

Call for tenders for subcontracting an expert for the ETUC project on “Democracy at Work”

This is a call for a subcontractor to provide expertise as part of the implementation of the ETUC project on “Democracy at Work”.

The ETUC will publish the call on its website, on Monday 7 February 2022, and keep it online for 18 calendar days (deadline for submission of bids: Friday 25 February 2022).

1. Background information on the project

More Democracy at Work is an essential initiative of the ETUC to ensure a stronger Social Europe, where workers’ involvement, including effective information and consultation and board-level participation rights matter. These are key features anchored in the values and principles of the European Union, in particular

- in the Chapter on Solidarity of the legally binding Charter of Fundamental Rights of the EU in its Articles 27 and 28;
- in the TFEU’s social policy chapter (Article 153 points (e) and (f));
- in the 1989 Community Charter of Fundamental Social Rights of Workers (Articles 17 and 18).

These fundamental rights are furthermore rooted in the European Social Charter of the Council of Europe (Articles 6, 21, 22, 25, 28 and 29) and in the ILO “Workers Representatives” Convention n° 135 (1971) and the related Recommendation n° 143 (1971).

Such rights are increasingly under pressure due to the conjunction of the increase of multinational companies operating at European and global level looking for regime shopping with and due to the increased pace of digitalisation of the economy and the development of various types of outsourcing practices (with long and complex supply and subcontracting chains) and restructuring processes (e.g. conversions, mergers and divisions).

European Works Councils (EWCs), in particular, are confronted with such developments. Although their role as a transnational body securing worker representation has become more and more important with more transnational companies operating across borders. Workers’ basic rights to information and consultation are often breached. Evaluations by the European Commission and the ETUI have showcased the need to seriously address the loopholes of the EWC directive 2009/38/EC to guarantee the effectiveness of EWC rights. One of the loopholes is clearly the lack of enforcement and in particular lack of proper access to justice for EWCs.

The few litigation cases concerning the European Works Council, e.g. the case of Anglo-Saxon groups or EWC lawsuits filed in Great Britain, are very heterogenous: Whereas EWCs in France and Belgium

have succeeded in obtaining injunctions to provisionally stop the implementation of measures, several attempts in Germany and the Netherlands have failed.

The reasons for EWCs going to court are various from the lack of information and consultation to the quality and timing of such a process and also the issue of confidentiality, resources for EWCs and operational aspects.

Many of the violations and infractions of EWCs' rights might be settled through alternative dispute resolution mechanisms between the parties. A certain number of them, however, do not make it to court rooms for various reasons, among which, due to a lack information about the different national rules of governing access to courts or inability of EWCs to apply them in practice.

Before taking the decision of whether going to court is the right option, EWCs face several uncertainties with regards to the national judicial system concerned. Their access to justice is amongst other things determined by:

- a) Access to judicial and legal capacity to act in courts;
- b) Costs and time of legal proceedings;
- c) Competence of courts;
- d) Category of breach and possible sanctions.

Given the vast diversity of possible legal redress across the EU member states, EWC guidelines on basic conditions to fulfil when seeking access to justice would be key support. EWC agreements are usually subject to the law of the Member State in which the company head office is located. As a result, most EWC members have to operate within a legal system that is unfamiliar to them.

The objectives of the tendered study are to:

- Present the different judicial avenues for EWCs to file a complaint in different member states of the European Union;
- Produce a practical overview of access to justice for EWCs in different EU member states. It should serve as a handbook of basic technical provisions that have to be taken into account when considering the option to seek enforcement through court.
- Present exemplary court cases and EWCs' respective strategy to go to court that could be used as best practices.
- Highlight shortcomings and challenges with the current European (and national) legal frameworks and areas which would need to be adapted and improved.

At the same time, it is important to underline that the tendered study does not intend to generally encourage or discourage EWCs to choose the option of going to court, but to map and provide an overview of the state of play. The tendered study shall paint a clear picture laying out the means to and technicalities of access to justice in each EU member state. As a result, the study shall serve as a guiding handbook for legal redress with the aim of breaking down the complexity of such a process. The practical character of the guidance for practitioners is therefore essential for the outcome of the study.

2. Tasks to be performed by the subcontractor

The subcontractor will be entrusted with a research project, which is part of the broader ETUC project *More Democracy at Work*. **The research will start in April 2022 and will be concluded by June 2022.**

The project's investigation concerns legal provisions for EWCs to assert their rights in the different EU member states. The subcontractor will assess the latter in all 27 EU member states. The aim is to offer a pragmatic/practical overview for practitioners which steps have to be undertaken in order to seek justice before a court. Such an overview may finally also serve to the practitioners as an objective tool to figure out whether such a decision may be the adequate way to go forward.

The results shall be presented in a final report of about 50-70 pages maximum containing:

- **An introduction** why EWCs may seek the option to go to court
- **Legal status check** taking into account the following questions:
What is the legal status of the EWC? Who has legal capacity to go to court? How/where can a complaint be filed?
- **Resources check** taking into account the following questions:
Is there an autonomous budget? Which costs may have to be taken up? Who bears the costs for legal representation? How can the financing be organised? How to find and finance a lawyer? How to calculate possible court fees?
- **Competent Court check** (in both material and geographical terms)
- **In trial check** taking into account the following challenges: preparation of evidence, collecting proof, enquiries with the lawyer, evaluation of the burden of proof, appointment of a legal proxy.
- **3 Examples of Best-Practice-Cases.** Whereas the formal and rather preliminary aspects of the access to justice for EWCs shall be laid down in previous sections, possible coordination and in-depth procedural tips during trial can be brought forward by means of the best-practice examples.
- **A conclusion** including reference to the provisions of access to justice in the EWC Directive and how the latter could be strengthened given the background of national implementation.

The research should cover all 27 European Union member states. The analysis should be presented in a pragmatic/practical manner so that it can be used by practitioners. For example, the results of the analysis can be laid down in a map or in a comparative table. The tenderer is invited to make suggestions for the graphical layout, the final layout will eventually be produced by a third party. The final report will be published in English and in French.

The progress and development of the study will be closely followed and monitored in collaboration with the project's Steering Committee.

The final outcome of the study shall serve as a tool for EWC members, trade union and workers' representatives and other (legal) practitioners when considering the option of legal redress when their information and consultation rights are disregarded by management. Instead of a political document,

the purpose of this study is to give guidance and advocacy to trade unions and worker representatives on the ground.

The findings of the study will also be presented at a workshop around the time of publication. This workshop will serve for dissemination and awareness-raising among people on the ground. Furthermore, the tenderer will be asked to present the results of his/her research during one of the ETUC Committee meetings. The tenderer may also be asked to present the results of the study during the EWC conference in September 2022.

In summary the tenderer will need to:

- Participate periodically in meetings of the steering committee of the project, to discuss the legal analysis and its content and to assess the developments and the ongoing work;
- Identify, together with the steering committee of the project, the relevant criteria of analysis that will compose the map/ comparative table;
- Produce a final report (approximately 70 pages);
- Participate and present the report in a workshop and possibly at the ETUC Annual EWC Conference in September 2022.

3. Expertise, experience and skills required

Sound expertise is required on the following issues:

- Expert knowledge in the field of European Works Councils;
- Expert knowledge of workers' information, consultation and participation rights;
- Good understanding of workers' involvement (both in national and European contexts);
- Good knowledge about legal redress systems/possibilities;
- Experience in working on European level projects;
- Good understanding of the European trade union movement.

Sound experience is required in the following areas:

- Carrying out in-depth research, including legal research and overviews, preferably relating to workers' information, consultation and participation rights;
- Writing research reports containing analysis of legal frameworks and meaningful policy recommendations;
- Successful track record of delivering in case studies for similar projects, with EU institutions and/or European stakeholders (social partners, NGOs, etc.).
- Producing practical/pragmatic and comprehensible material for a non-research related public.

Skills required:

- Proven research and presentation skills (in English);
- Proven skills in drafting case study reports;
- Ability to work within specified deadlines and to respect budgetary limits;
- Ability to work in a multicultural context and understanding of different industrial relations systems, cultures & traditions;
- Good administration and project management skills.

4. Time schedule and reporting

The subcontractor will be asked to perform the above-mentioned tasks by 30 June 2022.

The subcontractor will also be asked to participate in the Steering Committee meetings of the project, Committee meetings of the ETUC and the workshop after publication. Participation in the ETUC Annual EWC conference may also be possible. The dates will be discussed and decided together with the tenderer in the Steering Committee.

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"> • Produce a report of approximately 70 pages containing: <ul style="list-style-type: none"> • An introduction to why EWCs may seek the option to go to court • Checks on preliminary fundamental prerequisites for EWCs when going to court • 3 Examples of Best-Practice-Cases • Brief analysis of the shortcomings of the EWC Directive (and national legislations) regarding the provisions of access to justice • Participate in the Steering Committee meetings to discuss the evolution of the project. • Participate in a workshop, the Steering Committee meetings, and ETUC permanent Committee meeting (and possibly in the ETUC EWC Conference) to present the results of the case study report. 	
Total budget for the Expertise	28 500 € (VAT and all taxes included)

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 workshops, ETUC Committee meetings). 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 in particular:

- Verifiable expertise, experience and skills, as required and described in part 3 of this call;
- Quality of the methodology proposed in the offer;
- 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/Quality ratio;
- Previous research/work undertaken in the field of EWCs and workers' information, consultation and participation rights.

7. Form, structure and content of the tender

Tenders must be written in English. They must be signed by the tenderer or his/her 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 tenderer and of the other team members if applicable;
 - 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 of this call.

- ii) Financial proposal

The prices of the financial proposal must be quoted in euros, including if the subcontractor 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 which will be covered by ETUC on the basis of EU rules & thresholds.

The maximum amount available for this contract is EUR 28,500 (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 Monday 4 February 2022 and will be kept online for 28 calendar days. Offers must be sent at the latest on Friday 25 February 2022. Offers must be sent to ETUC, in electronic format (by e-mail to amartin@etuc.org), and refer to our “Call for Tenders – Democracy at Work Project”.

A Steering Committee will be formed comprising of 3 representatives of the ETUC. One member of this committee will confirm the date and time of receipt 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.

The 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 Steering 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.