

CALL FOR TENDERS

This is a call for a subcontractor to deliver the expertise in the implementation of ETUC project 2012/19 : "**Enhancing European Trade Unions in Negotiations with Transnational Companies and Implementing European Framework Agreements (EFAs)**".

In order to ensure a large visibility of this tender, the ETUC will publish the tender specifications on its website on 29 January 2013 and keep it online for 21 days.

I. Background and objectives of the project

Background

Transnational negotiations with multinational companies are marking a trend of Europeanization of industrial relations. 220 agreements have been registered by the database of the European Commission on TCA: this form of collective bargaining is showing the capacity of social partners to explore new patterns of industrial relations to answer to the actual needs of companies and their employees.

Many have the sensation that the number of cross-border collective agreements may be further expanded in presence of clear rules and of a wider-spread know-how in the capacity to handle cross-border dynamics of cross-border negotiations.

As remarked by ETUC in its Discussion note 'More and better EFA Enhancing Trade Unions in Transnational Negotiations with Transnational Companies' (adopted by the ETUC Executive Committee in June 2012, from now on 'the Discussion Note'), experience shows that the absence of rules may function as an incentive in a start-up phase when partners may enjoy some flexibility in exploring innovative forms of negotiation. However, as time passes, it becomes an obstacle for new negotiations, implementing and applying agreements effectively.

In the absence of a fully-fledged legal framework, the enforcement of the agreements leans on the capacity of social partners to make their mutual engagement respected, notably at national and branches level. However, it cannot be excluded that third parties (national Courts or extra-judicial bodies) may be called upon to solve conflicts or disputes. In this

case, the outcome of a legal dispute before a national court remains widely uncertain. It can hamper a smooth evolution of future negotiations or disincentive companies from engaging in an EFA.

European trade unions are convinced that legal and procedural obstacles must be removed in order to exploit the innovative potential contained in this new form of collective bargaining.

EFA can be considered a brand-new kind of collective agreement in the European scenario. It is new because of the legal environment in which it takes place, because of the actors involved, because of the geographical scope of the agreements and because of the effects they can have in the future setting of the European industrial relations.

European trade union federations (ETUFs) have established procedures to clarify relevant aspects of a negotiating process at European level. The solutions they have found mainly concern the acquisition of the mandate, the composition of the negotiating delegations and their bargaining power and the possible procedures to manage/implement transnational agreements. Such rules normally apply to negotiations with a European scope. The procedural rules originally adopted by EMF have demonstrated to be effective and therefore they have been mirrored in other sectors and are today used by the new federation IndustriAll, certain branches in EPSU and in Uni-Europa (e.g. graphical industry, public sector). The Discussion Note of the ETUC encourages all the ETUFs to converge on similar procedures.

For all these reasons, the ETUC is convinced that more can be done to further develop this form of collective bargaining and the best way to promote more and better EFA is to work in two main areas of action:

- Promoting exchange of best practices
- Clarifying legal aspects and sustainability of procedures established by social partners to frame cross-border negotiations in predefined rules and make their effects binding at national/branches level.

ETUC is also convinced that an open dialogue with employer organizations at European level can help the establishment of an enabling environment for transnational negotiations between companies and employees when they wish to engage themselves in such kind of negotiations.

In particular, trade unions consider this form of collective bargaining is able to enhance social dialogue in countries where it is still under-developed (as central and eastern European Countries, Baltic Countries, UK). This is why the project will encourage the largest involvement of trade union representatives from Central and Eastern European Countries in the events it foresees.

Project objectives:

This project is aimed at fostering the development of transnational company agreements between multinational companies and workers' representatives especially when aimed at increasing the participative features of industrial relations in multinational companies.

The project wants to:

Spread best practices of transnational agreements with multinational companies, especially EFA

Deliver a more focused legal analysis of procedures established by ETUFs

Draw some hypotheses of optional legal/procedural framework at European level, in order to make agreements binding at national/branches level

The project will focus on European Framework Agreements. It means that the project will investigate and will draw its conclusions on practices that have been developed in a Europe-wide dimension and/or led by European actors. However, suitable experiences having a larger geographical scope may be considered when they are able to offer solutions to enhance negotiations and implementation of EFAs.

II. Tasks to be performed by the subcontractor

Important note: references to “expert” in the text are synonymous to “subcontractor”.

Description of tasks

The subcontractor will therefore provide the following services for the applicant organisation:

- Drafting an academic report on legal stands concerning procedures established by ETUFs, explaining, in a synthetic and accessible way, the weaknesses and strengths of ETUFs procedures and providing recommendations for improvement. The report will not exceed 20 pages and will be translated into English, French and German. Additional materials and comments produced by the group of experts may be annexed to the final document in English (the official language of work of the academic group).
- Presenting the report at the final conference of the project.

Contents of the report to be delivered

Some studies show how problematic it is to frame transnational negotiations into national legal orders. Complications may arise from the fact that they are at the same time ‘transnational’ and ‘labour-related’ issues (see the study tendered for the benefit of the Group of Experts on TCA of ‘International private law aspects and dispute settlement

related to transnational company agreements' and 'Study on the characteristics and legal effects of agreements between companies and workers' representatives').

A team of academic experts will be asked to analyse the ETUFs procedure against national, European and international law. They will elaborate on the ETUFs procedures focusing on legal aspects concerning:

- Correctness of the mandate chain according to the ETUFs' procedure
- Capacity of the ETUFs' procedures to enhance the legal binding effect of EFAs
- Binding effects of normative and obligatory clauses of EFAs when negotiated according to the ETUFs procedures
- Position of non-unionised workers or trade union organizations which are not a member of an ETUF.
- Effects of the withdrawal from negotiations or disowning of the agreement from one national organization.
- Role of the non-regression clauses in EFA concluded according to the ETUFs procedures
- Capacity of ETUFs to stand before a national Court in case of non-respect of an EFA.

Therefore, the team of academic experts will not be asked to provide a general evaluation of legal aspects of EFA but on the capacity of the ETUFs procedures to provide answers to the legal uncertainty in which transnational negotiations are performed today.

III. Expertise and skills required

Sound expertise is required on the following issues:

- Expert knowledge of industrial relations systems, social dialogue and collective bargaining at national and EU level.

Skills required:

- Academic analysis and drafting skills (in English);
- Proven research and presentation skills;
- Ability to work within specified deadlines and to respect budgetary limits;

IV. Time schedule, reporting and methodology

The subcontractor will be asked to work in the period between 25/02/2013 to 03/11/2013. The subcontractor will be responsible for submitting the deliverables foreseen in the project methodology within the above time frame (see below for a more detailed calendar).

During the preparatory phase, a legal analysis will be tendered to a transnational team of three academic experts. The best offer will be decided on the basis of the qualification of each single component of the team, their experience in the field of industrial relations at European level, their proved knowledge of legal aspects of collective bargaining at European level.

These experts will carry out the work according to the instructions provided by the steering committee of the project and under the supervision of the ETUC secretariat.

The team of academic experts will have the chance to meet twice during the preparatory stage to organize their work, exchange views and share intermediate results of their evaluation.

ETUC will support the work of the team of experts facilitating access to documents and direct contact with political leaders of ETUFs.

The report to be drafted by the experts is aimed at explaining in synthetic and accessible way weaknesses and strengths of ETUFs procedures and recommendation for improvement on the main topics raised above. It means that the report will not exceed 20 pages. The report will be translated into English, French and German. Additional materials and comments produced by the group of experts may be annexed to the final document in English (the official language of work of the academic group).

The academic team will be convened in Brussels at the beginning of March 2013. During the meeting they will receive instructions from the ETUC and the steering committee on objectives and expected results of their work. They will also go through a first exchange of views on the ETUFs procedures to negotiate and enforce EFAs.

The academic experts will have four (4) months to elaborate on and carry out a draft document.

During the three months, if they consider it necessary, the academic team can submit a request of an extra meeting to be held in Brussels at the presence of the ETUC secretariat and the ETUFs concerned.

The academic team will have one month after the main event to provide a final version of their work.

V. Payment

The total maximum budget available for expertise is as follows:

Contract with ETUC (February 2013)	
Activities and Meetings	
Steering Committee Meeting # 1 (March 2013)	
Analysis + submitting of the draft report (March - June 2013)	
Steering Committee Meeting # 2	
1 EU Final Conference (June)	
Final Study Research Report (September)	
Expert 1 = 500€ x 15 days = 7,500 €	
Expert 2 = 500€ x 15 days = 7,500 €	
Expert 3 = 500€ x 15 days = 7,500 €	
Total Expertise =	22,500 €

For more precise information on the approximate timing of the above events, please refer to the indicative calendar of activities at annex.

The subcontractor will also receive an advance and a final payment upon receipt and validation by the ETUC of the final product.

VI. Selection criteria

The offers will be examined against the following criteria:

Ability to propose a transnational team of three experts with the required expertise

Ability to propose a methodology to prepare and conduct the analysis and the report

Evidence of extensive experience in conducting analyses and drafting reports on the theme of industrial relations and collective bargaining;

Proven track record of ensuring the quality of written materials prepared, both in terms of content and format (i.e. previous publications),

Expert knowledge of industrial relations systems /collective bargaining and ability to identify and integrate analyses of current

Respect of the budgetary constraints.

VII. Award Criteria

The contract will be awarded to the tender offering the best value for money, taking into account the specific objectives, requirements and selection criteria of the tender. The principles of transparency and equal treatment will be respected with a view to avoiding any conflicts of interest.

VIII. Content and selection of the bids

Offers must be sent within 21 days of the date of publication of this call for tenders on the ETUC website, by 19 February 2013. Offers must be sent to ETUC (see contact address below).

To ensure confidentiality, bidders must submit their offer in a double envelope. Both envelopes must be sealed and the inside envelope shall not only bear the name of the department for which it is intended (see below), but also the words "Tender – not to be opened by the Mail Department" (Appel d'offres – à ne pas ouvrir par le service du courrier). If self-adhesive envelopes are used, they must be sealed with adhesive tape crossed by the signature of the sender.

A committee will be formed comprising four representatives of the ETUC Secretariat. One or more members of this committee will initial the documents, confirming the date and time of each bid. The committee members will sign the report on the bids received, which will list the admissible bids and provide reasons for rejecting bids owing to their failure to comply with the stipulations of the tendering process.

This committee will also evaluate the tenders that have been deemed admissible. An evaluation report and classification of participation requests will be drawn up, dated and signed by all the members of the evaluation committee and kept for future reference.

This report will include:

- The name and address of the contracting authority, the purpose and value of the contract or framework contract;
- The names of any excluded candidates and the reasons for their rejection;
- The names of candidates selected for consideration and the justification for their selection;

- The names of candidates put forward and justification of their choice in terms of the selection or award criteria.

The contracting authorities will then make their decision.

All candidates must either deliver their bid by hand or submit them by registered letter to:

ETUC Alexandre MARTIN International Trade Union House Boulevard du Roi Albert II, 5 B – 1210 Brussels BELGIUM
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For requests sent by registered mail, the postmark will serve as proof of the date of dispatch.