



EUROPEAN COMMISSION

Structural Reform Support Service

Financial Sector and Access to Finance Cluster

European Commission

Call for tenders SRSS/2019/OP/0001

**Support for insolvency, pre-insolvency,
restructuring and data collection in Spain**

Open procedure

TENDER SPECIFICATIONS

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1. SCOPE AND DESCRIPTION OF THE PROCUREMENT

1.1 Contracting authority

This call for tenders is launched and managed by the European Commission (referred to as the **EC** or the **Contracting Authority** for the purposes of this call for tender), assisted by the Structural Reform Support Service (**SRSS**).

1.2 Subject

The subject of this call for tenders is to provide the following services:

- Develop a uniform legislative framework for the IP profession in Spain.
- Review and amend, where necessary, the entire Spanish legal framework for restructuring, insolvency and discharge of debt.
- Review and amend, where necessary, the Spanish legal framework, procedure and system to collect data in the field of restructuring, insolvency and discharge of debt.

1.3 Lots

This call for tenders is not divided into lots.

1.4 Description (background and context)

The services that are the subject of this call for tender, including any minimum requirements, are described in detail below.

Variants (alternatives to the model solution described in the Tender Specifications) are not allowed. The Contracting authority will disregard any variants described in a tender.

The mission of the SRSS is to provide support to the Member States for the preparation and implementation of growth-enhancing administrative and structural reforms by mobilising EU funds and technical expertise. Spain has requested support from the Contracting Authority under Regulation (EU) 2017/825 on the establishment of the Structural Reform Support Programme (**SRSP Regulation**).

The request has been analysed by the EC in accordance with the criteria and principles referred to in Article 7(2) of the SRSP Regulation, following which the Contracting Authority has agreed to provide technical support to Spain in the following areas:

- (i) The regulation of the profession of insolvency practitioners (**IPs**)¹.
- (ii) The legal framework for restructuring, insolvency and discharge of debt².
- (iii) The legal framework for data collection in the field of restructuring, insolvency and discharge of debt.

The Spanish Ministry of Justice (**MOJ**) has requested support from the SRSS in order to address the following issues:

(A) The urgent need to regulate the IP profession

Spain tried to fully regulate the IP profession³ in various attempts since 2014. However, there are many remaining issues, amongst others, the following:

- Lack of controls to access to the IP profession and the requirements to obtain and maintain a license.
- Allegedly underhanded method to appoint IPs.
- Scattered and heterogeneous trainings for IPs.
- No requirements or framework to ensure IPs' continuing professional development.
- Unclear duties of IPs and the disparity between duties and skills.
- Absence of any authority in charge of supervising and monitoring the IPs' work.
- Scarce application of disciplinary measures in cases of wrongdoings or misbehaviour.
- Lack of a uniform Code of Conduct and Ethics applicable to all IPs.
- Significant disparity in terms of remuneration depending on the size of the debtor.
- Lack of incentives to reduce the length of insolvency proceedings.

Spain cannot delay the regulation of the IP profession. The transposition obligations derived from the so-called Restructuring Directive⁴ have made this long-awaited reform mandatory.

¹ The term IP includes *administrador concursal*, *auxiliar delegado* and *mediador concursal*. In Spain, there is only one insolvency procedure - during the course of which the debtor may be: either rescued or liquidated – and only one type of IP, whose duties and powers vary according to the purpose of the proceedings.

² The terms 'restructuring, insolvency and discharge of debt' include a broad variety of tools and proceedings within the Spanish insolvency framework, amongst others, the following:

- (i) Preventive frameworks (*alerta temprana*).
- (ii) Pre-insolvency tools such as the 5bis petition (*solicitud del artículo 5-bis*), which aims at: (i) signing a refinancing agreement; (ii) obtaining sufficient votes for an early proposal for a voluntary arrangement with creditors (*propuesta anticipada de convenio*); or (iii) reaching an out-of-court debt rescheduling agreement (*acuerdo extrajudicial de pagos*).
- (iii) Restructuring proceedings: out-of-court individual or collective refinancing agreements (*acuerdo de refinanciación*) or the judicial confirmation of a refinancing agreement (*homologación judicial*).
- (iv) Reorganisation plans within insolvency (*convenio*).
- (v) Sale of individual assets or business units as a going concern (*venta de activos o unidades productivas*).
- (vi) Merger, spin-off, split-off, carve-out or others (*modificaciones estructurales*).
- (vii) Discharge of debt (*exoneración de pasivo insatisfecho*).

³ Please see Appendix 1 for more information about the regulation of the IP profession in Spain.

⁴ Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU.

Besides, all key stakeholders are urging the Spanish authorities to take immediate action, which makes the need to reform more compelling.

(B) The need to amend the pre-insolvency, insolvency and restructuring framework

The Spanish authorities believe that the financial crisis triggered most of the legislative reforms between 2009 and 2015 and the compelling needs of some too-big-to-fail companies drove certain policy decisions made by the legislator⁵. The MOJ opines that it is time to reassess the new procedures and tools, now that most stakeholders have suffered more intensely the consequences of the economic and financial crisis.

In light of the above, the MOJ approved a Ministerial Order⁶ in September 2018, to appoint a group of experts charged with the drafting of a report (the **Experts' Report**) that shall cover, amongst others, the following matters:

- Suggest any legal changes that may be necessary with regard to restructuring agreements and out-of-court debt rescheduling agreements (*acuerdos extrajudiciales de pagos*).
- Analysis of the necessary reforms to enhance the efficiency and a faster processing of insolvency proceedings.
- Analysis of the subjective scope, requirements and regime of the current procedure for the discharge of debt of individual debtors.

The MOJ believes that the recommendations of the Experts' Report could be the stepping-stone and a good basis to conduct an in-depth analysis of all the insolvency and restructuring tools currently available. Besides, the Restructuring Directive grants a great level of discretion to Member States in this area and thus, the MOJ will be in a better position to prepare for its transposition with the technical support requested to the Contracting Authority.

(C) The need to improve the collection of data in the field of insolvency

Spain collects few data on restructuring and procedures leading to a discharge of debt⁷. The Spanish authorities do not collect any data on restructured debtors that subsequently file for insolvency or restructuring, the average cost of proceedings, the recovery rates per classes of creditors and the jobs losses linked to restructuring or insolvency (data that all Member States shall collect pursuant to Article 29 of the Restructuring Directive).

⁵ Please see Appendix 2 for more information about the regulation of pre-insolvency, insolvency and restructuring proceedings in Spain.

⁶ Ministerial Order of 28 September, which is available at:
<https://www.mjusticia.gob.es/cs/Satellite/Portal/es/actividad-legislativa/comision-general-codificacion/propuestas>

⁷ Please see Appendix 3 for more information about the regulation on data collection in the area of insolvency and restructuring in Spain.

Consequently, the Spanish authorities would like to reconsider the entire system to collect data in the field of insolvency to ensure that any of the authorities that currently collect data in the field of insolvency (and/or any other) collects the necessary data.

In the context of that reassessment, the Spanish authorities may analyse the convenience to centralise all the data collection within one institution or keep it decentralised. Besides, the authorities could also assess whether collecting additional data may be necessary to monitor closely the efficiency and effectiveness of restructuring, insolvency and discharge of debt procedures.

Against this background, the Contracting Authority is launching this call for tenders in order to conclude a direct contract for the provision of the following services (see the description of the services in section 1.11 '*Deliverables and Tasks*' below):

Develop a uniform legislative framework for the IP profession in Spain.
Review and amend, where necessary, the entire legal framework for restructuring, insolvency and discharge of debt.
Review and amend, where necessary, the legal framework, procedure and system to collect data in the field of restructuring, insolvency and discharge of debt.

1.5 Detailed characteristics of the purchase / Objectives

The general objective of this service contract is to contribute to institutional, administrative and growth-sustaining structural reforms in Spain, in line with Article 4 of the SRSP Regulation.

The objectives of this service contract, in line with Article 5 of the SRSP Regulation, are:

- To support the initiatives of national authorities to design their reforms according to their priorities, taking into account initial conditions and expected socioeconomic impacts.
- To support the national authorities in enhancing their capacity to formulate, develop and implement reform policies and strategies and in pursuing an integrated approach ensuring consistency between goals and means across sectors.
- To support the efforts of national authorities to define and implement appropriate processes and methodologies by taking into account good practices of and lessons learned by other countries in addressing similar situations.

The achievement of the objectives are not solely the responsibility of the contractor and will depend partly but not only on the MOJ's action.

1.6 Impact and Outcomes

The MOJ will be closely involved in the implementation of the contract and consulted by the Contracting Authority on all draft deliverables. Consequently, it is expected that the MOJ

endorses the recommendations provided and implements the specific measures contained in the final deliverables.

The deliverables are expected to result in the following outcomes and impact:

- **Spain implementing a modern and uniform legal framework for the IP profession, aligned with European and international best practice.**

This outcome is expected to contribute to the following impact:

A uniform and consistent regulation of the IP profession in Spain may have a strong impact in the efficiency, length and costs of insolvency proceedings:

- Stronger controls to access the profession will ensure that only continuously trained and highly skilled professionals handle insolvency cases. A close monitoring and supervision of these specialists will raise the standards of the profession and enhance the efficiency in their work.
 - Sufficiently skilled specialists may prevent debtors from filing for insolvency and thus, increasing the number of restructured and debt-discharged debtors that preserve the value created, the synergies between different companies and as many jobs as possible. Alternatively, the professionalised IPs will ensure that insolvency proceedings, once initiated, reach the best outcome expeditiously (whether reorganisation or liquidation).
 - A shorter duration of restructuring, insolvency and discharge of debt proceedings will ensure that viable debtors continue running their operations and return to the path of economic growth in a short deadline. As opposed to them, non-viable debtors will cease their activity, exit the market and swiftly return the investments and money lent to those who could reinvest it in other businesses. Individual entrepreneurs that are partially discharged of their debt may continue running their operations, which will have a positive impact in the overall economy.
 - An efficient remuneration system for IPs will incentivise restructurings, the sale of assets and faster liquidations. Besides, lower costs will increase the recovery rate for creditors, who will be able to reinvest the borrowed funds in other ventures.
- **Spain reassessing and amending the current legal framework for restructuring and insolvency proceedings, as well as for procedures leading to a discharge of debt, to align the legal framework with European and international best practice.**

This outcome is expected to contribute to the following impact:

An enhanced legal framework for restructuring will prevent viable debtors from entering into lengthy and costly insolvency proceedings that could adversely affect their operations to the extent of killing the business and ceasing their activity.

Changes to the current legal framework to prioritise reorganisation and procedures leading to a discharge of debt as opposed to liquidation will increase the number of viable debtors, whether corporations or individuals, that keep contributing with their resources and their activity to the overall growth of the economy.

In 2016, data gathered by the DG for Justice and Consumers shows that liquidations have made 1.7 million jobs disappear and the cause of 1 in 6 insolvencies is the insolvency of another company in the supply chain. Additional data from the World Bank's Doing Business Report indicates that the recovery rate in liquidations is, at least, 25 cents on the dollar lower than the recovery in insolvency (reorganisation).

Promoting preventive tools, restructuring and discharge of debt as opposed to liquidation will reduce the pernicious effects described above. Besides, prioritising restructuring over liquidation will help viable debtors to continue running their operations, redistribute value created, keep the synergies with other companies in their supply/production chain and reduce unemployment.

- **Spain reviewing the current procedures to collect data in the field of restructuring, insolvency and discharge of debt and implementing the necessary changes to align it with European and international best practice.**

This outcome is expected to contribute to the following impact:

An efficient and centralised system to collect data in the field of restructuring, insolvency and discharge of debt, as well as more exhaustive and detailed information will allow a closer monitoring of the efficiency and effectiveness of the tools available. Besides, a closer look at certain figures will allow quicker and more precise measures to tackle any impediments detected. These changes will have a positive impact in the functioning of the legal framework and consequently, in the overall Spanish economy.

The achievement of the outcomes above, which may contribute to the longer-term impacts of this contract, largely depends on the degree of endorsement and implementation of the deliverables by the MOJ.

The adoption of wider policy changes and reforms remains outside the responsibility of the European Commission and the contractor. Such approval and implementation remains the exclusive responsibility of the MOJ.

1.7 Beneficiary institution(s) and other stakeholders

The main beneficiary of this contract will be the MOJ.

Other local and international stakeholders, which will also benefit from the regulation of the IP profession, the changes towards a friendlier framework to preventive tools, restructuring and discharge of debt procedures and an enhanced system to collect data in the field of restructuring, insolvency and discharge of debt, include the existing IPs, as well as the business, banking and creditor communities.

The MOJ may involve other public authorities in the development of this project such as members of the group of experts currently working for the MOJ, the Ministry of Economy, the Ministry of Finance, the Central Bank, the Companies House, INE and the CGPJ.

The MOJ may also consult other stakeholders such as EIP, ASPAC, APACSA, AELAC, Bar Associations, the Institute of Chartered Accountants, ICAC, AEDIN, FIDE, AULA CONCURSAL, INSOL EUROPE, TMA Spain and others.

1.8 Resources to be made available by the MOJ

The MOJ will provide all necessary equipment, its experts and any documents, data and information necessary for the implementation of the Contract. The MOJ will also provide all relevant contacts to the contractor and, if necessary, full support of technical equipment, including available rooms for meetings in their premises, internet access, teleconference facilities and organisation of the meetings with key stakeholders.

The MOJ may also provide interpretation services during meetings, videoconferences or phone calls, if necessary.

1.9 SRSS involvement

The European Commission will be involved throughout the implementation of the contract. To this effect, a project manager will be nominated within the SRSS. The SRSS project manager will be the main contact point for the MOJ and the contractor for the implementation of the contract.

The SRSS will play an active role in the implementation of the project. SRSS staff will participate as needed in missions related to the project.

1.10 Language

All Deliverables will be drafted in English. To facilitate the comprehension and use by the MOJ, the contractor will also provide the final version of all Deliverables in Spanish.

The contractor must be able to handle meetings and communications in English and in Spanish. The communications with the contracting authority on contractual/administration issues will be in English.

Any presentations and workshops will be delivered in Spanish.

Progress reports, in line with section 1.18, will be drafted in English.

1.11 Deliverables and Tasks

Deliverable 1: 1A Kick-off meeting + 1B Inception Report	
Tasks	<p>(a) Holding a kick-off meeting between the contractor, the SRSS, and the representatives from the MOJ, who will work with the contractor on the project.</p> <p>The purpose of the meeting will be to discuss the detailed scope, timeline, information needs for the project and present the methodology to be followed for all Deliverables. It will also be the opportunity for the contractor to gather all the necessary information to ask any questions to have a better understanding of the following:</p>

<ul style="list-style-type: none"> ➤ The legal framework governing the IP profession. ➤ The legal framework governing restructuring and insolvency proceedings, as well as for procedures leading to a discharge of debt. ➤ The current procedures to collect data in the field of restructuring, insolvency and discharge of debt. <p>(b) Preparation of an inception report. Based on the methodology presented by the contractor during the kick-off meeting, the agreed details for the detailed scope, the timeline and information needs for the project will be presented in the inception report.</p>
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In order to achieve **Outcome 1: Implementing a modern and uniform legal framework for the IP profession, aligned with European and international best practice**, the contractor shall produce the following deliverables by implementing the tasks listed below.

Deliverable 2: 2A IP profession Report + 2B IPs Benchmark Report + 2C IPs Gap analysis Report	
Tasks	<p>(a) Conduct an in-depth analysis in the form of a report covering all the key areas that currently regulate the IP Profession in Spain⁸ (the IP profession Report). The IP profession Report will examine, at least, the following matters:</p> <ul style="list-style-type: none"> • Qualifications/Requirements to access the IP profession • Licensing of IPs • Associations of IPs • Appointment of IPs • Challenges/Review of the appointment of IPs • Removal, resignation and replacement of IPs • Duties and mandate of IPs • Training • Continuing Professional Development (CPD) • Requirements to maintain an IP license • Standards of professional and commercial conduct and code of ethics • Monitoring/supervising/oversight of IPs • Regulatory and disciplinary measures of IPs • Remuneration of IPs • Insurance policy of IPs <p>The IP profession Report shall also examine the Draft Bill (described in Appendix 1 of this call for tenders) and the Experts' Report (described in Appendix 2 of this call for tenders). However, the content of the Draft Bill and the relevant conclusions within the Experts' Report are not binding for</p>

⁸ The IP Profession report shall take into consideration any attempts to self-regulate the IP profession, such as the Code of Good Conduct approved by one of the main association of IPs (see Appendix 1 for more details).

the IP profession Report. The latter will be an independent in-depth analysis of the legal framework of the IP profession.

- (b) Conduct a comparative law analysis in the form of a report between the legal framework regulating the IP profession in at least three (3) jurisdictions - including France and the United Kingdom (the **IPs Benchmark Report**).

The objective of the IPs Benchmark Report is identifying European best practices, taking into consideration how other Member States regulate the IP profession and, if the case may be and to the extent possible, the preparatory works for the transposition of the Restructuring Directive.

- (c) Conduct a gap analysis in the form of a report (the **IPs Gap analysis Report**) taking into consideration the findings of the IPs Benchmark Report. The IPs Gap analysis Report shall identify which aspects of the Spanish legal framework do not comply with European best practice.

Deliverable 3: 3A IPs Recommendations Report + 3B IPs Final Report

- Tasks
- (a) Prepare recommendations in the form of a report (the **IPs Recommendations Report**) to address the shortcomings and impediments identified in the IPs Gap analysis Report. The IPs Recommendations Report shall identify the provisions/areas to regulate and/or amend (including secondary legislation) and suggest a draft articulated text for the new regulation and the amendments to the existing regulation. The legislative changes shall be carefully balanced, appropriate for the Spanish context and supported by European best practices.
 - (b) Comment on any draft legislation prepared by the MOJ and provide, where appropriate, drafting suggestions in the form of a draft articulated text (based on the IPs Recommendations Report) to give effect to any legislative reform.
 - (c) Actively participate in any work and discussions of the MOJ with other key stakeholders.
 - (d) Deliver presentations to the MOJ and/or any other relevant stakeholders on key policy areas of the new regulatory framework for the IP profession.
 - (e) Provide any drafting or technical support to the MOJ during the legislative process.

Following completion of the tasks (b) to (e) under Deliverable 2, the contractor shall prepare an **IPs Final Report** (maximum 5 pages) summarising all the activities undertaken. The contractor shall annex to the IPs Final Report any written analysis provided under the tasks, presentations, and/or, where relevant, the minutes of any high-level meetings with the MOJ and/or other key stakeholders.

Deliverable 4: 4A Dissemination Event + 4B Report

- Tasks (a) Organise, prepare and deliver one outreach dissemination event for up to 150 people to present the new regulatory framework of the IP profession to key stakeholders (including representatives from the public and private sector). The event shall contribute to raise awareness of the new regulatory framework.
- The organisation of the event will include, at least, the preparation of the agenda, list of invitees/attendees, panel scripts and presentations. The structure of the event shall ensure an effective delivery of key messages. The Contractor shall assume all the costs linked to the organisation of the event, including venue, catering, interpretation and any costs linked with the speakers selected by the contractor, in consultation with the coordinating authority and the MOJ, for the event.
- Following completion of the tasks under Deliverable 3, the contractor shall submit a **Dissemination Event Report** (maximum 5 pages) summarising the matters discussed and the main takeaways. The Dissemination Event Report shall annex all other relevant materials about the dissemination event (e.g. agenda, venue, attendees, speakers, presentations, etc.).

In order to achieve **Outcome 2: Reassessing and amending the current legal framework for restructuring and insolvency proceedings, as well as for procedures leading to a discharge of debt, to align the legal framework with European and international best practice**, the contractor shall produce the following deliverables by implementing the tasks listed below.

Deliverable 5: 5A Insolvency Report + 5B Insolvency Benchmark Report + 5C Insolvency Gap analysis Report

- Tasks (a) Conduct an in-depth analysis in the form of a report covering all the key areas governing restructuring, insolvency and procedures leading to a discharge of debt (the **Insolvency Report**). The Insolvency Report shall examine, at least, the following proceedings and/or tools:
- Preventive frameworks (*mecanismos de alerta temprana*).
 - Pre-insolvency tools such as the 5bis petition, which aims at: (i) signing a refinancing agreement; (ii) obtaining sufficient votes for an early proposal for a voluntary arrangement with creditors (*propuesta anticipada de convenio*); or (iii) reaching an out-of-court debt rescheduling agreement (*acuerdo extrajudicial de pagos*).
 - Restructuring procedure: out-of-court individual or collective refinancing agreements (*acuerdo de refinanciación*) or the judicial confirmation of a refinancing agreement, the Spanish scheme (*homologación judicial*).
 - Reorganisation within insolvency (*convenio*).
 - Sale of individual assets or business units as a going concern (*venta de activos o unidades productivas*).
 - Merger, spin-off, split-off, carve-out or others (*modificaciones*).

estructurales).

- Discharge of debt (*exoneración de pasivo insatisfecho*).

The Insolvency Report shall also examine the conclusions of the Experts' Report (described in Appendix 2 of this call for tenders). However, the relevant recommendations within the Experts' Report are not binding for the Insolvency Report. The latter will be an independent in-depth analysis of the legal framework governing restructuring, insolvency and procedures leading to a discharge of debt.

- (b) Conduct a comparative law analysis in the form of a report between the legal framework regulating restructuring, insolvency and procedures leading to a discharge of debt in at least five (5) jurisdictions - including Germany, France and others such as Denmark and the Netherlands (the **Insolvency Benchmark Report**). The Experts' Group may be consulted for their views.

The objective of the Insolvency Benchmark Report is identifying European best practices, taking into consideration how other Member States regulate restructuring, insolvency and procedures leading to a discharge of debt and, if the case may be and to the extent possible, the preparatory works for the transposition of the Restructuring Directive.

- (c) Conduct a gap analysis in the form of a report (the **Insolvency Gap analysis Report**) taking into consideration the findings of the Insolvency Benchmark Report. The Insolvency Gap analysis Report shall also identify which aspects of the Spanish legal framework need an amendment taking into consideration the provisions of the Restructuring Directive and those matters that do not comply with European best practice.

Deliverable 6: 6A Insolvency Recommendations Report + 6B Insolvency Roadmap + 6C Insolvency Final Report

- Tasks
- (a) Prepare specific recommendations in the form of a report (the **Insolvency Recommendations Report**) to address the shortcomings and impediments identified in the Insolvency Gap analysis Report. The Insolvency Recommendations Report shall identify the provisions/areas to regulate and/or amend (including secondary legislation) and suggest an articulated text for the new regulation and the amendments to the existing regulation. The legislative changes shall be carefully balanced, appropriate for the Spanish context and supported by European best practices.
- (b) Prepare a roadmap for the reform of the current legal framework for restructuring, insolvency and procedures leading to a discharge of debt (the **Insolvency Roadmap**). The Insolvency Roadmap shall take into consideration the recommendations of the Insolvency Recommendations Report.

The Insolvency Roadmap will include a detailed action plan associating the

legislative planning with the different phases of the legislative process. The action plan shall cover, at least, the following matters:

- Identification of the actors responsible for carrying out each of the steps and the relevant stakeholders, whose participation and consultation may be crucial for the successful implementation of each step.
 - The expected deadlines (i.e. starting date and end date) for each step or phase within the action plan.
 - Main difficulties or impediments that the authorities may face during the implementation of the action plan.
 - Mitigating factors.
- (c) Participate in any meetings with the MOJ, key stakeholders and any other authorities to discuss and agree with the MOJ and other key stakeholders, the deadlines and actions within the action plan.

Following completion of the tasks (b) above, the contractor shall prepare an **Insolvency Final Report** (maximum 5 pages) summarising all the activities undertaken. The contractor shall annex to the Insolvency Final Report any written analysis provided under the tasks, presentations, and/or, where relevant, the minutes of any high-level meetings with the MOJ and/or other key stakeholders.

In order to achieve **Outcome 3: Reviewing the current procedures to collect data in the field of restructuring, insolvency and discharge of debt and implementing the necessary changes to align it with European and international best practice**, the contractor shall produce the following deliverables by implementing the tasks listed below.

Deliverable 7: 7A Data Collection Report + 7B Data Collection Benchmark Report + 7C Data Collection Gap analysis Report

Tasks	<p>(a) Conduct an in-depth analysis in the form of a report covering all the key areas governing the methodology and processes to collect data on restructuring, insolvency and procedures leading to a discharge of debt (the Data Collection Report). The Data Collection Report shall examine, at least, the following:</p> <ul style="list-style-type: none"> • The methodology, procedure and data collected by INE, the Companies House and the CGPJ (as these institutions are defined in Appendix 3 of this call for tenders). • Comparative analysis between the different methodologies, procedures and the objectives of each statistic. • The advantages/disadvantages of a centralised system. <p>(b) Conduct a comparative law analysis in the form of a report between the legal framework regulating data collection in at least four (4) jurisdictions - including Germany, Italy and France (the Data Collection Benchmark Report).</p> <p>The objective of the Data Collection Benchmark Report is identifying European best practices in the methodologies and procedures to collect data in the field of restructuring, insolvency and discharge of debt in the Member States analysed. The Data Collection Benchmark Report shall take into consideration, to the extent possible, the preparatory works for the transposition of Article 29 of the Restructuring Directive in the Member States analysed and confirm which aspects of the Spanish legislative framework do not comply with current European trends.</p> <p>(d) Conduct a gap analysis in the form of a report (the Data Collection Gap analysis Report) taking into consideration the findings of the Data Collection Benchmark Report. The Data Collection Gap analysis Report shall also identify which aspects of the Spanish legal framework need an amendment taking into consideration, amongst others, Article 29 of the Restructuring Directive and those matters that do not comply with European best practice.</p>
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Deliverable 8: 8A Data Collection Recommendations Report + 8B Data Collection Roadmap + 8C Data Collection Final Report

Tasks

(a) Prepare specific recommendations in the form of a report (the **Data Collection Recommendations Report**) to address the shortcomings and impediments identified in the Data Collection Gap analysis Report. The Data Collection Recommendations Report shall provide concrete and specific legal reform recommendations by identifying the provisions to regulate and/or amend (including secondary legislation), suggesting an articulated text for the new regulation or procedure to collect data and/or the amendments to the existing regulation. The legislative changes, if any, shall be carefully balanced, appropriate for the Spanish context and supported by European best practices.

(b) Prepare a roadmap for the reform of the legal framework governing data collection in the field of restructuring, insolvency and procedures leading to a discharge of debt (the **Data Collection Roadmap**). The Data Collection Roadmap shall take into consideration the recommendations of the Data Collection Recommendations Report.

The Data Collection Roadmap will include a detailed action plan associating the legislative planning with the different phases of the legislative process. The action plan shall cover, at least, the following matters:

- Identification of the actors responsible for carrying out each of the steps and the relevant stakeholders, whose participation and consultation may be crucial for the successful implementation of each step.
- The expected deadlines (i.e. starting date and end date) for each step or phase within the action plan.
- Main difficulties or impediments that the authorities may face during the implementation of the action plan.
- Mitigating factors.
- In case of alternative recommendations, the action plan shall include all the information above for each option.

(c) Participate in any meetings with the MOJ, key stakeholders and any other authorities to discuss and agree with the MOJ and other key stakeholders, the alternatives, deadlines and actions within the action plan.

Following completion of the tasks (b) above, the contractor shall prepare a **Data Collection Final Report** (maximum 5 pages) summarising all the activities undertaken. The contractor shall annex to the Insolvency Final Report any written analysis provided under the tasks, presentations, and/or, where relevant, the minutes of any high-level meetings with the MOJ and/or other key stakeholders.

1.12 Submission and approval of deliverables

The deliverables described in section 1.11 shall be submitted by the contractor to the Contracting Authority within the agreed deadlines (see timetable in section 1.16). The Contracting Authority may share the deliverables with the MOJ for their comments.

The Contracting Authority will comment on the deliverables submitted within 20 days after the date of their reception. If the Contracting Authority has not reacted within this period, the deliverables shall be deemed to have been approved.

In case clarifications or corrections are required, the contractor should respond within 10 working days addressing the input of the Contracting Authority.

1.13 Place of performance

Any physical meeting, presentation and/or conference with the national authorities will take place in Spain.

1.14 Nature of the contract

The procedure will result in the conclusion of a direct service contract (which means that all the terms governing the provision of the services are defined at the outset. Once signed, they can be implemented directly without any further contract procedures).

👉 Tenderers need to take full account of the provisions of the Draft contract as the latter will define and govern the contractual relationship(s) to be established between the *Contracting authority* and the successful tenderer(s). Special attention is to be paid to the provisions specifying the rights and obligations of the contractor, in particular those on payments, performance of the contract, confidentiality, and checks and audits.

1.15 Volume and value of the contract

The estimated total amount of all purchases under this contract is EUR 500,000 (i.e. Heading II.1.5 of the contract notice). The quantities to be purchased over the total duration of the contract are specified in Section 1.11 of these specifications.

1.16 Duration of the contract

The contract resulting from the award of this call for tenders will be concluded for at most 20 months. The details of the initial contract duration and possible renewals are set out in Article I.3 of the draft contract.

The reference date for the contract is the date of signature by both parties.

Deliverables 2-4, 5-6 and 7-8 will run in parallel.

		Timetable
Deliverable 1: 1A Kick-off meeting + 1B Inception report		Reference date + up to 2 months
Deliverable 2:	2A IP profession Report	Reference date + up to 4 months
	2B IPs Benchmark Report	Reference date + up to 8 months
	2C IPs Gap analysis Report	Reference date + up to 10 months
Deliverable 3:	3A IPs Recommendations Report	Reference date + up to 12 months
	3B IPs Final Report	Reference date + up to 14 months
Deliverable 4:	4A Dissemination Event + 4B Report	Reference date + up to 18 months
Deliverable 5:	5A Insolvency Report	Reference date + up to 6 months
	5B Insolvency Benchmark Report	Reference date + up to 10 months
	5C Insolvency Gap analysis Report	Reference date + up to 14 months
Deliverable 6:	6A Insolvency Recommendations Report	Reference date + up to 16 months
	6B Insolvency Roadmap	Reference date + up to 18 months
	6C Insolvency Final Report	Reference date + up to 18 months
Deliverable 7:	7A Data Collection Report	Reference date + up to 6 months
	7B Data Collection Benchmark Report	Reference date + up to 10 months
	7C Data Collection Gap analysis Report	Reference date + up to 14 months
Deliverable 8:	8A Data Collection Recommendations Report	Reference date + up to 16 months
	8B Data Collection Roadmap	Reference date + up to 18 months
	8C Data Collection Final Report	Reference date + up to 18 months

1.17 Electronic exchange system

For all exchanges with the contractor during the implementation of the contract, as well as for future possible subsequent proceedings for the purposes of EDES (i.e. European Union's Early Detection and Exclusion System), the Contracting Authority may use an electronic exchange system meeting the requirements of Article 148 of [Regulation \(EU, Euratom\) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union](#).

At the request of the Contracting Authority the use of such a system shall become mandatory for the contractor(s) at no additional cost for the Contracting Authority. Details on specifications, access, terms and conditions of use will be provided in advance.

1.18 Reporting

A progress report should be provided on a monthly basis starting from the date of signature of the contract. These reports should clearly describe the progress status of each Deliverable described in section 1.11 above.

A Steering Committee will be established for the contract. The Steering Committee will be comprised of representatives of the contractor, the SRSS and the MOJ (including representatives from other authorities if the MOJ deems it appropriate).

The Steering Committee will meet at least quarterly in order to oversee all planned activities, ensuring effective coordination and engagement.

2. GENERAL INFORMATION ON TENDERING

2.1 Legal basis

This call for tenders is governed by the provisions of [Regulation \(EU, Euratom\) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union](#) (the **Financial Regulation**).

The Contracting Authority has chosen to award the contract resulting from this call for tenders through an open procedure pursuant to Article 164(1) (a) of the Financial Regulation. In an open procedure, any interested economic operator (any natural or legal person who offers to supply products, provide services or execute works) may submit a tender.

2.2 Rules on access to procurement

Participation in this call for tenders is open on equal terms to all natural and legal persons coming within the scope of the [Treaties](#), as well as to international organisations.

It is also open to all natural and legal persons established in a third country, which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement. Where the Agreement on Government Procurement concluded within the World Trade Organisation applies, the participation to this call for tenders is open to all natural and legal persons established in the countries that have ratified this Agreement, on the conditions laid down therein.

The rules on access to procurement do not apply to subcontractors. Subcontracting may not be used with the intent to circumvent the rules on access to procurement.

To enable the Contracting Authority to verify the access, each tenderer must indicate its country of establishment (and in case of joint tender – the country of establishment of each group member) and must present the supporting evidence normally acceptable under the law of that country. The same document could be used to prove the country of establishment and the delegation of the authorisation to sign as described in **Section 4.3**.

☞ *For tenderers established in the United Kingdom:*

Please be aware that after the UK's withdrawal from the EU, the rules of access to EU procurement procedures of economic operators established in third countries will apply to tenderers from the UK depending on the terms of any Withdrawal Agreement. In case such access is not provided by legal provisions in force tenderers from the UK could be rejected from the procurement procedure.

2.3 Registration in the Participant Register

Any economic operator willing to submit a tender for this call for tenders must be registered in the [Participant Register](#): an online register of organisations and natural persons participating in European Commission's calls for tenders or proposals (**participants**).

On registering, each participant obtains a Participant Identification Code (PIC, 9-digit number) which acts as its unique identifier in the Participant Register. A participant needs to register only once – the information provided can be further updated or re-used by the participant in other European Commission's calls for tenders or calls for proposals.

At any moment during the procurement procedure, the Research Executive Agency Validation Services (hereafter, the **EU Validation Services**) may contact the participant and ask for supporting documents on legal existence and status and financial capacity. The requests will be made through the register's messaging system to the e-mail address of the participant's contact person indicated in the register. It is the responsibility of the participant to provide a valid e-mail address and to check it regularly.

The documents that may be requested by the EU Validation Services are listed in the [EU Grants and Tenders Rules on Legal Entity Validation, LEAR appointment and Financial Capacity assessment](#).

☞ **Please note that a request for supporting documents by the EU Validation Services in no way implies that the tenderer has been successful.**

2.4 Ways to submit a tender

Economic operators can submit a tender either as a sole tenderer or as a group of tenderers. In either case subcontracting is permitted.

In order to fulfil the selection criteria set out in **Section 3.2** the tenderer can rely on the capacities of subcontractors or other entities (not subcontractors).

The role of each entity involved in a tender (hereafter referred to as *involved entity*) must be clearly specified: sole tenderer, member of a group or Group leader, subcontractor or an

entity on whose capacities the tenderer relies to fulfil the selection criteria⁹. This applies also where the *involved entities* belong to the same economic group.

2.4.1 **Joint tenders**

A joint tender is a situation where a tender is submitted by a group (with or without legal form) of economic operators regardless of the link they have between them. The group as a whole is considered a tenderer¹⁰.

All members of the group assume joint and several liability towards the Contracting authority for the performance of the contract as a whole.

Group members must appoint a *Group leader* and a single point of contact authorised to act on their behalf in connection with the submission of the tender and all relevant questions, clarification requests, notifications, etc., that may be received during the evaluation, award and until the contract signature. The model power of attorney attached in **Annex 3** is to be used.

The joint tender must clearly indicate the role and tasks of each member and of the *Group leader* who will act as the Contracting authority's contact point for the contract's administrative or financial aspects and operational management. The Group leader will have full authority to bind the group and each of its members during contract execution. If the joint tender is successful, the Contracting authority shall sign the contract with the Group leader, authorised by the other members to sign the contract on their behalf via power of attorney drawn up in the model attached in **Annex 3**.

Changes in the composition of the group during the procurement procedure (after the submission deadline and before contract signature) shall lead to rejection of the tender except in case of a merger or takeover of a member of the group (universal succession), provided that the new entity has access to procurement (see **Section 2.2**) and is not in an exclusion situation, (see **Section 3.1**).

In any case the selection criteria must be still fulfilled by the group and the terms of the originally submitted tender may not be altered substantially, i.e. all the tasks assigned to the former entity must be taken over by the new entity member of the group, the change must not make the tender non-compliant with the Tender specifications, and the evaluation of award criteria of the originally submitted tender may not be modified.

2.4.2 **Subcontracting**

Subcontracting is the situation where the contractor enters into legal commitments with other economic operators, which will perform part of the contract on its behalf. The

⁹ Such an entity is not considered a subcontractor (see Section 2.4.3 below).

¹⁰ References to tenderer or tenderers in this document shall be understood as covering both sole tenderers and groups of economic operators submitting a joint tender.

contractor retains full liability towards the Contracting authority for performance of the contract as a whole.

The following shall not be considered subcontracting:

- a) Use of workers posted to the contractor by another company owned by the same group and established in a Member State (“intra-group posting” as defined by Article 1, 3, (b) of [Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#)).
- b) Use of workers hired out to the contractor by a temporary employment undertaking or placement agency established in a Member State (“hiring out of workers” as defined by Article 1, 3, (c) of [Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#)).
- c) Use of workers temporarily transferred to the contractor from an undertaking established outside the territory of a Member State and that belongs to the same group (“intra-corporate transfer” as defined by Article 3, (b) of [Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer](#)).
- d) Use of staff without employment contract (“self-employed persons working for the contractor”) to perform substantially the same tasks as the staff with employment contract (“employees”), without the tasks of the self-employed persons being particular well-defined parts of the contract.
- e) Use of suppliers and/or transporters by the contractor, in order to perform the contract at the place of performance, unless the economic activities of the suppliers and/or the transporting services are within the subject of this call for tender (see **Sections 1.4 to 1.13**).
- f) Performance of part of the contract by members of an EEIG (European Economic Interest Grouping), when the EEIG is itself a contractor or a group member.

The persons mentioned in points a), b), c) and d) above will be considered as “personnel” of the contractor as defined in the contract.

All contractual tasks may be subcontracted unless the *Technical specifications* expressly reserve the execution of certain critical tasks to the sole tenderer itself, or in case of a joint tender, to a member of the group.

By filling in the form available in **Annex 4**, tenderers are required to give an indication of the proportion of the contract that they intend to subcontract, as well as to identify and describe briefly the envisaged contractual roles/tasks of subcontractors meeting any of these conditions (hereafter referred to as **identified subcontractors**):

- on whose capacities the tenderer relies upon to fulfil the selection criteria as described under **Section 3.2**;
- whose individual share of the contract, known at the time of submission, is above 20%.

Any such subcontractor must provide the tenderer with a commitment letter drawn up in the model attached in **Annex 5.1** and signed by its authorised representative.

Changes concerning subcontractors identified in the tender (withdrawal/replacement of a subcontractor, additional subcontracting) during the procurement procedure (after the submission deadline and before contract signature) require the prior written approval of the Contracting Authority subject to the following verifications:

- any new subcontractor is not in an exclusion situation;
- the tenderer still fulfils the selection criteria and the new subcontractor fulfils the selection criteria applicable to it individually, if any;
- the terms of the originally submitted tender are not altered substantially, i.e. all the tasks assigned to the former subcontractor are taken over by another involved entity, the change does not make the tender non-compliant with the Tender specifications, and the evaluation of award criteria of the originally submitted tender is not modified.

Subcontracting to subcontractors identified in a tender that was accepted by the *Contracting authority* and resulted in a signed contract, is considered authorised.

2.4.3 Entities on whose capacities the tenderer relies to fulfil the selection criteria

In order to fulfil the selection criteria a tenderer may also rely on the capacities of other entities, regardless of the legal nature of the links it has with them. It must in that case prove that it will have at its disposal the resources necessary for the performance of the contract by producing a commitment letter in the model attached in **Annex 5.2**, signed by the authorised representative of such an entity, and the supporting evidence that those other entities have the respective resources.

If the contract is awarded to a tenderer intending to rely on another entity to meet the minimum levels of economic and financial capacity, the *Contracting authority* may require the entity to sign the contract or, alternatively, to provide a joint and several first-call financial guarantee for the performance of the contract.

With regard to technical and professional selection criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required (i.e. the latter will assume the role of subcontractors).

☞ Relying on the capacities of other entities is only necessary when the capacity of the tenderer is not sufficient to fulfil the required minimum levels of capacity. Abstract commitments that other entities will put resources at the disposal of the tenderer will be disregarded.

3. EVALUATION AND AWARD

The evaluation of the tenders that comply with the submission conditions will consist of the following elements:

- Check if the tenderer has access to procurement (see **Section 2.2**);
- Verification of administrative compliance (if the tender is drawn up in one of the official EU languages and signed by duly authorised representative(-s) of the tenderer);
- Verification of non-exclusion of tenderers on the basis of the exclusion criteria;
- Selection of tenderers on the basis of selection criteria;
- Verification of compliance with the minimum requirements defined in the Tender specifications;
- Evaluation of tenders on the basis of the award criteria.

The *Contracting authority* will evaluate the abovementioned elements in the order that it considers to be the most appropriate. If the evaluation of one or more elements demonstrates that there are grounds for rejection, the tender will be rejected and will not be subjected to further full evaluation. The unsuccessful tenderers will be informed of the ground for rejection without being given feedback on the non-assessed content of their tenders. Only tenderer(s) for whom the verification of all elements did not reveal grounds for rejection can be awarded the contract.

The evaluation will be based on the information and evidence contained in the tenders and, if applicable, on additional information and evidence provided at the request of the *Contracting authority* during the procedure. If any of the declarations or information provided proves to be false, the *Contracting authority* may impose administrative sanctions (exclusion or financial penalties) on the entity providing the false declarations/information.

For the purposes of the evaluation related to exclusion and selection criteria *the Contracting authority* may also refer to publicly available information, in particular evidence that it can access on a national database free of charge.

3.1. Exclusion criteria

The objective of the exclusion criteria is to assess whether the tenderer is in any of the exclusion situations listed in Article 136(1) of the Financial Regulation.

As evidence of non-exclusion each tenderer needs to submit with its tender a Declaration on Honour¹¹ in the model available in **Annex 2**.¹² The declaration must be signed by an authorised representative of the entity providing the declaration.

¹¹ The European Single Procurement Document (ESPD) may not be used yet in European Commission's calls for tenders.

The initial verification of non-exclusion of tenderers will be done on the basis of the submitted declarations and consultation of the [European Union's Early Detection and Exclusion System](#). The documents mentioned as supporting evidence in the Declaration on Honour need to be provided whenever requested and where this is necessary to ensure the proper conduct of the procedure within a deadline given by the Contracting authority¹³.

Annex 1 specifies which of the *involved entities* participating in a tender need to provide the Declaration on Honour and, when requested by *the Contracting authority*, the supporting evidence.

Please note that a request for evidence in no way implies that the tenderer has been successful.

3.2. Selection criteria

The objective of the selection criteria is to assess whether the tenderer has the legal, regulatory, economic, financial, technical and professional capacity to perform the contract.

The selection criteria for this call for tenders, including the minimum levels of capacity, the basis for assessment and the evidence required, are specified in the following subsections.

Tenders submitted by tenderers not meeting the minimum levels of capacity will be rejected.

When submitting its tender each tenderer shall declare on honour that it fulfils the selection criteria for the call for tender. The model Declaration on Honour available in **Annex 2** shall be used.

The initial assessment of whether a tenderer fulfils the selection criteria will be done on the basis of the submitted declaration(s).

The subsections below specify which selection criteria evidence must be provided with the tender or may be requested later, at any time during the procurement procedure¹⁴. In any

¹² Unless the same declaration has already been submitted for the purposes of another award procedure of the European Commission, the situation has not changed, and the time elapsed since the issuing date of the declaration does not exceed one year.

¹³ The obligation to provide the supporting evidence will be waived in the following situations:

- if the same documents have already been provided in a previous award procedure of the European Commission, have been issued no more than one year before the date of their request by the *Contracting authority* and are still valid at that date;
- if such evidence can be accessed by the *Contracting Authority* on a national database free of charge, in which case the economic operator shall provide *the Contracting authority* with the internet address of the database and, if needed, the necessary identification data to retrieve the document;
- if there is a material impossibility to provide such evidence.

¹⁴ The obligation to provide the supporting evidence will be waived in the following situations:

case, to the extent that there is no ground for a waiver, the evidence must be provided, upon request and within a deadline given by the Contracting authority. The evidence must be provided in accordance with the applicable basis for assessment of each criterion: in case of a consolidated assessment – only by the *involved entities* who contribute to the fulfilment of the criterion, and in case of individual assessment – by each *involved entity* to whom the criterion applies individually.

3.2.1. Legal and regulatory capacity

Tenderers do not need to prove specific legal and regulatory capacity to perform the contract.

3.2.2. Economic and financial capacity

Tenderers must comply with the following selection criterion in order to prove that they have the necessary economic and financial capacity to perform the contract.

Criterion F1	
Minimum level of capacity	Average yearly turnover of the last two financial years above EUR 250 000.
Basis for assessment	This criterion applies to the tenderer as a whole, i.e. a consolidated assessment of the combined capacities of all <i>involved entities</i> will be carried out.
Evidence	Copy of the profit and loss accounts and balance sheet for the last two years for which accounts have been closed from each concerned <i>involved entity</i> , or, failing that, appropriate statements from banks. The most recent year must have been closed within the last 18 months.

👉 The evidence of economic and financial capacity does need not be provided with the tender but may be requested by the *Contracting authority* at any time during the procedure. **Please note that a request for evidence in no way implies that the tenderer has been successful.**

3.2.3. Technical and professional capacity

Tenderers must comply with the following selection criteria in order to prove that they have the necessary technical and professional capacity to perform the contract.

-
- if the same documents have already been provided in a previous award procedure of the European Commission, have been issued no more than one year before the date of their request by the *Contracting authority* and are still valid at that date;
 - if such evidence can be accessed by the *Contracting Authority* on a national database free of charge, in which case the economic operator shall provide the *Contracting authority* with the internet address of the database and, if needed, the necessary identification data to retrieve the document.

Criterion T1	
The tenderer must prove experience providing legal advice to EU public authorities.	
Minimum level of capacity	At least 2 projects providing legal advice to any Member State's authority completed in the last three years preceding the tender submission deadline, with a minimum value for each of them EUR 100 000.
Basis for assessment	This criterion applies to the tenderer as a whole, i.e. the combined capacities of all <i>involved entities</i> .
Evidence	A list of projects meeting the minimum level of capacity. The list shall include details of their start and end date, total project amount and scope, role and amount invoiced. In case of projects still on-going only the portion completed during the reference period will be taken into consideration.

Criterion T2	
The tenderer must prove experience supporting EU public authorities in the field of data collection.	
Minimum level of capacity	At least 2 projects completed supporting any Member State's public authorities in the field of data collection in the last three years preceding the tender submission deadline, with a minimum value for each of them EUR 100 000.
Basis for assessment	This criterion applies to the tenderer as a whole, i.e. the combined capacities of all <i>involved entities</i> .
Evidence	A list of projects meeting the minimum level of capacity. The list shall include details of their start and end date, total project amount and scope, role and amount invoiced. In case of projects still on-going only the portion completed during the reference period will be taken into consideration.

The tenderer must prove that they have the necessary human resources to perform the contract in line with best professional practice as follows:

Criterion T3	
in the field of Spanish insolvency.	
Minimum level of capacity	At least 5 experts, who work for the tenderer, with a

	minimum of 5 years' work experience in Spanish insolvency.
Basis for assessment	This criterion applies to the tenderer as a whole, i.e. the combined capacities of all <i>involved entities</i> .
Evidence	5 CVs of experts meeting the minimum level of capacity.

Criterion T4	
in the field of insolvency in Member States other than Spain.	
Minimum level of capacity	At least 3 experts, who work for the tenderer, with a minimum of 5 years' work experience in insolvency in Member States other than Spain. Each expert must have experience in a different jurisdiction than the others.
Basis for assessment	This criterion applies to the tenderer as a whole, i.e. the combined capacities of all <i>involved entities</i> .
Evidence	3 CVs of experts meeting the minimum level of capacity.

Criterion T5	
in the field of data collection.	
Minimum level of capacity	At least 3 experts, who work for the tenderer, with a minimum of 5 years' work experience in data collection.
Basis for assessment	This criterion applies to the tenderer as a whole, i.e. the combined capacities of all <i>involved entities</i> .
Evidence	3 CVs of experts meeting the minimum level of capacity.

👉 The evidence of technical and professional capacity does need not be provided with the tender but may be requested by the *Contracting authority* at any time during the procedure. **Please note that a request for evidence in no way implies that the tenderer has been successful.**

👉 Involved entities must not be subject to conflicting interests, which may negatively affect the contract performance. Where the *Contracting authority* has established such conflicting

interests, it may conclude that the tenderer or an involved entity does not possess the required professional capacity to perform the contract to an appropriate quality standard.

The presence of conflicting interests shall be examined during the evaluation phase based on the statements made through the Declarations on Honour and, where applicable, the commitment letters (**Annex 5.1 and Annex 5.2**).

3.3. Compliance with the minimum requirements of the Tender specifications

By submitting a tender, a tenderer commits to perform the contract in full compliance with the terms and conditions of the procurement documents for this call for tender. Particular attention is drawn to the minimum requirements specified in Section 1 of these specifications and to the fact that tenders must comply with applicable data protection, environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU.

The minimum requirements shall be observed throughout the entire duration of the contract. Compliance with these requirements is mandatory and cannot be subject to any assumptions, limitations, conditions, or reservations on the part of a tenderer.

👉 Tenders that are not compliant with the applicable minimum requirements shall be rejected.

3.4. Award criteria

The objective of the award criteria is to evaluate the tenders with a view to choosing the most economically advantageous tender.

Tenders will be evaluated on the basis of the following award criteria and their weighting:

1. Price - 40%

The price considered for evaluation will be the total price of the tender, covering all the requirements set out in the Tender Specifications.

2. Quality - 60%

The quality of the tender will be evaluated based on the following criteria:

The maximum total quality score is 100 points.

- **Quality of the proposed methodology** (60 points – minimum score 50%)

This criterion will assess the quality of the methodology set out in the tender and its relevance to the tender specifications, in particular how the methodology addresses the following points: (i) the impact and outcomes and (ii) the deliverables and tasks.

Furthermore, this criterion will assess how the tenderer's methodology addresses the scope and the challenges of the technical support to be provided.

- **Organisation of the work and resources** (30 points – minimum score 50%)

This criterion will assess how the roles and responsibilities of the proposed team and of the different economic operators (in case of joint tenders, including subcontractors if applicable) are distributed for each task.

It also assesses the global allocation of time and resources to the project and to each task or deliverable, and whether this allocation is adequate for the work.

The tender should provide details on the allocation of time and human resources and the rationale behind the choice of this allocation.

Details should be provided as part of the technical offer.

- **Quality control measures** (10 points – minimum score 50%)

This criterion will assess the quality control system applied to the service foreseen in this tender specification concerning the quality of the deliverables, the language quality check, and continuity of the service in case of absence of a member of the team.

The quality system should be detailed in the tender and specific to the tasks at hand.

A generic quality system will result in a low score.

Tenders must score minimum 50% for each criterion and minimum 60% in total. Tenders that do not reach the minimum quality levels will be rejected and will not be ranked.

3.5. Award (ranking of tenders)

Tenders shall be ranked according to the best price-quality ratio in accordance with the formula below:

score for tender X	=	$\frac{\text{cheapest price}}{\text{price of tender X}}$	*	100	*	0.4	+	total quality score (out of 100) for all award criteria of tender X	*	0.6
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☝ The contract shall be awarded to the tender ranked first, which complies with the Tender Specifications and is submitted by a tenderer having access to procurement, not in an exclusion situation and fulfilling with the selection criteria.

4. FORM AND CONTENT OF THE TENDER

4.1 Form of the tender

Tenders are to be submitted via the e-Submission application according to the instructions laid down in the Invitation to tender letter and the [e-Submission Quick Guide](#).

👉 Make sure you prepare and submit your electronic tender in e-Submission early enough to ensure it is received within the deadline specified under Heading IV.2.2 of the contract notice. A tender received after this deadline will be rejected.

4.2 Content of the tender

The documents to be submitted with the tender in e-Submission are listed in **Annex 1**.

The following requirements apply to the technical and financial offer (to be uploaded as Technical tender and Financial tender in e-Submission):

- *Technical offer.*

The technical offer must provide all the information needed to assess the compliance with **Section 1** and the award criteria. Tenders deviating from the minimum requirements or not covering all the requirements may be rejected based on non-compliance and not evaluated further.

The technical offer must not exceed 20 pages in length. Tenders submitted by tenderers that exceed this limit will be rejected. Contractors are invited to use font size 11 point, in the style of Times New Roman, Arial, or similar. All margins should be at least 2.54cm (the standard default). The text can have 1 line spacing.

- *Financial offer.*

A complete financial offer, including the breakdown of the price needs to be uploaded. For this purpose, the Financial Offer Model in **Annex 6** shall be completed, duly signed and uploaded in e-Submission.

It is the responsibility of each tenderer to ensure that the total amount of the tender inserted in the relevant field of the e-Submission application corresponds to the amount indicated in the uploaded financial offer. In case of discrepancies, only the amount indicated in the financial offer will be taken into account.

The financial offer shall be:

- expressed in euros. Tenderers from countries outside the euro zone have to quote their prices in euro. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to bear the risks or the benefits deriving from any variation.
- quoted free of all duties, taxes and other charges, i.e. also free of VAT. The tenderer may indicate the amount of VAT but it must be shown separately.

☞ The European Union Institutions are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965 annexed to the Treaty on the Functioning of the European Union. Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT must be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Union is exempt from VAT.

4.3 Signature policy

Where a document needs to be signed, the signature must be either hand-written, a qualified electronic signature or an advanced electronic signature based on a qualified certificate as defined in [Regulation \(EU\) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market \(the eIDAS Regulation\)](#).

For hand-written signatures see Section 1 of the Invitation to tender.

For electronic signatures see: <https://ec.europa.eu/docsroom/documents/32342>

All documents must be signed by the signatories (when they are individuals) or by their duly authorised representatives.

For the following documents, when signed by representatives, tenderers must provide evidence for the delegation of the authorisation to sign:

- The Tender report;
- The Declaration on Honour of the tenderer (in case of joint tender – the Declarations on Honour of all group members);
- (If applicable – in the case of joint tender) the power(s) of attorney drawn up using the model attached in **Annex 3**).

The delegation of the authorisation to sign on behalf of the signatories (including, in the case of proxy(-ies), the chain of authorisations) must be evidenced by appropriate written evidence (copy of the notice of appointment of the persons authorised to represent the legal entity in signing contracts (together or alone), or a copy of the publication of such appointment if the legislation which applies to signatory requires such publication or a power of attorney). A document that the Contracting authority can access on a national database free of charge does not need to be submitted if the Contracting authority is provided with the exact internet link and, if applicable, the necessary identification data to retrieve the document.

4.4 Confidentiality of tenders

Once the *Contracting authority* has opened a tender, it becomes its property and shall be treated confidentially, subject to the following:

- For the purposes of evaluating the tender and, if applicable, implementing the contract, performing audits, benchmarking, etc., the *Contracting authority* is entitled to make available (any part of) the tender to its staff and the staff of other Union institutions, agencies and bodies, as well to other persons and entities working for the *Contracting authority* or cooperating with it, including contractors or subcontractors and their staff provided that they are bound by an obligation of confidentiality.
- After the signature of the award decision tenderers whose tenders were received in accordance with the submission modalities, who have access to procurement, who are not found to be in an exclusion situation referred to in Article 136(1) of the FR, who are not rejected under Article 141 of the FR, whose tenders are not found to be incompliant with the procurement documents, and who make a request in writing will be notified of the name of the tenderer to whom the contract is awarded, the characteristics and relative advantages of the successful tender and the price of the offer and/or contract value. The *Contracting authority* may decide to withhold certain information that it assesses as being confidential, in particular where its release would prejudice the legitimate commercial interests of economic operators or might distort fair competition between them. Such information may include, without being limited to, confidential aspects of tenders such as unit prices included in the financial offer, technical or trade secrets¹⁵.
- The *Contracting authority* may disclose the submitted tender in the context of a request for public access to documents, or in other cases where the applicable law requires its disclosure. Unless there is an overriding public interest in disclosure¹⁶, the *Contracting authority* may refuse to provide full access to the submitted tender, redacting the parts (if any) that contain confidential information, the disclosure of which would undermine the protection of commercial interests of the tenderer, including intellectual property.

☞ The *Contracting authority* will disregard general statements that the whole tender or substantial parts of it contain confidential information. Tenderers need to mark clearly the information they consider confidential and explain why it may not be disclosed. The *Contracting authority* reserves the right to make its own assessment of the confidential nature of any information contained in the tender.

¹⁵ For the definition of trade secrets, please see Article 2 (1) of DIRECTIVE (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

¹⁶ See Article 4 (2) of the REGULATION (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

APPENDIX 1: LIST OF REFERENCES

<i>Award criteria</i>	See Section 3.4
<i>Contracting Authority</i>	See Section 1.1
<i>Entities on whose capacities the tenderer relies to fulfil the selection criteria</i>	See Section 2.4.3
<i>EU Validation services</i>	See Section 2.3 EU Grants and Tenders Rules on Legal Entity Validation, LEAR appointment and Financial Capacity assessment
<i>Exclusion criteria</i>	See Section 3.1
<i>Financial Regulation</i>	Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union
<i>Group leader</i>	See Section 2.4.1
<i>Identified subcontractors</i>	See Section 2.4.2
<i>Involved entities</i>	See Section 2.4
<i>Joint tenders</i>	See Section 2.4.1
<i>Registration in the Participant Register</i>	See Section 2.3 https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/participant-register
<i>Selection criteria</i>	See Section 3.2
<i>Sole tenderer</i>	See Section 2.4
<i>Subcontracting/subcontractor</i>	See Section 2.4.2
<i>Treaties</i>	The EU Treaties: https://europa.eu/european-union/law/treaties_en

APPENDIX 2

The urgent need to regulate the IP Profession

By 2013, a consequence of, *inter alia*, the severe financial crisis affecting Spain, the number of insolvency proceedings reached its peak, when 9,660 debtors commenced insolvency proceedings¹⁷, a 6.5% increase than in the previous year (lower than the 32% and 15% increases in 2011 and 2012, respectively).

Against this backdrop, Spain enacted a series of legislative reforms¹⁸ to introduce a new pre-insolvency procedure, preventive restructuring tools and measures aimed at improving the efficiency of insolvency, reducing the length of proceedings and increasing the recovery rate for creditors. Additionally, the Spanish authorities tried to tackle a recurring problem of the insolvency framework: the lack of regulation of the IP profession.

The first wave of reforms reduced the number of IPs appointed per case (i.e. from a three-member body to a one-person mandate) and allowed corporations (mostly law firms and auditing companies) to be appointed as IPs (in order to raise the standards of the profession).

In 2014, a subsequent reform foresaw additional changes to the IP profession, amongst others, the following:

- The need to pass an exam to access the profession.
- Additional requisites for the courts to appoint IPs (where the size of the debtor and the type of proceedings became crucial factors).
- The regulation of an extensive catalogue of duties for IPs within insolvency proceedings.
- A major overhaul of the system to calculate the remuneration of IPs per case (trying to incentivise reorganisations and reduce the length of proceedings).
- The creation of a National Register of licensed IPs.

However, the coming into force of this second wave of reforms remained subject to the enactment of secondary legislation, which the Spanish authorities never approved.

By the end of 2014, several active IPs in Madrid and Barcelona (more than 100 practitioners) created an association of IPs in Spain (**ASPAC**)¹⁹. The by-laws of the association set forth the

¹⁷ Source: *Instituto Nacional de Estadística, Estadística del Procedimiento Concursal* (2013).

¹⁸ By means of, amongst others, the following: the Law 38/2011 of 10 October, the Law 14/2013 of 27 September, the Law 17/2014 of 30 September, the Law 9/2015 of 25 May and the Law 25/2015 of 28 July.

¹⁹ There are other associations of IPs, amongst others, AELAC (funded in 2010 for lawyers that also work as IPs) and APACSA (which mostly represents IPs from Andalucía and the south of Spain).

objectives of ASPAC²⁰, which aimed at becoming one of the main interlocutors of the Spanish authorities for the reform of the IP profession.

In early 2015, the MOJ published the so-called Statute for the IP profession (*‘Estatuto del Administrador Concursal’*), which the Spanish authorities announced for approval as a Royal Decree (the **Draft Bill**) in the fall later that year.

The Draft Bill built upon the reforms in 2014 to put the focus on three aspects: (i) set up new requisites to access the profession, maintain the license and access a register of IPs; (ii) introduce a new and objectified system to appoint IPs; and (iii) reshape the remuneration system of IPs in order to reward efficiency, diligence and expeditiousness.

This draft reform addressed most of the criticism that the Spanish IP profession has received over a decade, in particular, the following concerns:

- Allegations against the system to appoint IPs.

Allegedly, the courts would always select the same handpicked IPs, who deal with the most profitable insolvency proceedings but who could not manage them well due to the high number of cases assigned to each IP.

- Absolute lack of controls to access the IP profession.

One the latest versions of the Draft Bill foresaw the introduction of an exam to access the IP profession (on top of requiring prospective candidates to meet further criteria related to education, training and professional experience).

- Lack of skills and expertise.

Despite the countless insolvency reforms in the period 2009-2015, IPs do not need to meet any training requirements or continuing professional development²¹.

- Non-official and non-transparent local or regional lists of IPs.

²⁰ Amongst others, the following:

- (i) Enhance the knowledge and management of IPs to restructure viable companies.
- (ii) Develop initiatives to improve and defend the IP profession.
- (iii) Promote training, professionalization and specialization of IPs.
- (iv) Act as interlocutors of the authorities with regard to legislative reforms on insolvency/IP profession.
- (v) Prepare a deontological code for IPs.

²¹ AEDIN, created in 2008, is the oldest and most representative association to promote a culture of workout and insolvency in Spain. It organises an Annual Congress on Insolvency Law (the XI Congress took place in March 2019). AULA CONCURSAL organises the Annual National Convention on Insolvency Law (four conventions since 2016). Other institutions in the private sector such as FIDE, INSOL and TMA Spain also organise numerous conferences, seminars, discussion forums, debates and symposia on Insolvency Law.

The reform foresaw that IPs meeting certain criteria (license + training) would enter into a National Public Register of IPs, which would be the official list for courts to select and appoint IPs (together with other professional-experience-related criteria).

- Excessive fees.

The remuneration approved in one of the biggest insolvency proceedings ever declared in Spain amounted to nearly 20 million Euro. Similarly, the fees of the IPs in the biggest cases in recent years²² easily resulted into compensations in the range of 3-5 million Euros.

As opposed to that, statistics show that approximately 40% of debtors declared insolvent do not generate sufficient income to pay the fees of the IP appointed²³. Besides, the assets are worth less than 2 million Euros in approximately 65% of cases²⁴, which means that the compensation for the IP could amount to less than 10,000 Euros for a few months' work.

In the summer of 2015, there was a strong consensus amongst all key stakeholders that Spain needed an urgent reform to regulate the IP profession. By means of the Law 15/2015 of 28 July, Spain introduced two changes to the remuneration of IPs²⁵:

1. Limitation of the overall remuneration of an IP per case (i.e. the lesser of the following amounts: 1.5 million Euro or 4% of the total value of the debtor's assets). The relevant court could exceptionally approve a remuneration beyond these limits (only up to 50% of the limitation) if proven that the work performed is worth more.
2. Obligation for every IP to deposit an amount equal to 2.5%, 5% or 10% of his/her total remuneration in a bank account handled by the MOJ to ensure IPs' compensation in asset-less cases ('*cuenta de garantía arancelaria*').

Notwithstanding the above, the Spanish Government was unable to approve the Draft Bill or any legislation about the IP profession due to, amongst others, the following reasons:

- The disagreements and different views on how to regulate key aspect of the IP profession in Spain²⁶.
- The strong opposition from key stakeholders (in particular, the association of IPs and non-affiliated IPs) to the Draft Bill and other draft legislation to regulate the IP profession²⁷.
- The call for Presidential elections in October 2015 and the subsequent elections in December 2015 and June 2016.

²² According to the *Estadística del Procedimiento Concursal* for the year 2018, the insolvent debtors, whose assets are worth more than 30 million Euro, only represent 2% of the total.

²³ Source: *Instituto Nacional de Estadística, Estadística del Procedimiento Concursal* (2016).

²⁴ Source: *Instituto Nacional de Estadística, Estadística del Procedimiento Concursal* (2018).

²⁵ These changes are not subject to the enactment of secondary legislation and therefore, both are in force.

²⁶ <http://www.expansion.com/juridico/actualidad-tendencias/2016/01/12/56954de322601de55d8b4626.html>

²⁷ https://cincodias.elpais.com/cincodias/2016/04/20/economia/1461159543_584644.html

The criticism towards the lack of regulation of the IP profession has steadily increased in the period 2016-2018. In fact, the need to regulate the IP profession in Spain has grown stronger and become more urgent.

The most representative associations of IPs, the IPs that are not affiliated to any association and key stakeholders²⁸ seem to have changed their minds, urging the Spanish authorities to take measures to regulate the IP profession²⁹.

The associations of IPs estimate that there are approximately 12,000 IPs registered in Spain³⁰. In recent years, the number of debtors declared insolvent has decreased from the peak reached in 2013 (9,660) to 5,635 insolvent debtors in 2018. Consequently, the number of IPs registered remains significantly above the needs of the market. In the opinion of the association of IPs, the number of IPs licensed in Spain (once the authorities regulate the access to the IP profession) should remain below 500 active IPs.

According to INSOL Europe, the number of IPs in Spain drastically contrasts with other EU Member States, where there is regulation of the IP profession such as France (420 judicial administrators and liquidators) and the UK (1,745 professionals). Even in Germany, where the IP profession is deregulated and the number of insolvency proceedings is much higher, the number of IPs is significantly lower (3,410 IPs)³¹.

Due to the lack of initiative by the Spanish authorities, the IP profession has started to pave the way towards self-regulation. In March 2019, one of the associations of IPs approved a Code of Good Conduct consisting of more than 25 rules that all members of that association agreed to comply³².

The MOJ attended the event to present the above-mentioned code and manifested their support of these type of initiatives. The MOJ reminded the audience the future approval of a Consolidated Text for all insolvency legislation, as well as the forthcoming approval of the Restructuring Directive, which Spain will have to transpose shortly after.

Pursuant to Articles 26 and 27 of the Restructuring Directive, EU Member States shall ensure the following in the context of regulating the IP profession:

- IPs receive suitable training, have the necessary expertise and are eligible.
- The process to appoint, remove and resignation are clear, transparent and fair.
- Debtors and creditors can object the selection or appointment of the IP.

²⁸ Amongst others, the European Association of Insolvency Practitioners' Organisations (EIP), insolvency judges, economists, regional Bar Associations (in particular, Madrid and Barcelona), the Institute of Chartered Accountants and the Institute to ensure a standard application of Accounting Principles (ICAC).

²⁹ https://www.eldiario.es/economia/Jueces-economistas-regular-administracion-concursal_0_706929460.html

³⁰ https://www.vozpopuli.com/economia-y-finanzas/Espana-sobran-administradores-concursales-Aspac-crisis-amiguismo_0_1134187963.html

³¹ INSOL Europe Insolvency Office Holders Forum - Draft Working Paper (2015-2016), available at: <https://www.insol-europe.org/download/documents/841>

³² <https://confilegal.com/20190328-justicia-partidaria-de-la-autorregulacion-de-los-administradores-concursales-en-visperas-de-la-aprobacion-de-una-directiva-sobre-solvencia/>

- The IPs' work is effectively supervised, including measures for the accountability of the IPs who fail in their duties.
- The IPs' remuneration responds to rules that are consistent with an efficient resolution of the insolvency proceedings.

APPENDIX 3

The need to amend the pre-insolvency, insolvency and restructuring framework

In 2003, Spain enacted its first modern Insolvency Law. The new legislation mirrored, to some extent, the German legislation, which foresees one single getaway into insolvency for debtors that could result into two outcomes: reorganisation within insolvency (*convenio*) or liquidation.

For many years, insolvency proceedings have been the sole venue in Spain to either: (i) restore debtors in financial distress; or (ii) orderly liquidate (and remove from the market, in the case of corporations) non-viable debtors that are unable to be rescued.

In the early days of modern insolvency in Spain, outcome (i) above was not very common. In fact, almost every key stakeholder perceived insolvency proceedings as a well-structured collective enforcement of the debtor's estate, as well as a better alternative to corporate liquidation or enforcement/foreclosing proceedings.

The financial crisis triggered the first reforms to the insolvency framework in 2009 (shield refinancing agreements against clawback actions) and 2011 (new pre-insolvency mechanism, protection of fresh money, new rules to cram-down creditors in a restructuring scenario and other incentives to prioritise restructuring over liquidation where feasible).

However, the real shift towards a prepetition restructuring regime (where viable companies in temporary financial distress could restructure expeditiously with no or very limited judicial intervention) came with the numerous reforms approved between 2014 and 2015.

In March 2014, the Spanish authorities put the focus on out-of-court workouts. The effects of the automatic stay (prevent creditors from taking action against the debtor) reached the pre-insolvency stage. The legislator introduced a new set of majorities to cram-down dissenting secured and unsecured creditors within the so-called Spanish scheme (i.e. judicial confirmation of refinancing agreements – *homologación judicial*).

In September 2014, the legislator extended the changes above to the reorganisation phase within insolvency (*convenio*). The Spanish authorities also developed a system to facilitate the sale of business units within insolvency proceedings to secure maximisation of the debtor's estate and increase the recovery rate for creditors (to some extent, inspired in the two-fold German approach of asset-deal and share-deal, as well as the 363 sales of the US Bankruptcy Code).

In February 2015, the legislator introduced significant reforms to the discharge of debt proceedings for individual debtors (the so-called, second chance or fresh start).

The legislative efforts of the Spanish authorities primarily focused on developing powerful restructuring tools at pre-insolvency stages. The newly introduced restructuring procedures

emerged as effective tools for Spanish companies (e.g. more than 150 courts decisions confirming Spanish schemes since the enactment of the latest reforms). Besides, there has been a 50% increase in discharge of debt proceedings in 2016³³.

Notwithstanding the reforms and the incipient good results, the MOJ acknowledges that there is significant room for improvement. For example, preventive restructuring tools (i.e. early warnings) barely exist in the current framework and the authorities want to revisit most of the newly restructuring tools now that some years have elapsed since the reforms came into force.

In light of the accumulated experience and lessons learned from the big corporations and groups of companies restructured or declared insolvent in the last 4-5 years, the MOJ would like to rethink, reassess and reform some of the general principles applicable to restructuring agreements and out-of-court debt rescheduling agreements.

The MOJ thinks that the reform should aim at achieving a greater degree of flexibility both in the negotiation with creditors and in the design of the restructuring agreements. If achieved, this goal would prevent the use of this legal instrument by those who do not have (or, in the course of these negotiations, find that they do not have), any objective possibility to restructure. Besides, the reform should enhance the use of out-of-court debt rescheduling agreements by making this tool more attractive and open³⁴.

The MOJ also notes that insolvency proceedings rarely last less than 18 months, which precludes debtors from reorganising within insolvency proceedings. In 2018, only 20 debtors (out of the 5,635 debtors that commenced insolvency proceedings that year) filed a proposal for an early voluntary arrangement with creditors. Liquidation remains as the most likely outcome within insolvency. In fact, a recent study suggests that 90% of insolvency proceedings in Spain end up in liquidation and 70% of these proceedings terminate because the debtor's assets have no market value³⁵.

Against that background, the MOJ appointed a group of experts in September 2018, charged with the drafting of the Experts' Report (as this term is defined in section 1.4 above). The Experts' Report will cover several areas, particularly, pre-insolvency, preventive restructuring and procedures leading to a discharge of debt. The Experts' Report shall be ready by July 2019.

The group of experts shall take into consideration the forthcoming Restructuring Directive in the field of restructuring (e.g. early warning tools, cross-class cram-down, the absolute priority rule, the best-interest-of-creditors test, the possibility to appeal the decision to confirm or reject a restructuring plan, etc.).

³³ Source: MOJ.

³⁴ The latest statistics from the Companies House (2017) show that only 17 insolvent corporations started negotiations with creditors to reach a debt rescheduling agreement (*acuerdo extrajudicial de pagos*), out of the 1,393 petitions filed in 2017 (most of them corresponding to individuals, whether traders or not).

³⁵ <https://www.elperiodico.com/es/finanzas/20190116/90-concursos-acreedores-liquidacion-7244476>

Additionally, the MOJ listed other topics that the Experts' Report shall cover with regard to increasing the efficiency of insolvency proceedings, amongst others, the following:

- Remove the obstacles that difficult the petition for insolvency.
- Reduce the rigidity of the insolvency proceedings as a collective enforcement of the insolvency estate in subsequent phases.
- Ensure that the liquidation of non-viable debtors commences earlier.
- Increase the reporting and management duties of IPs.
- Reduce the intervention of courts to essential matters.

Last but not least, the MOJ requests the experts to suggest recommendations with regard to other matters that Member States will have to transpose/legislate once the Restructuring Directive comes into force, such as the following:

- Introduce preventive restructuring tools (i.e. early warnings).
- Collect certain data in the field of restructuring, insolvency and discharge of debt.
- Ensure the training and expertise of the courts handling insolvency cases.
- Develop a consistent regulatory framework for IPs.

Given the above, the recommendations of the Experts' Report might also serve as a good basis for the other components within this project (i.e. the regulation of the IP profession – see Appendix 1 - and the data collection system – see Appendix 3).

APPENDIX 4

The need to improve the collection of data in the field of insolvency

Spain collects significant data and information in the field of insolvency. However, the data collected is not sufficient to monitor the efficiency of the framework and the data on restructuring and discharge of debt proceedings is almost non-existent. The collection is not centralised (which gives room to discrepancies, inconsistencies and/or duplications), and the Spanish authorities would like to reassess and adjust the process to collect this data.

The National Institute of Statistics (*'Instituto Nacional de Estadística'* - **INE**) has collected data in the field of insolvency since 1923. In 2004, INE amended the methodology to collect this data, as well as the terminology and the information collected. The amendment was a direct consequence of the approval of the first modern Insolvency Law in Spain in 2003.

INE approved the latest version of the methodology to collect data on insolvency³⁶ in November 2018. The main objective of the statistics on insolvency is to provide quarterly information about the number of debtors declared insolvent and some of the main features of the insolvency proceedings.

The goal of these statistics is to serve as an indicator of the economic situation of Spain and of different industry sectors. Together with other indicators, the statistics on insolvency contribute to the analysis of periods of growth, crisis or cooling of the Spanish economy.

In 2005, INE and the General Council of the Judiciary (**CGPJ**) entered into an agreement for the elaboration of judicial statistics (which included insolvency). By means of this agreement, the CGPJ authorised INE to collect data directly from the first-instance courts handling insolvency cases (i.e. the specialised *'Juzgados Mercantiles'* and the *'Juzgados de Primera Instancia e Instrucción con competencia mercantil'*).

INE sends questionnaires (*'boletín estadístico'*) to 92 courts that cover all the Spanish territory. INE collects data per province (Spain has 17 autonomous regions - within which there are 50 provinces - and 2 autonomous cities: Ceuta and Melilla). INE receives the questionnaires on a monthly basis. However, INE publishes the statistics quarterly.

The questionnaires collect the following data:

- Number of petitions for insolvency filed before the court.
- Number of judicial decisions declaring a debtor insolvent.
- Tax Identification Number of the debtor.

³⁶ Available at:
https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736177018&menu=metodologia&idp=1254735576550

- Type of proceedings depending on who files the petition for insolvency: debtor-initiated (*voluntario*) or creditor-initiated (*necesario*).
- Type of proceedings depending on the size of the debtor: ordinary or simplified.
- Filing of an early proposal for a voluntary arrangement with creditors (yes or no).
- If yes, content of the proposal (i.e. write-off, stay on payments, both or other alternatives such as debt-to-equity swap, conversion of debt into profit participating loans, etc.).
- Total value of the debtor's assets (once declared final by the relevant court).
- Total value of the debtor's liabilities (once declared final by the relevant court).

Additionally, for the debtors that perform any trade or business activity at the time of filing the petition for insolvency, whether individuals or corporations, the insolvency statistics provide further information on other variables. This data comes from crossing the Tax Identification Number provided in the above-mentioned questionnaire with other data gathered by DIRCE (*Directorio Central de Empresas del INE*) and other data collected by INE.

The insolvency statistics call the debtors above, insolvent debtors (*'empresas concursadas'*). The purpose is to differentiate the so-called 'insolvent debtors' from the individuals that do not perform any business activity at the time of filing the petition for insolvency. The additional data collected about 'insolvent debtors' is the following:

- Legal form of the insolvent debtor (*sociedad anónima, sociedad limitada, etc.*).
- Main economic activity (i.e. NACE Codes).
- Number of employees.
- Years of operation and region.
- Size depending on the annual turnover.
- Evolution of the data above quarterly and yearly.
- Information about the insolvent debtor's group of companies (yes or no).
- If yes, whether the group of companies is under foreign control (yes or no).

Until 2009, INE collected the questionnaires by ordinary mail or fax. From 2010, the relevant courts submit the filled-in questionnaires to INE through an electronic platform. INE also collects the information published in the Spanish Official Journal³⁷.

INE runs all questionnaires through a series of software applications that detect and correct potential errors, prepare tabular statistics and provide percentages on the most relevant variables.

³⁷ Pursuant to Article 23 of the Insolvency Law, the court shall publish an excerpt of the decision declaring the insolvency of a debtor in the Official Journal. The excerpt shall only contain indispensable data, such as:

- Identification of the debtor (including tax identification number).
- Competent court and number assigned to the insolvency proceedings.
- Date of the insolvency declaration and deadline for creditors to communicate their claims.
- Identity of the IP appointed, mail address and e-address for creditors to communicate their claims.
- The suspension or intervention of the debtor's management and disposition powers.
- E-address of the Public Registry for Insolvency (where most decisions will be accessible).

INE's quarterly and annual aggregated data is available at the link below:

www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736177018&menu=ultiDatos&idp=1254735576550

INE is not the only public institution or authority that collects data in the field of insolvency. The Companies House (*'Registradores de la Propiedad y Mercantiles'*) also collects data in this field. In fact, the Companies House elaborates an annual report on insolvency statistics.

The Annual Directory of Insolvency Statistics (*'Anuario Concursal'*) offers information about the economic and legal functioning of the Spanish insolvency framework. This economic approach is possible thanks to the diverse sources of information that the Companies House has access to, which allow the latter to match the insolvency data that is submitted to them, with information obtained from the annual accounts deposited in the Companies House.

The Annual Directory of Insolvency Statistics is the only document that provides information about the evolution, from start to finish, of insolvency proceedings. To that end, the Companies House examines more than 10,000 decisions, reports and court rulings per year.

This data offers substantial economic information about certain decisions that may affect the value of the productive assets of the debtors, as well as the distribution of costs within restructuring and insolvency proceedings.

The Annual Directory of Insolvency Statistics offers tabular data and comparative analysis of the following variables:

- Main features of the debtor and its solvency.

The Directory offers a broad variety of comparative data about the size, value of assets and liabilities, turnover, number of employees, industry sector and age of insolvent debtors. It also provides an analysis of viability based on the debtors' activity and the debtors' capital solvency (the methodology explains how to obtain the viability and solvency variables). The analysis includes information about the debtor-initiated or creditor-initiated character of the proceedings.

- Management and reallocation of resources.

The Directory analyses the evolution of the debtors' management bodies before and after the insolvency declaration, an evolution of the allocation of resources and the reallocation post-insolvency declaration.

- Recovery rate in voluntary arrangements with creditors (*convenio*).

The Directory contains the main terms and features of the proposals for a voluntary arrangement with creditors (*convenios*), the recovery rate depending on the terms agreed and a comparative analysis between the debtors' main features (i.e. size, value of assets and liabilities, turnover, number of employees, industry sector) and the different recovery expectations.

- The length of insolvency proceedings.

The Directory offers information about the duration of each phase, as well as the total length of insolvency proceedings, differentiating between ordinary (*ordinarios*) and simplified (*abreviados*) procedures.

- Information about refinancing/restructuring and debt rescheduling agreements.

There is also information about the number of agreements per autonomous region, the main features of the debtors/petitioners and a viability and capital solvency analysis.

The Annual Directory contains an additional variable dedicated to the analysis of debtors within the construction sector. The Companies House reformulates the traditional division between the four biggest sectors of the economy (i.e. agriculture and fishery, industry, construction and services), extracting from each one of them, those activities that are part of the cycle of construction.

Consequently, this last variable analyses insolvency data related to companies that obtain the raw materials (stone, gypsum, wood), suppliers of half-finished products (flat glass, bricks, bathroom fittings), builders and subcontractors, and developers and landowners.

The personnel of the 59 commercial registries (*'Registros Mercantiles'*) that cover Spain, forward to the Centre for Statistics (**CSP** - a special unit within the Companies House) every insolvency-related document after registration in the online database.

As opposed to the insolvency data collected by INE (which responds to one moment in time: when the questionnaires are filled-in), the methodology of the Companies House gives access to the information contained in the courts' main decisions during the proceedings. This methodology allows the statistics of the Companies House to give a time perspective to a complex judicial procedure that has two main different phases (i.e. *común* and *sucesiva*), whose evolution depends on certain decisions by the court, the actions/petitions of the relevant parties to the proceedings (debtor and creditors) and other contingencies.

The main judicial decisions sent to the CSP are the following: declaration of insolvency, intervention or substitution of the debtors' management, opening of the phase to approve a proposal for a voluntary arrangement with creditors (*convenio*), approval of a *convenio*, opening of the liquidation phase, approval of a liquidation plan and termination of the proceedings.

The Annual Directory of Insolvency Statistics is available at the link below:

<http://www.registradores.org/portal-estadistico-registral/estadisticas-mercantiles/estadistica-concursal/>

In addition to the statistics collected by INE and the Companies House, the CGPJ also collects relevant information in the field of insolvency. The data is part of the Annual Statistics on the Judiciary, which include an endless number of variables about many different aspects of the judicial system.

For example, the annual report that describes the organisation of the entire judicial system in Spain (*'La Justicia dato a dato'*), which includes the backlog of the courts and estimated

lengths of all types of proceedings, offers the following information in the field of restructuring, insolvency and discharge of debt:

- Number of 5bis petitions filed and decided per year.
- Petitions to start negotiations for a debt rescheduling agreement, the number of petitions closed and the number of insolvencies subsequently declared.
- Number of petitions for insolvency filed per autonomous region and the evolution compared with the previous year.
- Number of insolvency proceedings declared per autonomous region, differentiating between debtor-initiated and creditor-initiated proceedings.
- Number of liquidations within insolvency per autonomous region. The data breaks down to show the liquidations commenced, reopened, terminated and ongoing.

In light of the above, it seems evident that Spain collects significant data on insolvency proceedings. However, the data collected about restructuring or the procedures leading to a discharge of debt is very scarce. Besides, some relevant data that may be crucial to monitor the efficiency and outcome of insolvency proceedings is not collected.

Additionally, the Restructuring Directive contains certain obligations on data collection. Pursuant to Article 29 of the Restructuring Directive, EU Member States shall collect and aggregate data on procedures concerning restructuring, insolvency and discharge of debt, on an annual basis and at national level. Amongst others, Member States shall collect, at least, the following data:

- Number of procedures opened, pending or terminated.
- Average length of procedures from submission of the petition to their closure.
- Number of applications for restructuring procedures declared inadmissible, rejected or withdrawn before opening.
- Number of debtors subject to restructuring or insolvency proceedings. This data shall include the debtors that had a restructuring plan confirmed under a previous procedure within the last three years.
- Average cost of each type of procedure.
- Average recovery rates for secured, unsecured creditors and any other classes of creditors, separately.
- Number of entrepreneurs who, after having undergone a procedure leading to a discharge of debt, launch a new business.
- Number of job losses linked to restructuring and insolvency proceedings.
- Size of the debtors that are not natural persons.
- Whether debtors subject to procedures concerning restructuring or insolvency are natural or legal persons.
- Whether the procedures leading to a discharge of debt concern only entrepreneurs or all natural persons.

Annex 1. List of documents to be submitted with the tender or during the procedure

Description	Sole tenderer	Joint tender		Identified Subcontractor	Entity on whose capacity is being relied	When and where to submit the document?	Instructions for uploading in eSubmission (if applicable)	
		Group leader	Member of the group				How to name the file?	Where to upload?
<div><div>1. Identification and information about the tenderer.</div><div><div>eSubmission view</div><div><div><div></div><div></div><div></div><div></div><div></div><div></div></div><div><div>Ways to submit</div><div>Parties</div><div>Lots</div><div>Tender Data</div><div>Tender report</div><div>Submit tender</div></div></div></div></div>								
<div><div>Declaration on Honour on Exclusion and Selection Criteria (see Section 3.1)</div><div>model in Annex 2. Declaration on Honour on exclusion and selection criteria</div></div>	<div><input checked="" type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>	<div>With the tender in e-Submission</div>	<div>'Declaration on Honour'</div>	<div>With the concerned entity under 'Parties' →'Identification tenderer' →'Attachments'→'Declaration on Honour'.</div>
<div>Evidence that the person signing the documents is an authorised</div>	<div><input checked="" type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>	<div><input checked="" type="checkbox"/></div>			<div>With the tender in e-Submission</div>	<div>'Authorisation to sign' documents'.</div>	<div>With the concerned entity under 'Parties' →'Identification tenderer'</div>

representative of the entity ³⁸								→'Attachments'→'Other documents'.
Power of attorney (see Section 2.4.1) model in Annex 3. Power of attorney			<input checked="" type="checkbox"/>			With the tender in e-Submission	'Power of attorney'	In the Group leader's section under 'Parties' →'Identification tenderer' →'Attachments'→'Other documents'.
Commitment letter (see Section 2.4.2 and 2.4.3)				<input checked="" type="checkbox"/> (model in Annex 5.1)	<input checked="" type="checkbox"/> (model in Annex 5.2)	With the tender in e-Submission	'Commitment letter'	With the concerned entity under 'Parties' →'Identification tenderer' →'Attachments'→'Other documents'.
Evidence of non-exclusion (see Section 3.1)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Only upon request by <i>the Contracting authority</i> At any time during the procedure	n.a.	n.a.
Evidence of legal existence and status	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			Only upon request by <i>the EU Validation services</i> At any time during the procedure In the Participant Register	n.a.	n.a.

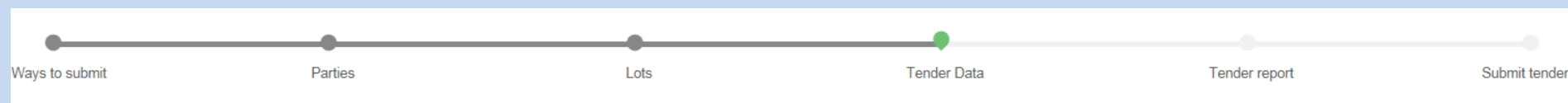
³⁸ A document that the Contracting authority can access on a national database free of charge does not need to be submitted if the Contracting authority is provided with the exact internet link and, if applicable, the necessary identification data to retrieve the document.

Evidence of legal capacity (see Section 3.2.1)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Evidence of economic and financial capacity F1 (see Section 3.2.2)	<p>The documents must be provided</p> <p>only by the <i>involved entities</i></p> <p>who contribute to reaching the minimum capacity level</p> <p>for criterion F1</p>					Only upon request by <i>the Contracting authority</i>	n.a.	n.a.
Evidence of technical and professional capacity T1 (see Section 3.2.3)	<p>The documents must be provided</p> <p>only by the <i>involved entities</i></p> <p>who contribute to reaching the minimum capacity level</p> <p>for criterion T1</p>					Only upon request by <i>the Contracting authority</i>	n.a.	n.a.
Evidence of technical and professional capacity T2	The documents must be provided					Only upon request by <i>the</i>	n.a.	n.a.

(see Section 3.2.3)	<p>only by the <i>involved entities</i></p> <p>who contribute to reaching the minimum capacity level</p> <p>for criterion T2</p>	<p><i>Contracting authority</i></p> <p>At any time during the procedure</p>		
<p>Evidence of technical and professional capacity T3</p> <p>(see Section 3.2.3)</p>	<p>The documents must be provided</p> <p>only by the <i>involved entities</i></p> <p>who contribute to reaching the minimum capacity level</p> <p>for criterion T3</p>	<p>Only upon request by <i>the Contracting authority</i></p> <p>At any time during the procedure</p>	n.a.	n.a.
<p>Evidence of technical and professional capacity T4</p> <p>(see Section 3.2.3)</p>	<p>The documents must be provided</p> <p>only by the <i>involved entities</i></p> <p>who contribute to reaching the minimum capacity level</p> <p>for criterion T4</p>	<p>Only upon request by <i>the Contracting authority</i></p> <p>At any time during the procedure</p>	n.a.	n.a.

Evidence of technical and professional capacity T5 (see Section 3.2.3)	<p style="text-align: center;">The documents must be provided</p> <p style="text-align: center;">only by the <i>involved entities</i></p> <p style="text-align: center;">who contribute to reaching the minimum capacity level</p> <p style="text-align: center;">for criterion T5</p>	<p>Only upon request by <i>the Contracting authority</i></p> <p>At any time during the procedure</p>	n.a.	n.a.
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2. Tender data.

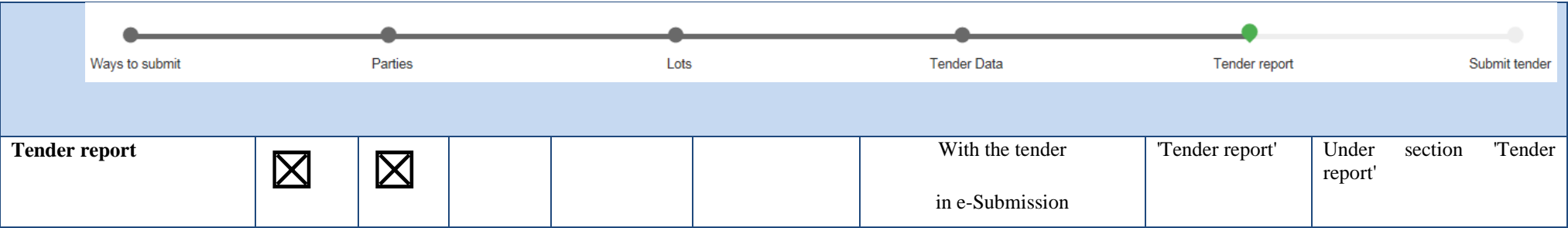


Failure to upload the following documents in eSubmission will lead to rejection of the tender.

Technical offer (see Section 4.2)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				With the tender in e-Submission	'Technical tender'	Under section 'Tender Data' → 'Technical Tender'
Financial offer (see Section 4.2)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				With the tender in e-Submission	'Financial tender'	Under 'Tender Data' → 'Financial Tender'

3. Tender report.

Once all information and documents have been encoded and uploaded in the e-Submission application and you consider that the tender is complete, the application will require you to download the Tender Report generated by the e-Submission application. It will have to be signed (hand signature or electronic signature) and uploaded, as explained in the [eSubmission Quick Guide](#).



Annex 2. Declaration on Honour on exclusion and selection criteria

The undersigned [*insert name of the signatory of this form*], representing:

<i>(only for natural persons)</i> himself or herself	<i>(only for legal persons)</i> the following legal person:
ID or passport number: (‘the person’)	Full official name: Official legal form: Statutory registration number: Full official address: VAT registration number: (‘the person’)

The person is not required to submit the declaration on exclusion criteria if the same declaration has already been submitted for the purposes of another award procedure of the same contracting authority³⁹, provided the situation has not changed, and that the time that has elapsed since the issuing date of the declaration does not exceed one year.

In this case, the signatory declares that the person has already provided the same declaration on exclusion criteria for a previous procedure and confirms that there has been no change in its situation:

Date of the declaration	Full reference to previous procedure

I – Situation of exclusion concerning the person

(1) declares that the above-mentioned person is in one of the following situations:	YES	NO
(a) it is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation	<input type="checkbox"/>	<input type="checkbox"/>

³⁹ The same EU institution, agency, body or office.

arising from a similar procedure provided for under Union or national law;		
(b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;	<input type="checkbox"/>	<input type="checkbox"/>
(c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the performance of a contract or an agreement;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(d) it has been established by a final judgement that the person is guilty of any of the following:		
(i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997, or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in other applicable laws;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) conduct related to a criminal organisation, as referred to in Article 2 of Council Framework Decision 2008/841/JHA;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) money laundering or terrorist financing, within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;	<input type="checkbox"/>	<input type="checkbox"/>
(vi) child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(e) it has shown significant deficiencies in complying with the main obligations in the performance of a contract or an agreement financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following	<input type="checkbox"/>	<input type="checkbox"/>

checks, audits or investigations by a contracting authority, the European Anti-Fraud Office (OLAF) or the Court of Auditors;		
(f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;	<input type="checkbox"/>	<input type="checkbox"/>
(g) it has been established by a final judgment or final administrative decision that the person has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business.	<input type="checkbox"/>	<input type="checkbox"/>
(h) (<i>only for legal persons</i>) it has been established by a final judgment or final administrative decision that the person has been created with the intent provided for in point (g).	<input type="checkbox"/>	<input type="checkbox"/>
(i) for the situations referred to in points (c) to (h) above the person is subject to: <ul style="list-style-type: none"> i.facts established in the context of audits or investigations carried out by the European Public Prosecutor's Office after its establishment, the Court of Auditors, the European Anti-Fraud Office (OLAF) or the internal auditor, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body; ii.non-final judgments or non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics; iii. facts referred to in decisions of entities or persons being entrusted with EU budget implementation tasks; iv.information transmitted by Member States implementing Union funds; v.decisions of the Commission relating to the infringement of Union competition law or of a national competent authority relating to the infringement of Union or national competition law; or vi. decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body. 	<input type="checkbox"/>	<input type="checkbox"/>

II – Situations of exclusion concerning natural or legal persons with power of representation, decision-making or control over the legal person and beneficial owners

Not applicable to natural persons, Member States and local authorities

(2) declares that a natural or legal person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers e.g. company directors, members of management or supervisory bodies, and cases where one natural or legal person holds a majority of shares), or a beneficial owner of the person (as referred to in point 6 of article 3 of Directive (EU) No 2015/849) is in one of the following situations:	YES	NO	N/A
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Situation (e) above (significant deficiencies in performance of a contract)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (g) above (creation of an entity with the intent to circumvent legal obligations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (h) above (person created with the intent to circumvent legal obligations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (i) above	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

III – Situations of exclusion concerning natural or legal persons assuming unlimited liability for the debts of the legal person

(3) declares that a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations:	YES	NO	N/A
Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IV – Grounds for rejection from this procedure

(4) declares that the above-mentioned person:	YES	NO
Was previously involved in the preparation of the procurement documents used in this award procedure, where this entailed a breach of the principle of equality of treatment including distortion of competition that cannot be remedied otherwise.	<input type="checkbox"/>	<input type="checkbox"/>

V – Remedial measures

If the person declares one of the situations of exclusion listed above, it must indicate measures it has taken to remedy the exclusion situation, thus demonstrating its reliability. This may include e.g. technical, organisational and personnel measures to prevent further occurrence, compensation of damage or payment of fines or of any taxes or social security contributions. The relevant documentary evidence which illustrates the remedial measures taken must be provided in annex to this declaration. This does not apply for situations referred in point (d) of this declaration.

VI – Evidence upon request

Upon request and within the time limit set by the contracting authority the person must provide information on natural or legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control, including legal and natural persons within the ownership and control structure and beneficial owners.

It must also provide the following evidence concerning the person itself and the natural or legal persons on whose capacity the person intends to rely, or a subcontractor and concerning the natural or legal persons which assume unlimited liability for the debts of the person:

For situations described in (a), (c), (d), (f), (g) and (h), production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person showing that those requirements are satisfied.

For the situation described in point (b), production of recent certificates issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the person is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

The person is not required to submit the evidence if it has already been submitted for another award procedure of the same contracting authority⁴⁰. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

VII – Selection criteria

(1) declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender specifications:	YES	NO	N/A
(a) It fulfills the applicable economic and financial criteria indicated in section 3.2.2 of the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) It fulfills the applicable technical and professional criteria indicated in section 3.2.3 of the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(2) if the above-mentioned person is the sole tenderer or the leader in case of joint tender , declares that:	YES	NO	N/A
(c) the tenderer, including all members of the group in case of joint tender and including subcontractors if applicable, complies with all the selection criteria for which a consolidated assessment will be	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

⁴⁰ The same institution or agency.

made as provided in the tender specifications.			
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VIII – Evidence for selection

The signatory declares that the above-mentioned person is able to provide the necessary supporting documents listed in the relevant sections of the tender specifications and which are not available electronically upon request and without delay.

The person is not required to submit the evidence if it has already been submitted for another procurement procedure of the same contracting authority⁴¹. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

The above-mentioned person must immediately inform the contracting authority of any changes in the situations as declared.

The above-mentioned person may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.

Full name

Date

Signature

⁴¹ The same institution of agency.

Annex 3. Power of attorney

Call for tenders SRSS/2019/OP/0001

Support for insolvency, pre-insolvency, restructuring and data collection in Spain

POWER OF ATTORNEY

The undersigned:

– Signatory (Name, Function, Company, Registered address, VAT Number)

having the legal capacity required to act on behalf of his/her company,

HEREBY AGREES TO THE FOLLOWING:

- 1) To submit a joint tender as a member of a group of tenderers (the Group), constituted by Company 1, Company 2, Company N (Group members), and led by Company 1 (Group leader), in accordance with the conditions specified in the Tender specifications and the terms specified in the tender to which this Power of attorney is attached.
- 2) If the Contracting authority awards the contract resulting from this call for tenders to the *Group* on the basis of the joint tender to which this power of attorney is attached, all *Group members* shall be considered parties to the contract in accordance with the following conditions:
 - (a) All *Group members* shall be jointly and severally liable towards the Contracting authority for the performance of the contract.
 - (b) All *Group members* shall comply with the terms and conditions of the contract and ensure the proper delivery of their respective share of the services and/or supplies subject to the contract.
- 3) Payments by the Contracting authority related to the services and/or supplies subject to the Contract shall be made through the bank account of the *Group leader*: [Provide details on bank, address, account number].
- 4) The *Group members* grant to the *Group leader* all the necessary powers to act on their behalf in the submission of the tender and the conclusion of the contract, including:
 - (a) The *Group leader* shall submit the tender on behalf of all *Group members* and indicate in the "Tender Contact Info" section in e-Submission the name and e-mail address of an individual - single point of contact authorised to communicate officially with the Contracting authority in connection with the submitted tender on behalf of all *Group members*, including in connection with all relevant questions, clarification requests, notifications, etc., that may be received during the evaluation, award and until the contract signature.
 - (b) The *Group leader* shall sign any contractual documents — including the contract, and amendments thereto — and issue any invoices related to the performance of the contract on behalf of all *Group members*.

(c) The *Group leader* shall act as a single contact point with the Contracting authority in the delivery of the services and/or supplies subject to the contract. It shall co-ordinate the delivery of the services and/or supplies by the *Group* to the Contracting authority, and shall see to a proper administration of the contract.

Any modification to the present Power of attorney shall be subject to the Contracting authority's express approval. This Power of attorney shall expire when all the contractual obligations of the *Group* have ceased to exist. The parties cannot terminate it before that date without the Contracting authority's consent.

Place and date:

Name (in capital letters), function, company and signature:

Annex 4. List of identified subcontractors

Identification details	Roles/tasks during contract execution	Proportion of subcontracting (% of contract volume)
<i>[Full official name Registered address Statutory registration number VAT registration number]</i>		
<i>[Full official name Registered address Statutory registration number VAT registration number]</i>		
<i>[REPEAT AS MANY TIMES AS THE NUMBER OF IDENTIFIED SUBCONTRACTORS]</i>		
Other subcontractors that do not need to be identified under Section 2.4.2		
	TOTAL % of subcontracting	0,00%

Annex 5.1. Commitment letter by an identified subcontractor

[Letterhead, if any]

EUROPEAN COMMISSION

Call for tenders Ref. SRSS/2019/OP/0001

Attn:

[Insert date]

Commitment letter by identified subcontractor

I, the undersigned,

Name:

Function:

Company:

Registered address:

VAT Number:

having the legal capacity required to act on behalf of the company *[insert name of the entity]* hereby confirm that our company agrees to participate as subcontractor in the offer of *[insert name of the tenderer]* for the Call for Tenders SRSS/2019/OP/0001 – Support for insolvency, pre-insolvency, restructuring and data collection in Spain.

In the event that the tender of the aforementioned tenderer is successful, *[insert name of the subcontractor]* commits itself to make available the resources necessary for performance of the contract as a subcontractor and to carry out the services that will be subcontracted to it in compliance with the terms of the contract. It further declares that it is not subject to conflicting interests which may negatively affect the contract performance and that it accepts the general conditions attached to the Tender Specifications for the above call for tender, in particular the contractual provisions related to checks and audits.

Done at:

Name:

Position:

Signature:

Annex 5.2. Commitment letter by an entity on whose capacities is being relied

[Letterhead, if any]

EUROPEAN COMMISSION

Call for tenders Ref. SRSS/2019/OP/0001

Attn:

[Insert date]

Commitment letter by an entity on whose capacity is being relied

I, the undersigned,

Name:

Function:

Company:

Registered address:

VAT Number:

having the legal capacity required to act on behalf of the company *[insert name of the entity]* hereby confirm that our company **authorises the** *[insert name of the tenderer]* **to rely on its financial and economic capacity in order to meet the minimum levels** required for the Call for Tenders SRSS/2019/OP/0001– Support for insolvency, pre-insolvency, restructuring and data collection in Spain.

In the event that the tender of the aforementioned tenderer is successful, *[insert name of the entity]* commits itself to make available the resources necessary for performance of the contract. It further declares that it is not subject to conflicting interests which may negatively affect the contract performance, and that it accepts the general conditions attached to the Tender Specifications for the above call for tender, in particular the contractual provisions related to checks and audits.

Done at:

Name:

Position:

Signature:

Annex 6. Financial offer form

The financial offer form is provided in Excel format in a separate file.

