

Call for tenders for subcontracting a legal expert for the ETUC, IRES and ASTREES project “Establishing workers representation and social dialogue in the platform and app economy”

This is a call for a subcontractor to provide legal research as part of the implementation of the project “Establishing workers representation and social dialogue in the platform and app economy”. The ETUC will publish the call on its website on 8 December 2020 and the call will be open for 4 weeks. The deadline for submission of bids is 5 January 2021.

1. Summary of the project and description of the objective

This project intends to contribute towards the setting-up of a shared space for dialogue and experimentation involving different stakeholders of the platform economy. The purpose of this project is to:

- Give visibility to and support through capacity building the existing initiatives of workers representation and social dialogue within platforms and trade union initiatives towards platforms;
- Reflect upon the setting-up of collective self-regulation practices within platforms, « charts » and « codes of good conduct » (on minimum standards, on occupational safety and health, gender equality, etc.) and raise the visibility and awareness on these practices;
- Reflect upon the experimentation of new modes and practices of workers representation and social dialogue in the context of the platform economy.

This project is promoted by the European Trade Union Confederation, as the lead coordinator, in partnership with IRES and ASTREES.

Three specific objectives have been identified:

1. To set up and to coordinate a European observatory on the evolution of the participation of the workers within the digital platforms. This observatory would be in charge on the development of the following tasks:
 - a. Mapping and assessing existing practices of worker representation and social dialogue within platforms;
 - b. Developing new methods of representation and dialogue with the stakeholders and specifically platform workers at the European level.
2. Identifying and supporting innovative and emerging practices aiming at strengthening the best representation, organisation and protection of platform workers.
3. Proposing a regulatory framework at European level to strengthen the representation of platform workers and to defend their working conditions in these companies.

2. Specific background

The subcontractor should deliver specific legal contributions linked to the work of the Observatory.

At this regard, this request of expertise is linked with the third specific objective of the project, which aims at putting forward “a proposal for a European regulatory framework to defend worker’s representation in platforms and their working conditions in these companies. This regulation may be based on existing legal frameworks (reference to the European Directive on Temporary Work, inter alia). The elaboration of this proposal will rely notably on the work of the observatory...”.

The observatory has been following the different legislative and political initiatives developed at both European and national level. The President of the European Commission, Ursula Von der Leyen, has mandated the Commissioner for Employment and Social Rights Nicolas Schmit to move forward on an initiative to "improve the working conditions of platform workers". Commissioner Schmit has undertaken informal consultations with the European social partners and formal consultations will be launched in 2021 during the Portuguese Presidency of the Council of the European Union (January-June 2021).

The European Parliament's Committee on Employment and Social Affairs is working on an own-initiative procedure on "Fair working conditions, rights and social protection for platform workers", whose first draft will be published on 23 January 2021.

On November 2020, the GUE political group at the European Parliament has put forward a proposal for a Directive on digital platform workers, aiming at respecting the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union, with particular attention to Article 31 of the Charter, which provides that every worker has the right to working conditions which respect his or her health, safety and dignity, and to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

In Germany, the Ministry for Employment and Social Affairs has opened a discussion on labour conditions and labour law in the platform economy. On 27 November, a document containing the key points around which he hopes the discussion will revolve was published, yet the legislative timetable has not been made public yet. The points are the following:

- Including auto-entrepreneurs working for online platforms in the general pension system by involving companies in the financing of this pension,
- Examining the possibility of broadening access to health insurance by also transferring a part of the contributions to the employers,
- Studying the potential for strengthening work protection, especially in the case of bicycle couriers,
- Providing for a potential legal framework for the self-employed, freelancers and auto-entrepreneurs so they can organise in order to negotiate basic working conditions with their employers,
- Imposing notice periods for terminating working relationships that are in proportion to the number of hours worked for an online platform,

- Requiring company transparency over the status they grant to the self-employed working for them as well as creating a set of general rules over working conditions, which would apply to all companies in the sector,
- Establishing a mechanism equivalent to the drafting of a work certificate that allows the person to apply for another job,
- Creating a data bank at the Ministry in order to better monitor the data related to the number of workers and human activity in the sector.

In France, the Government has published the Frouin report to explore potential legislative avenues for regulating the working conditions of platform workers. A set of recommendations has been put forward on concerning the working status, social dialogue and social rights, and social protection but without calling into question the « flexibility provided by self-employed status ».

On 29 October, the Executive Committee of the ETUC adopted a resolution “on the protection of the rights of non-standard workers and workers in platform companies (including the self-employed)” (available at: <https://www.etuc.org/en/document/etuc-resolution-protection-rights-non-standard-workers-and-workers-platform-companies>). The ETUC calls on European governing bodies to undertake action on the following two axes:

- The ETUC wants to impose the rights to organise, to be represented by a trade union and to collective bargaining, the employee presumption, access to minimum wages, social protection and respect for working conditions for all workers, in this case for all non-standard workers and workers in platform companies (including the self-employed)
- Two other aspects specific to platform companies need also to be addressed. Firstly, platforms must be recognised as employers, with all the legal obligations that this entails in terms of payment of income tax, financing of social protection, responsibility for health and safety, due diligence and corporate social responsibility and their workers should be acknowledged as workers. Secondly, democratic control of the operation of the algorithm applications must be at the heart of the public debate and must be discussed through information, consultation and participation of workers.

3. List of tasks to be performed by the subcontractor

The subcontractor will be asked to perform the following tasks:

To provide an analysis on the legal feasibility of the ETUC proposal with specific attention to the principle of subsidiarity in such a way that a distinction is presented of the actions which could be taken at European level and those which are a national competence. In particular the proposal of an ‘employee presumption’ as starting point for European legislation needs to be translated into legal terms.

To make an analysis from the perspective of the political position of the ETUC of the two above-mentioned initiatives of the European Parliament (GUE proposal for a directive; European Parliament own-initiative report) and those of the French and German governments.

The expert will also be requested to present the main findings of the different reports to the Steering Committee and to the ETUC European Platform Observatory.

4. Time schedule and reporting

The subcontractor will be asked to sign the contract on 8 January 2021.

The deadline for the presentation of the first draft of the legal feasibility of the ETUC resolution and the French and German legislative proposals is 8 March 2021.

The deadline for the presentation of the first draft of the analysis of GUE directive is 1 February, the deadline for the preliminary analysis of the European Parliament's report "Fair working conditions, rights and social protection for platform workers", which will be published on 23 January, is 8 February.

The Steering Committee of the project will provide feedback to the draft reports within two-weeks time, after which the expert should integrate the consideration provided in one-month time. A second and last similar revision period will be arranged afterwards.

The expert should complete five 15-page report for each of the above-mentioned analysis.

4. Expertise, experience and skills required

Expertise required:

- Legal degree: Expertise on EU labour legislation, with a focus on the situation of non-standard workers and workers in platform companies (including the self-employed);
- Knowledge of relevant European level policies and legislation on non-standard workers and workers in platform companies (including the self-employed);
- 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 legal research on EU issues and understanding links between European and national level;
- 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 to meetings of the Steering Committee and the meeting of the ETUC European Platform Observatory.

5. Payment

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

Contract with ETUC	
Main activities and Meetings	
<ul style="list-style-type: none"> • Analysis of the legal feasibility of the ETUC proposal with specific attention to the principle of subsidiarity in such a way that a distinction is presented of the actions which could be taken at European level and those which are a national competence. • Analysis under the light of the political position of the ETUC on the two above-mentioned initiatives of the European Parliament and those of the French and German governments. • Presentation of these deliverables to the Steering Committee of the project. • Presentation of these deliverables to the ETUC European Platform Observatory. 	
Total budget for the Expertise	12.000 € (VAT and all taxes included)

The subcontractor will be remunerated in various instalments (advance and final payment). This amount covers all fees but does not include the travel and subsistence costs as physical meetings are not foreseen between the applicant and the subcontractor.

6. Selection criteria

The selection criteria are:

- Verifiable experience and technical skills required to perform the tasks described in this call;
- Proven track-record of legal research in the fields related to digital labour platforms, industrial relations, social dialogue and workers' rights;
- Price not exceeding the amount stated above.

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 2.
- 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 12.000 (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 8 December 2020. Offers must be sent at the latest on 5 January 2021. Offers must be sent to ETUC, in electronic format (by e-mail to lvoet@etuc.org and amartin@etuc.org) and refer to the “ETUC, IRES and ASTRESS project “Establishing workers representation and social dialogue in the platform and app economy”.

A committee will be formed comprising of 3 representatives (one of ETUC, one of IRES, and one of ASTRESS). 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.