

Call for tenders ETUC Project 2020-02

Call for tenders to subcontract an expert to draft a strategic litigation guide for trade unionists

This is a call for a subcontractor to provide expertise with a view to support the activities of the Fundamental Rights and Litigation Advisory Group under the ETUC project *ETUCLEX*. More specifically, this call for tenders relates to the drafting of a strategic litigation guide for trade unionists.

The ETUC published the call on its website on 10 June 2022, and keep it online for 28 calendar days. The deadline for submission of bids was 8 July 2022. **The deadline has been extended to 3 November.**

1. Background information on the project

Promoting and defending human rights, including labour and trade union rights, has always been at the core of the priorities and actions of the ETUC. Strategic litigation undertaken by the ETUC and its affiliates before international and European judicial and quasi-judicial bodies has played a key role in the effective enforcement and advancement of workers' rights. Looking ahead, the ETUC intends to further equip itself and its affiliates with concrete tools to stimulate and develop strategic approaches to litigation.

The ETUC has reaffirmed its commitment as a Human Rights Defender in its Action Programme 2019-2023, adopted at its 14th Statutory Congress held in Vienna in May 2019. Since then, the ETUC has embarked on a mission to renew and further enhance the work of its Fundamental Rights and Litigation Advisory Group and associated trade union legal networks.

In November 2020, the ETUC Executive Committee adopted a [Resolution](#) laying the basis for the ETUCLEX, a human rights, legal and strategic litigation network, with a view to serve the interests of the ETUC and its affiliates in these domains. The ETUCLEX aims to consolidate the legal expertise, competence and capacity of the ETUC and its affiliates, including through improved exchange of information, increased capacity building and a more coordinated approach to strategic litigation.

Against this background, the ETUC intends to subcontract an external expert to prepare a strategic litigation guide (hereinafter "guide") for trade unionists and legal practitioners wishing to defend or advance social, workers' and trade union rights through legal proceedings.

The guide is intended as a practical tool that can be used by trade union legal activists to support their strategic litigation process and inform their decisions, in particular in terms of considerations linked to the identification of strategically favourable cases, the choice of appropriate legal fora and capitalising on the outcomes of the case. In the absence of a strategic litigation guide addressing specifically the needs of trade unions, this guide intends to fill that gap and build capacity among trade union legal practitioners wishing to mobilise human rights instruments at European and international level.

2. Tasks to be performed by the subcontractor

As part of the ETUC project *ETUCLEX*, the subcontractor will be entrusted with the drafting of a practical guide on strategic litigation for trade union legal activists. The project is expected to be concluded by the end of March 2023.

The guide shall be divided into two parts. The first part (1) will offer insights into strategic litigation both as a concept and as an action, explaining how it can be pursued to either defend or advance social, workers' and trade union rights. In practical terms, it should outline what practitioners need to know and take into consideration to give their litigation a more strategic approach, including non-legal activities such as advocacy and the creation of strategic partnerships among others. The [checklist](#) previously developed by the ETUC and annexed to the ETUCLEX Resolution will serve as basis for this chapter, with a view to further explore and elaborate on the various considerations to be taken into account when identifying a favourable case, choosing the appropriate legal forum, and ensuring and effective follow-up independently of whether the outcome of the case is positive or negative.

The second part (2) of the guide will give an overview of the judicial and quasi-judicial bodies and remedies before which strategic litigation and action may be envisaged at European and international level, with a view to outline in more detail the specificities of the proceedings before the different bodies. For each body, this overview should elaborate on issues such as:

- What is the scope of the body (e.g. geographical and personal scope, material rights covered, etc.)?
- Who has legal standing?
- What are the advantages (or disadvantages) of litigation or action before the specific body in relation to social, workers' and trade union rights?
- How to bring a case?
- What are the possibilities for appeal of a judgement or decision?
- What complementary actions can be undertaken in relation to a case pending before the specific body in addition to or in the absence of legal standing?
- Examples of relevant successful (or unsuccessful) trade union cases?

N.B. the list is not exhaustive and other elements will be identified in cooperation with the successful bidder.

The guide will cover the relevant procedures under the following judicial and quasi-judicial bodies:

- Council of Europe
 - European Committee of Social Rights (ECSR)
 - European Court of Human Rights (ECtHR)
- European Union
 - Court of Justice of the European Union (CJEU)
 - European Ombudsman
 - European Labour Authority (ELA) (social partner cases)
 - European Commission Directorate General for Competition (whistleblowing (antitrust) and complaints (state aid) mechanisms)

- European Commission Directorate General for Trade (complaints to the Chief Trade Enforcement Officer)
- International Labour Organisation (ILO)
 - Representations
 - Complaints
 - Complaints to the Committee on Freedom of Association
- United Nations Committee on Economic, Social and Cultural Rights (CESCR)
 - Individual complaints mechanism

N.B. the list is not exhaustive and is subject to change.

The guide should be no longer than 70 pages, while ensuring a simple and accessible format using e.g. lists, indicators and charts. The subcontractor should develop basic graphic flowcharts to provide an overview of the different legal fora available and outlining the main steps of each procedure. References to legal instruments, rules or procedures, forms, handbooks and other relevant sources should be included in footnotes and the bibliography, so as to facilitate access to further information and a deeper understanding for users of the guide.

An indicative draft structure of the guide is provided in annex to this call. In consultation with the Steering Committee, the subcontractor will develop a template to be followed for the presentation and examination of each body included in the guide, so as to ensure a coherent and practical approach.

The final outcome of the study shall serve as a tool for trade union legal activists when considering whether to embark on strategic litigation and the relevant regards to be had in relation to the case and the legal fora. The purpose of this study is to give practical guidance and as such must be structured in a user-friendly way.

With a view to feed the drafting and give the guide a hands-on approach, the subcontractor is also required to undertake a series of interviews with experts with practical experience of the various judicial and quasi-judicial bodies covered by the guide. The interviews may also inform the chapter on strategic litigation. The subcontractor will be required to draft the interview guides in agreement with the Steering Committee.

The subcontractor will ensure the proof-reading and editing of the finalised study, while the ETUC will account for the layout and publication of the guide.

3. Expertise, experience and skills required

Sound expertise is required on the following issues:

- Expert knowledge in the field of international human rights law;
- Expert knowledge of trade union rights;
- Expert knowledge of legal redress systems/possibilities;
- Practical experience or demonstrated interest in strategic litigation;
- 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 legal research;

- Producing practical/pragmatic and comprehensible material for a non-research related public;
- Writing research reports containing analysis of legal frameworks;
- Successful track record of delivering in case studies for similar projects, with EU institutions and/or European stakeholders (social partners, NGOs, etc.).

Skills required:

- Proven research, drafting and presentation skills in English;
- Proven skills in drafting case study reports and interview templates;
- 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 31 December 2022.

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

Feedback on the draft guide will be collected from the experts interviewed and other legal practitioners as appropriate and identified by the ETUC legal team.

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/foreword ○ A chapter on the aims, objectives, considerations and associated actions relevant to strategic litigation ○ A chapter on strategic litigation before European and international judicial and quasi-judicial bodies • Undertake a minimum of 4 interviews with experts with practical experience of strategic litigation • Participate in meetings with the Steering Committee to discuss the evolution of the guide. 	
Total budget for the Expertise	20 000 € (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 human rights/trade union rights, in particular in the field of litigation.

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 EUR 20 000 (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 10 June 2022. Offers must be sent at the latest on 8 July (now extended to 3 November). Offers must be sent to ETUC, in electronic format (by e-mail to amartin@etuc.org), and refer to our “Call for Tenders – ETUCLEX”.

As Steering Committee, the ETUC legal team will assess the bids received. . 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.