

# **TERMS OF REFERENCE**

## **Tender no. DG EAC 01/04**

*Surveillance/monitoring of the application of rules in the  
TVWF Directive concerning television advertising,  
sponsorship and teleshopping in the Member States  
(framework contract)*

**Contracting Authority: European Commission**

## **1. BACKGROUND INFORMATION**

The “Television without Frontiers” Council Directive 89/552/EEC of 3 October 1989 ([http://europa.eu.int/eur-lex/en/lif/dat/1989/en\\_389L0552.html](http://europa.eu.int/eur-lex/en/lif/dat/1989/en_389L0552.html)), as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 ([http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0036.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0036.html)) ([http://europa.eu.int/eur-lex/en/consleg/main/1989/en\\_1989L0552\\_index.html](http://europa.eu.int/eur-lex/en/consleg/main/1989/en_1989L0552_index.html), consolidated version) (« The Directive ») provides in its Article 2(1) that Member States shall ensure that television broadcasts transmitted by broadcasters under their jurisdiction comply with the rules of the system of law applicable to broadcasts intended for the public in that Member State. In its Article 3(2), said Directive provides that Member States ensure, by appropriate means, that television broadcasters under their jurisdiction effectively comply with the provisions of this Directive.

Therefore, it is clear from the foregoing that Member States are obliged by the Directive to conduct a monitoring and, if need be, to sanction possible infringements to the rules contained in the Directive. In particular, the Directive lays down rules concerning the content and presentation of on-screen advertising and teleshopping (Articles 10, 12, 13, 14, 15 and 16), the duration of such advertising and teleshopping allowed (daily and hourly limits contained in Articles 18, 18(a) and 19), the insertion of advertising and teleshopping between the programmes and, exceptionally during the programmes (Article 11), and specific rules on sponsorship (Article 17).

Following complaints from the public and Parliamentary petitions, the attention of the Commission has been drawn to the situation prevailing in several Member States in respect of the previously mentioned provisions of the Directive. Under the circumstances, the Commission has considered it necessary to proceed with a detailed control of the level of compliance with the rules of the Directive on advertising, by broadcasters under the jurisdiction of the Member States.

## **2. CONTRACT OBJECTIVES & EXPECTED RESULTS**

### **2.1. Overall objectives**

The overall objective of this exercise for the Commission is to make sure that the Member States currently monitor the application of the rules of the Directive on Television advertising and teleshopping by the broadcasters under their jurisdiction.

### **2.2. Specific objective**

To proceed with a monitoring exercise in some Member States in order to determine if they control accurately the correct application of the rules of the Directive on advertising and teleshopping by the broadcasters under their jurisdiction.

### **2.3. Results to be achieved by the Contractor**

In conjunction with the activities carried out by the “*Audiovisual policy*” Unit, the contractor will be required to furnish a legal analysis on the transposition of the relevant

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provisions of the Directive in the concerned country. The contractor will also analyse, monitor and take stock of the duration of advertising interruptions and spots (using video recordings and log files) on television channels of one (or more) Member State(s) of the European Union or candidate countries over a given period (one month or two months per year). The contractor must also analyse and present the data in the light of the Directive's rules and determine if and how the facts found constitute an infringement of the Directive. The whole information and conclusions obtained by the contractor for each country will be put together in the form of a report and the draft report will be sent to the Commission in due course according to the framework contract.

### **3. SCOPE OF THE WORK**

#### **3.1. General**

##### *3.1.1. Project description*

The work of the consultant will entail a legal analysis of the rules on televised advertising applicable in the country and their conformity with the directive and a monitoring of the correct application of the rules of the directive by the channels concerned and designated by the Commission. The monitoring will entail logging the transmission time given over by television channels (public or commercial), which schedule advertising, to teleshopping spots and to other forms of advertising, verifying whether these commercial practices comply with the terms of the Directive as regards their insertion in programmes and a legal analysis that demonstrates how said practices violate the provisions of the Directive.

##### *3.1.2. Geographical area to be covered*

The service to be hereby provided is likely to cover every Member State of the European Union.

#### **3.2. Specific activities**

Once the Commission has received the draft report, it has one month following the effective receipt of said draft to submit its comments to the contractor by e-mail or any other means of communication.

If the Commission does not make any comments within sixty days following receipt of the draft report, the contractor will be entitled to request written acceptance thereof.

The final report will be deemed to have been accepted by the Commission if, within a period of one month from receipt of such request, it has not expressly informed the contractor of any comments.

If the Commission starts an infringement procedure against a Member State based on the findings of the contractor, the contractor has to provide representatives of that Member State, that will be designated by the Commission, full access to the recorded material. The contractor has to store the recordings at least for three years in any case until the end of a potential infringement proceeding (including proceedings before the European Court of Justice).

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### 3.3. Project management

#### 3.3.1. Responsible body

The responsible body within the European Commission is Directorate-General Education and Culture, Unit C/1 "Audiovisual Policy".

## 4. LOGISTICS AND TIMING

### 4.1. Location

Contractor's home office

### 4.2. Commencement date & Period of execution

The indicative intended commencement date is November 2004 and the period of execution of the contract will be 12 months. The contract enters into force after signature of the contract by both parties.

The Contract may be renewed up to two times, each time for a period of 12 months, only before expiry of the Contract and with the express written agreement of the parties. Renewal does not imply any modification or deferment of existing obligations.

Time Schedule

The period of monitoring will be 60 days per channel.

A preliminary meeting is to be organised in Brussels before the work starts, and a final meeting is also to be held in Brussels for the final version of each final report delivered.

The duration of the contract is three years, based on a framework contract initially running for one year, renewable annually twice at the most.

The reporting schedule is specified in section 6.

## 5. REQUIREMENTS

### 5.1. Personnel

The Tenderer remains free to propose any allocation of resources which they believe will best achieve the desired results.

The staff will include at least a team manager and a legal consultant.

### 5.2. Facilities to be provided by the Contractor

The Contractor shall ensure that experts are adequately supported and equipped. In particular it shall ensure that there is sufficient administrative, secretarial and interpreting provision as necessary, to enable experts to concentrate on their primary responsibilities.

## 6. REPORTS

### 6.1. Reporting requirements

The services provided by the contractor in performance of the contract will be the subject of the following report.

#### Final report per country

The final report will describe all the work carried out and the results obtained in performance of the contract. It will comprise also a summary of the main results achieved and the video recordings supporting the conclusions.

The report is to be sent to the Commission for the deadline mentioned in the order.

Within Each draft report will be submitted in 1 original and 4 copies in English and by e-mail to the correspondent official (whose name will be communicated by the Contracting Authority).

The Commission will comment on the draft reports within 60 days. In the absence of observations from the Commission within the deadline, the draft reports will be considered as being approved.

Within 20 days of receiving the Commission's observations, the Contractor will submit new draft reports taking full account of these observations, either by following them precisely, or by explaining clearly why he did not. Should the Commission still not consider the reports acceptable, the Contractor will be invited to amend them until the Commission is satisfied.

After approval by the Commission, the final version of the reports will be submitted in 1 original and 4 copies and by e-mail to the correspondent official in English as well as 5 copies in the official language(s) of the relevant country.

The contractor will also provide one electronic copy (MS-Word compatible) as well as five CD-ROMs with the video recordings supporting the conclusions.