

## Call for tenders for subcontracting an expert in company law and workers board-level representation (ETUC project on “Company mobility and workers in boards”)

This is a call for a subcontractor to provide expertise as part of the implementation of the ETUC project on “Company mobility and workers in boards”.

The ETUC will publish the call on its website, on Wednesday 5 December 2018, and keep it online for 16 calendar days (deadline for submission of bids: Friday 21 December 2018).

### 1. Summary of the project and description of the objective

The ETUC is very concerned about the potential impact of the Company law package, particularly given previous proposals by the Commission (SPE, SUP) which would have made it easier to set up letterbox companies in other countries to avoid taxes and social standards. It is very important for ETUC to have better insight into the topic and to develop the trade union point of view across scientific and other channels. Regarding Cross-Border Divisions, the ETUC is concerned that workers’ rights will also be weakened by the division, and that assets and liabilities will not be fairly divided between the companies resulting from the division.

The project is based and follows-up on a previous ETUC project on letterbox companies which dealt with regime shopping, tax evasion, circumvention of labour law and social security contributions. The current project looks at new and similar types of circumvention and is building bridges to the previous project.

This project seeks to better understand the links between company law and workers’ rights, and building upon this, to raise awareness about these interdependencies in policy making and union circles: The ETUC recognizes that EU company law is driven by the need to maximize company mobility and economic integration as part of the fulfilment of the single market. However, the experience with the SE and the Cross-Border Mergers Directive, to name only two examples, has made it quite clear that such company law measures have a collateral and potentially quite erosive impact on the governance models and workers’ rights which are laid down more clearly in collective labour legislation. Even though this collateral impact may not be intended, the preservation and development of collective labour rights is not high on the company law agenda.

In order to gather more evidence on the potential impact of the Company Law Package, the ETUC has organised 2 workshops and would like to organise a conference together with ETUFs

and affiliates. It is of utmost importance to gather plausible evidence on the real impact of the Company Law Package related to workers' participation. Information on any cases of Cross-Border Transfers of Seats and Cross-Border Divisions that trade unions and experts are aware of from their country should be looked at with a view on the impact on workers' participation.

The following ETUC assumptions have to be tested with its affiliates.

- Regarding the issue of Cross-border Conversion, Merger, Divisions, Transfers of Registered Seat, the ETUC is concerned that companies use this to move their headquarters to countries with lower social standards, tax rates and weaker – or non-existent – participation rights. The situation after Polbud allows all kind of circumventions.
- Related to Cross-Border Divisions, provisions must be in place to prevent companies from splitting companies in order to fall below existing thresholds for workers' board-level representation, which are different from one Member State to the other.
- As for cross-border conversions, mergers, divisions, no legislation should be allowed in this area without safeguards for worker rights. This is another area where the ETUC proposal for an EU framework for information, consultation and participation rights could have been helpful, but contrary to the SE-Directive with its two-track approach (regulation and directive on workers involvement) the Commission has chosen a single track approach.

Following these assumptions, the ETUC will continue to monitor the ongoing developments on the Directive on Cross-Border Conversion, Merger and Division and the necessary improvements to the Commission proposal. From previous discussions on company law proposals, the ETUC came to some partial conclusions which have to be tested on the newly submitted proposals of the current company law package.

- Companies should not be allowed to split their registered office and their company headquarters (main seat) between different countries. Instead, and like the SE Directive + Regulation, companies should be required to have their registered office and company HQ in the same country ('same seat' principle). This will help discourage companies from transferring for reasons not based on genuine business needs.
- Worker Information, Consultation and Participation rights should not be endangered by the cross-border reorganisation and restructuring process. The ETUC has proposed an EU framework for information, consultation and participation rights (<https://www.etuc.org/documents/etuc-position-paper-orientation-new-eu-framework-information-consultation-and-board-level#.WOeOYdJ97cs>) which would help preserve and strengthen worker rights in this area, which should apply to cross-border reorganisation and restructuring such as transfer of seat situations.

The project needs to call upon the expertise of some external experts in order to carry out a legal assessment on the interlinkage between this company law package and worker participation rights, and in particular on workers' board-level representation (via a desk research and some telephone interviews). Different legal backgrounds will have to be taken into account, as the effects are expected to be different from one country to another. The research will probably need a company lawyer with an expertise in labour law or vice versa: a labour lawyer who is knowledgeable in company law. The external experts will produce a report, which will be published, as a key outcome of this project.

## 2. Tasks to be performed by the subcontractor

The sub-contractor will perform the following tasks:

1. Making a study on the formal legal frameworks (including requirements on company law, labour law, at European and national level, and in particular worker participation rights in the broadest sense: information, consultation and board-level representation) and informal practices regarding workers' participation in time of corporate governance crisis, within 6 different European countries. These countries will include Germany, Sweden, Denmark and three other countries, to be determined in agreement with the project steering committee, reflecting the political and regional diversity of the EU, as the company law package has important consequences on workers participation which are different from one country to the other. The study will address questions such as: What kind of influence do the workers representatives have on cross-border reorganisation and restructuring? What kind of European company law has which kind of effects on workers participation rights?
2. Analysing relevant case studies and evaluating best practices on how to secure fair corporate governance, how to implement early warning systems and preventive measures to avoid the setting up of letterbox companies, and under which conditions the active contribution by the workforce and their representatives could be useful.
3. A key aspect is the question of European policy on workers' participation and company law: How must European policy be designed to avoid the undermining, circumvention, evasion of workers' participation rights and in the same time to create a European level playing field for workers in order to diminish and end unequal treatment of workers. The challenge is to overcome the national perspective and adopting a European vision to design a possible horizontal EU framework for information consultation and board-level representation as the general reference for European company law. Analysing and discussing the ETUC proposal of 2016 (with the escalator) proposing a European approach taking into account different national industrial relation systems, cultures and traditions (perhaps with proposals to improve it or proposals for an alternative approach).
3. Contribute to organising and animating a small scale experts' workshops (approximately 30 participants), presenting the results of the study, discussing the national and European frameworks and analysing chances and challenges for the workforce within preventive restructurings and arrange the transfer of knowledge and perceptions.
4. Update the study once the company law package is adopted.
5. Producing recommendations for European policy makers and supporting lobbying efforts by ETUC affiliates in monitoring the transposition of company law directives in their national legislations.

## 3. Expertise, experience and skills required

Expertise required:

- In-depth expertise in company law, labour law and worker participation rights and its interconnectedness;
- Proven experience of workers' participation rights related to European company law issues, and in particular the workforce/labour dimension related to these processes, will be considered a plus;
- Experience in working on European level projects;
- Experience in working with trade unions at both European and national level;

Skills required:

- Proven ability to carry out in-depth research on legal issues and understanding the links between European and national levels
- Proven research skills, including identifying stakeholders and conducting interviews
- High proficiency in English: ability to draft documents and make presentations in English.
- Ability to work within specified deadlines and to respect budgetary limits
- Availability to participate in the workshop to present the results.

## 4. Time schedule and reporting

The subcontractor will be asked to perform the above-mentioned tasks by 15 March 2019 followed by a workshop in April 2019.

Please note that the exact dates of the above-mentioned events may be subjected to slight changes and will be decided upon by the steering committee.

## 5. Payment

The total maximum budget available for the fees of the subcontractor is as follows:

<b>Contract with ETUC</b>	
<b>Main activities and Meetings</b>	
<ul style="list-style-type: none"> <li>▪ Desk research</li> <li>▪ Drafting a report</li> <li>▪ Participating in the Steering Committee meetings,</li> <li>▪ Contribute to the organisation and participating in the key project events: 1-2 dissemination workshops.</li> </ul>	
<b>Total budget for the Expertise</b>	<b>16 250 € (VAT and all taxes included)</b>

The subcontractor will be remunerated in various instalments (advance and final payment). This

amount covers the fees but does not include the travel and subsistence costs incurred for attending project meetings such as Steering Committee meetings and Final Conference. These will be covered by ETUC on the basis of EU rules & thresholds (see the EC table of maximum amounts per EU member state).

## 6. Selection criteria

The selection criteria are:

- Verifiable expertise, experience and skills, as required and described in part 3 of this call;
- Proven track record of ensuring the quality of written materials produced, both in terms of content and format (i.e. previous publications), in the relevant subjects specified in this call for tenders;
- Price not exceeding the amount stated above;
- Previous research/work undertaken in the field of insolvencies and workers participation at company-level

## 7. Form, structure and content of the tender

Tenders must be written in English. They must be signed by the tenderer or his duly authorised representative and be perfectly legible so that there can be no doubt as to words and figures. Tenders must be clear and concise and assembled in a coherent fashion.

Since tenderers will be judged on the content of their written bids, they must make it clear that they are able to meet the requirements of the specifications.

All tenders must include at least two sections:

- i) Technical proposal

The technical proposal must provide all the information needed for the purpose of awarding the contract, including:

- Specific information covering the technical and professional capacity, as required, in particular:
  - Description of relevant professional experience with emphasis on the specific fields covered by the invitation to tender;
  - Detailed curriculum vitae of key coordinator and of the other team members;
  - A selection of the main works and/or articles published by all the experts involved, in relation to the relevant subjects specified in this tender.
- Specific information concerning the proposed methodology for delivering the tasks listed in part 3.

- ii) Financial proposal

Prices of the financial proposal must be quoted in euros, including if the sub-contractor is based in a country which is not in the euro-area. As far as the tenderers of those countries are concerned, they cannot change the amount of the bid because of the evolution of the exchange rate. The tenderers choose the exchange rate and assume all risks or opportunities relating to the rate fluctuation.

Prices must be fixed amounts and shall not include travel expenses and daily allowances for the attendance to the Steering Committee meetings and other project events (such as the workshops or Final Conference) which will be covered by ETUC on the basis of EU rules & thresholds.

The maximum amount available for this contract is EUR 16,250 (VAT and all taxes included).

Prices shall be fixed and not subject to revision during the performance of the contract.

## 8. 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.

## 9. Content and selection of the bids

**This call for tenders will be published on the ETUC website on Wednesday 05 December 2018. Offers must be sent within 16 days of the date of publication, by Friday 21 December 2018.** Offers must be sent to ETUC, in both formats: electronic (by e-mail to [amartin@etuc.org](mailto:amartin@etuc.org)) and as a paper copy (see contact details below).

Concerning the paper copy, 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 WBRL Project – not to be opened by the Mail Department" (Appel d'offres – à ne pas ouvrir par le service du courrier).

A committee will be formed comprising of representatives of the ETUC and the European Trade Union Federations involved in the project. 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:

1. The name and address of the contracting authority, the purpose and value of the contract;
2. The names of any excluded candidates and the reasons for their rejection;
3. The names of candidates selected for consideration and the justification for their selection;

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

Candidates must send their bid electronically – to the following e-mail address: [amartin@etuc.org](mailto:amartin@etuc.org) – as well as submitting a paper copy of their bid, either delivered by hand or by registered mail or special courier service to:

**ETUC**

Peter SCHERRER

Deputy General Secretary

International Trade Union House

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B – 1210 Brussels

BELGIUM

For bids sent by registered mail, the postmark will serve as proof of the date of dispatch.