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## **Specifications – Invitation to tender No VT/2011/074**

### **Study on out of court settlement mechanisms in transnational labour disputes**

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

Tender No VT/2011/074: Study on out of court settlement mechanisms in transnational labour disputes

#### **2. General information regarding the line financing this action**

PROGRESS<sup>1</sup> 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 Agenda<sup>2</sup>, 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);

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

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

- The improvement of the working environment and conditions including health and safety at work and reconciling work and family life (section 3);
- The effective implementation of the principle of non-discrimination and promotion of its mainstreaming in all EU policies (section 4);
- 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>.

### **3. Background of the study**

#### **Development of an EU framework on alternative dispute resolution**

Over the last years, the issue of alternative dispute resolution (ADR) has been addressed by the EU in a scope not limited to the particular area of labour relations. At the European Council on Justice that took place in Tampere in 1999, EU leaders had drawn attention to how much importance they place on the role of ADR in cross-border disputes and in March 2000, at the Lisbon Summit on employment and the information society, EU leaders had asked the European Commission and the Council to reflect upon ways of applying ADR methods to resolve conflicts in the area of e-commerce.

In the field of consumer disputes, the Commission adopted two recommendations on the subject, one on procedures involving a third party who proposes or imposes a solution<sup>3</sup> and another on procedures which are restricted to a single attempt to draw conflicting parties together to help them find a common solution<sup>4</sup>. Networks of national bodies were created in 2001 to facilitate the task of finding extra-judicial solutions to cross-border consumer disputes (ECC-NET<sup>5</sup>) as well as for matters relating to financial services (FIN-NET<sup>6</sup>).

In April 2002, the Commission published a Green Paper on alternative dispute resolution in civil and commercial law<sup>7</sup>, which provided a comprehensive view of approaches to alternative dispute resolution and aimed at initiating a constructive debate on a certain number of legal issues in this regard. The questions in the Green Paper related in particular to the essence of the various means of alternative dispute resolution such as clauses in contracts, limitation periods, confidentiality, the validity of consent given, the effectiveness of agreements generated by the process, the training of third parties, their accreditation and the rules governing their liability. Following this consultation, the Commission decided in 2003<sup>8</sup> to launch two initiatives: to develop a European plan for best practice in mediation, which led to issue a European Code of Conduct for Mediators in 2004<sup>9</sup>, and

<sup>3</sup> Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (OJ L 115, 17.4.1998, p. 31) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:115:0031:0034:EN:PDF>

<sup>4</sup> Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (OJ L 109, 19.4.2001, p. 56) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:109:0056:0061:EN:PDF>

<sup>5</sup> [http://ec.europa.eu/consumers/ecc/index\\_en.htm](http://ec.europa.eu/consumers/ecc/index_en.htm)

<sup>6</sup> [http://ec.europa.eu/internal\\_market/fin-net/index\\_en.htm](http://ec.europa.eu/internal_market/fin-net/index_en.htm)

<sup>7</sup> COM(2002) 196 of 19.04.2002 [http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002\\_0196en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0196en01.pdf)

<sup>8</sup> see the Commission Scoreboard on Justice COM(2003) 291 final

<sup>9</sup> [http://ec.europa.eu/civiljustice/adr/adr\\_ec\\_code\\_conduct\\_en.htm](http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.htm)

to present a proposal for a directive to promote mediation, which led to the adoption of Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters, to be implemented by May 2011<sup>10</sup>.

A study was also commissioned on the use of Alternative Dispute Resolution in the European Union, focused on business-to-consumer disputes. The report issued in 2009<sup>11</sup> provides an overview of existing ADR schemes and how they work, it identifies the existing gaps and assesses the conformity of ADR schemes with the two relevant Commission Recommendations.

The Lisbon Treaty introduced a new legal basis for out of court dispute settlement by adding "the development of alternative methods of dispute settlement" in the areas for measures to develop judicial cooperation in civil matters having cross-border implications (Art.81 TFUE).

In 2010, in his report on a new strategy for the single market<sup>12</sup>, Mario Monti proposed ways to ease access of citizens to an informal dispute resolution mechanism through various means including the establishing of an EU network of alternative dispute resolution centres. Following these suggestions, the Commission consulted in its 2010 Communication "Towards a single market Act"<sup>13</sup> on various measures relating to alternative dispute resolution in the EU, notably for cross-border consumer disputes. The issue of ADR was submitted to the European Business Test Panel end 2010 and in the final "Single Market Act"<sup>14</sup>, the Commission further announced its intention to propose legislation on Alternative Dispute Resolution, to improve the settlement of cross-border consumer disputes.

These developments in ADR have been so far focused on consumer disputes and did not address the particular situation of labour disputes. The extend to which they may be used or serve in the context of employer/employee disputes, whether individual or collective, needs to be analysed.

### **Initial EU approaches to out of court settlement of labour disputes**

The Commission first worked on out of court dispute settlement mechanisms in employer/employee relations in the period 2000-2003. Such mechanisms were -and still are- widely used at Member State level. They play a valuable role in conflict resolution and are regarded as a key element in the overall system of employer/employee relations. In view of the increasing level of transnational or European-level corporate restructuring, Human Resources management and employer/employee engagement, the Commission announced its intention to explore ground for such dispute resolution mechanisms to be established at EU-level in the 2000 Social Policy Agenda<sup>15</sup>. In 2001-2002, it held preliminary talks with social partners, convened meetings of a high level group and organised conferences.

There has also been interest in the issue of dispute resolution within the Council in these years. In December 2001, the Council adopted Conclusions concerning an EU-level mechanism to help resolve disputes in employer/employee relations that transcend the national level<sup>16</sup>. The Conclusions expressed the belief that, in the light of the success of dispute resolution mechanisms

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<sup>10</sup> Directive 2008/52/EC of the European Parliament and of the council of 21 May 2008 on certain aspects of mediation in civil and commercial matters disputes (OJ L 136, 24.05.2008, p. 3) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:0003:0008:EN:PDF>

<sup>11</sup> GHK, Civic Consulting, Van Dijk, Study on alternative Dispute Resolution in the European Union, 2009, [http://ec.europa.eu/consumers/redress\\_cons/adr\\_study.pdf](http://ec.europa.eu/consumers/redress_cons/adr_study.pdf) and [http://ec.europa.eu/consumers/redress\\_cons/adr\\_en.htm](http://ec.europa.eu/consumers/redress_cons/adr_en.htm)

<sup>12</sup> Mario Monti, A new strategy for the single market at the service of Europe's economy and society, report to the President of the European Commission, 9 May 2010, p71 [http://ec.europa.eu/bepa/pdf/monti\\_report\\_final\\_10\\_05\\_2010\\_en.pdf](http://ec.europa.eu/bepa/pdf/monti_report_final_10_05_2010_en.pdf); website single market [http://ec.europa.eu/internal\\_market/smact/index\\_en.htm](http://ec.europa.eu/internal_market/smact/index_en.htm)

<sup>13</sup> COM(2010) 608 of 11.11.2010 proposals 30 and 46 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:REV1:EN:PDF#page=2>

<sup>14</sup> COM(2011) 206 of 13.4.2011, key actions 4 and 10 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0206:EN:NOT>

<sup>15</sup> COM(2000) 379: Social Policy Agenda

<sup>16</sup> OJ C 354/1 of 13.12.2001

in the Member States, it would be appropriate to investigate fully whether an EU-level dispute resolution mechanism might help to resolve employer/employee disputes that transcend the national territories. The Conclusions welcomed the Commissions intention to deepen understanding of how dispute resolution mechanisms in the Member States are organised and function through a detailed study of the issue and its intention to continue to reflect on whether a European-level mechanism might have value added and, if so, how it might function. The Commission was invited to report on the outcome of its consultation of the social partners on the issue.

This interest in the issue was confirmed at the highest political level when the Heads of State or Government, at their meeting in Laeken in December 2001, stressed the importance of preventing and resolving social conflicts, especially transnational social conflicts, by means of voluntary mediation mechanisms and invited the Commission to produce a discussion paper on this issue<sup>17</sup>

The Commission had identified anticipation and management of change as the priority area concerned by the need to prevent and mediate conflict. In January 2002, the Commission launched a social partner consultation 'Anticipating and managing change: a dynamic approach to the social aspects of corporate restructuring'<sup>18</sup>. Under the heading dealing with the modalities of implementing change the consultation document noted that there is no machinery at Community level for helping resolve collective industrial disputes with a transnational dimension as there is at national level for disputes restricted to a single country. As an answer to the consultation and following a series of seminars and case-studies, the European Social Partners presented a set of 'Orientations for reference in managing change and its social consequences' in October 2003<sup>19</sup>. This document however did not address the subject of dispute settlement and the social partners did not take up the issue of out of court dispute resolution in answering the consultation. As a result, the Commission did not follow-up immediately on specific proposals as to an EU level dispute resolution mechanism for labour disputes.

### **Outcome of the 2003 study on out of court settlement of labour disputes**

In the meantime, having identified the need to deepen knowledge on the situation in the Member States as regards labour dispute resolution, the Commission launched a study on this subject, which was undertaken by the Instituto Complutense de Estudios Internacionales. The report<sup>20</sup>, issued in 2003, outlines the elaborate and sophisticated dispute resolution machinery that developed in the 15 Member States to resolve disputes in employer/employee relations. Insofar as disputes of a collective nature are concerned, the study confirms that, in the vast majority of Member States, there exist autonomous, third party dispute resolution mechanisms.

The study showed that dispute resolution is a central feature of the industrial relations environment of Member states and its mechanisms and procedures have developed over long periods of time. Central to dispute resolution in employer/employee relations is the role played by the social partners representing management and employees. It begins at local level where management and unions or employee representatives will attempt to resolve issues through informal or agreed procedures. Collective agreements negotiated by employers or employers' representative bodies on the one hand and trade unions on the other, normally contain an obligatory part which allows the parties to stipulate mutual relations, rights and duties. Procedures to be followed in the event of disputes are set down in this part and often specify conciliation and mediation mechanisms. In some Member States the social partners, under the terms of collective agreements or otherwise, maintain

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<sup>17</sup> Paragraph 25 of the Presidency Conclusions [http://ec.europa.eu/governance/impact/background/docs/laeken\\_concl\\_en.pdf](http://ec.europa.eu/governance/impact/background/docs/laeken_concl_en.pdf)

<sup>18</sup> <http://ec.europa.eu/social/main.jsp?catId=522&langId=en>

<sup>19</sup> <http://ec.europa.eu/social/main.jsp?catId=521&langId=en>

<sup>20</sup> Fernando Valdés dal-Ré (Director), Labour conciliation, mediation and arbitration in European Union countries, Ministerio de Trabajo y asuntos sociales, coleccion informes y estudios, serie relaciones laborales num.53, Madrid, 2003. The study can also be consulted at <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>

permanent conciliation committees to which disputes are referred. This primary role of the social partners in resolving disputes is a distinctive feature of labour disputes.

The study also showed that the social partners' role is supplemented in many Member States by autonomous, third-party dispute resolution mechanisms provided, usually, by the public authorities. Recourse can be done to such mechanisms in situations where the social partners themselves have been unable to find solutions through their own bipartite procedures. These autonomous mechanisms are structured differently from one Member State to another: in some cases the service is established as an independent agency; in others the service is provided directly by the Labour Ministry; while in others it can be an ancillary service of the special labour courts or tribunals. Referral of a dispute to these services is generally by the voluntary agreement of both parties though in some cases mediation services can take the initiative in calling both sides together. Use of the service is encouraged in some instances through the parties being precluded from certain further actions until conciliation and mediation processes have been gone through. Acceptance of the outcome of mediation is also in general totally voluntary with the services having no power to impose a solution.

In addition, the study explored the technical feasibility of a European voluntary labour conciliation and mediation system, assessing its advisability, suitability and appropriateness and stressing the role of social partners in designing any such a mechanism.

The study however did not address the situation of the 12 new Member States, which are key to any analysis related to present challenges and would need to be updated in view of the development of new transnational disputes and of the general developments regarding alternative dispute resolution.

### **Fresh challenges and needs on out of court settlement of labour disputes**

Economic activities are increasingly managed cross-border in companies, even in SMEs, and the same can be said for the Human Resources management and restructuring operations. New developments have been observed in the Cross-border mobility of workers. Transnational labour issues have therefore gained importance over the last years..

A need for transnational negotiation in the social sphere is also increasingly to be observed in companies<sup>21</sup>, which already led to over 200 agreements in 100 companies employing 10 million workers. The Commission has issued in 2008 a report on "the role of transnational company agreements in the context of an increasing international integration"<sup>22</sup> which took stock of the development of such agreements and raised issues relating to the way social actors can resolve any differences of interpretation and disputes that may arise in their application. A 2009 study<sup>23</sup> analysed further the international private law aspects of dispute settlement related to transnational company agreements and highlighted the practical and legal obstacles to the way such disputes can be settled in court.. Information on the access to alternative mechanisms for such disputes is missing .

In general, whereas employer/employee relations, whether individual or collective, increasingly take a cross-border dimension, most of the determination of employees' employment and working conditions as well regulation mechanisms in the social sphere still remain at national level. Existing

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<sup>21</sup> <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>

<sup>22</sup> SEC(2008)2155 See <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214> ; A transnational company agreement in this context means an agreement comprising reciprocal commitments the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers' organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives

<sup>23</sup> Aukje van Hoek & Frank Hendrickx, International private law aspects and dispute settlement related to transnational company agreements, October 2009, see <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>

mechanisms for out of court settlement of labour disputes in Member states appear badly equipped to deal with cross-border labour situations and disputes.

The Commission therefore needs to update its information and analysis on out of court settlement mechanisms in transnational labour disputes, whether individual or collective, in order to see how best existing or future out of court settlement mechanisms could be used for transnational labour disputes.

#### **4. Subject of the contract**

In view of the background described above, the subject of the contract is to document the possibility to use of out of court settlement mechanisms for transnational labour disputes, and in particular to:

- Update available information on labour conciliation, mediation and arbitration mechanisms in EEA Member States, so as to provide a comprehensive and clear overview of the national out of court mechanisms used to settle labour disputes;
- Analyse the present situation as to the possibility to use existing out of court settlement mechanisms for transnational labour disputes in the different Member States;
- Identify the practical and legal obstacles to allow for transnational labour disputes to be settled out of court; exploring several options;
- Identify and suggest any actions that might be taken to overcome these obstacles.

Both individual and collective labour disputes at transnational level are to be addressed, with specific examples of such disputes to be analysed

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

#### **5. Participation**

Please note that:

The competition is open to any physical person or legal entity coming within the scope of the Treaties and any other physical person or legal entity from a third country which has concluded with the Union a specific agreement in the area of public contracts, under the conditions provided for in that agreement.

Where the Multilateral Agreement on Public Contracts concluded within the framework of the WTO applies, the contracts are also open to nationals of States that have ratified this Agreement, under the conditions provided for therein. It should be noted that research and development services, which come under category 8 of Annex II A of Directive 2004/18/CE, are not covered by this Agreement.

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

##### **6.1 Specific tasks**

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

The different situations present in all EEA Member States need to be covered in the study report. The contractor may however chose to group Member States together and analyse more in-depth the situation of selected Member States only. In the later case, the rationale for the grouping and the in-depth analysis needs to be duly justified and all Member States clearly associated with the situations covered by the analysis on every aspect of the study. The selected group of Member States should include at least 10 – 12 Member States, of which at least 4 are large Member States (UK, Germany, Spain, Italy, France, Poland). In drawing up the bid the tenderer should propose the methodology explaining how the selected group of Member States will be determined. A preliminary proposal of the selected group of Member States will be made no later than in the kick-of meeting and a final proposal no later than in the inception report (see point 8.1 below) and will be subject to the approval by the European Commission.

At least four examples of individual and collective labour disputes should be taken to illustrate the analysis throughout the study. In drawing up the bid, the tenderer should propose the methodology for choosing such examples. A preliminary proposal of the examples will be made no later than in the kick-of meeting and a final proposal no later than in the inception report (see point 8.1 below) and will be subject to the approval by the European Commission.

The contractor shall also provide: (1) a list of main national bodies in Member States, with their contact details (2) a list of relevant bibliography consulted (3) 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 tasks, with a presentation of the concise, sharp, easily understandable key points (not more than 1 page).

#### ***a. Overview of the labour conciliation, mediation and arbitration mechanisms in the Member States***

The contractor will update and complete existing information on labour conciliation, mediation and arbitration mechanisms in Member States, so as to provide a comprehensive and clear overview of the national out of court mechanisms used to settle labour disputes. The overview should follow the scheme of the 2003 study<sup>24</sup>:

- Types of labour disputes and means for solutions
- Role of social partners and of the State in out of court labour dispute settlement
- General organisation, typology and financing of out of court labour dispute settlement mechanisms;
- Conciliation and mediation in labour disputes: notion and character, where it is to be applied, procedure
- Arbitration in labour disputes: notion and character, where it is to be applied, procedure, the arbitral decision
- Assessment of out of court mechanisms for solving labour disputes

In doing so, the contractor will:

- Address both individual and collective disputes, distinguishing between both where necessary
- Present main comparative results in form of tables

#### ***b. Analysis of the situation relating to the possibility to use existing out of court settlement mechanisms in the Member States for transnational labour disputes***

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<sup>24</sup> See background; Fernando Valdés dal-Ré (Director), Labour conciliation, mediation and arbitration in European Union countries, Ministerio de Trabajo y asuntos sociales, colleccion informes y estudios, serie relaciones laborales num.53, Madrid, 2003. The study can also be consulted at <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>



The contractor will analyse the present situation regarding the possibility to use existing out of court mechanisms in the Member States to settle transnational labour disputes, in particular as to:

- The conditions under which a transnational labour disputes can be considered as a labour dispute under national law or practice;
- The actors to be involved in the settlement of a transnational labour disputes
- The specific aspects to be considered as to the general organisation and financing of settlement mechanisms in the case of transnational labour disputes;
- The use of conciliation and mediation mechanisms in transnational labour disputes
- The use of arbitration mechanisms in transnational labour disputes

In doing so, the contractor will:

- Address both individual and collective disputes, distinguishing between both where necessary
- Differentiate between transnational labour disputes arising for issues primarily governed by the law of the Member State considered, of another Member State and of a non-Member State;
- Where appropriate, cover the specific situation of transnational labour disputes occurring in particular sectors or for specific issues;
- Present main comparative results in form of tables

***c. Identification of the practical and legal obstacles to allow for transnational labour disputes to be settled out of court***

The contractor will identify and assess the options to allow for transnational labour disputes to be settled out of court and identify any related practical and legal obstacles, in particular:

- Assess the access to and the use of out of court dispute settlement mechanisms for individual workers and employers, trade unions and employer organisations at different levels, employee representatives and bodies representing the employees at different levels (individual employee representatives, company trade union body, works councils, European works council)
- Assess how out of court mechanisms are able to take into account the actors and situation in other countries for the settlement of transnational labour disputes
- Assess the applicability and respect of provisions contained in the Mediation Directive 2008/52/EC<sup>25</sup>;
- Assess the adherence to the general principles retained in Commission Recommendations on ADR, ie impartiality and independence, transparency, effectiveness, liberty, legality, representation<sup>26</sup>;
- On the basis of comparative analysis, identify best practices aiming at enabling the out of court settlement of transnational labour disputes.

In doing so, the contractor will:

- Address both individual and collective disputes, distinguishing between both where necessary
- Where appropriate, cover the specific situation of transnational labour disputes occurring in particular sectors or for specific issues; or involving specific Member states:
- Report on the views of concerned stakeholders (including the public administration and the social partners) on the subject
- Present main comparative results in form of tables

***d. Possible solutions***

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<sup>25</sup> See background Directive 2008/52/EC of the European Parliament and of the council of 21 May 2008 on certain aspects of mediation in civil and commercial matters disputes (OJ L 136, 24.05.2008, p. 3)

<sup>26</sup> See background - Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (OJ L 115, 17.4.1998, p. 31) and Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (OJ L 109, 19.4.2001, p. 56)



The contractor shall make suggestions as to what action might be taken and at which level to overcome any practical or legal obstacles that have been identified and allow for transnational labour disputes to be settled out of court. The possible actions shall include:

- Application of the Mediation Directive 2008/52/EC, with eventual adaptations;
- Use of the principles or mechanisms established by international organisations
- Code of conduct or Recommendation on ADR in labour disputes
- Network of national bodies dealing with labour disputes
- Team of conciliators/mediators specialised in transnational labour disputes
- Development of Sectoral or cross-industry mechanisms at EU-level
- Any other action to be considered.

In doing so, the contractor will:

- Identify the main arguments in favour and against such actions, analyse the difficulties that may arise in their implementation and make appropriate proposals to solve them;
- Analyse the role of the social partners in such actions;
- Address both individual and collective disputes, distinguishing between both where necessary;
- Where appropriate, cover the specific situation of transnational labour disputes occurring in particular sectors or for specific issues; or involving specific Member states.

## **6.2 General - Guide how the tasks shall be carried out**

The PROGRESS Programme aims to promote gender mainstreaming in all its five policy sections and commissioned 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.

## **7. Professional qualifications required**

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

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

The duration of the tasks shall not exceed 10 (ten) months from the entry into force of the contract.

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

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

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

The contractor will prepare an inception report in English, presented as follows:

- Background information and review of study precise objectives
- Detailed presentation of data tools and methodology to be used
- Proposal on the way to cover the situations in the different Member States and, where applicable, proposal as to a list of selected group of Member States for in-depth analysis
- Proposal of at least four examples of individual and collective labour disputes to be taken to illustrate the analysis throughout the study
- List of persons and institutions to be contacted
- Literature review at EU level and preliminary list of relevant literature review at national level
- Indicative structure of the study report

The draft inception report must arrive<sup>27</sup> at the Commission no later than 45 days after the date of the signature of the contract by the Commission

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

The contractor will prepare a concise, clear interim report in English, presented as follows: summary of the work carried out according to the present contract; work programme planned for the following period; present status of expected output documents, and comments on the degree of achievement; any comments, suggestions or recommendations judged useful or necessary by the contractor. This report will be accompanied by a detailed table of contents of the draft study report. The draft interim report accompanied by the detailed table of content must arrive<sup>28</sup> at the Commission no later than five months after the date of the signature of the contract by the Commission.

#### ***c. Final reports***

A draft of the study report requested, in English, has to be presented to the Commission no later than eight months after the date of the signature of the contract by the Commission. The draft study report, followed by the study report, shall include 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 tasks, with a presentation of the concise, sharp, easily understandable key points (not more than 1 page), as well as a list of main national bodies in Member States, with their contact details, and a list of relevant bibliography consulted as described in point 6.1.

In addition, the contractor will prepare, in English, a technical report presented as follows: concise, full description of the overall work carried out according to the present contract; presentation of the results obtained according to the present contract for the whole period of performance; technical comments on the content, presentation and value of output documents realised and submitted for approval to the Commission; any comments, suggestions or recommendations judged useful or necessary by the contractor.

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<sup>27</sup> Official receipt date by Employment and Social Affairs DG, attested by its Archive Department, Internal Mail Service stamp.

<sup>28</sup> Official receipt date by Employment and Social Affairs DG, attested by its Archive Department, Internal Mail Service stamp.

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

***d. Meetings with the Commission***

The contractor may be requested to attend four meetings with the Commission in Brussels: one to kick off the study within the first month of the execution of the tasks, one to discuss the inception report within the second or third month of the execution of the tasks, one to discuss the interim report within the sixth month of the execution of the tasks and one to discuss the draft final report within the ninth month of the execution of the tasks.

***e. Overall time schedule***

<b>Subject</b>	<b>Timing from the signature of the contract</b>
Kick off meeting with the Commission	1st month
<b>Inception report</b>	<b>45 days</b>
Meeting with the Commission	2 or 3 months
<b>Interim report</b>	<b>5 months</b>
Meeting with the Commission	6th month
<b>Draft final study report</b>	<b>8 months</b>
Meeting with the Commission	9th month
<b>Final study report and technical report</b>	<b>10 months</b>

**8.2. Other requirements**

***a. 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.

### ***b. 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.

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

See Article 1.4 and II of the attached draft contract.

Payments under the Contract shall be made in accordance with Article II.4 of the draft contract. 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.

### ***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 20% 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 report in accordance with the instructions laid down in point 8.1,
- 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 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 reports in accordance with the instructions laid down in point 8.1,
- 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.

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".

## **10. Prices**

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

#### ***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,
- Direct costs and unavoidable expenses necessary to the achievement of the Contract, such as travel and subsistence expenses for the meetings with the Commission specified under point 8.1.c.

The total price may not under any circumstances exceed **200,000.00 €**

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

## **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>29</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**

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

Those articles are as follows:

*"Article 93 :*

*Applicants or tenderers shall be excluded if:*

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;*
- b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;*
- c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;*
- d) they have not fulfilled their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;*

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<sup>29</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.

- e) *they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;*
- f) *they are currently subject to an administrative penalty referred to in Article 96(1)*<sup>30</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;(..."*

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

#### *Article 134 of the Implementing Rules – Evidence*

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

*Where the document or certificate is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.*

*§4. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraph 3 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.*

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<sup>30</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.
- (...)"



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.

**12.3** 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 tenderers 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 specifications must be demonstrated as follows:

(i) the tenderer (or all partners of the consortium together) must provide proof of a turnover of €200 000 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 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 experts must satisfy the requirements for at least Level III experts and the coordinator the requirements for at least level II experts. They need to be experienced lawyers and/or academics in the areas of Union, international and comparative labour law and/or industrial relations and/or alternative dispute resolution.

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

- Detailed CV's of the members of the study team responsible for providing the service, together with a listing of those designated as the co-ordinator(s) and other experts to be used for the study along with their CVs;
- A list of principal services or studies provided in the relevant policy domain over the past three years, with sums, dates and recipients (whether public or private) identified;

- Solid experience of analysis in the field of Union, international and comparative labour law and/or industrial relations and/or alternative dispute resolution, as attested by the published work accredited to the members of the expert team in these fields;
- Proven expertise of team members on the basis of experience as lawyers or academics with a minimum of 5 years professional experience of which at least 2 years experience connected with the tasks to be performed;
- Sufficient knowledge of languages on the part of the coordinator to ensure communication with the Commission and the experts and, in particular, ability to draw up reports in English;
- A declaration by the co-ordinator certifying the competence of the team to carry out the study, including their respective professional and linguistic capabilities;
- In the case of tenders from consortia: clear identification of the co-ordinator of the work who will also be responsible for signing the contract, and written confirmation from each member of the consortium that they would be ready and willing to participate in the execution of the contract, and briefly describing their role(s).

## **14. Award criteria**

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

### **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, notably as to the way to address the specificities of out of court settlement mechanisms of labour disputes and the diversity in national legal and industrial relations systems; Creativity and quality of the approach to the tasks to be performed; Clarity and comprehensiveness of the bid (40 points)
- Methodology – Relevance and coherence of the methodology for organising the research work, including the collection, verification, analysis, drafting and presentation of information in the area of the study; notably as to the various steps envisaged, the documentary efforts to be undertaken, the way to integrate different national systems, examples and aspects of the analysis into the conceptual approach and final outcome (30 points)
- Work Organisation - Quality of the strategy for organising the work, in particular the allocation of tasks, the way to address administrative and logistical tasks involved, the way to ensure the coordination of the team, the quality of results and the implementation of the work plan in the defined timetable (30 points)

### **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 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:

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

- all information and documents necessary to enable the Commission to appraise the bid on the basis of the selection and award criteria (see points 13 and 14 above);
- a bank ID form duly completed and signed by the bank<sup>31</sup>;
- a "legal entity" form duly completed<sup>32</sup>;
- the price;
- the detailed CVs of the proposed experts and the list of classification of experts in accordance with annex IV of the model contract;
- the name and function of the contractor's legal representative (i.e. the person authorised to act on behalf of the contractor in any legal dealings with third parties – see annex I "administrative identification form");
- proof of eligibility: tenderers must indicate the State in which they have their registered office or are established, providing the necessary supporting documents in accordance with their national law;
- in the case of tenders from consortia: power of attorney signed by each of the partners
- in case of sub-contractors: letter of intend signed by each sub-contractor..

## **15.2. Presentation of bids**

Tenders must be presented in three parts:

Part I: containing all administrative information

Part II: containing the technical content of the bid

Part III: containing the financial part of the bid.

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

They must include all the information required by the Commission (see points 13 and 14 above).

They must be clear and concise.

They must be signed by the legal representative<sup>33</sup>.

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

## **16. Disclaimer**

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

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

<sup>31</sup> Template in each EU language at [http://ec.europa.eu/budget/info\\_contract/fliers\\_en.htm?submenuheader=0](http://ec.europa.eu/budget/info_contract/fliers_en.htm?submenuheader=0)

<sup>32</sup> Template in each EU language at [http://ec.europa.eu/budget/info\\_contract/legal\\_entities\\_en.htm?submenuheader=0](http://ec.europa.eu/budget/info_contract/legal_entities_en.htm?submenuheader=0)

<sup>33</sup> The signature of the tenderer's authorised representative or representatives (preferably in blue ink) on the administrative identification form (Annex I) will be considered as the signature of the tender, binding the single tendere or the group of partners to the terms included in the tender.

## Annex I

Exclusion criteria (Article 93(1) FR)	Supporting documents to be provided by applicants, tenderers or tenderers to who the contract will be awarded	
	Procurement (Article 93(2) FR; Article 134 IR)	
<b>1. Exclusion from a procurement procedure, Article 93(1) FR :</b> <i>« Candidates or tenderers shall be excluded from participation in a procurement procedure if:</i>		
<b>1.1. (subparagraph a)</b> <i>they are bankrupt or being wound up,</i>  <i>are having their affairs administered by the courts,</i>  <i>have entered into an arrangement with creditors have suspended business activities, are the subject of proceedings concerning those matters,</i>  <i>or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations<sup>34</sup>;</i>	- Recent extract from the judicial record  <b>or</b> recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance  <b>or</b> - Where no such certificate is issued in the country concerned : sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance	
<b>1.2. (subparagraph b)</b> <i>they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata<sup>35</sup>;</i>	Cf. supporting documents for Article 93(1)(a) FR above	
<b>1.3. (subparagraph c)</b> <i>they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;</i>	Declaration by the candidate or tenderer that he is not in the situation described	
<b>1.4. (subparagraph d)</b> <i>they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed<sup>36</sup>;</i>	Recent certificate issued by the competent authority of the State concerned confirming that the candidate is not in the situation described  <b>or</b> Where no such certificate is issued in the country concerned : sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance	
<b>1.5. (subparagraph e)</b> <i>they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests<sup>37</sup>;</i>	Cf. supporting documents for Article 93(1)(a) FR above	
<b>1.6. (subparagraph f)</b> <i>they are currently subject of an administrative penalty referred to in Article 96(1)<sup>38</sup>. »</i>	Declaration by the candidate or tenderer that he is not in the situation described	

<sup>34</sup> See also Article 134(3) IR : Depending on the national legislation of the country in which the tenderer or candidate is established, the documents referred to in paragraphs 1 and 2 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

<sup>35</sup> Cf. footnote n° 19.

<sup>36</sup> Cf. footnote n° 19.

<sup>37</sup> Cf. footnote n° 19.

<sup>38</sup> Article 96(1) FR: 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.

Exclusion criteria (Article 94 FR)	Supporting documents to be provided by applicants, tenderers or tenderers to who the contract will be awarded		
	Procurement	Grants	
<b>2. Exclusion from a procurement or grant award procedure Article 94 FR :</b> « <i>Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:</i>			
<b>2.1. (subparagraph a)</b>  <i>are subject to a conflict of interest;</i>	Statement by the applicant, tenderer or bidder confirming the absence of conflict of interests, to be submitted with the application, bid or proposal		
<b>2.2. (subparagraph b)</b> <i>are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information»<sup>39</sup>.</i>	<ul style="list-style-type: none"> <li>– No specific supporting documents to be supplied by the applicant, tenderer or bidder</li> <li>– It is the responsibility of the authorising officer, represented by the evaluation committee, to check that the information submitted is complete<sup>40</sup> and to identify any misrepresentation</li> </ul>		

<sup>39</sup> Cf. Article 146(3) of the FR Implementing Rules: « ...the evaluation committee may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within the time limit it specifies. » and Article 178(2) of the FR Implementing Rules: « The evaluation committee may ask an applicant to provide additional information or to clarify the supporting documents submitted in connection with the application, in particular in the case of obvious clerical errors. »

<sup>40</sup> Cf. footnote n°24

## **Annex II**

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

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

- ☐ in his/her own name (if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator<sup>41</sup>)  
or
- ☐ representing (if the economic operator is a legal person)

official name in full (only for legal person):

official legal form (only for legal person):

official address in full:

VAT registration number:

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

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

In addition, the undersigned declares on their honour:

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<sup>41</sup> To be used depending on the national legislation of the country in which the candidate or tenderer is established and where considered necessary by the contracting authority (see art. 134(4) of the Implementing Rules).

- g) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;
- h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract.
- k) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.
- l) that in case of award of contract, they shall provide the evidence that they are not in any of the situations described in points a, b, d, e above<sup>42</sup>.

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

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

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.]

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

Full name                      Date                      Signature

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<sup>42</sup> Mandatory for contracts of value above €133 000 only (see art. 134(2) of the Implementing Rules). The contracting authority can nevertheless request such evidence for contracts with a lower value.



# ANNEX III - OVERVIEW OF PROGRESS PERFORMANCE MEASUREMENT FRAMEWORK

## PROGRESS Ultimate Outcome

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

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

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

### Legal Regime

#### Outcome:

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

#### Performance Indicators

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

### Shared Understanding

#### Outcome:

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

#### Performance Indicators

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

### Strong Partnerships

#### Outcome:

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

#### Performance Indicators

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