

ANNEX 1

Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audiovisual productions

TENDER SPECIFICATIONS

Part 1: **Technical description**
Part 2: **Administrative details**

Annex I: Administrative Identification Form
Annex II: Financial Identification Form
Annex III: Exclusion Criteria & Non Conflict of Interests Form

Part 1: Technical description

Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audiovisual productions

1. CONTEXT

The criteria used by the European Commission to assess the compatibility with the EC Treaty of aid schemes for cinema and TV production were set out in chapter 2 of the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works¹. This Communication contains the Commission's general approach to State aid to the cinema and TV production sector.

This approach was recently confirmed up to 30 June 2007 by a further Communication² which also announces the Commission's intention to launch a study covering the effects of State aid systems and in particular the economic and cultural impact of territorialisation requirements taking into account the impact on co-productions.

The criteria set by the Communication are two-fold:

- a) Respect of the general legality criterion
- b) Specific compatibility criteria for State aid to cinema and TV fiction production.

The second of these criteria applies to "territorialisation". The Communication states that "Member States shall allow producers to invest at least 20% of the film budget in other Member States without suffering any reduction in the aid provided for under the scheme". Many Member States do not impose any territorialisation criteria, in other words, producers are free to spend their film budget in the country or countries of their choice.

The Communication stated that the Commission did not intend to alter the specific compatibility criteria unless they prove unable to prevent undue distortion of competition within the EC.

According to the European Audiovisual Observatory³, the EU Member States dedicated 1071 million EUROS in 2002 and 1084 in 2003 for funding the development, production and distribution of European films. National and regional mechanisms of support to the cinema are very different in terms of how they are financed, available resources, criteria for selecting projects, etc. The Observatory's database KORDA⁴ contains an inventory of State aid schemes in Europe.

¹ COM(2001)534 final of 26.09.2001, OJ C 43 of 16.02.2002

² Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the follow-up of the Commission communication on certain legal aspects relating to cinematographic and other audiovisual works of 26.09.2001 (COM(2004)171 final of 16.3.2004, OJ C 123/1 of 30.04.2004, http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0171en01.pdf).

³ European Audiovisual Observatory, 2004 Yearbook, Volume 3, T.15.1.

⁴ <http://korda.obs.coe.int/web/fr/>

The study “Public funding for film and audiovisual works in Europe – A comparative approach”⁵ presents an analysis of the European State aid in the form of subsidies. The study provides useful background information for the present study:

- Wide diversity of stakeholders and methods of intervention: 51 organizations active at national level and 118 at regional level. Around 600 aid schemes.
- Five countries (France, Germany, Italy, Spain and the UK) accounted for 72% of the overall EU funding in 2002. France alone accounted for 46% of direct public funding, and Germany for 17%.⁶
- Territorialisation is described as a condition imposed by the Member state that some of the production or post-production activities shall take place in the country concerned. “This condition is usually defined in general terms in national legislation and it is not always easy to find out what the exact arrangements are. These are sometimes to be found in internal rules of procedure and often seem to be more a question of established practice than fixed rules (...) The definition of the criterion of territoriality can often be singled out as such but it may also derive from the definition of the nationality conditions which producers have to satisfy to qualify for aid.”⁷
- The following impose territorialisation criteria: Austria, French Community of Belgium, Flemish Community of Belgium, Germany, German regional funds (Berlin-Brandenburg, FFF Bayern, Film NRW, and FF Hamburg), France, United Kingdom, Ireland, Italy and Portugal.⁸
- The following do not impose territorialisation criteria: Denmark, Spain, and Finland. The study does not provide information on Greece, the Netherlands⁹, Luxembourg and the 10 new Member States.

The number of European films financed via international co-productions is very high and in some Member States they account for the majority of the films produced. European co-productions are also important from a pan-European circulation point of view since they are more likely to be distributed in several Member States than the films produced in a single country. The European Convention on Cinematographic Co-production¹⁰, which is signed by all EU Member states, has largely contributed to the development of European co-productions. According to the European Audiovisual Observatory¹¹, there are currently over 50 co-production agreements in force between European countries. These agreements stipulate a legal framework in which producers from these countries

⁵ European Audiovisual Observatory, Strasbourg 2004.

⁶ Chapter 5.1.2

⁷ Chapter 6.8

⁸ Box 6

⁹ According to Commission information, The Netherlands imposes territorialisation requirements.

¹⁰ <http://conventions.coe.int/>

¹¹ <http://www.obs.coe.int/about/oea/pr/coproduction.html.en>

may work together. They also define the role which the various sources of film funding and financing may play within the financial structure of a European co-production. The available co-production agreements can be downloaded from the Observatory's freely consultable IRIS MERLIN database¹².

2. OBJECTIVES OF THE STUDY

2.1 Overall objective

The overall objective of this contract is to provide the Commission with information regarding the application of Articles 151 and 87.3(d) of the EC Treaty.

Under Article 151.1 of the EC Treaty, “the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity”. In addition, Article 151.4 enshrines the principle that the Community shall take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures. Cinematographic productions are an essential component of our cultures, which are covered by Article 151.

Article 87.3 (d) of the EC Treaty states that the Commission may consider compatible with the common market State “aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest”. On the basis of this exception, the Commission has examined and approved all the national schemes of State aid to cinema that have been notified.

2.2 Specific objectives

The specific objective of the study is to provide Commission clear and reliable data on the consequences of “territorialisation” requirements. The Commission will take these findings into account when making a decision on its approach to State aid to cinema beyond June 2007. In particular, the core of the study is to analyse the impact of territorialisation on the cost structure of film industries.

The study is divided in 7 parts:

PARTS A and B will provide an **objective view** of the situation in relation to State aid in the 25 Member States. **PART A** calls for a **synopsis of the legal provisions** relating to territorialisation. **PART B** requires an **analysis of the subsidies that are effectively paid** in the 25 Member States. The European Audiovisual Observatory provides data on the budgets that are available in each Member State, but not how much of these is effectively spent. The results of PART B are necessary for comparing the magnitude of public intervention in relation to the turnover of the sector. Given that regional State aid

¹² <http://merlin.obs.coe.int/>

regimes are a substantial part of the budget, the consultant shall also provide data on the budget of larger regional schemes¹³.

PARTS C and D form the core of the study: **identifying whether there are economic inefficiencies** in the sector that can be explained by the existence of territorialisation requirements. **PART C** calls for a **description of the economic structure** of a representative sample of countries, some of which apply territorialisation and some of which do not. **PART D** undertakes a **comparison of the economic structures** of these countries. In addition, **PART D** requires the **structure of budget films** produced in countries that apply territorialisation **to be compared** with the structure of those produced in countries not applying territorialisation. The aim is to analyse whether and how territorialisation affects the cost categories of films.

PARTS E and F deal with **co-productions**. Point 8 of the Communication calls for a study in particular on the impact of territorialisation on co-productions. **PART E** looks at the issue from two points of view: **legal** (summary of co-production agreements) and **statistical** (number of co-productions). It calls, finally, for an analysis of whether and how territorialisation may influence the way in which co-productions are financed. **PART F** involves a **qualitative assessment** of whether territorialisation is an obstacle to European co-productions. This assessment will be based notably on interviews with a representative sample of stakeholders.

PART G will look at the problem from a **cultural perspective**. The consultant will evaluate what the cultural consequences might be of removing territorialisation. This assessment will be based notably on interviews with a representative sample of stakeholders.

The reference period to be covered by the study is the latest 5 years for which data is available.

2.3 Detailed description of the tasks

PART A:

The contractor will provide the Commission with a clear synopsis of the legal provisions relating to territorialisation in Member States' aid schemes. The analysis will cover all national schemes and those relevant regional schemes¹⁴, in force in all Member States, with a precise description of territorialisation requirements. It should be noted that territoriality requirements can also derive from the definition of the nationality conditions which productions have to satisfy in order to qualify for aid. The analysis should cover both automatic and selective granting procedures. It will also look at whether the evaluation criteria used impose territorialisation requirements in any direct or indirect way.

The result of the analysis will be presented in a table format.

PART B:

The contractor will provide the Commission with an analysis, covering all Member States, of the public subsidies paid within the framework of all national and major

¹³ We consider as "larger regional schemes" for the purpose of this study those schemes that had a budget over 1 million in the last year of the reference period.

¹⁴ For the purpose of this study, major regional aid schemes are considered to be those with a budget over 1 million € in the last year of the reference period

regional¹⁵ aid schemes, and notably in favour of service activities based in the relevant market relating to cinema production, post-production, marketing, distribution and promotion. The analysis will identify subsidies paid through schemes imposing territorialisation requirements and subsidies paid through schemes not imposing territorialisation requirements.

PART C :

The contractor will provide a clear analysis of the essential characteristics of the cinema industry in a relevant sample of Member States, in particular:

- Employment, turnover and value added; number and size of companies; existing stock of facilities and capacity utilisation; prevailing prices for rendering typical services; for cinema production, post-production, marketing, distribution and promotion activities in the selected countries applying “territorialisation” and the countries not applying it.
- Film production and distribution (national, EU co-productions, EU non-national, extra-EU origin) in the countries applying “territorialisation” and film distribution/circulation in the countries that do not apply it.

PART D :

D.1 Comparison of economic indicators

The selected countries will be classified in one of the following three categories:

- Countries applying a high level of territorialisation.
- Countries applying a low level of territorialisation
- Countries not applying territorialisation

The contractor will compare the characteristics of the cinema industries, as identified under part C, between the three groups. The contractor will assess whether existing differences (if any, taking into account the relative sizes of the selected countries and the degree of territorialisation) can be explained by the existence of “territorialisation” requirements (evaluation of impact).

D.2 Analysis of film budgets

The contractor will also provide an assessment of the competitiveness of the cinema production, post-production, marketing, distribution and promotion activities in the selected countries applying high and low “territorialisation” versus the countries not applying it.

As part of this assessment the contractor will identify a representative sample of films produced in a single country or internationally co-produced over the reference period, and divide them into the following categories:

- a) Films produced in a single country not applying “territorialisation”
 - a.1) small and medium budget
 - a.2) large budget
- b) Film produced in a single country applying “territorialisation”.
 - b.1) small and medium budget
 - b.2) large budget
- c) Films co-produced between countries applying “territorialisation”
 - c.1) small and medium budget
 - c.2) large budget

¹⁵ Those with a budget over 1 million € in the last year of the reference period

- d) Films co-produced between countries not applying “territorialisation”
 - d.1) small and medium budget
 - d.2) large budget
- e) Films co-produced between a country applying “territorialisation” and a country not applying “territorialisation”
 - e.1) small and medium budget
 - e.2) large budget

The contractor will divide the budget structure of the chosen films into an appropriate number of cost categories covering the professional activities of cinema production¹⁶, post-production, marketing, distribution and promotion. He will compare the mentioned cost categories of the budget structure of films sub a.1 with sub b.1, c.1, d.1 and e.1; sub a.2 with sub b.2, c.2, d.2 and e.2.

The contractor will analyse the economic impact (if any) of the “territorialisation” requirements on the mentioned cost categories of the budget structure of the chosen films and will identify and analyse the impact (if any) of the “territorialisation” requirements in terms of geographical localisation of spending concerning the mentioned cost categories of the budget structure of the chosen films.

PART E :

The contractor will provide the Commission with a clear synopsis of the co-production agreements in force in 2003 and in the past (1998/2002) in all Member States, with reference to arrangements concerning the territorialisation requirements of the national/regional aid schemes.¹⁷

He will identify the number of international co-productions (in relation to the total number of productions) featured over the reference period between:

- a) Member States not applying “territorialisation”
- b) Member States applying “territorialisation” and Member States that do not apply it
- c) Member states applying “territorialisation”.

He will identify the main patterns of the financing models of international co-productions with a specific reference to the “territorialisation” issues, the Media Plus Programme and the instruments of the Council of Europe on co-productions.

PART F :

The contractor will provide a qualitative assessment notably based on interviews with a representative sample of stakeholders on whether “territorialisation” requirements of the aid schemes in all Member States hinder the production of films under European co-productions agreements.

PART G :

The contractor will provide the Commission with an overall qualitative assessment based on interviews with a representative panel of operators of what the consequences might be, in cultural terms (number and genres of film produced and distributed, number of festivals, etc.), of removing territorialisation requirements from national and regional aid schemes.

¹⁶ For instance, author fees, leading role fees, crew fees, filming support fees.

¹⁷ The available co-production agreements can be downloaded from the Observatory's freely consultable IRIS MERLIN database: <http://merlin.obs.coe.int/>.

2.4 Requirements

2.4.1 Personnel requirements

2.4.1.1 Key experts

All experts who have a crucial role in implementing the contract are referred to as key experts. The profiles of the key experts for this contract are set out below. It is not necessary that each of these profiles should correspond to a single individual. One expert may have the skills and experience required to cover more than one role in the project. Equally, one role may be divided between two or more experts where the tenderer believes that this will be the most effective way of achieving the desired results. It is recommended that the team proposed by the Tenderer should have all the skills and experience described below:

Key expert 1: Team leader

Qualifications and skills : Degree in economics and/or law.

Professional experience : At least 10 years of experience in economic and/or legal research, of which at least 5 as team leader.

Key expert 2: Senior economic expert

Qualifications and skills : Degree in economics.

Professional experience : At least 10 years of experience in economic research, and at least 5 years as co-ordinator or team leader of economic studies. Experience in the audiovisual sector would be an asset.

Key expert 3: Senior legal expert

Qualifications and skills : Degree in law.

Professional experience : At least 10 years of experience in competition law, and, in particular, State aid. Experience in the field of State aid to cinema would be an asset.

Key expert 4: Cinema expert

Professional experience : At least 10 years of experience in the cinema sector, as a cinema critic, director, producer or other relevant position.

2.4.1.2 Other experts

Researchers able to cover with an appropriate knowledge of the relevant legal and economic situation in the 25 countries covered by the study.

2.4.1.3 Staff availability

The tenderer shall provide written confirmation by all experts on the personal availability to carry out the tasks foreseen by the tender.

2.4.2 Facilities to be provided by the Contractor

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

3. DURATION

The indicative intended commencement date is October 2005 and the period of execution of the contract will be 12,5 months. Actual commencement will take place after signature of the contract by both parties.

4. DELIVERABLES

The following deliverables are required from the contract:

4.1 Interim reports

The first interim report is to be submitted within 3 months of the date of signature of the contract by the last of the two parties. The second interim report is to be submitted within 8 months of the date of signature of the contract by the last of the two parties.

The **first interim report** must include at least the following:

- Parts A and B;
- Proposal for the representative sample of countries to be covered in parts C and D, with an explanation of the methodology for benchmarking. The Commission will make the final decision on the sampling.
- Problems encountered, solutions found or proposed, and impact on future work;
- Detailed time schedule for the completion of the work;

The **second interim report** shall include at least the following:

- Parts C, D;
- Proposal for the representative sample of stakeholders to be interviewed as foreseen under parts F and G, with an explanation of the methodology for selection. The Commission will make the final decision on the sample.
- Problems encountered, solutions found or proposed, and impact on future work;
- Detailed time schedule for the completion of the work;

4.2 Preliminary final report

A preliminary final report is to be submitted within 11 months of the date of signature of the contract by the last of the two parties. The preliminary final report must include the following:

- An executive summary in English, French and German and a presentation set in English suitable for the general public (MS Powerpoint compatible);

- .A detailed analysis of the findings, covering all parts of the study.

4.3 Final report

The draft final report will be prepared taking into account comments presented during the workshop referred to in point 4.4 here after. The draft final report will be submitted within one month after the workshop.

The final report report must include the following:

- An executive summary in English, French and German and a presentation set in English suitable for the general public (MS Powerpoint compatible).
- A detailed analysis of the findings, covering all parts of the study

4.4 Organisation of 1-day workshop in Brussels.

The workshop will be held within two weeks after the submission of the preliminary final report. It will be designed to stimulate a discussion among interested parties in order to validate the findings of the study contained in the preliminary final report.

The Commission will provide the meeting and interpretation facilities for the workshop. All other organizational aspects will be the responsibility of the contractor. The Commission will provide a list of invitees, which should be completed by the contractor where appropriate.

4.5 Reporting requirements

The Commission may call the consultants for a meeting in Brussels after the submission of each of the three following reports: first interim report, second interim report and preliminary interim report”, for requesting clarifications on the reports.

An original and 4 paper copies of each report in English have to be submitted to the official responsible (whose name will be communicated by the Contracting Authority). In addition, the file has to be submitted by e-mail (MS Word compatible) to the same official.

The Commission will comment on the draft reports (first interim report, second interim report and final report) within 45 days. In the absence of observations from the Commission within the deadline, all reports will be considered as being approved.

Within 45 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 asked to amend them until the Commission is satisfied. The new report shall likewise be subject to the same provision.

After approval by the Commission, the original and 4 paper copies of the final version of the reports will be submitted in English to the official responsible. In addition, the file has to be submitted by e-mail (MS Word compatible) to the same official.

The contractor will also provide the approved version of the final report on 5 CD-ROMs (MS Word compatible and HTML formats).

1. ELIGIBILITY REQUIREMENTS

1.1 Address and deadline for submission of the tender :

You are invited to tender for this study and requested to submit your tender no later than 07/06/2005, either by:

- (a) registered post. In this case the post office stamp will constitute proof of compliance with the deadline given above. The offer must be sent to the following postal address:

**European Commission
DG Information Society – Directorate A – Unit A1 - B100 7/7
for the attention of Jean-Eric de Cockborne
B-1049 Brussels**

- (b) or hand delivery (direct or through any authorised representative of the tenderer, including private messenger service etc.) by 16.00 Hours on 07/06/2005 at the latest to the following address:

**European Commission
DG Information Society – Directorate A – Unit A1 - B100 7/7
for the attention of Jean-Eric de Cockborne
rue de Genève, 1
B-1140 Brussels**

In this case, in order to establish proof of the date of deposit, the depositor will receive, from an official at the above-mentioned address, a receipt which will be nominatively signed, dated and time stamped.

Please note that in this case it is the date and time of reception at the Commission services that will count, not the actual date in which it was dispatched.

Late delivery will lead to the exclusion from the award procedure for this contract.

1.2 Presentation of the offer and Packaging

The offer (consisting of 1 original and 2 copies) should be enclosed in two envelopes, both of which should be sealed. If self-adhesive envelopes are used, they should be further sealed with adhesive tape, upon which the depositor's signature must appear.

The *outer* envelope should bear, in addition to the address of the above-mentioned Archive Department, the following mention:

INVITATION TO TENDER No. DG Infs0 2005/A1/1
NOT TO BE OPENED BY THE MESSENGER/COURIER SERVICE
NOT TO BE OPENED BY THE OPENING COMMITTEE BEFORE
14/06/2005

The *inner envelope* should also bear the following mention:

INVITATION TO TENDER No. DG Infs0 2005/A1/1
NOT TO BE OPENED BY THE MESSENGER/COURIER SERVICE
NOT TO BE OPENED BY THE OPENING COMMITTEE BEFORE
14/06/2005
TENDER BY THE FIRM : insert NAME OF THE TENDERER/COMPANY

1.3 Identification of the tenderer

The tenderer must be clearly identified, and where the tender is submitted by an organisation, a company the following administrative information and documents must be provided (see **administrative identification form** attached as **Annex I**):

Full name of organisation/company, **copy of legal status**, registration number, address, person to contact, person authorised to sign on behalf of the organisation (**copy of the official mandate** must be produced), telephone number, facsimile number, VAT number, banking details: bank name, account name and number, branch address, sort code, IBAN and SWIFT address of bank: a **bank identification form** must be filled in and signed by an authorised representative of each tenderer and his banker. A standard form is provided in **Annex II** and a specific form for each Member State is available at the following Internet address:
http://europa.eu.int/comm/budget/execution/ftiers_en.htm.

Tenders must be submitted individually. If two or more applicants submit a joint bid, one must be designated as the lead contractor and agent responsible.

1.4 Tenders must be signed by the tenderer's authorised representative or representatives (preferably in blue ink)

1.5 A total fixed price expressed in euro must be included in the tender.

The contract prices shall be firm and not subject to revision.

1.6 Opening of the tenders:

The opening of received tenders will take place on 14/06/2005 at 11h00' in the Commission building at meeting room, 6th floor, rue Belliard 100 - B – 1040 Brussels. One authorised representative of each tenderer may attend the opening of the tenders. Tenderers who plan to attend the opening session have to inform Mr Jean-Eric de Cockborne by e-mail, fax or letter at the latest 24 hours in advance.

2. GROUNDS FOR EXCLUSION OF TENDERERS

2.1 Pursuant to Article 29 of Council Directive 92/50/EC relating to public service contracts and to Article 93 of the Financial Regulation, the Commission will exclude tenderers from participation in the procurement procedure if:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the

- contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
 - (f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

Tenderers must certify that they are not in one of the situations listed in paragraph 1 (see **Annex III: Exclusion criteria and non-conflict of interest** form). If the tender is proposed by a consortium this form must be submitted by each partner.

In addition, tenderers must submit evidences that they are not in one of the situation described in point (a), (b), (d), (e) above. If the tender is proposed by a consortium these evidences must be submitted by each partner.

The contracting authority shall accept as satisfactory evidence that the candidate or tenderer is not in one of the situations described in point (a), (b) or (e) above, production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.

The contracting authority shall accept as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d) above, a recent certificate issued by the competent authority of the State concerned.

Where no such certificate is issued in the country concerned, it may be replaced by a sworn declaration or, failing that, a solemn statement made by the interested party **before a judicial or administrative authority**, a notary or a qualified professional body in his country of origin or provenance.

2.2 Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:

- (a) are subject to a conflict of interest;
- (b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

The Commission requires a signed declaration upon submission of the tender - equally binding on any sub-contractors - that on the date of submission of the tender, the company or organisation he represents and the staff proposed for this tender are not subject to a conflict of interest in the context of this invitation to tender; and that he undertakes to inform the Commission, without delay, of any changes to this situation after the date of submission of the tender

2.3 Administrative and financial penalties

By returning the form in Annex III, duly signed, tenderers confirm that they have been notified of the following points.

Each institution has a central database containing information on tenderers who have been in one of the situations described under 2.1 and 2.2 above. The sole purpose of this database is to ensure, in compliance with Community rules on the processing of personal data, that the above-mentioned cases of exclusion are applied correctly. Each institution has access to the databases of the other institutions.

Administrative or financial penalties may be imposed by the Commission on tenderers who are in one of the cases of exclusion provided for in 2.1 and 2.2 above after they have been given the opportunity to present their observations.

These penalties may consist of:

a) exclusion of the tenderer from contract and grant award procedures financed by the Community budget for a maximum of five years;

b) in the payment of financial penalties by the contractor in the case referred to in f) and by the tenderer in the cases referred to in art 2.2 a) and b) above where they are really serious and without exceeding the value of the contract in question.

The penalties imposed shall be in proportion to the importance of the Contract and the seriousness of the misconduct. In detail, and in accordance with Article 133 of the Regulation laying down the rules for the implementation of the Financial Regulation (OJ L 357/1 of 31 December 2002), these penalties may be as follows:

- (a) Without prejudice to the application of penalties laid down in the contract, tenderers and contractors who have been guilty of making false declarations or have been found to have seriously failed to meet their contractual obligations in an earlier procurement procedure shall be excluded from all contracts and grants financed by the Community budget for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

That period may be extended to three years in the event of a repeat offence within five years of the first infringement.

Tenderers who have been guilty of making false declarations shall also receive financial penalties representing 2% to 10% of the total value of the contract being awarded.

Contractors who have been found to have seriously failed to meet their contractual obligations shall receive financial penalties representing 2% to 10% of the total value of the contract in question.

This rate may be increased between 4% and 20% in the event of a repeat offence within five years of the first infringement.

- (b) In the cases referred to in points a), c) and d) of 3.1.2, the tenderers shall be excluded from all contracts and grants for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

In the cases referred to in points b) and e) of 2.1 above, the tenderers shall be excluded from all contracts and grants for a minimum of one year and a maximum of four years from the date of notification of the judgment.

Those periods may be extended to five years in the event of a repeat offence within five years of the first infringement or the first judgment.

- (c) The cases referred to in point e) of 2.1. above shall be the following:
- i. cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by Council Act of 26 July 1995 (OJ C 316, 27.11.1995, p. 48);
 - ii. cases of corruption as referred to in 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 (OJ C 195, 25.6.1997, p. 1);
 - iii. cases of participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council (OJ L 351, 29.12.1998, p. 1);
 - iv. cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC (OJ L 166 of 28 June 1991, p. 77).

3. SELECTION CRITERIA

The following criteria will be used to select the tenderers. If the tender is proposed by a consortium these criteria must be fulfilled by each partner.

Documentary evidence of the tenderers' claims in respect of the below-mentioned criteria is required.

3.1 Professional Information

The tenderer must provide evidence of enrolment (declaration or certificates) in one of the professional or trade registers, in country of establishment;

3.2 Financial and Economic capacity

Proof of financial and economic standing may be furnished by one or more of the following references:

- annual accounts, balance sheet or extracts therefrom where publication of the balance sheet is required under company law in the country of establishment;
- statement of the undertaking's overall turnover and its turnover in respect of the services to which the contract relates for the previous three financial years;

If, for any valid reason, the service provider is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.

3.3 Technical Background

The Tenderer must comply with the following criterion:

- Adequate experience in the economic, legal and cinema areas as described at point 2.4.1 and availability of a team capable of carrying out the work required in all the languages and the countries covered by the study.

The Contracting Authority shall accept the following as evidence of compliance with the above criteria:

- the educational and professional qualifications of the Tenderer, sub-contractors or any other entity on which the tenderer will rely on, and of persons responsible for providing the services in accordance with the requirements of 2.4.1.
- a list of the principal services provided in the past three years by the Tenderer, sub-contractors or any other entity on which the tenderer will rely on, with indication of the value of the services, dates and commissioning bodies, either public or private.

4. AWARD CRITERIA

4.1 Technical criteria

The tenders will be evaluated following the award criteria outlined below producing a total score out of 100%

- *Effectiveness of the proposed methodology (notably in respect of the selection of sources, the collection and treatment of the economic and legal information), work-plan and allocation of human resources to carry out the tasks set out at Point 2.3, Parts A and B. (30%)*
- *Effectiveness of the proposed methodology (notably in respect of the selection of sources, the collection and treatment of the economic information), work-plan and allocation of human resources to carry out the tasks set out at Point 2.3, Parts C and D. The methodology shall cover also the identification of the representative samples of countries and films, the criteria for indentifying high level and low level of territorialisation and the criteria for classifying films with small-medium budget vs. large budget. (35%)*
- *Effectiveness of the proposed methodology (notably in respect of the selection of sources, the collection and treatment of the economic and legal information), work-plan and allocation of human resources to carry out the tasks set out at Point 2.3, Part E. (10%)*
- *Effectiveness of the proposed methodology, work-plan and allocation of human resources to carry out the tasks set out at Point 2.3, Part F. The methodology shall cover also the identification of the representative sample of stakeholders (10%)*
- *Effectiveness of the proposed methodology, work-plan and allocation of human resources to carry out the tasks set out at Point 2.3, Part G. The methodology shall cover also the identification of the representative sample of stakeholders (15%)*

The above criteria will be assessed on the basis of:

- a methodology provided by the Tenderer setting out his understanding of the purpose and nature of the tasks to be undertaken and how he intends to achieve the objectives and results set out in the Terms of Reference. The methodology will cover such points as: time schedule, organisation of work, preliminary assessment of difficulties and risks, expected results and format of deliverables;

Minimum attainment per criterion

Offers scoring less than 50% for any criterion will be deemed to be of insufficient quality and eliminated from further consideration.

Minimum attainment overall

Offers scoring less than 60% after the evaluation process will be considered to be of insufficient quality and eliminated from the following phase.

4.2 Price

Tenders must state a total fixed price in euro exclusively. Prices quoted should be exclusive of all taxes.

The price must be broken down into the following categories:

(a) Professional fees : must cover all expenditure incurred in the performance of the contract with the exception of those under (b) and (c) below. The labour cost for each category of staff engaged in the project must be specified. The daily rate for labour of each member of staff and the total number of days each member of staff will contribute to the work should be provided.

(b) Travel and Subsistence Costs : In the event of travel being necessary to carry out the duties specified in the tender, travel and subsistence costs shall be reimbursed in accordance with Article II.7, "Reimbursement", of the contract. **The amount specified in the tender shall be the maximum reimbursable amount.**

(c) Other Costs : break down by category (e.g. Workshop)

The European Commission, in conformity with the Protocol on the Privileges and Immunities of the European Community annexed to the Treaty of April 8th, 1965, setting up a single Council and a single Commission for the European Community, is exempt from all duties, taxes and dues.

5. AWARD OF THE CONTRACT

The Contract will be awarded to the tender offering the best value for money, which will be the one with the best price-quality ratio, taking into account the awarding criteria listed in point 4. The qualitative score obtained for the technical criteria will be divided by the total price of the tender

6. PAYMENT AND STANDARD CONTRACT

Payments under the contract shall be made in accordance with articles I.4 and II.4 of the model contract attached.

6.1. Pre-financing:

Following the signature of the Contract by the last contracting party, within 30 days of

- the receipt by the Commission of a request for pre-financing with a relevant invoice and,
- the receipt by the Commission of a duly constituted financial guarantee equal to at least the pre-financing amount

a pre-financing payment of

EUR [complete amount in figures and in words] equal to 30 % of the total amount referred to in Article I.3.1

shall be made.

The guarantee shall be released upon the interim payment by the Commission and in accordance with the terms set in the general conditions.

6.2. Interim payment:

The request for interim payment by the Contractor shall be admissible if accompanied by

- the second interim report.
- the relevant invoice

On receipt of the report, the Commission shall have 45 days to approve or reject the report, and the Contractor shall have 45 days in which to submit additional information or a new report.

Should the Commission still not consider the report acceptable, the Contractor will be invited to amend it until the Commission is satisfied.

Within 30 days of the date on which the report is approved by the Commission, the interim payment corresponding to EUR [complete amount in figures and in words] equal to 40 % of the total amount referred to in Article I.3.1 shall be made.

6.3. Payment of the balance:

The request for payment of the balance of the Contractor shall be admissible if accompanied by

- the final report
- the relevant invoice

On receipt of the report, the Commission shall have 45 days to approve or reject the report, and the Contractor shall have 45 days in which to submit additional information or a new report.

Should the Commission still not consider the report acceptable, the Contractor will be invited to amend it until the Commission is satisfied.

Within 30 days of the date on which the report is approved by the Commission, payment of the balance corresponding to EUR [complete amount in figures and in words] equal to 30 % of the total amount referred to in Article I.3.1 shall be made.

For Contractors established in Belgium, the provisions of the Contract constitute request for VAT exemption no 450, provided that the Contractor indicates in his invoice(s) as follows: “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA.” or equivalent indication in Dutch or German language.

For Contractors established in Italy, the provisions of the Contract constitute request for VAT exemption, provided that the Contractor indicates in his invoice(s) as follows: “Operazione non imponibile ai sensi dell’articolo 72, comma 3)

paragrafo 3 del D.P.R. n. 633 del 26/10/1972 come modificato da ultimo dal D.L. n. 323 del 20/06/1996 convertito in Legge n. 425 dell'8/8/1996".

In drawing up the bid, the tender should take account of the provisions of the standard contract which include the "General terms and conditions applicable to contracts"

7. VALIDITY

Period of validity of the tender: 6 months from the closing date given above.

8. ADDITIONAL PROVISIONS

- Changes to tenders will be accepted only if they are received on or before the final date set for the receipt of tenders.
- Expenses incurred in respect of the preparation and presentation of tenders cannot be refunded.
- No information of any kind will be given on the state of progress with regard to the evaluation of tenders.
- All documents submitted by tenderers will become property of the Commission and will be regarded as confidential.
- Tenderers may not submit bids for only parts of the services required. Variants are not allowed.
- Sub-contracting is permitted, provided that the value of the services to be sub-contracted does not exceed 50% of the value of the contract. All subcontracting must be approved by the Contracting Authority, either by accepting the Contractor's offer, or, if proposed by the Contractor after contract signature, by an addendum to the contract. Such an addendum will only be agreed, exceptionally, where such subcontracting is judged by the Contracting Authority to be necessary to complete the project, and does not lead to distortion of competition.

The Tenderer must indicate clearly in their methodology, which parts of the work will be sub-contracted, and the identity of all subcontractors undertaking more than 10% of the work by value. Full details of such subcontractors must also be given, in accordance with point 1.3.

9. LIQUIDATED DAMAGES : see article II.16 of the model contract

10. NO OBLIGATION TO AWARD THE CONTRACT

Initiation of a tendering procedure imposes no obligation on the Commission to award the contract. Should the invitation to tender cover several items or lots, the Commission reserves the right to award a contract for only some of them. The Commission shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be so liable if it decides not to award the contract.

11. RESULTS

The results of the service must be forwarded to the Commission of the European Communities in Brussels. The copyright will belong to the Commission, the Commission will in particular have the right to publish the results.

12. DISCLAIMER

The following phrase is to be prominently displayed on the cover of each working paper and the final report of the study. The disclaimer should also be incorporated into the introduction of each working paper and final report.

The opinions expressed in this study are those of the authors and do not necessarily reflect the views of the European Commission.

ANNEXE I. ADMINISTRATIVE IDENTIFICATION FORM

<u>IDENTIFICATION OF THE TENDERER</u> <i>(to be completed by the tenderer)</i>	
<u>IDENTITY</u>	
Name of tenderer	.....
Legal form of tenderer	.....
Date of registration	.....
Country of registration	.....
Registration number	.....
VAT number	.....
<u>ADDRESS</u>	
Address of Registered Office of the tenderer	..........
When appropriate, administrative address of tenderer for the purposes of this invitation to tender	..........
<u>CONTACT PERSON</u>	
Name	.....
Forename	.....
Title (e.g. Dr, Mr, Mrs)	
Position (e.g. Manager)	
Telephone number	
Fax number	
e-mail address	
Internet address	
Other	

<u>NAMES OF LEGAL REPRESENTATIVES</u>	
And of other representatives of the tenderer who are authorised to sign contracts with third parties	..........
<u>DECLARATION BY THE AUTHORISED REPRESENTATIVE OF THE ORGANISATION¹⁸:</u>	
<i>I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.</i>	
Name	.....
Forename	.....
Title (e.g. Dr, Mr, Mrs)	.....
Position (e.g. Manager)	.....
Telephone number	.....
Fax number	.....
e-mail address	.....
Internet address	.....
Other	.....

Date of signature:

SIGNATURE:

.....

¹⁸ This individual must be included on the list of legal representatives; otherwise the signature on the tender will be valid.

ANNEXE II

FINANCIAL IDENTIFICATION FORM SPECIMEN FOR THE TENDERER

(to be completed by the tenderer and his financial institution)

The tenderer's attention is drawn to the fact that this document is a specimen, and a specific form for each Member State is available at the following address: http://europa.eu.int/comm/budget/execution/ftiers_fr/htm.

SIGNALETIQUE FINANCIER

TITULAIRE DU COMPTE BANCAIRE	
NOM	
ADRESSE	
COMMUNE/VILLE	CODE POSTAL
PAYS	NUMERO TVA
CONTACT	
TELEPHONE	TELEFAX
E - MAIL	

BANQUE	
NOM DE LA BANQUE	
ADRESSE (DE L'AGENCE)	
COMMUNE/VILLE	CODE POSTAL
PAYS	
NUMERO DE COMPTE	
IBAN (optionnel)	

REMARQUES:

CACHET de la BANQUE + SIGNATURE de REPRESENTANT DE LA BANQUE (ou deux obligatoires)

DATE + SIGNATURE DU TITULAIRE DU COMPTE (obligatoire)

ANNEXE III.

EXCLUSION CRITERIA AND NON CONFLICT OF INTEREST FORM

STUDY ON THE ECONOMIC AND CULTURAL IMPACT, NOTABLY ON CO-PRODUCTIONS, OF TERRITORIALISATION CLAUSES OF STATE AID SCHEMES FOR FILMS AND AUDIOVISUAL PRODUCTIONS

The undersigned:

Name of the company/organisation:

Legal address:
.....

Registration number:

VAT Number:

Name of the signatory of this form (authorised to represent the tenderer vis-à-vis third parties and acting on behalf of the aforementioned company or organisation):.....
.....
.....

Declares on his honour that the company or organisation that he represents:

- a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;
- c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- d) has fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- e) has not been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) has not been declared to be in serious breach of contract for failure to comply with his contractual obligations subsequent to another procurement procedure or grant award procedure financed by the Community budget.

In addition, the undersigned declares on his honour:

- g) that on the date of submission of the tender, the company or organisation he represents and the staff proposed for this tender are not subject to a conflict of interests in the context of this invitation to tender; he undertakes to inform the Commission without delay of any change in this situation which might occur after the date of submission of the tender;
- h) that the information provided to the Commission within the context of this invitation to tender is accurate, truthful and complete.

By signing this form, the undersigned acknowledges that he is aware of the administrative and financial penalties described under 2.3. part II of the specifications, which may be applied if one of the situations described in points a) to h) above arises.

.....

Full name

Date

Signature