application in practice of the measures applicable to transfers in insolvency situations in a selected group of Member States and assess the effects that are generated by the measures in place in same group of Member States, (3) undertake a comparative analysis and identify best practices aiming at the protection of employees in case of transfers in insolvency situations and the solutions of the problems occurring in the process of application of law.

4. Participation

Not applicable

5. Tasks to be carried out by the contractor

5.1 General - requirements on how the tasks shall be carried out

The PROGRESS Programme aims to promote gender mainstreaming in all its five policy sections and commissioned activities. Consequently, the Contractor shall 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 proposed activities includes a perspective informed by a systematic consideration of the gender dimension;
- Performance monitoring includes the collection and gathering of data disaggregated by sex when needed;
- Its proposed team and/or staff respects the gender balance at all levels.

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

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

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

5.2 Specific

Taking into account the background described under point 2 above, and in order to ascertain how and to what extent the rights of employees have been protected, the contractor shall prepare 3 reports in English:

- 1) A detailed "descriptive" report on the measures in force providing for special rules on the transfers of undertakings, businesses or parts thereof in insolvency situations in the EU Member States concerned

2) An analytical report on the application in practice of the measures applicable to transfers in insolvency situations in the selected group of Member States and on the effects of this application in the same group of Member States.

3) A comparative report bringing together the findings of the above two reports, highlighting differences, similarities and encountered difficulties across Member States, and assessing a variety of effects generated by the Directive both from an economic and social point of view

The contractor shall also provide: (1) a list of relevant national case-law (2) a list of relevant bibliography consulted (3) a table listing for every Member State concerned (i) the insolvency situations falling within respectively paragraph 1, paragraph 2(a) and paragraph 2(b) of Article 5 of Directive 2001/23/EC and (ii) the proceedings in case of economic difficulties that, although similar, cannot be regarded as falling within the scope of insolvency situations covered by Article 5 (1) and (2) of the Directive, (4) a separate, clear and comprehensive executive summary of the main findings (in English, French and German) of no more than 10 pages, following the structure of the reports, with a presentation of the concise, sharp, easily understandable key points (not more than 1 page).

I. Detailed "descriptive" report on national measures in the Member States concerned

As explained in footnote 11 and 12, the questionnaire mentioned there may not provide an accurate picture of the actual situation and therefore it is for the contractor to specify the Member States that made use of Article 5 (1) and (2) of the Directive and hence do not fully apply Articles 3 and 4 of the Directive to insolvency situations mentioned in Article 5 (1) and (2). All these Member States concerned will be included in the first "descriptive" report.

Other Member States (according to the declarations made – see footnote 13 above – this includes the Czech Republic, Denmark, Estonia, Hungary and Portugal) which fully apply Articles 3 and 4 of the Directive to insolvency situations mentioned in Article 5 (1) and (2), do not need to be incorporated in the "descriptive" report, but this group should be included in the second analytical report (see below).

The contractor should in particular:

- Describe in a systematic way the measures in force aiming at the implementation of Article 5 paragraphs 1, 2(a) and 2(b) of the Directive. The description shall be made separately for each of the aforementioned paragraphs and must show that the measures/proceedings classified under paragraphs 1, 2(a), 2(b) meet the requirements and conditions for application provided for in those paragraphs and the case-law of the European Court of Justice, notably that mentioned in footnote 4 above;

- Describe the national measures regulating the proceedings in case of economic difficulties that cannot be regarded as falling within the scope of insolvency situations covered by Article 5 (1) and (2) of the Directive. The contractor should explain whether in such proceedings the rights of employees are safeguarded, as required by Directive 2001/23/EC;

- Present the meaningful conclusions highlighting difficulties and inconsistencies in every Member State concerned.

II. The analytical report for a selected group of Member States

The selected group of Member States, for which a detailed analysis is to be undertaken, should include at least 10 – 12 Member States, of which at least 4 are large Member States (UK, Germany, Spain, Italy, France, Poland). The group should contain a representative number of Member States of the EU within the specific categories comprising of the Member States that:

(1) do not apply national provisions implementing Articles 3 and 4 of the Directive to the transfers in bankruptcy proceedings and analogous insolvency proceedings aimed at liquidation, mentioned in Article 5(1),

(2) make use of the possibilities offered by Article 5 (2)(a) and/or 5 (2)(b) and are different from the ones under point (1) above,

(3) do not make use of both Article 5 (1) and Article 5 (2)(a)(b) of the Directive and hence fully apply Articles 3 and 4 of the Directive to insolvency situations mentioned in Article 5 (1) and (2).

In drawing up the bid the tenderer should propose the selected group of Member States. A final composition of the selected group of Member States will be subject to the approval by the European Commission together with the inception report (see point 7.1 below).

The contractor should in particular:

- Identify difficulties (from the point of view of all the stakeholders involved, including employees, employers, public authorities and courts) that have arisen with the application in practice of the national measures applicable in case of transfers in insolvency situations. Ascertain whether the actors are aware of the rules governing the transfers in insolvency situations;

- Report on the existence of eventual gaps, legal uncertainties and inconsistencies;

- Analyse how the collective rights of employees, as enshrined in Articles 6 and 7 of the Directive, have been realised in insolvency situations;

- Indicate and describe case studies, illustrating the operation of the Directive in insolvency situations in practice. These case studies can build upon cases already analysed in existing literature. There should be at least 2 case studies concerning each of the large Member State (see above) and at least 1 case study concerning each of the remaining Member State. The selection of the case studies should be carried out by the contractor in agreement with the Commission on the basis of appropriate criteria including size of the undertaking, sector and type of the insolvency situation.

- Strive to estimate the number of transfers in insolvency situations.

- Strive to assess to what extent the transposing measures were effective with a view to preventing misuse of insolvency proceedings in such a way as to deprive employees of the rights provided for in the Directive.

- Strive to assess whether the provisions have been helpful to attain the objective to enable the survival of insolvent undertakings.

- Strive to assess whether the provisions had an effect on facilitating restructuring.

- Strive to assess to what extent have the insolvency proceedings been accompanied by the social plans aimed at helping the workers losing their jobs and whether the social plans were satisfying the workers' needs and to what extent they appeared to compensate the loss of jobs;

- Consider and discuss the spectrum of significant effects (social and economic) that could be created by the legislation in question, and strive to assess whether the effects are useful for the directive in reaching its objectives. The contractor will strive to assess what are the social and economic costs and benefits related to the measures aiming at the implementation of respectively paragraphs 1, 2(a) and 2(b) of Article 5 of the Directive for workers, employers, other actors (e.g. creditors) and the economy/society at large.

Following the analysis and the assessment made for every Member State concerned, the contractor should present the meaningful conclusions. Difficulties and inconsistencies as well as best practices in every Member State concerned should be highlighted and the overall effect of the operation of the provisions applicable to transfers in insolvency situations clearly presented.

The contractor shall report on the views of concerned stakeholders (including the public administration, the Labour Inspection and the social partners) on the issues covered by the analytical report.

III. Comparative report

The contractor should:

- Bring together the findings of the other two reports, highlighting differences as well as similarities across Member States and evaluating the operation and effects of the Directive's provisions concerned at EU level.
- On the basis of comparative analysis, identify best practices aiming at the protection of employees (their individual and collective rights) in case of transfers in insolvency situations.
- Propose solutions to the problems occurring in the process of application of the relevant provisions of the Directive in the Member States, including where appropriate proposals for reform regarding the Directive in case major difficulties are discovered in the Member States.

6. Professional qualifications required and some methodological aspects

See Annex IV of the draft contract "CVs and classification of experts" and additional requirements under point 12.2 (selection criteria) below.

The team of experts proposed must include experienced lawyers and persons with expertise in socio-economic evaluation of social legislation. The team must have sufficient specialist expertise in the relevant fields (including the areas of transfers of undertakings, insolvency and socio-economic evaluation of social legislation) and the ability to analyse complex legal and socio-economic aspects. The team must also have adequate linguistic capacity allowing for successful accomplishment of the tasks required.

The contractor is to appoint one of the senior experts as the study coordinator. He/she will be responsible for contacts with the European Commission and will attend all meetings, accompanied by other experts as appropriate.

The overall quality of work shall be ensured throughout by a small group of senior experts designated by the contractor. At least one of the members of the group has to be a lawyer and have experience (of at least four years) in dealing with legal issues in the areas of transfers of undertakings and/or insolvency. At least one of the members has to have experience (of at least four years) in socio-economic evaluation of social legislation. Provided that one senior expert has the required experience (of at least four years) in both dealing with legal issues - in the areas of transfers of undertakings and/or insolvency - and socio-economic evaluation of social legislation, he or she can be designated by the contractor instead of the small group of senior experts. The group (or the designated expert) will have a real, close and continuous involvement at all stages in the design, management and supervision of the whole range of tasks. The group (or the designated expert) will be responsible to ensure that the experts covering the Member States concerned by the study provide high quality, comparable information used in the report. The contractor will verify the sources of information provided by its experts, and ensure a thorough quality check of any material provided or service rendered.

7. Time schedule and reporting

The duration of the tasks shall not exceed 11 (eleven) months from the entry into force of the contract.

All reports (and other documents, e.g. questionnaires) should be in English.

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

7.1. Specific deadlines for the performance of tasks:

Inception report

Within **5 (five) weeks** of the date of the entry into force of the contract, and following the kick-off meeting with the European Commission, the contractor will submit to the European Commission¹⁷ (Unit EMPL B/2) an inception report which will consist of a detailed outline of the approach/methodology to be used and a detailed work schedule for the remaining period. The inception report should enable the Commission to validate the finalized research methodology before the start of the data and information collection phase. It will contain, among others:

- a detailed presentation of data collection tools and an explanation of how the contractor intends to respond to the detailed specific tasks and questions presented in point 5.2 above;
- a list of persons, institutions, enterprises to be contacted and/or interviewed as part of the information collection process;
- a list of illustrative case studies from which a number, as set out in point 5.2 above, will be chosen;
- a literature review at EU level and a (preliminary) list of relevant literature and surveys at national level;
- an indicative provisional structure for the three required reports based on the better understanding of the research that the contractor has developed during the inception phase. The structure will be subject to change on the basis of the progress of the work and future discussions with the Commission.

Interim report

Within **5 (five) months** of the date of the entry into force of the contract, the contractor will submit to the European Commission¹⁸ (Unit EMPL B/2) an interim report describing progress in relation to the timetable laid down, together with a summary of results obtained so far and the work programme planned for the following period.

Draft final report

Within **9 (nine) months** of the date of the entry into force of the contract, the contractor will submit to the European Commission¹⁹ (Unit EMPL B/2) a draft final report, which will include the elements referred to in point 5.2 above. The report should be in English. The European Commission will examine the draft final report and notify the contractor of possible objections or comments to be made within 40 (forty) days of receipt of this draft final report.

Final report

¹⁷ Official receipt date by DG EMPL, attested by its Archive Department, Internal Mail Service stamp.

¹⁸ Official receipt date by DG EMPL, attested by its Archive Department, Internal Mail Service stamp.

¹⁹ Official receipt date by DG EMPL, attested by its Archive Department, Internal Mail Service stamp.

The contractor will have to present to the European Commission the final report, which will include the elements referred to in point 5 of the present technical specifications, within 11 months of the date of the entry into force of the contract, taking into account, where appropriate, the objections or comments made by the European Commission. The aforementioned final report shall be transmitted by the contractor in both paper and electronic versions compatible with Commission standards (texts in Word, spreadsheets in Excel). Each paper copy will correspond in full with the electronic version. The aforementioned documents, plus two copies of them, must arrive at the Commission no later than the last day of the period of execution of the tasks.

Meetings with the Commission

The contractor may be requested to attend four meetings with the Commission in Brussels: one to kick off the study, one to discuss the inception report within 25 days after receipt of the report, one to discuss the interim report within 25 days after receipt of the report and one to discuss the draft final report within 30 days after receipt of the report.

7.2. Other requirements

i) Publicity and information requirements

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

This (publication, conference, training session etc) is commissioned by the European Union Programme for Employment and Social Solidarity - PROGRESS (2007-2013).

This programme is implemented by the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment, social affairs and equal opportunities area, and thereby contribute to the achievement of the Europe 2020 Strategy goals in these fields.

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

For more information see: <http://ec.europa.eu/progress>

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.

ii) Reporting requirements

PROGRESS is implemented through a results-based management (RBM). The Strategic Framework, developed in collaboration with the Member States, social partners and civil society organisations, sets out the intervention logic for PROGRESS-related expenditure and defines PROGRESS' mandate and its long-term and immediate outcomes. It is supplemented by performance measures which serve to determine the extent to which PROGRESS has delivered the expected results. See in Annex the overview of PROGRESS performance measurement framework. For more information on the strategic

framework, please visit PROGRESS website
<http://ec.europa.eu/social/main.jsp?catId=659&langId=en>.

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

The Contractor will be asked to collect and report on its own performance to the Commission and/or persons authorised by it against a template which will be annexed to the contract/service order/. In addition, the Contractor will make available to the Commission and/or persons authorised by it all documents or information that will allow PROGRESS performance measurement to be successfully completed and to give them the necessary rights of access.

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Contractor's Tender

ANNEX II

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ANNEX III Breakdown of prices

1. Breakdown of prices

<i>Description</i>	<i>Unit price in €</i>	<i>Max. No of units</i>	<i>Unit type</i>	<i>Sub-total per item</i>	<i>Total amounts in €</i>
FEES AND DIRECT COSTS (fixed prices)					
<i>Experts' fees (to be specified for each expert)</i>					<i>0,00</i>
<i>Details</i>	0,00	0	w.d.	0,00	
<i>Other direct costs (to be specified)</i>					<i>0,00</i>
<i>Details</i>	0,00	0	unit	0,00	
Sub-total "Fees and Direct Costs" (Art. I.3.1)					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)²⁰ 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:

- 6 hours or less: reimbursement of actual expenses (on production of supporting documents);

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

- 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 Head of Unit - EMPL.B.2 of DG Employment, Social Affairs and Inclusion, 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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ANNEX VI **Final technical report to be submitted**

See attached document(s): 11 pages.

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