SERVICE CONTRACT

CONTRACT NUMBER – [complete]

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Heinz Zourek, Director General, DG Enterprise and Industry,

of the one part,

and

[official name in full]
[official legal form]¹
[statutory registration number]²
[official address in full]
[VAT registration number]

(hereinafter referred to as "the Contractor"³), [represented for the purposes of the signature of this contract by [name in full and function.]]/

of the other part,

HAVE AGREED

the Special Conditions and the General Conditions below and the following Annexes⁴:

¹ Delete if contractor is a natural person or a body governed by public law.
² Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.
³ In the case of a joint offer and provided the invitation to tender so specifies, the following clause should be added below the identification of the parties: “The parties identified above and hereinafter collectively referred to as ‘the Contractor’ shall be jointly and severally liable vis-à-vis the Commission for the performance of this contract”.
⁴ Voluminous annexes may be replaced by a reference to the documents concerned, provided the content of such documents is not subject to challenge (by virtue of their public nature).
Annex I – Tender Specifications (Invitation to Tender No ENTR/2009/021 of [complete]) and Monitoring
Annex II – Contractor's Tender (No ENTR/2009/021 of [complete])

which form an integral part of this contract (hereinafter referred to as “the Contract”).

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the Tender (Annex II).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Commission, subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.
I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

I.1.1 The subject of the Contract is a study on the implementation of Regulation 1435/2003 on the Statute for European Cooperative Society (Societas Cooperativa Europaea SCE) in all EU Member States and EEA countries (Norway, Iceland and Liechtenstein): rules applied to the SCE, national legislation on cooperatives and impact of the Statute on the national legislation and the promotion of cooperatives in EU countries; recommendations for future legislation.

I.1.2. The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex I).

ARTICLE I.2 - DURATION

I.2.1 The Contract shall enter into force on the date on which it is signed by the last contracting party.

I.2.2. Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.

I.2.3. The duration of the tasks shall not exceed 12 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE I.3 – CONTRACT PRICE

I.3.1 The total amount to be paid by the Commission under the Contract shall be EUR [amount in figures and in words] covering all tasks executed.

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

I.4.1. Pre-financing:

Following signature of the Contract by the last contracting party, within 30 days of the latest of the following dates:

- the receipt by the Commission of a request for pre-financing with a relevant invoice
• if applicable, the receipt by the Commission of a duly constituted financial guarantee equal to at least 10% of the total amount referred to in Article I.3.

a pre-financing payment equal to 10% of the total amount referred to in Article I.3. shall be made.

I.4.2. Interim payments:

Request for interim payment by the Contractor shall be admissible if accompanied by:

• an interim report in accordance with the instructions laid down in Annex I;
• the relevant invoices

provided the interim report has been approved by the Commission.

The Commission shall have twenty days from receipt to approve or reject the interim report, and the Contractor shall have twenty days in which to submit additional information or a new interim report.

Within thirty days of the date on which the report is approved by the Commission, an interim payment corresponding to the relevant invoices equal to 40% of the total amount referred to in Article I.3.1 shall be made.

I.4.3. Payment of the balance:

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

• the final report (study) in accordance with the instructions laid down in Annex I,
• the relevant invoices,

provided the report has been approved by the Commission.

The Commission shall have forty-five days from the receipt to approve or reject the final study.

If the Contractor receives comments from the Commission, the contractor shall have forty-five days in which to submit additional information or a new final study.

**ARTICLE I.5 – BANK ACCOUNT**

Payments shall be made to the Contractor’s bank account denominated in euro\(^5\), identified\(^6\) as follows:

\(^5\) Or local currency where the receiving country does not allow transactions in EUR.

\(^6\) By a document issued or certified by the bank.
Name of bank: [complete]
Address of branch in full: [complete]
Exact designation of account holder: [complete]
Full account number including codes: [complete]
[IBAN\(^7\) code: [complete]]

\(^7\) BIC or SWIFT code for countries with no IBAN code.
ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract number. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

Commission:

European Commission
Directorate-General Enterprise and Industry
Directorate E 3 Promotion of SMEs’ competitiveness
Unit E 3 Crafts, small businesses, cooperatives and mutuals
1040 Brussels

Contractor:

Mr/Mrs/Ms [complete]
[Function]
[Company name]
[Official address in full]

ARTICLE I.7 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.7.1. The Contract shall be governed by Community law, complemented, where necessary, by the national substantive law of Belgium.

I.7.2. Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

ARTICLE I.8 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by DG ENTR, Unit E.3 without prejudice to possible transmission to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Community. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to DG ENTR, Unit E.3. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY
Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 30 days formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

ARTICLE I.9a – CONTRACT CONCLUDED DURING STANDSTILL PERIOD

In case this Contract was signed by both the Commission and the Contractor before the expiry of fourteen calendar days from the day after simultaneous dispatch of information about the award decisions and decisions to reject, this Contract shall be null and void.
II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

II.1.1. The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.

II.1.2. The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.

II.1.3. Without prejudice to Article II.3 any reference made to the Contractor’s staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.

II.1.4. The Contractor must ensure that all staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.

II.1.5. The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.

II.1.6. The Contractor shall have sole responsibility for the staff who executes the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;

- the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.

II.1.7. In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.
II.1.8. Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

II.1.9. Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II.2 – LIABILITY

II.2.1. The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.

II.2.2. The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.

II.2.3. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.

II.2.4. In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.

II.2.5. The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.
ARTICLE II.3 - CONFLICT OF INTERESTS

II.3.1. The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Commission in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Commission reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Commission, any member of his staff exposed to such a situation.

II.3.2. The Contractor shall abstain from any contact likely to compromise his independence.

II.3.3. The Contractor declares:
• that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
• that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

II.3.4. The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Commission should it so request.

ARTICLE II.4 – PAYMENTS

II.4.1. Pre-financing:

Where required by Article I.4.1, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on his part.
The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the Contractor).

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The Commission shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

II.4.2. Interim payment:

At the end of each of the periods indicated in Annex I the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- an interim technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

If the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

II.4.3. Payment of the balance:

Within sixty days of completion of the tasks referred to in Annex I the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;

If the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.
If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

**ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS**

**II.5.1.** Payments shall be deemed to have been made on the date on which the Commission's account is debited.

**II.5.2.** The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Commission shall notify the Contractor accordingly and set out the reasons for the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

**II.5.3.** In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("the reference rate") plus seven percentage points ("the margin"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

**ARTICLE II.6 – RECOVERY**

**II.6.1.** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.

**II.6.2.** In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3.
Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

II.6.3. The Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

**ARTICLE II.7 - REIMBURSEMENTS**

II.7.1. Where provided by the Special Conditions or by Annex I, the Commission shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.

II.7.2. Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.

II.7.3. Travel expenses shall be reimbursed as follows:

   a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;

   b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;

   c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;

   d) travel outside Community territory shall be reimbursed under the general conditions stated above provided the Commission has given its prior written agreement.

II.7.4. Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:

   a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;

   b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;

   c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;

   d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.

II.7.5. The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Commission has given prior written authorisation.
ARTICLE II.8 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Community, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

ARTICLE II.9 – CONFIDENTIALITY

II.9.1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

II.9.2. The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

ARTICLE II.10 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

II.10.1. The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.

II.10.2. Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.

II.10.3. Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Community. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

II.10.4. The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.
ARTICLE II. 11 – TAXATION

II.11.1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

II.11.2. The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.

II.11.3. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.

II.11.4. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.12 – FORCE MAJEURE

II.12.1. Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

II.12.2. Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

II.12.3. Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.

II.12.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.13 – SUBCONTRACTING

II.13.1. The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.
II.13.2. Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.

II.13.3. The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.17.

ARTICLE II.14 – ASSIGNMENT

II.14.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.

II.14.2. In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

ARTICLE II.15 – TERMINATION BY THE COMMISSION

II.15.1. The Commission may terminate the Contract in the following circumstances:

(a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) where the Contractor has 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 he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;

(c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;

(d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

(e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;

(f) where the Contractor is in breach of his obligations under Article II.3;

(g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
(h) where a change in the Contractor’s legal, financial, technical or organisational situation could, in the Commission’s opinion, have a significant effect on the performance of the Contract;

(i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;

(j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;

(k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

II.15.2. In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least one fifth of the period laid down in Article I.2.3.

II.15.3. Prior to termination under point c), d), e), h) or k), the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

II.15.4. Consequences of termination:
In the event of the Commission terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Commission may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Commission may engage any other contractor to complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

**ARTICLE II.15a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR**
Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the Commission may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities of fraud.

**ARTICLE II.16 – LIQUIDATED DAMAGES**

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3.1 per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

**ARTICLE II.17 – CHECKS AND AUDITS**

**II.17.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance.

**II.17.2.** The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.

**II.17.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

**ARTICLE II.18 – AMENDMENTS**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.
ARTICLE II.19 – SUSPENSION OF THE CONTRACT

Without prejudice to the Commission's right to terminate the Contract, the Commission may at any time and for any reason suspend execution of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Commission may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

SIGNATURES

For the Contractor,  For the Commission,
[Company name/forename/surname/function] [forename/surname/function]

signature[s]: _____________________ signature[s]: _____________________

Done at [Brussels], [date] Done at [Brussels], [date]

In duplicate in English.
ANNEX I

Tender Specifications and Monitoring

1. AWARDING AUTHORITY

European Commission
Directorate General Enterprise and Industry
B - 1049 BRUSSELS
BELGIUM
Tel. (+32)-2.295.87.26
Fax: (+32)-2.299.81.10
E-mail: Entr-Craft-Small-Business@ec.europa.eu

2. BACKGROUND INFORMATION

2.1. Nature of the contract

This call for tenders concerns a service contract entitled “Study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (SCE)”. The aim of this call for tenders is to award a contract for a study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (Societas Cooperativa Europaea - SCE) in the EU Member States and EEA countries (Norway, Iceland and Liechtenstein), rules applied to the SCE, national legislation on cooperatives, and the impact of the Statute on the national legislation and the promotion of cooperatives in EU countries. The study will also include recommendations for future legislation.

The target audience will be policy makers and stakeholders interested in the sector of cooperatives.

2.2. Background and general remarks

In 2003 the Council adopted the Statute for a European Cooperative Society\(^8\) the Societas Cooperativa Europaea, hereinafter SCE, in order to facilitate the creation of cross border cooperative structures and to enable them to compete with other European transnational business forms. The Statute consists of a Regulation containing the basic rules on creation, functioning, and management of European cooperatives and of a Directive outlining the rules on mandatory worker

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participation in the decision-making process. Member States had until August 2006 to introduce measures facilitating the creation of SCEs.

For the SCE Directive there is an obligation of the Member States to adopt internal measures and to communicate them to the Commission. The Regulation however does not contain explicit similar obligation imposing to Member States to inform the Commission on the provisions allowing the incorporation and functioning of European cooperatives, as the Regulation is an instrument which in principle is directly applicable in all Member States.

The study is undertaken in the framework of the Competitiveness and Innovation Framework Programme (CIP) (2007-2013), Entrepreneurship and Innovation Operational Programme (EIP), Implementing Measure No ENT/CIP/09/B/N10500 - Follow-up of the implementation of the European Statute for cooperatives. The CIP related objective is: (b) Creation of an environment favourable to SME co-operation, particularly in the field of cross-border co-operation.

The study will be used by the Commission in order, inter alia,

- To draft the report foreseen in Article 79 of the European Cooperative Regulation which provides that: “Five years at the latest after the entry into force of this Regulation (i.e. August 2011), the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate.”

- To be the basis of possible future work of the Commission together with public authorities and co-operative organisations, to ensure improvements of national co-operative legislation, that will help creation and growth of cooperatives.

2.3. Description of tasks

The purpose of this Call for Tender is to conduct a study on the implementation of the Statute for a European Cooperative Society (SCE), its impact on national measures taken in accordance to the Regulation, while the measures adopted by the Directive make the subject of another two studies. The first one has finished in 2007 and covers the examination of the implementation of 17 Member States (not published yet in the Commission site) and the new one of 2008 will cover the rest: see http://ec.europa.eu/social/main.jsp?catId=626&langId=fr&callId=176&furtherCalls=yes

In this context, the Commission, in order to accompany the introduction of the Statute, over the period 2004-2006, invited government representatives and experts from various organizations to a series of workshops at which the provisions of the Statute were presented. For the minutes of the meetings see http://ec.europa.eu/enterprise/entrepreneurship/coop/index.htm.


As it was argued by the High Level Group of experts mandated by the Commission to analyze the Modern Regulatory Framework of European Company Law (4/11/2002) “There are important questions deserving analysis in the future application of the SCE Regulation. It will be interesting to see how the SCE relates to the national forms of co-operatives. Will the SCE indeed be used for trans-national restructurings and joint ventures? If so, this may enhance the competitiveness of co-operatives”

http://ec.europa.eu/internal_market/company/modern/index_en.htm
legislations concerning cooperatives, and its influence on the promotion of the cooperatives across EU Member States and EEA countries (Iceland, Liechtenstein and Norway). More information in section 1.1. “Nature of the contract”, and in section “1.2 “Background”.

2.3.1. Content of the study

The topics to be covered by the study are listed below.

For the specific case of D) and F), the contractor should propose a mechanism to ensure that the policy makers, stakeholders and other organisations interested in the sector of cooperatives are consulted and that their opinions are taken into account.

A) Mapping of the relevant legislation implementing SCE applicable in the EU Member States and EEA countries.

Background

The Regulation on the SCE foresees that certain measures need to be adopted for its full implementation. Thus

• Article 78(1) states that Member States shall make such provisions as it is appropriate to ensure the effective application of the Regulation.

• Article 78 (2) requires the designation by Member States of certain authorities and the subsequent information of the Commission and the other Member States accordingly.

• Article 8 (1) (c) (i) lays down that in the case of matters not or only partially covered by the Regulation the laws adopted by Member States in the implementation of Community measures relating specifically to SCEs shall apply.

All the above provisions imply that Member States need to adopt measures enabling economic operators to create SCEs.

In addition the text of the SCE stipulates in Article 8 (1) (c) (ii) and (iii) that for matters not or partially regulated by the Regulation the functioning of the SCE and the provisions of its articles of association will be governed by the national cooperative law.

Besides the Regulation contains provisions for the adoption of which the authorities’ intervention is necessary. This is the case of the options offered to Member States, entitling them to introduce, if they wish, supplementary rules on issues like conversion (Article 35 (7)), appointment of members of the management organ (Article 37(2)), voting rights (Article 59 (2)) etc.

At the same time it is foreseen that SCEs can decide in their articles of association to apply the two tier structure of management, even if such a scheme is not regulated in the Member State of the registered office of the SCE. In this case the Member States may adopt the appropriate measures in relation to the SCEs or designate which are the applicable rules.

Furthermore various provisions of the Regulation make direct reference to the national law of public limited-liability companies (e.g. Article 10(1)) that will be applicable mutatis mutandis to SCEs.

Finally it is to be mentioned that Article 8 (2) foresees that if the national law provides for specific rules and/or restrictions related to the nature of business carried out by and SCE or for forms of control by a supervisory authority that law shall apply in full to the SCE.
The Commission is therefore interested in how the Regulation has been implemented in the Member States, and in the rules applying in each Member State to the SCE.

The study shall examine all national legal frameworks implementing the SCE Regulation in EU Member States and EEA countries. It will give a general presentation of the laws, regulations, and other necessary legal or administrative measures (circulars, ministerial decisions, presidential decrees etc), which have been adopted in each country in order to give full implementation of the Regulation and to allow the creation of European Cooperatives.

The above mapping shall at least include details on:

- How have Member States implemented the articles that provide for an obligation to take measures in order to put into force the SCE Regulation?
- If and how have Member States implemented the options contained in the Regulation and what are the differences between the options chosen for the SCE and the respective national rules applicable to cooperatives?
- Which are the competent authorities designated in accordance with article 78 (2) of the Regulation?
- Any other element concerning measures adopted by a Member State in relation to SCEs

B) Mapping of the national legislations on cooperatives

Background

In February 2004 the Commission has adopted a Communication on the promotion of cooperatives in Europe (COM(2004)18)\(^{13}\), which reflects the policy objectives for the coming years after the adoption of the SCE Regulation. In this Communication the Commission, amongst other things, notes that the legal forms of cooperatives and provisions concerning the exercise of certain activities in Member States are highly varied.

Although the Regulation on SCE does not seek to harmonise national laws in the area, the Commission understands that some Member States, when implementing the Regulation, have taken advantage of its commonly accepted provisions to draft or rewrite the national laws applying to national cooperatives. Such an exercise may lead to an indirect approximation of national laws.

The aforementioned Communication additionally notes that Member States may have specific rules and/or restrictions related to the nature of business carried out by national cooperatives. This kind of situations, which needs to be revised in accordance with the services directive\(^ {14}\), may create hindrances to the freedom of establishment and freedom to provide services of SCEs and national cooperatives as well.

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The Commission is therefore interested to obtain extensive information on all the above subjects and the study shall give a detailed description of:

- the national legislation (Constitution, general and special laws) applying to national cooperatives in each Member State and eventually of existing drafts proposing new legislation. The relevant provisions of national laws should be presented in EN. The study should include a comparative summary table for each country of all the important issues of the rules applicable to cooperatives like methods of creation, external financing instruments available to cooperatives, management, required capital, rights of shares, reserves, returns on profit, protection against demutualisation, cooperative taxation etc.;

- the specific rules and/or operational, territorial or other restrictions, obligations or obstacles related to the nature of business or to the free exercise of certain activities to be carried out by the ESC and/or national cooperatives, (e.g. insurance activities, participation to public procurements etc) as well as the reasons for such restrictive regulations;

- any other obligations that cooperatives have and which derive from the cooperative nature of the business or from the cooperative principles and values (e.g. investors non members etc.).

Furthermore it is required to explain if and to what extent the adoption of the SCE had an impact on the national legislation, i.e. whether and how the implementation of the European legislation influenced the adoption of amendments to the national law.

C) Inventory of SCEs and related information

In order to reach some conclusions on the success of the use of the SCE instrument by European operators, it is also important to have detailed evidence of the number of SCEs created, their importance, fields of activities etc.

The following information shall at least be provided on each SCE created at the latest 3 months before the delivery of final report:

- the name, objects, address, method of formation and the identity and origin of founders and eventually some details on its subsidiaries and the subscribed capital at the time of formation and consequent variations and the actual net turnover;

- the year it was set up, and if applicable the year(s) it transferred the registered office, and the Member State of the former registered office(s);

- fields of economic activity of the SCE according to the NACE codes (Statistical Classification of Economic Activities in the European Community);

- the board structure (two-tier/one-tier) of the SCEs, and of the founding companies just before the creation of the SCE;
• an indication if the SCE has gone through the negotiation procedure on employee participation in accordance with rules set out in the SCE Directive and how long this procedure lasted and the number of persons employed at the date of creation and the average number of persons employed during the each financial year after creation;

• any further information on SCEs and companies and/or natural persons that have set up SCEs the contractor considers relevant for the study.

D) Analysis of the degree of success of the Regulation

Background

The report foreseen in Article 79 of the ECS Regulation (see point 1.2.1. of the present) should also, if necessary, contain proposals for amendments, aiming at making it more successful and/or at covering new needs. Therefore the Commission is interested in receiving comments as to the effectiveness of the provisions of Council Regulation 1435/2003.

On the basis of the information collected by the Contractor (within representative organisations and/or individual cooperatives), the study shall analyse and identify how the different provisions of the SCE Regulation can or have affected the decisions of companies and/or natural persons to uptake or not of the SCE form, including an analysis of the legal and economic considerations involved. In particular, the following aspects shall be considered:

• the value of the "European" image connected to being an SCE, the possibility for cross-border groups of cooperatives to adopt a simplified management structure, the possibility of transferring the registered office, the modalities of formation of an SCE (e.g. merger) etc.;

• the apparent reduced uniformity of the SCE due to the number of references to national law and to the number of options granted to Member States to set national rules concerning the SCE, the complexity of the text of the Regulation etc;

• any relevant legal issues, including employee participation, and considerations linked to tax and labour regimes shall be identified and be taken into account in this assessment;

• costs and savings associated with setting up, registration and running the SCE compared to a national cooperative, e.g. expert legal advice required and other legal controls and obligations before the registration of a SCE, the approximate time and cost of setting up the required employee participation regimes, the time and the administrative costs associated with checking the legality of the formation of the SCE prior to its registration etc.;

• the main legal, administrative and practical difficulties for cross-border cooperation between cooperatives, which the SCE Regulation has or not successfully addressed;

• any other advantages and disadvantages an SCE can offer, identified during the study through interviews or in any other way.
The main reasons motivating entrepreneurs’ decision to set up or not SCEs shall be grouped into two separate categories: factors with potential positive (persuading) effect and factors with potential negative (dissuasive) effect. Where relevant, the study should analyse also any eventual differences according to countries, sectors of activity (agriculture, banking, workers cooperatives, insurance etc) and/or stakeholder groups (e.g. members, employees, investors, creditors, insured people).

**E) Other issues concerning visibility of the cooperatives sector**

The European Commission would also like to collect information related to measures adopted at national and regional level that support cooperatives and increase awareness of the co-operative form of business. The study should, for example, make reference to curricula of business studies, courses at secondary and university levels, initiatives to develop management skills for cooperatives’ members etc.

**F) Recommendations**

The conclusions should include recommendations and possible proposals to amend the Regulation based on the results of the study. It is important to understand if the SCE is considered to be an easy or cumbersome instrument, and if it is or not suitable to meet the expectations of the cooperatives which plan to carry out the reorganisation of their business at a Community scale.

In this section the following points should at least be examined:

- whether the SCE Regulation in the future should provide simpler and stronger rules, and whether references back to national laws should be minimised,
- to what extent the cross border element for the creation of SCEs is still necessary and to what extent allowing other methods of formation of the SCE than those defined in Regulation may promote the establishment of new cooperatives,
- to what extent it is appropriate to allow to an SCE to include in its articles of association rules which deviate from or complete national legislation applied to national cooperatives

The study shall also draw conclusions on the future policy concerning the promotion of cooperatives in Europe. The study should identify and analyse what are the main trends in using the business form of cooperatives in European countries, and in which sectors. The study should also give recommendations, and suggestions as to what needs to be done in the area of cooperatives’ legislation and other policy measures affecting growth and development of cooperatives.

**2.3.2. Steering committees**

The Contractor will work under the supervision of a Steering Committee presided by the Commission. It will consist of representatives of the Commission. The Commission will organise three meetings of the Steering
Committee throughout the performance of the contract. The Chair of the Steering Committee will invite the Contractor and any other person it deems necessary to its meetings. The Contractor shall ensure the participation of his/her representative(s) in these meeting.

The role of these meetings will be to examine the methodologies concerning the activities and tasks described above and to make appropriate adjustments where necessary, as well as to assess the results obtained with respect to the objectives established. The Committee meetings will be held at the Commission’s premises in Brussels. The Commission will draft minutes of these meetings. Any travel expenses incurred by the contractor or its representatives to attend the meetings of the Steering Committee, should be included in the budget estimate provided according to section 2.3.3. (Financial Proposal).

- The kick-off meeting (1st Steering Committee Meeting) will be organised no later than one month after the contract is signed to discuss and adjust the work programme and the precise schedule for the meetings for the duration of the contract.

- No later than six months after the signature of the contract the Commission will organise an interim meeting (2nd Steering Committee Meeting) to discuss the interim results of the study.

- No later than 11 months after the signature of the contract the Commission will organise a final meeting (3rd Steering Committee Meeting) to discuss the final results of the study.

2.4. Reports and documents

The Contractor is to provide the required reports and documents in accordance with the conditions of the standard service contract appended in Annex 5.2.

- All deliverables will be submitted in 2 copies, in paper version and in electronic format compatible with MS Word.
- All deliverables will be submitted in English. Deliverables should be proofread by a qualified native speaker or by a qualified person with a perfect knowledge of English.
- Where information that is not publicly available is provided by other institutions, associations or firms, the accuracy of this information, as expressed in deliverable, will have to be approved by those who have provided it to the Contractor.

The foreseen deliverables are the following:

2.4.1. Work programme

Within one month after the signature of the contract, the contractor will have to provide the Commission with a work programme including the methodology and time lines foreseen to carry out the different tasks. The
work programme will be discussed and agreed with the Commission during the 1st Steering Committee Meeting (section 4.1.2).

2.4.2. Interim report

The interim report shall be submitted no later than 6 months after the date of signature of the contract by the last of the contracting parties. The document shall include at least the following:

- The description of the work carried out, the provisional results, the current status of the implementation of the work programme, and the difficulties met during the process.
- It should specially inform on the mapping of the legislation applicable in the selected EU/EEA Member States, and the inventory of SCEs and related information.
- It will outline also the structure of the chapter devoted to analysis of the data and identification of the main trends as well as the chapter including the analytical conclusions.

The interim report will be discussed with the Commission during the 2nd Steering Committee Meeting (section 4.1.2).

The Commission shall have 20 days from the receipt to approve or reject the interim report.

If the Contractor receives comments from the Commission, the contractor shall have 20 days in which to submit additional information or a new interim report.

2.4.3. Final study

The final study shall be submitted no later than 10 months after the date of signature of the contract by the last of the contracting parties.

The final report will be discussed with the Commission during the 3rd Steering Committee Meeting (section 4.1.2).

The study will contain all the findings of the tasks carried out and will include an executive summary not exceeding 8 pages.

The presentation of the results should include analytical tables, graphs, etc. of the data collected.

In addition, the inventory of SCEs should be also provided to the Commission in an electronic format compatible with MS Excel, from which further analysis can be easily made.

The Commission shall have 45 days from the receipt to approve or reject the final study.

If the Contractor receives comments from the Commission, the contractor shall have 45 days in which to submit additional information or a new final study.
Should the Commission still not consider the final study acceptable, the Contractor will be invited to amend it until the Commission is satisfied. In this case, the corresponding liquidated damages will be applicable, following the provisions of Article II.16 of the Contract.
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