



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Directorate A: Civil justice
The Director

Brussels, 06/08/2014
JUST/A/4/MB/ARES(2014)2599553

Dear Sir/Madam,

Subject: Open call for tender JUST/2014/JCOO/PR/CIVI/0051: Study on the law applicable to companies with the aim of a possible harmonisation of conflict of laws rules on the matter

Contract notice in 2014/S 149-267126 of 06/08/2014

1. The European Commission is planning to award the public contract referred to above. Please find enclosed the related tender specification listing all the documents that must be produced in order to submit a tender, and the draft contract.
2. If you are interested in this contract, you should submit a tender in one original and three copies in one of the official languages of the European Union.
3. Tenderers shall submit tenders by letter:
 - a) Either by post or by courier not later than **30/09/2014** in which case the evidence of the date of dispatch shall be constituted by the postmark or the date of the deposit slip, to the address indicated below.
 - b) Or delivered by hand not later than 16.00 on **30/09/2014** to the address indicated below. In this case, a receipt must be obtained as proof of submission, signed and dated by the official in the Commission's central mail department who took delivery.

The department is open from 08.00 to 17.00 Monday to Thursday, and from 8.00 to 16.00 on Fridays. It is closed on Saturdays, Sundays and Commission holidays.

By post:
CALL FOR TENDERS
JUST/2014/JCOO/PR/CIVI/0051
European Commission
Directorate-General Justice,
Unit JUST/A4, MO-59 04/21
For the attention of Public Procurement Department
B – 1049 Brussels
Belgium

By courier or by hand:
CALL FOR TENDERS
JUST/2014/JCOO/PR/CIVI/0051
European Commission
Directorate-General Justice,
Unit JUST/A4, MO-59 04/21
For the attention of Public Procurement Department
Avenue du Bourget 1
B-1140 Brussels (Evere)
Belgium

Tenders must be placed inside two sealed envelopes. The inner envelope, addressed as indicated above, should be marked as follows: "**CALL FOR TENDERS – NOT TO BE OPENED BY THE INTERNAL MAIL DEPARTMENT**". If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

4. Tenders will be opened at 10:30 a.m. on 09/10/2014 at 59 Rue Montoyer, 1040 Brussels.

This opening session will be public. Each tenderer may be represented by not more than one person. At the end of the opening session, the Chairman of the opening committee will indicate the name of the tenderers and the decision concerning the admissibility of each offer received. The prices mentioned in the bids will not be communicated.

5. Tenders must be:

- Signed by a duly authorised representative of the tenderer;
- Perfectly legible so that there can be no doubt as to words and figures;

6. The period of validity of the tender, during which tenderers may not modify the terms of their tenders in any respect, is 6 months from the final date for submission.

7. Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the tender specification and in the draft contract and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. Submission of a tender is binding on the tenderer to whom the contract is awarded for the duration of the contract.

8. All costs incurred during the preparation and submissions of tenders are to be borne by the tenderers and will not be reimbursed.

9. Contacts between the contracting authority and tenderers are prohibited throughout the procedure save in exceptional circumstances and under the following conditions only:

- Before the final date for submission of tenders:

- * At the request of the tenderer, the contracting authority may provide additional information solely for the purpose of clarifying the nature of the contract.

Any requests for additional information must be made in writing only to

JUST-A4-CFT@ec.europa.eu

Requests for additional information received less than five working days before the final date for submission of tenders will not be processed.

- * The Commission may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other clerical error in the text of the call for tenders.

* Any additional information including that referred to above will be posted on

http://ec.europa.eu/justice/newsroom/contracts/index_en.htm

The website will be updated regularly and it is the tenderers' responsibility to check for updates and modifications during the tendering period.

- After the opening of tenders

* If clarification is required or if obvious clerical errors in the tender need to be corrected, the contracting authority may contact the tenderer provided the terms of the tender are not modified as a result.

10. This invitation to tender is in no way binding on the Commission. The Commission's contractual obligation commences only upon signature of the contract with the successful tenderer.
11. Up to the point of signature, the contracting authority may either abandon the procurement or cancel the award procedure, without the candidates or tenderers being entitled to claim any compensation. This decision must be substantiated and the candidates or tenderers notified.
12. Once the Commission has opened the tender, the document shall become the property of the Commission and it shall be treated confidentially.
13. You will be informed of the outcome of this procurement procedure by e-mail. It is your responsibility to provide a valid e-mail address together with your contact details in your tender and to check it regularly.
14. If processing your reply to the invitation to tender involves the recording and processing of personal data (such as your name, address and CV), such data will 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. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by namely Unit SRD.01: 'Budget, control and ex-post audits' of the Shared Resource Directorate of Directorates-General Home Affairs and Justice, LX 46 00/43, BE-1049 Brussels. Details concerning the processing of your personal data are available on the privacy statement at:
http://ec.europa.eu/dataprotectionofficer/privacystatement_publicprocurement_en.pdf.
15. Your personal data may be registered in the Early Warning System (EWS) only or both in the EWS and Central Exclusion Database (CED) by the Accounting Officer of the Commission, should you be in one of the situations mentioned in:
 - The Commission Decision 2008/969 of 16.12.2008 on the Early Warning System (for more information see the Privacy Statement on http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm), or
 - The Commission Regulation 2008/1302 of 17.12.2008 on the Central Exclusion Database (for more information see the Privacy Statement on http://ec.europa.eu/budget/explained/management/protecting/protect_en.cfm#BDCE)

[signed]
Paraskevi Michou

TENDER SPECIFICATIONS
ATTACHED TO THE INVITATION TO TENDER

**Invitation to tender No. JUST/2014/JCOO/PR/CIVI/0051 concerning a
study on the law applicable to companies with the aim of a possible harmonisation of conflict of
laws rules on the matter**

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TECHNICAL SPECIFICATIONS

1.1. Introduction

In the Stockholm Programme,¹ the European Council considered that the process of harmonising conflict-of-law rules at Union level should continue in areas where it is necessary, pointing out specifically the area of company law. Furthermore, the EU Justice Agenda for 2020² states that "a clearer and more consistent civil ... law framework ... could" provide "businesses with a level-playing field while safeguarding the interests of consumers." The conclusions of the European Council meeting of 27 June 2014³ provide that "a sound European justice policy will contribute to economic growth by helping businesses and consumers to benefit from a reliable business environment within the internal market." The European Council considered therefore that "further action is required to facilitate cross-border activities and operational cooperation."

The EU internal market provides its economic actors with various freedoms, in particular the freedom of establishment (Articles 49 and 54 of the Treaty on the Functioning of the European Union). Article 49 prohibits restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State. Article 54 extends that prohibition to companies and firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union. Despite the fundamental principle of freedom of establishment, obstacles remain to the full exercise of such freedom. One such obstacle lies in the absence of a harmonised regime in the EU determining the law applicable to companies.

At present, conflict-of-law rules in the area of company law are regulated by Member States and the content of these rules differs substantially. In particular, the connecting factor determining the applicable law varies significantly among Member States. For instance, some Member States follow the real seat theory, i.e. the law governing a company is determined by the place where the central administration of that company is located. Other Member States follow the incorporation theory, i.e. the law governing a company is determined by the place of its incorporation (where the registered office is located).

The divergence of national private international law regarding companies causes legal uncertainty for economic actors operating within the internal market. Today, nearly half of companies in the EU, in particular SMEs, regularly use the internal market freedoms.⁴ Legal certainty as to which is the law governing their operations is of the essence for them. The divergence of conflict rules leads to a situation where a company may be subject to the laws of various Member States at the same time. For instance, a company incorporated in State A but operating mainly from State B may, depending on the conflict rules of both States, be subject to the laws of both States. This means that on important matters regarding the internal functioning of the company, such as its incorporation, shareholding, management, diverging or even conflicting laws may be applicable.

At the level of substantive law, there is a certain degree of harmonisation of company law on the basis of EU secondary legislation. One set of such rules establishes European company law forms, i.e. autonomous or supra-national entities which can be created under EU Law (e.g. the Societas Europaea or SE⁵ or the European Cooperative Society⁶). Secondly, there are several minimum harmonisation directives⁷ which do not only to a

¹ The *Stockholm Programme* - An open and secure Europe serving and protecting Citizens, OJ C 2010, 115/01.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The EU Justice Agenda for 2020 - Strengthening Trust, Mobility and Growth within the Union, COM(2014) 144 final.

³ See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/143478.pdf.

⁴ See Commission Proposal for a Regulation on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012, COM(2013) 228 final, p. 4.

⁵ Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, p. 1).

⁶ Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European cooperative society (SCE) (OJ L

certain extent guarantee a level playing field,⁸ but also address and solve to some extent concrete cross-border problems - like in the case of cross-border mergers or certain aspects of cross-border conversions.⁹ The existing *acquis* needs to be taken into account in the context of a possible harmonisation of conflict-of-law rules which would build on the existing level of harmonisation of substantive company law, but still have an EU added value due to the fact that the latter is only partially harmonised.

The lack of harmonisation of the conflict-of-law rules concerning companies also has as a consequence that a company may – depending on the national laws concerned - not be able to transfer its registered and/or administrative seat to another Member State without having to wind-up and dissolve first and reincorporate in the host State. In addition, even if the conflict rules were harmonised and it were decided which law governs which matters, there may still remain questions as to how such a transfer should effectively be organised when the rules of the varying laws concerned provide for different conditions for such a transfer. This raises the question whether certain procedural or substantive law matters may not need to be addressed in order to ensure the practical feasibility of such transfers.

Case law of the European Court of Justice on the freedom of establishment for companies

The European Court of Justice has been called to address some of the uncertainties faced by companies in the internal market resulting from the varying conflict rules from the perspective of the freedom of establishment guaranteed by EU law. It has been seized with a number of preliminary questions concerning the relationship between the national company laws and the freedom of establishment. In its case law, the Court has ensured that

207, 18.8.2003, p. 1). The proposal for a Council Regulation on the Statute for a European private company (COM(2008) 396/3) was withdrawn in the context of the REFIT exercise (Communication on "Regulatory Fitness and Performance (REFIT): Results and Next steps" (COM(2013)0685).

⁸ Relevant EU law company law directives include:

- Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (codified version);
- Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (recast);
- Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies;
- Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts;
- Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies;
- Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies;
- Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies;
- Eleventh Council Directive 89/666/EC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State;
- Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies (codified version);- Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers;
- Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies;
- Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

⁹ The recent proposal on a directive on single-member private limited liability companies (COM(2014)0212), for instance, contains provisions on (cross-border) conversion (Article 9).

certain uncertainties which amounted to restrictions on corporate mobility resulting from diverging conflict-of-law rules have been removed because they were considered incompatible with the freedom of establishment. In its present state, EU law guarantees that a company incorporated in a Member State must be recognised throughout the EU provided that it has any of its registered office, central administration or principal place of business in a Member State,¹⁰ subject only to the prevention of fraud on a case-by case basis.¹¹ Besides formal recognition of companies as legal persons, Member States must recognise the law of the State of incorporation as the governing law of the company and they cannot impose additional obligations unless such obligations are justified by overriding requirements.¹² Furthermore, they may not prevent a seat transfer accompanied by a change of a company's governing law, provided that this is possible under the law of the Member State which the company wishes to adopt and subject to a public interest exception.¹³ This jurisprudence of the Court is in line with the current trend in private international law to strengthen party autonomy in civil and commercial matters, upholding companies' decisions on where and under which law to organise themselves.

The first case decided by the Court was the *Daily Mail* case.¹⁴ *Daily Mail* wanted to transfer its central management and control (i.e. its primary establishment) to the Netherlands whilst retaining its status as a UK company. Under English law, a company incorporated in the UK and having its registered office there could transfer its central management and control outside of the UK, while preserving its legal personality under English company law. However, the company would become non-resident and no longer be subject to UK corporation tax. For such transfers, consent from the Treasury was required. The Treasury agreed to give its consent to *Daily Mail* on condition that the company would sell part of its assets before transferring its central management outside of the UK.

In its decision, the European Court of Justice ruled that companies are "creatures that only exist by virtue of the national law which determines their incorporation and functioning" and emphasized the fact that the legislation of Member States varies widely both in relation to the connecting factor and the possibility of transferring the registered office of a company incorporated under national law. It concluded that the Treaty has taken into account this variety and thus does not provide for an unlimited right for a company incorporated under the law of a Member State to transfer its central management and control while retaining its legal personality under that law. Therefore, the UK was not prevented from making the transfer subject to approval from the Treasury.

The next case which was decided by the Court was the *Centros* case.¹⁵ *Centros* was a private limited company registered in England. However, it had never traded there since its formation. *Centros* was owned by two Danish nationals residing in Denmark. Most of the business of the company was in fact conducted through a Danish branch. The Danish Board for Trade and Companies refused the registration of the branch of *Centros* in Denmark on the grounds that *Centros*, which did not trade in the UK, was in fact seeking to establish a principal establishment in Denmark, rather than a branch. This would have circumvented national company law rules such as minimum capital requirements. *Centros* argued that the Board's refusal to register its Danish branch violated its freedom of establishment.

The Court ruled that it is immaterial that the company was formed in the first Member State only for the purpose of establishing itself in the second where its main or entire business is to be conducted. The decision of a national of a Member State to form a company according to the rules of company law that seem to him the least restrictive and set up branches in other Member States does not in itself constitute an abuse of the right of establishment. Therefore, although Members States are entitled to adopt measures aimed at preventing or

¹⁰ Case C-212/97 *Centros* [1999] ECR I-1459, Case C-208/00 *Überseering* [2002] ECR I-9919

¹¹ Case C-167/01 *Inspire Art* [2003] ECR I-10155, para 105.

¹² Case C-167/01 *Inspire Art* [2003] ECR I-10155, para. 101 et seq.

¹³ Case C-210/06 *Cartesio* [2008] ECR I-9641.

¹⁴ Case 81/87 *Daily Mail* [1988] ECR 5483.

¹⁵ Case C-212/97 *Centros* [1999] ECR I-1459.

penalising fraud, they cannot refuse to register a branch of a company formed in accordance with the law of another Member State. Also the fact that Centros did not conduct any business in its Member State of incorporation, but carried on all its activities in the Member State where the branch was established was not sufficient to prove the existence of abuse or fraudulent conduct.

In *Überseering*,¹⁶ the Court was seized with a similar question. *Überseering BV* was a Dutch company which owned a building site in Germany. It had contracted NCC, a German company, to refurbish buildings located on the site. After the contractual obligations were performed, *Überseering* claimed that the work was defective and attempted to get compensation from NCC. In the meantime, two German nationals had acquired all the shares in *Überseering*. The German courts dismissed the action. They found that, whilst still incorporated in the Netherlands, *Überseering* had transferred its actual centre of administration to Germany and had become subject to German law. As it had not followed the required formation formalities under German law, *Überseering* did not have legal capacity in Germany and could not bring proceedings there.

The Court ruled that the refusal to give standing or to recognise the legal capacity of a company validly incorporated in another Member State is a restriction to the freedom of establishment which cannot be justified. The Court drew a distinction between *Daily Mail*, which concerned relations between a company, and the Member State under whose law it was incorporated, and *Überseering*, which concerned the recognition by one Member State of a company incorporated under the laws of another Member State. Compared to *Centros* where the intention of establishment in a certain Member State constituted a necessary precondition for the exercise of the freedom of establishment, in *Überseering* it was considered not to be of relevance whether or not the company intended to transfer its seat. Furthermore, the Court rejected the German assertion that the denial of *Überseering*'s legal capacity was justified on the basis of overriding requirements relating to the general public interest (protection of interests of creditors and minority of stakeholders).

*Inspire Art*¹⁷ concerned a British private company which was required by Dutch law to be formally registered as a foreign company. The Court was seized with the question whether the Dutch legislation which imposed additional conditions on a company formed under the law of another Member State when it exercises its business in the Netherlands was in compliance with the freedom of establishment. Even though the rules at stake were mandatory, the Court followed its reasoning as laid down in *Centros* and *Überseering*. It concluded that the Dutch legislation constituted restrictions on the freedom of establishment which could not be justified on the grounds of protecting creditors, combating an improper recourse to the freedom of establishment or the efficiency of tax inspections.

The *Cartesio*¹⁸ case concerned a refusal by the Hungarian authorities of an application made by *Cartesio* which wanted to transfer its seat to Italy whilst remaining subject to Hungarian law. The Court reiterated its view expressed in *Daily Mail* that "companies are creatures of national law and exist only by virtue of national legislation which determines its incorporation and functioning" and that the variety of national laws was taken into consideration by the Treaty. With regard to the connecting factors, the Court seems to revisit its previous case-law. It ruled that the question whether and, if so, how the registered office or real seat of a company incorporated under national law can be transferred from one Member State to another is a problem which is not resolved by the rules concerning the right of establishment, but which must be dealt with by future legislation or conventions. It was, therefore, a question of national law whether and how a company is connected with a Member State, so as to benefit from freedom of establishment. The Court ruled that the Hungarian rules which prevented *Cartesio* from transferring its seat to another Member State (whilst retaining its status as company under Hungarian law) were compatible with the freedom of establishment.

¹⁶ Case C-208/00 *Überseering* [2002] ECR I-9919.;

¹⁷ Case C-167/01 *Inspire Art* [2003] ECR I-10155.

¹⁸ Case C-210/06 *Cartesio* [2008] ECR I-9641.

This reasoning of *Cartesio* was subsequently confirmed in *National Grid Indus BV*¹⁹ and *Vale*.²⁰

The case law of the Court of Justice can be considered to have an impact on matters of private international law such as the determination, the scope and the change of the *lex societatis*:

The determination of the lex societatis

- Companies are creatures of national law. Therefore, they only exist insofar as they have been validly created under national law.
- Each Member State determines whether and under what conditions a company can be incorporated under its own law, and, in particular, whether not only the registered office, but also its real seat must be situated in its territory. That means that each Member State determines the relevant connecting factor and thereby whether the company exists and is entitled to exercise the freedom of establishment.
- However, once a company has been validly incorporated under the laws of a Member State, the principle of mutual recognition applies.

The Scope of the lex societatis

- The principle of mutual recognition encompasses not only the recognition of the capacity of the foreign entity under the law of its incorporation, but also the legal status of the company under that law. The host Member State can therefore in principle not impose any particular obligations on disclosure, minimum capital or personal joint and several liability of directors on a company validly incorporated under the laws of another Member State.
- The Court has, however, accepted that there can be exceptions to that rule which are, however, subject to the proportionality test. The host Member State may impose certain obligations to the foreign company (i.e. exceptions to the application of the *lex societatis*) insofar as (i) they are non-discriminatory, (ii) aimed at the protection of general interests (creditors of the company, workers, tax authorities or minority shareholders), (iii) suitable for securing the attainment of the objective they pursue and (iv) do not go beyond what is necessary in order to attain it.
- However, in practice, the ECJ has been reluctant to conclude that an exception to the application of the *lex incorporationis* satisfies those conditions. For instance, with regard to the protection of creditors of the company, in particular, it has invoked the principle *volenti non fit injuria*: “Since the company concerned in the main proceedings holds itself out as a company governed by the law of England and Wales and not as a company governed by Danish Law [where the real seat was located], its creditors are on notice that it is covered by laws different from those which govern the formation of private limited companies in Denmark...”²¹

The Change of the lex societatis

Companies might wish to reorganise themselves in another Member State, by moving their seat to the territory of the latter, or by converting into a company under the laws of that other Member State. With regard to these

¹⁹ C-371/10, *National Grid Indus BV*, ECR [2011] ECR I-12273.

²⁰ C-378/10, *VALE*, Judgment of 12 July 2012, not published yet.

²¹ Case C-212/97 *Centros* [1999] ECR I-1459, point 36.

transactions and their consequences for changing or not the *lex societatis*, the ECJ has set out the following main principles:

- The home Member State determines not only the connecting factor required for a company to be regarded as incorporated under its national law, but also the connecting factor required if the company is to be able subsequently to maintain that status. Therefore, the home Member State may subject the company's right to retain its original *lex societatis* to the condition of maintaining its real seat within the territory of that State. The freedom of establishment does not include a right, for a company incorporated under the legislation of a Member State and registered therein, to transfer its central administration to another Member State whilst retaining its legal personality and nationality of origin.
- When a company established in one Member State wishes to convert to a company governed by the national laws of another Member State, i.e. with a change of the *lex societatis*, this should be possible to the extent that the requirements of the law of the host Member State are satisfied. This conversion while keeping its legal personality, i.e. without prior winding-up or liquidation, is guaranteed by the freedom of establishment. In particular, this freedom precludes the host Member State which enables companies established under national law to convert, from not allowing, in a general manner, companies governed by the law of another Member State to convert to companies governed by its national law.
- However, the company that wishes to undertake a cross-border conversion must satisfy the requirements applicable to national companies of the host Member State as regards e.g. registration, minimum capital, disclosure, internal structure or number of members. The ECJ has clarified that the principles of equivalence and effectiveness apply. For instance, in a case of cross-border conversion from Italy to Hungary, the ECJ concluded that those principles preclude the host Member State from "(i) refusing ...to record the company which has applied to convert as the "predecessor in law", if such a record is made of the predecessor company in the commercial register for domestic conversions, and (ii) refusing to take due account, when examining a company's application for registration, of documents obtained from the authorities of the Member State of origin".²²

Conclusions

As shown above, the ECJ has had to address certain questions caused by the diverging conflict rules in the area of company law from the perspective of the freedom of establishment of companies in the internal market. However, the case law has provided only partial answers on a case by case basis. Also the impact of secondary legislation is still limited. It has created European corporate bodies, such as the European Company (SE) which, subject to certain conditions, can be used as an instrument to change the registered office, with however, only a partial change of the applicable law, since for the most part the SE is regulated by the relevant regulation and not by national law. Also, a minimum harmonisation of certain rules has been put in place. However, many differences between the national legal systems continue to exist.²³ It appears therefore that in order to provide more legal certainty to companies in the EU, it is necessary to consider a harmonisation of the rules applicable in Member States concerning conflict of laws in the field, possibly combined with a harmonisation of certain procedural or substantive law matters insofar as necessary to eliminate incompatibilities between national

²² C-378/10, *VALE*, Judgment of 12 July 2012, not published yet, point 62.

²³ On the question of harmonization of the provision on the cross-border transfer of registered office see the Commission Impact Assessment on the cross-border transfer of registered office (SEC(2007)1707, Part I and II); European Parliament resolution of 10 March 2009 with recommendations to the Commission on the cross-border transfer of the registered office of a company (P6_TA(2009)0086); European Parliament resolution of 2 February 2012 with recommendations to the Commission on a 14th company law directive on the cross-border transfer of company seats (P7_TA(2012)0019); European Parliament European Added Value Assessment "Directive on the cross-border transfer a company's registered office – 14th Company Law Directive" (PE 494.460).

systems.

Other areas of law linked to the applicable company law under private international law

Several other areas of law may need to be taken into account when designing a harmonised set of conflict of laws rules in company law matters:

First of all, due regard should be given to the relevant jurisdiction and recognition and enforcement rules of the Brussels I Regulation and how such rules would interrelate with the new conflict rules. Article 22 Nr. 1 of the Brussels I Regulation²⁴ provides for an exclusive jurisdiction in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs. In such proceedings, the courts of the Member State in which the company, legal person or association has its seat are competent. In order to determine that seat, the court shall apply its rules of private international law. It should be considered whether it might be appropriate to extend the scope of exclusive jurisdiction in company law to additional matters related to the internal organisation and decision-making in a company.²⁵

Secondly, the scope of the applicable company law should be carefully delimited from the applicable law in closely related areas such as contractual obligations (Rome I),²⁶ non-contractual obligations (Rome II),²⁷ and insolvency.²⁸

In addition, the existing European company law, in particular the degree of harmonisation of substantive company law, may have an impact on the choice of the uniform connecting factor and/or on the determination of the scope of the overriding mandatory rules which Member States may still impose on foreign companies at least in the internal market.

Furthermore, as pointed out above, even if the conflict rules were harmonised and it were decided which law governs which matters, there may still remain questions as to how a transfer of a company's seat should effectively be organised when the rules of the varying laws concerned provide for different conditions for such a transfer. This raises the question whether certain procedural or substantive law matters may not need to be addressed in order to ensure practical feasibility of such transfers. Similar questions have been addressed in the context of cross-border mergers.²⁹ It should be studied to what extent additional rules of substantive or procedural law may be necessary in order to allow companies to exercise their right of establishment by migrating to a host Member State without losing their legal personality. In other words, it should be analysed what is needed to ensure that a company may be converted into a company governed by the law of the host Member State without having to be wound up. Such rules could for instance include provisions on transparency and information, on the decision by the shareholders, on the verification of the legality of the transfer and on employees' rights.

²⁴ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001, p. 1. See also Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351/1, 20.12.2012.

²⁵ See the Green Paper on the review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM(2009) 175 final, p. 10.

²⁶ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6.

²⁷ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199, 31.7.2007, p. 40.

²⁸ See Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, OJ L 160, 30.6.2000, p. 1.

²⁹ See Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies and Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies.

Finally, it should be determined to what extent, if any, a uniform connecting factor might have an impact on the taxation of companies in the Member States.

1.2. Purpose of the contract

The purpose of the study is to evaluate the practical problems caused by the lack of harmonisation of the conflict-of-law rules concerning companies and the possibilities for harmonising such rules, if necessary in combination with a harmonisation of certain matters of procedure or substantive law. For this purpose, the study will conduct a comparative analysis on the provisions of private international law, and, where relevant for the purpose of the study, substantive law related to companies in the 28 Member States. It will, in addition, carefully analyse the relationship with other areas of private international and substantive law and set out the pro's and con's of the solutions proposed. More details on the tasks are set out below.

1.3. Tasks to be performed

The Contractor should carry out the following tasks which include country specific reports for all Member States:

1. Collect statistical data concerning the number of companies which are established in the European Union and make use of their freedom of establishment by operating in some form in one or more Member States different from the Member State in which they have been incorporated or have their real seat;
2. Conduct an empirical analysis of the practical problems created by the legal uncertainty for companies caused by the current situation stemming from the potential for conflicts of laws in a context where the substantive laws of the Member States have not been fully harmonized. This empirical analysis should take into account the case law of the European Court of Justice related to the freedom of establishment and the existing European company law framework. Specific attention shall be paid to the practical problems of those companies that intend to move or reorganise within the Internal Market while not neglecting the situation of companies operating from outside the European Union;
3. Conduct a comparative analysis of private international laws, and, where relevant substantive laws related to companies of all 28 EU Member States, and more specifically of:
 - a) The connecting factor in private international law (e.g. real seat or incorporation theory);
 - b) The scope of the *lex societatis* (i.e. the extent to which the law of the registered and/or real seat of companies regulates substantive matters such as legal nature and capacity to act, foundation, corporate governance, liability, including directors' liability for e.g. wrongful trading etc.);
 - c) The delimitation in national laws with other areas of law which are relevant in this context, for instance: Insolvency law, Contract law, Tort law and Tax law;
 - d) The mechanisms used by Member States to protect certain public interests against the activities of foreign companies on their territory (e.g. interests of creditors, minority shareholders);
 - e) The rules applicable to the change of the applicable law (e.g. in cases of the transfer of registered office and/or real seat and cross-border conversions);
 - f) The mechanism of *renvoi*;
 - g) The application in practice of any public policy requirements.
4. Suggest possible solutions to the problem, including a possible harmonisation of conflict-of-law rules at EU level in the area of company law, taking into account the results of tasks 1. – 3. and the relevant jurisdiction, applicable law, and recognition and enforcement rules of the Brussels I, Insolvency, Rome I and Rome II Regulations, including any proposals, where considered appropriate, to align the latter with

the future new instrument. Explain pro's and con's of possibly varying solutions. The suggestion for a harmonisation of conflict rules should cover all elements relevant to private international law, in particular a harmonised connecting factor, the scope of the *lex societatis* and possible exceptions to it, overriding mandatory provisions and renvoi. Taking into account the universal scope of application of a future instrument, the suggestion should also take into account the possibility of introducing different exceptions for intra-EU cases and for cases involving companies from third countries.

The suggestion for a possible harmonisation of conflict-of-law rules at EU level in the area of company law should be accompanied, where appropriate, by proposals for a harmonisation of certain substantive and procedural rules applicable to a change of the *lex societatis* so as to ensure that such changes can effectively take place in practice without being hindered by conflicting conditions imposed by the applicable laws concerned.

SUGGESTED SOURCES OF INFORMATION

The study should be based on all relevant legal sources, i.e. legislation (national and European), jurisprudence as well as supporting sources such as legal scholarship³⁰, comparative legal studies³¹ or where relevant existing empirical research. For task 4., the proposal of the Deutscher Rat für Internationales Privatrecht for European and national and EU³² legislation in the field of international company law³³ should be consulted.

1.4. Timetable and reporting

The study carried out by the Contractor in performance of this Contract will be set out in the documents described below. All reports must be presented in English.

Inception Report

The Contractor shall submit an inception report setting out the methodology for the study at the latest 2 weeks after the signature of the contract at the latest. The inception report shall include:

- An approach to solving possible methodological problems that may have an impact on the tasks to be carried out;
- A detailed time table for the delivery of the tasks;
- A description of quality assurance procedures.

Interim report

The contractor will submit an interim report of the study to the Commission at the latest 6 months after the signature of the contract. The interim report will indicate the progress to date with sufficient information to permit reorientation if appropriate and required.

The Contractor shall comply with any request by the Commission to attend an assessment meeting at the European Commission within two weeks of the submission of the interim report.

³⁰ For instance Borg-Barthet, *The governing law of companies in EU law*, Oxford and Portland, 2012.

³¹ For instance, the *Study on Directors' Duties and Liabilities* prepared for the European Commission DG MARKT by Gerner-Beuerle, Paech and Schuster, LSE Enterprise, December 2012.

³² See Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies and Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies.

³³ Sonnenberger, *Vorschläge und Berichte zur Reform des europäischen und deutschen internationalen Gesellschaftsrechts*, Tübingen, 2007.

Final progress report

The contractor will submit a final progress report to the Commission at the latest 12 months after the signature of the contract. The conclusions should be presented in an easily understandable form. The Contractor shall comply with any request by the Commission to attend a final assessment meeting at the European Commission within four weeks of the submission of the final progress report. The final progress report shall include an executive summary setting out the conclusions of the report.

Report format and publication

Five copies of each report must be provided, as well as an electronic version.

The final study must also be made available electronically, in Word and in PDF format, in a set of files corresponding to the chapters of the study which must in principle not exceed two megabytes. These files must be tested before dispatch.

Rights concerning the study and those relating to its reproduction and publication will remain the property of the European Commission. No document based, in whole or in part, upon the work undertaken in the context of this contract may be published except with the prior formal written approval of the European Commission.

The Commission may publish the results of the study. For this purpose, the contractor must ensure that there are no restrictions for reasons of confidentiality or based on the intellectual property rights of third parties. Any unpublishable data the contractor intends to use for the study must be explicitly mentioned in the bid.

The documents referred to in this section must also be sent by electronic mail to the following address:

JUST-NOTIFICATIONS-A1@ec.europa.eu

and

JUST-A4-CFT@ec.europa.eu

1.5. Place of performance

The tasks will be performed at the contractor's premises. However, the contractor should participate in one kick-off meeting held at the Commission's premises in Brussels at the start of the project.

Throughout the performance of the contract, the contractor should be available to participate in tele- or video-conferences with the Commission in order to discuss the progress in implementation. The schedule shall be agreed at the kick-off meeting.

1.6. Duration of the tasks

The duration of the tasks shall not exceed **12 months**. This period is calculated in calendar days.

1.7. Estimate of the amount of work involved

As a guide only, and without this being either a ceiling or a target amount when submitting the tender, the available budget is estimated at EUR 350.000.

This budget guideline is given in accordance with the principle of sound financial management, and the principles of economy and value for money shall prevail.

II. CONTENT, STRUCTURE AND GRAPHIC REQUIREMENTS OF THE FINAL DELIVERABLES

All studies produced for the European Commission and Executive Agencies shall conform to the corporate visual identity of the European Commission by applying the graphic rules set out in the European Commission's Visual Identity Manual, including its logo³⁴.

The Commission is committed to making online information as accessible as possible to the largest possible number of users including those with visual, auditory, cognitive or physical disabilities, and those not having the latest technologies. The Commission supports the [Web Content Accessibility Guidelines 2.0](#) of the W3C.

For full details on Commission policy on accessibility for information providers, see: http://ec.europa.eu/ipg/standards/accessibility/index_en.htm

Pdf versions of studies destined for online publication should respect W3C guidelines for accessible pdf documents. See: <http://www.w3.org/WAI/>

II.1 Content

II.1.1. Final study report

The final study report shall include:

- an abstract of no more than 200 words and an executive summary of maximum 6 pages, both in English and French;
- the following standard disclaimer:

“The information and views set out in this [report/study/article/publication...] are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission’s behalf may be held responsible for the use which may be made of the information contained therein.”

- specific identifiers which shall be incorporated on the cover page provided by the Contracting Authority.

II.1.2 Publishable executive summary

The publishable executive summary shall be provided in both in English and French and shall include:

- the following standard disclaimer:

“The information and views set out in this [report/study/article/publication...] are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission’s behalf may be held responsible for the use which may be made of the information contained therein.”

- specific identifiers which shall be incorporated on the cover page provided by the Contracting Authority.

II.2 Graphic requirements

Standard WORD template

For graphic requirements please refer to the template in annexe 5. The cover page shall be filled in by the contractor in accordance with the instructions provided in the template. For further details you may also contact comm-visual-identity@ec.europa.eu.

³⁴ The Visual Identity Manual of the European Commission is available upon request. Requests should be made to the following e-mail address: comm-visual-identity@ec.europa.eu

III. INFORMATION ON TENDERING

II.1. Participation

Participation in this tender procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the Union in the field of public procurement on the conditions laid down in that agreement. Where the Multilateral Agreement on Government Procurement³⁵ concluded within the WTO applies, the participation to the call for tender is also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down.

II.2. Contractual conditions

In drawing up his offer, the tenderer should bear in mind the provisions of the draft contract attached to this invitation to tender (Annex 4) particularly those on payments, performance of the contract, confidentiality, and checks and audits. Any limitation, amendment or denial of the terms of contract will lead to automatic exclusion from the procurement procedure.

The Commission may, before the contract is signed, either abandon the procurement procedure or cancel the award procedure without the tenderers being entitled to claim any compensation.

II.3. Joint Tenders (if applicable)

A joint tender is a situation where a tender is submitted by a group of economic operators (consortium). Joint tenders may include subcontractors in addition to the joint tenderers.

Tenders can be submitted by groupings of service providers/suppliers who will not be required to adopt a particular legal form prior to the contract being awarded. However, the Commission will require the grouping:

- Either to have the contract sign by all members of the grouping. In this case, one of them will be responsible for the receipt and processing of payments for members of grouping, for managing the service administration and for coordination of the contract; or
- to have the contract sign by a team leader, which has been duly authorised by the other members to bind each of them (a power of attorney will be attached to the contract according to the template provided by the Commission).

In addition, the composition and constitution of the grouping, and the allocation of the scope of tasks amongst the members, shall not be altered without the prior written consent of the Commission which can be withheld at discretion.

II.4. Liability of members of a group

Partners in a joint offer assume **joint and several liability** towards the Commission for the performance of the contract as a whole.

Statements, saying for instance:

- That one of the partners of the joint offer will be responsible³⁶ for only one part of the contract and another one for the rest, or
- That more than one contract should be signed if the joint offer is successful are thus incompatible with the principle of joint and several liability.

³⁵ See http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

³⁶ not be confused with distribution of tasks among the members of the grouping

The Commission will disregard any such statement contained in a joint offer, and reserves the right to reject such offers without further evaluation, on the grounds that they do not comply with the tendering specifications.

II.5. Subcontracting

Subcontracting is permitted in the tender but the contractor will retain full liability towards the Contracting Authority for performance of the contract as a whole.

If the tenderer intends to subcontract part of the service, he shall indicate in his offer which part will be subcontracted and to what extent (% of the total contract value).

Tenderers must ensure that Article II.7 of the contract (Annex 4) can be applied to subcontractors.

Tenderers must give an indication of the proportion of the contract that they intend to subcontract.

Tenderers are required to identify all subcontractors whose share of the contract is above 20 %.

During contract execution, the change of any subcontractor identified in the tender will be subject to prior written approval of the Contracting Authority.

IV. STRUCTURE AND CONTENT OF THE TENDER

IV.1. General

Tenders must be written in **one of the official languages** of the European Union.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled, etc...). Since tenderers will be judged on the content of their written bids, they must make it clear that they are able to meet the requirements of the specifications.

IV.2. Structure of the tender

All tenders must include three sections:

- 1) Administrative information and documents related to the exclusion and selection criteria;
- 2) Technical proposal;
- 3) Financial proposal.

IV.2.1. Section One: administrative proposal

a) Administrative information

This section must provide the following information:

- **Cover letter**

The tender must include a cover letter presenting the name of the tenderer (including all entities in case of joint offer) and identified subcontractors if applicable, and the name of the single contact person in relation to this tender.

Tenders must be signed by the tenderer or his duly authorised representative. In case of joint tender, the cover letter must be signed by a duly authorised representative for each tenderer, or by a single tenderer duly authorised by other tenderers (with power of attorney).

If applicable, the cover letter must indicate the proportion of the contract to be subcontracted.

Subcontractors must provide a letter of intent stating their willingness to provide the service foreseen in the offer and in line with the present tender specification.

- **Legal Entities**

In order to prove their legal capacity and their status, all tenderers and identified subcontractors must provide a signed Legal Entity Form with its supporting evidence.

However, the subcontractor(s) shall not be required to fill in or provide those documents when the services represent less than 20% of the contract.

The form is available on:

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

Tenderers must provide the following information if it has not been included with the Legal Entity Form:

- For legal persons, a legible copy of the notice of appointment of the persons authorised to represent the tenderer in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.
- For natural persons, where applicable, a proof of registration on a professional or trade register or any other official document showing the registration number.

- **Financial identification**

The tenderer (or the single point of contact in case of joint tender) must provide a Financial Identification Form and supporting documents. Only one form per offer should be submitted (no form is needed for subcontractors and other joint tenderers). The form is available on:

http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

Remark: Tenderers that are already registered in the Contracting Authority's accounting system (i.e. they have already been direct contractors) must provide the form but are not obliged to provide the supporting evidence.

b) Information regarding exclusion and selection criteria:

For the exclusion criteria the tenderer is request to submit:

1. Declaration by the Tenderer relating to the exclusion criteria (see V.1)
2. Documents certifying economic and financial capacity (see V.2.1.)
3. Proof of technical and professional capacity (see V.2.2)

IV.2.2. Section Two: Technical proposal

This technical section is of great importance in the assessment of the bids, the award of the contract and the future execution of any resulting contract.

The technical offer must cover all aspects and tasks required in the technical specification and provide all the information needed to apply the award criteria. Offers deviating from the requirements or not covering all requirements may be excluded on the basis of non-conformity with the tender specifications and will not be evaluated.

IV.2.3. Section Three: Financial proposal

All tenders must contain a financial proposal to be submitted **according to the form attached in Annex 3.**

The tenderer's attention is drawn to the following points:

- Prices must be quoted in **euros**, including the countries which are not in the euro-area. As far as the tenderers of those countries are concerned, they cannot change the amount of the bid because of the evolution of the exchange rate. The tenderers choose the exchange rate and assume all risks or opportunities relating to the rate fluctuation.
- **Prices must be fixed amounts** and include all expenses, such as travel expenses and daily allowances.
- **Prices must be quoted free of all duties**, taxes and other charges, including VAT, as the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union. The amount of VAT may be shown separately.
- Prices shall be fixed and not subject to revision during the performance of the contract.

V. ASSESSMENT AND AWARD OF THE CONTRACT

The assessment will be based on each tenderer's bid.

All the information will be assessed in the light of the criteria set out in these specifications. The procedure for the award of the contract, which will concern only admissible bids, will be carried out in three successive stages.

The aim of each of these stages is:

- 1) To check on the basis of the exclusion criteria, whether tenderers can take part in the tendering procedure;
- 2) To check on the basis of the selection criteria, the technical and professional capacity and economic and financial capacity of each tenderer;
- 3) To assess on the basis of the award criteria each bid which has passed the exclusion and selection stages.

Only tenders meeting the requirements of one step will pass on to the next step

V.1. Exclusion criteria

All tenderers shall provide a declaration on their honour (see Annex 1), duly signed and dated by an authorised representative, stating that they are not in one of the situations of exclusion listed in the Annex 1.

The declaration on honour is also required for identified subcontractors whose intended share of the contract is above 20%.

The successful tenderer shall provide the documents mentioned as supporting evidence in Annex 1 before signature of the contract and within a deadline given by the contracting authority. This requirement applies to all members of the consortium in case of joint tender

Remark:

The tenderers will be waived of the obligation to submit the documentary evidence mentioned above if such evidence has already been submitted for the purposes of another procurement procedure launched by ex-Directorate General Justice, provided that the documents are not more than one year old starting from their issuing date and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure, specifying the reference of the call for tender for which the documents have been provided, and confirm that no changes in his situation have occurred.

V.2. Selection criteria

Tenderers must prove their economic, financial, technical and professional capacity to carry out the work subject to this call for tender.

The evidence requested should be provided by each member of the group in case of joint tender and identified subcontractor whose intended share of the contract is above 20%. However a consolidated assessment will be made to verify compliance with the minimum capacity levels.

The tenderer may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

V.2.1. Economic and financial capacity criteria and evidence

In order to prove their economic and financial capacity, the tenderers (i.e. in case of joint tender, the combined capacity of all members of the consortium and identified subcontractors) must show that their annual consolidated turnover exceeds 350.000 EUR (average for the past three years).

The following evidence should be provided:

- The completed "Simplified balance sheet" and "Simplified Profit & Loss Account" completed for the last 3 years (Annex 2 must be completed),
- A copy of the profit & loss account and balance sheet for the last 3 years for which accounts have been closed,
- Failing that, appropriate statements from banks,
- If applicable, evidence of professional risk indemnity insurance;

If, for some exceptional reason which the Contracting Authority considers justified, a tenderer is unable to provide one or other of the above documents, he or she may prove his or her economic and financial capacity by any other document which the Contracting Authority considers appropriate. In any case, the Contracting Authority must at least be notified of the exceptional reason and its justification in the tender. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

Remark:

The tenderers will be waived of the obligation to submit the documentary evidence mentioned above if such evidence has already been submitted for the purposes of another procurement procedure launched by ex-Directorate General Justice, provided that the documents are not more than one year old starting from their issuing date and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure, specifying the reference of the call for tender for which the documents have been provided, and confirm that no changes in his situation have occurred.

V.2.2. Technical and professional capacity – References required

a. Criteria relating to tenderers

Tenderers (in case of a joint tender the combined capacity of all tenderers and identified subcontractors) must comply with the following criteria:

- The tenderer must prove experience in the field of comparative law studies including national private international law.
- The tenderer must prove ability to put together a team covering each of the jurisdictions which are subject of the study with at least one national correspondent, i.e. a lawyer responsible for the part of the study concerning that jurisdiction with a local legal background, preferably in the subject matter of the study.

- The tenderer must prove experience of working in English with at least 2 projects delivered in the last five years and demonstrate sufficient necessary language coverage to cover the 28 Member States.
- The tenderer must prove capacity to draft reports in English.

b. Criteria relating to the team delivering the service

The team delivering the service should include, as a minimum, the following profiles:

Project Manager: At least 5 years of experience in project management including professional and/or academic experience in law, preferably in the subject matter of the study. The experience should also include overseeing project delivery, quality control of delivered service, client orientation and conflict resolution experience in projects of a similar size and coverage (geographical scope at least half of the one subject to this call for tender), with experience in managing a large team of national reporters.

Team: The team must comprise, for each of the jurisdictions which are subject of the study, at least one national correspondent, i.e. a lawyer responsible for the part of the study concerning that jurisdiction with a local legal background, preferably in the subject matter of the study.

Each team member should have a university degree or equivalent, or a professional qualification in law and professional and/or academic experience in law, preferably in the subject matter of the study.

At least 1 member involved in drafting the report should have native level experience language skills in English, as proven by a certificate or relevant past experience.

The team for data collection and analysis: Collectively the team should have knowledge of all EU official languages for the purpose of collecting data on national laws from Member States and proven experience in the subject matter of the study and in managing comparative law research projects.

If several service providers/subcontractors are involved in the bid, they must **jointly** have the professional and technical capacity to perform the tasks assigned to them.

a. Evidence:

The following evidence should be provided to fulfil the above criteria:

1. Tenderers should provide with their offer detailed curriculum vitae of each staff member responsible for carrying out the work, including his or her educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills. The CV's shall be presented, preferably, in accordance to the Commission Recommendation on a common European format for curricula vitae, published in OJ L79 of 22 March 2002, p. 66.
2. A list of the principal services of the same type provided in the past five years, with the sums, dates and recipients, whether public or private, of the services provided, together with certificates issued or countersigned by public authorities or by private clients or, failing this, simply declared by the service provider to have been effected;
3. Part of the contract which the service provider intends to subcontract.

V.3. Award Criteria

The contract will be awarded according to the criteria given below, on the basis of the economically most advantageous tender.

Only bids that have reached a total score of a minimum of 70% and a minimum score of 60 % for each criterion will be taken into consideration for awarding the contract.

a) Technical evaluation criteria in their order of importance as weighted by percentage

The quality of the tender will be awarded a score out of 100. The qualitative criteria will be weighted as follows:

N°	Award Criteria	Weighting
1	Understanding of and expertise in the subject matter. The tenderer must provide a preliminary description of the problems and of the current legal situation and a preliminary view on possible solutions.	40
2	Quality of the proposed methodology for carrying out the tasks. The description of the proposed methodology should include, inter alia, precise information about the way in which the network of national correspondents is constituted and the information about the 28 Member States is to be gathered, the foreseen time schedule, an initial bibliography and an indicative list of sources to be used (e.g. legal scholarship, existing empirical research and studies, national and EU legislation and jurisprudence in the field of international company law etc.).	30
3	Organisational aspects of the team, including the composition of the proposed team and national correspondents; detailed in relation to the tasks to be carried out including level of direct participation of senior staff in the performance of the tasks required under this invitation to tender; judicious use of resources consistent with the proposed methodology	30
Total number of points		100

b) Price

The contract will be awarded to the tender which offers the **best-value-for-money**.

The evaluation will be made by awarding each tender a number of points calculated as follows:

$$\frac{\text{Number of "quality" points} * 10000}{\text{Price of the tender}}$$

Remarks:

Tenderers' attention is drawn to the fact that the Commission will be in a position to make a proper assessment of the tenders on the basis of the above qualitative criteria only if they contain full particulars relating to all aspects of this specification. Lack of detail and vague and perfunctory information will be penalised.

As the tenders will be evaluated on the basis of the quality of the services proposed, they should fully explore all the points included in this specification so as to obtain the best possible mark.

Simply repeating the guidelines given in the specification of this invitation to tender without going into detail or expanding on them will result in a very poor mark.

Furthermore, if any essential points of this specification are not expressly covered by the tender, the Commission may decide to give a zero mark for the relevant quality award criteria.

VI. INFORMATION FOR TENDERERS

The Commission will inform tenderers of decisions reached concerning the award of the contract, including the

grounds for any decision not to award a contract or to recommence the procedure.

VII ANNEXES

1. Declaration by the Tenderer (relating to the exclusion criteria)
2. Simplified balance sheet Form + profit & loss account Form
3. Financial offer Form
4. Draft Service Contract
5. Model for cover page for studies

ANNEX 1

Declaration of honour on exclusion criteria and absence of conflict of interest

(Complete or delete the parts in grey italics in parentheses)
[Choose options for parts in grey between square brackets]

The undersigned (*insert name of the signatory of this form*):

in [his][her] own name (*for a natural person*)

or

representing the following legal person: (*only if the economic operator is a legal person*)

full official name:

official legal form:

full official address:

VAT registration number:

➤ declares that [the above-mentioned legal person][he][she] is not in one of the following situations:

- a) is bankrupt or being wound up, is having its 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) has been convicted of an offence concerning professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;
- c) has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify including by decisions of the European Investment Bank and international organisations;
- d) is not in compliance with all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be performed;
- e) has been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such activity is detrimental to the Union's financial interests;
- f) is a subject of an administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a procurement procedure or failing to supply this information, or having been declared to be in serious breach of its obligations under contracts covered by the Union's budget.

➤ (*Only for legal persons other than Member States and local authorities, otherwise delete*) declares that the natural persons with power of representation, decision-making or control³⁷ over the above-mentioned legal entity are not in the situations referred to in b) and e) above;

➤ declares that [the above-mentioned legal person][he][she]:

- g) has no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinity, family, emotional life or any other shared interest;
- h) will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- i) 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 award of the contract;

³⁷ This covers the company directors, members of the management or supervisory bodies, and cases where one natural person holds a majority of shares.

j) provided accurate, sincere and complete information to the contracting authority within the context of this procurement procedure ;

- acknowledges that [the above-mentioned legal person][he][she] may be subject to administrative and financial penalties³⁸ if any of the declarations or information provided prove to be false.

In case of award of contract, the following evidence shall be provided upon request and within the time limit set by the contracting authority:

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required 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. Where the tenderer is a legal person and the national legislation of the country in which the tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn 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.

If the tenderer is a legal person, information on the natural persons with power of representation, decision making or control over the legal person shall be provided only upon request by the contracting authority.

Full name

Date

Signature

³⁸ As provided for in Article 109 of the Financial Regulation (EU, Euratom) 966/2012 and Article 145 of the Rules of Application of the Financial Regulation

ANNEX 2

SIMPLIFIED BALANCE SHEET

Currency

Unit

	Year		
	N	N-1	N-2
Assets			
Fixed assets (a)			
Current assets (b = c+d+e)	0	0	0
of which:			
Stocks (c)			
Cash (d)			
Other current assets(e)			
Total assets (A = a+b)	0	0	0

Liabilities (B=f+g)	0	0	0
of which,			
Short term liabilities (f)			
Long term liabilities (g)			
Net assets (Own Funds) (C= A-B)	0	0	0

Name of the tenderer	
Legal representative' s name	
Signature	

ANNEX 2

SIMPLIFIED PROFIT & LOSS ACCOUNT

Currency
Unit

	Year		
	N	N-1	N-2
Operating income			
Operating expenses			
Gross operating profit/loss	0	0	0
depreciation			
Net operating profit/loss	0	0	0
Financial income			
Financial expenses			
Profit/Loss on ordinary activity	0	0	0
19. Extraordinary income			
Extraordinary expenses			
20. Profit tax			
21. Profit/Loss for the financial year	0	0	0

Name of the tenderer	
Legal representative' s name	
Signature	

**ANNEX 3
Financial offer form**

Invitation to tender JUST/2014/JCOO/PR/CIVI/0051											
RESOURCES	Service providers Name of tenderer and, where applicable, names of partners or subcontractors which will perform this task	Level of expertise Senior or junior	Task: e.g. project manage ment	Task : (complet e)	Task : (complete)	Task : (complete)	Task : (complete)	Task : (complet e)	Add as many columns as necessary for your methodology	TOTAL	
			Number of days	Number of days	Number of days	Number of days	Number of days	Number of days	Number of days	Number of days	Number of days
1											EUR
2											EUR
3, etc.											EUR
TOTAL SENIOR STAFF (persons/days)											EUR
1											EUR
2											EUR
3, etc.											EUR
TOTAL JUNIOR STAFF (persons/days)											EUR
A. OVERALL STAFF TOTAL (PERSONS/DAYS)											EUR
B. TRAVEL AND SUBSISTENCE											EUR
C. OTHER COSTS											EUR

Financial bid: FIXED PRICE, NOT SUBJECT TO REVISION AND INCLUSIVE OF ALL EXPENSES: EUR

ANNEX 4



EUROPEAN COMMISSION
DIRECTORATE-GENERAL-JUSTICE

Directorate A Civil justice
Unit A4 Programme Management

DRAFT SERVICE CONTRACT

CONTRACT NUMBER JUST/2014/JCOO/PR/CIVI/0051

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mr. Renatas Mazeika, Head of Unit "Programme management" in the Directorate for Civil justice, Directorate-General Justice (JUST),

of the one part,

and

[official name in full]

[official legal form] (Delete if contractor is a natural person or a body governed by public law.)]

[statutory registration number] 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

[official address in full]

VAT registration number: xxxx

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

In case of joint offers

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.

of the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for service contracts** and the following annexes:

Annex I – Tender specifications (reference No [*complete*] of [*insert date*])

Annex II – Contractor's tender (reference No [*complete*] of [*insert date*])

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).

I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT MATTER

- I.1.1** The subject matter of the contract is a study on the law applicable to companies with the aim of a possible harmonisation of conflict of laws rules on the matter.
- I.1.2** The contractor shall execute the tasks assigned to it in accordance with the tender specifications annexed to the contract (Annex I).

ARTICLE I.2 – ENTRY INTO FORCE AND DURATION

- I.2.1** The contract shall enter into force on the date on which it is signed by the last party.
- I.2.2** Under no circumstances may performance commence before the date on which the contract enters into force.
- I.2.3** The duration of the execution of the tasks shall not exceed 12 months. Unless otherwise specified, all 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 the expiration of such period.
- I.2.4 Contract renewal** : not applicable

ARTICLE I.3 –PRICE

- I.3.1** The maximum total amount to be paid by the contracting authority under the contract shall be EUR [amount in figures and in words] covering all tasks executed.
- I.3.2 Price revision** : not applicable

ARTICLE I.4 – PAYMENT ARRANGEMENTS

- I.4.1 Pre-financing**: not applicable
- I.4.2 Interim payment**

The contractor shall submit an invoice for an interim payment of EUR [amount in figures and in words] equal to 30 % of the total amount referred to in Article I.3.1.

Invoices for interim payment shall be accompanied by a progress report or any other document in accordance with the tender specifications. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 20 days in which to submit additional information or corrections or a new progress report or documents if required by the contracting authority.

I.4.3 Payment of the balance

The contractor shall submit an invoice for payment of the balance.

The invoice shall be accompanied by the final progress report or any other document in accordance with the tender specifications. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 20 days in which to submit additional information or corrections, a new final progress report or other documents if it is required by the contracting authority.

[Where VAT is due in Belgium, the provisions of the contract constitute a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the contractor includes the following statement in the invoice(s): “Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)” or an equivalent statement in the Dutch or German language.]

[Where VAT is due in Luxembourg, the contractor shall include the following statement in the invoices: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ième

tiret de la loi modifiée du 12.02.79." In case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC."]

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the contractor's bank account denominated in [euro][*insert local currency where the receiving country does not allow transactions in EUR*], identified as follows:

Name of bank:
 Full address of branch:
 Exact designation of account holder:
 Full account number including [bank] codes:
 [IBAN³⁹ code:]

ARTICLE I.6 – COMMUNICATION DETAILS AND DATA CONTROLLER

For the purpose of Article II.6, the data controller shall be:

European Commission
 Directorates-General Home Affairs and Justice
 Shared Resources Directorate
 Unit SRD.01: Budget, control and ex-post audits
 LX 46 00/43
 B-1049 Brussels

Communications shall be sent to the following addresses:

Contracting authority:
 European Commission
 Directorate-General [*complete*]
 [Directorate [*complete*]]
 [Unit [*complete*]]
 [*Postcode and city*]
 Email: [*insert functional mailbox*]
Contractor:
 [*Full name*]
 [*Function*]
 [*Company name*]
 [*Full official address*]
 Email: [*complete*]

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.7.1.** The contract shall be governed by Union law, complemented, where necessary, by the law of Belgium
- I.7.2.** Any dispute between the parties in relation to the interpretation, application or validity of the contract which cannot be settled amicably shall be brought before the courts of Brussels.

ARTICLE I.8 - EXPLOITATION OF THE RESULTS OF THE CONTRACT

I.8.1 Modes of exploitation

In accordance with Article II.10.2 whereby the Union acquires ownership of the results as defined in the tender specifications (Annex I), these results may be used for any of the following purposes:

- [(a) use for its own purposes:

³⁹ BIC or SWIFT code for countries with no IBAN code.

- (i) making available to the staff of the contracting authority
 - (ii) making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
 - (iii) installing, uploading, processing
 - (iv) arranging, compiling, combining, retrieving
 - (v) copying, reproducing in whole or in part and in unlimited number of copies
- (b) distribution to the public:
- (i) publishing in hard copies
 - (ii) publishing in electronic or digital format
 - (iii) publishing on the internet as a downloadable/non-downloadable file
 - (iv) broadcasting by any kind of technique of transmission
 - (v) public presentation or display
 - (vi) communication through press information services
 - (vii) inclusion in widely accessible databases or indexes
 - (viii) otherwise in any form and by any method
- (c) modifications by the contracting authority or by a third party in the name of the contracting authority:
- (i) shortening
 - (ii) summarizing
 - (iii) modifying of the content
 - (iv) making technical changes to the content:
 - necessary correction of technical errors
 - adding new parts or functionalities
 - changing functionalities
 - providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications
 - (v) addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
 - (vi) preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
 - (vii) extracting a part or dividing into parts
 - (viii) use of a concept or preparation of a derivate work
 - (ix) digitisation or converting the format for storage or usage purposes
 - (x) modifying dimensions
 - (xi) translating, inserting subtitles, dubbing in different language versions:
 - English, French, German
 - all official languages of EU
 - languages used within EU
 - languages of candidate countries
 - [*list other languages*]
- (d) the modes of exploitation listed in article II.10.4
- [(e) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (c) to third parties.]

Where the contracting authority becomes aware that the scope of modifications exceeds that envisaged in the contract the contracting authority shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to the contracting authority within one month and shall provide its agreement, including any suggestions of modifications, free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

ARTICLE I.9 – TERMINATION BY EITHER PARTY

Either party may, unilaterally and without being required to pay compensation, terminate the contract by formally notifying the other party by giving one month's notice. Should the contracting authority terminate the contract, the contractor shall only be entitled to payment corresponding to part-performance of the contract before the termination date. The first paragraph of Article II.14.3 shall apply.

ARTICLE I.10 – OTHER SPECIAL CONDITIONS

Not applicable.

SIGNATURES

For the contractor,
[Company name/forename/surname/function]

For the Commission,
Mr Renatas Mazeika, *Head of Unit*
“Programme management” in the
Directorate for Civil Justice, Directorate-
General Justice (JUST),

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]
In duplicate in English.

Done at [Brussels], [date]

II – GENERAL CONDITIONS FOR SERVICE CONTRACTS

Article II.1 – Performance of the contract

- II.1.1** The contractor shall perform the contract to the highest professional standards.
- II.1.2** The contractor shall be solely responsible 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 it are to be executed.
- II.1.3** Without prejudice to Article II.4 any reference made to the contractor's personnel in the contract shall relate exclusively to individuals involved in the performance of the contract.
- II.1.4** The contractor must ensure that the personnel performing the contract possesses the professional qualifications and experience required for the execution of the tasks assigned to it.
- II.1.5** The contractor shall neither represent the contracting authority nor behave in any way that would give such an impression. The contractor shall inform third parties that it does not belong to the European public service.
- II.1.6** The contractor shall be solely responsible for the personnel who executes the tasks assigned to the contractor.

The contractor shall stipulate the following employment or service relationships with its personnel:

- (a) personnel executing the tasks assigned to the contractor may not be given orders directly by the contracting authority;
- (b) the contracting authority may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.
- II.1.7** In the event of disruption resulting from the action of one of the contractor's personnel working on the contracting authority's premises or in the event that the expertise of a member of the contractor's personnel fails to correspond to the profile required by the contract, the contractor shall replace him without delay. The contracting authority shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel 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 it resulting from the replacement of personnel.
- II.1.8** Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and on its own initiative record it and report it to the contracting authority. 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 its obligations under this contract. In such an event the contractor shall give priority to solving the problem rather than determining liability.
- II.1.9** Should the contractor fail to perform its obligations under the contract, the contracting authority may - without prejudice to its right to terminate the contract - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the contracting authority may claim compensation or impose liquidated damages in accordance with Article II.12.

ARTICLE II.2 – MEANS OF COMMUNICATION

- II.2.1** Any communication relating to the contract or to its performance shall be made in writing and shall bear the contract number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this contract.
- II.2.2** Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article I.6. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party. Electronic communication shall be confirmed by an original signed paper version of that

communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

- II.2.3** Mail sent using the postal services is deemed to have been received by the contracting authority on the date on which it is registered by the department responsible referred to in Article I.6. Any formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

Article II.3 – Liability

- II.3.1** The contractor shall be solely responsible for complying with any legal obligations incumbent on it.
- II.3.2** The contracting authority shall not be held liable for any damage caused or sustained by the contractor, including any damage caused by the contractor to third parties during or as a consequence of performance of the contract, except in the event of wilful misconduct or gross negligence on the part of the contracting authority.
- II.3.3** The contractor shall be held liable for any loss or damage sustained by the contracting authority in performance of the contract, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of the contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor shall have unlimited liability for the amount of the damage or loss.
- II.3.4** The contractor shall indemnify and hold the Union harmless for all damages and costs incurred due to any claim. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the contracting authority by a third party as a result of damage caused by the contractor during the performance of the contract. In the event of any action brought by a third party against the contracting authority in connection with the performance of the contract, including any alleged breach of intellectual property rights, the contractor shall assist the contracting authority. Such expenditure incurred by the contractor may be borne by the contracting authority.
- II.3.5** The contractor shall take out an insurance policy against risks and damage relating to the performance of the contract, if required by the relevant applicable legislation. It 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 contracting authority should it so request.

Article II.4 - Conflict of interest

- II.4.1** The contractor shall take all the necessary measures to prevent any situation of conflict of interest. Such situation arises where the impartial and objective performance of the contract is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.
- II.4.2** Any situation constituting or likely to lead to a conflict of interest during the performance of the contract shall be notified to the contracting authority in writing without delay. The contractor shall immediately take all the necessary steps to rectify the situation. The contracting authority reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.
- II.4.3** The contractor declares that it 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, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the contract.
- II.4.4** The contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the contract including subcontractors.

Article II.5 – Confidentiality

II.5.1 The contracting authority and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the contract and identified in writing as confidential.

The contractor shall:

- (a) not use confidential information and documents for any purpose other than fulfilling its obligations under the contract without prior written agreement of the contracting authority;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;
- (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the contracting authority.

II.5.2 The confidentiality obligation set out in Article II.5.1 shall be binding on the contracting authority and the contractor during the performance of the contract and for five years starting from the date of the payment of the balance unless:

- (a) the concerned party agrees to release the other party from the confidentiality obligation earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

II.5.3 The contractor shall obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the contract, an undertaking that they will comply with the confidentiality obligation set out in Article II.5.1.

Article II.6 – Processing of personal data

II.6.1 Any personal data included in the contract shall be processed pursuant to Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 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. Such data shall be processed by the data controller solely for the purposes of the performance, management and monitoring of the contract without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

II.6.2 The contractor shall have the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

II.6.3 The contractor shall have right of recourse at any time to the European Data Protection Supervisor.

II.6.4 Where the contract requires the processing of personal data by the contractor, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his rights.

II.6.5 The contractor shall grant its personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the contract.

II.6.6 The contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;

- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE II.7 – SUBCONTRACTING

- II.7.1** The contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the contract to be de facto performed by third parties.
- II.7.2** Even where the contracting authority authorises the contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this contract.
- II.7.3** The contractor shall make sure that the subcontract does not affect rights and guarantees granted to the contracting authority by virtue of this contract, notably by Article II.18.

ARTICLE II.8 – AMENDMENTS

- II.8.1** Any amendment to the contract shall be made in writing before fulfilment of any new contractual obligations and in any case before the date of payment of the balance.
- II.8.2** The amendment may not have the purpose or the effect of making changes to the contract which might call into question the decision awarding the contract or result in unequal treatment of tenderers.

ARTICLE II.9 – ASSIGNMENT

- II.9.1** The contractor shall not assign the rights, including claims for payments, and obligations arising from the contract, in whole or in part, without prior written authorisation from the contracting authority.
- II.9.2** In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the contractor shall not be enforceable against the contracting authority and shall have no effect on it.

ARTICLE II.10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

II.10.1 Definitions

In this contract the following definitions apply:

- (1) 'results' means any intended outcome of the performance of the contract which is delivered and finally accepted by the contracting authority;
- (2) 'creator' means any natural person who contributed to the production of the result and includes personnel of the contracting authority or a third party;
- (3) 'pre-existing rights' means any industrial and intellectual property rights, including background technology, which exist prior to the contracting authority or the contractor ordering them for the purpose of the contract execution and include rights of ownership and use by the contractor, the creator, the contracting authority and any third parties.

II.10.2 Ownership of the results

The ownership of the results shall be fully and irrevocably acquired by the Union under this contract including any rights in any of the results listed in this contract. Those rights in the results may include copyright and other intellectual or industrial property rights, as well as all technological solutions and information contained within these technological solutions, produced in performance of the contract. The contracting authority may exploit them as stipulated in this contract. All the rights shall be acquired by the Union from the moment the results are delivered by the contractor and accepted by the contracting authority. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the contractor to the Union.

The payment of the price as set out in the contract is deemed to include any fees payable to the contractor in

relation to the acquisition of rights by the Union including all forms of use of the results.

The acquisition of rights by the Union under this contract covers all territories worldwide.

Any intermediary sub-result, raw data, intermediary analysis made available by the contractor cannot be used by the contracting authority without the written consent of the contractor, unless the contract explicitly provides for it to be treated as a self-contained result.

II.10.3 Licensing of pre-existing rights

The Union shall not acquire ownership of the pre-existing rights.

The contractor shall license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the Union which may use the pre-existing right as foreseen in Article I.8.1. All the pre-existing rights shall be licensed to the Union from the moment the results were delivered and accepted by the contracting authority.

The licensing of pre-existing rights to the Union under this contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

II.10.4 Modes of exploitation

The Union shall acquire ownership of each of the results produced as an outcome of this contract which may be used for any of the following purposes:

- (a) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
- (b) storage of the original and copies made in accordance with this contract;
- (c) archiving in line with the document management rules applicable to the contracting authority.

II.10.5 Identification and evidence of granting of pre-existing rights and rights of third parties

When delivering the results, the contractor shall warrant that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the contracting authority. This does not concern the moral rights of natural persons.

The contractor shall establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this contract or parts thereof. This list shall be provided no later than the date of delivery of the final results.

In the result the contractor shall clearly point out all quotations of existing textual works. The complete reference should include as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified.

Upon request by the contracting authority, the contractor shall provide evidence of ownership of or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the Union.

This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

The evidence shall include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the results were created by its personnel;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities in case it is found that it does not hold the necessary rights, regardless of when and by whom this fact was revealed.

The contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final results.

II.10.6 Creators

By delivering the results the contractor warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the contractor to the contracting authority. The contractor shall obtain the consent of creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.

II.10.7 Persons appearing in photographs or films

If natural, recognisable persons appear in a result or their voice is recorded the contractor shall submit a statement of these persons (or of the persons exercising parental authority in case of minors) where they give their permission for the described use of their image or voice on request by the contracting authority. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

II.10.8 Contractor's copyright for pre-existing rights

When the contractor retains pre-existing rights on parts of the results, reference shall be inserted to that effect when the result is used as set out in Article I.8.1 with the following disclaimer: © - year – European Union. All rights reserved. Certain parts are licensed under conditions to the EU.

II.10.9 Visibility of Union funding and disclaimer

When making use of the results, the contractor shall declare that they have been produced within a contract with the Union and that the opinions expressed are those of the contractor only and do not represent the contracting authority's official position. The contracting authority may waive this obligation in writing.

ARTICLE II.11 – FORCE MAJEURE

II.11.1 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the contract, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.

II.11.2 A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

II.11.3 The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

II.11.4 The parties shall take all the necessary measures to limit any damage due to force majeure.

ARTICLE II.12 – LIQUIDATED DAMAGES

The contracting authority may impose liquidated damages should the contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.

Should the contractor fail to perform its contractual obligations within the time-limits set by the contract, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the contract, the contracting authority may impose liquidated damages for each and every calendar day of delay according to the following formula:

$$0.3 \times (V/d)$$

V is the amount specified in Article I.3.1;

d is the duration specified in Article I.2.3 expressed in calendar days.

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification.

In the absence of a reaction on its part or of written withdrawal by the contracting authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties 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 incurred due to failure to fulfil obligations which may be reasonably anticipated.

ARTICLE II.13 – SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.13.1 Suspension by the contractor

The contractor may suspend the performance of the contract or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The contractor shall inform the contracting authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the contract.

Once the circumstances allow resuming performance, the contractor shall inform the contracting authority immediately, unless the contracting authority has already terminated the contract.

II.13.2 Suspension by the contracting authority

The contracting authority may suspend the performance of the contract or any part thereof:

- (a) if the contract award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud;
 - (b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.
- Suspension shall take effect on the day the contractor receives formal notification, or at a later date provided in the notification. The contracting authority shall give notice as soon as possible to the contractor to resume the service suspended or inform the contractor that it is proceeding with the termination of the contract. The contractor shall not be entitled to claim compensation on account of suspension of the contract or of part thereof.

ARTICLE II.14 – TERMINATION OF THE CONTRACT

II.14.1 Grounds for termination

The contracting authority may terminate the contract in the following circumstances:

- (a) if a change to the contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the contract substantially or calls into question the decision to award the contract;
- (b) if 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 contracting authority, taking into account Article II.8.2;
- (c) if the contractor does not perform the contract as established in the tender specifications or fails to fulfil another substantial contractual obligation;
- (d) in the event of force majeure notified in accordance with Article II.11 or if the performance of the contract has been suspended by the contractor as a result of force majeure, notified in accordance with Article II.13, where either resuming performance is impossible or the modifications to the contract might call into question the decision awarding the contract or result in unequal treatment of tenderers;
- (e) if the contractor is declared bankrupt, is being wound up, is having its 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;
- (f) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (g) if the contractor is not in compliance with its 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 applicable law of this contract or those of the country where the contract is to be performed;

- (h) if the contracting authority has evidence that the contractor or natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- (i) if the contracting authority has evidence that the contractor or natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the contract, including in the event of submission of false information;
- (j) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the contract.

II.14.2 Procedure for termination

When the contracting authority intends to terminate the contract it shall formally notify the contractor of its intention specifying the grounds thereof. The contracting authority shall invite the contractor to make any observations and, in the case of point (c) of Article II.14.1, to inform the contracting authority about the measures taken to continue the fulfilment of its contractual obligations, within 30 days from receipt of the notification.

If the contracting authority does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In any case of termination the contracting authority shall formally notify the contractor about its decision to terminate the contract. In the cases referred to in points (a), (b), (c), (e), (g) and (j) of Article II.14.1 the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (h), and (i) of Article II.14.1 the termination shall take effect on the day following the date on which notification of termination is received by the contractor.

II.14.3 Effects of termination

In the event of termination, the contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The contractor shall have 60 days from the date on which termination takes effect to draw up the documents required by the special conditions for the tasks already executed on the date of termination and produce an invoice if necessary. The contracting authority may recover any amounts paid under the contract.

The contracting authority may claim compensation for any damage suffered in the event of termination.

On termination the contracting authority may engage any other contractor to execute or complete the services. The contracting authority shall be entitled to claim from the contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the contract.

ARTICLE II.15 – REPORTING AND PAYMENTS

II.15.1 Date of payment

Payments shall be deemed to be effected on the date when they are debited to the contracting authority's account.

II.15.2 Currency

The contract shall be in euros.

Payments shall be executed in euros or in the local currency as provided for in Article I.5.

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the *Official Journal of the European Union* or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the contracting authority.

II.15.3 Costs of transfer

The costs of the transfer shall be borne in the following way:

- (a) costs of dispatch charged by the bank of the contracting authority shall be borne by the contracting authority,
- (b) cost of receipt charged by the bank of the contractor shall be borne by the contractor,
- (c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

II.15.4 Invoices and Value Added Tax

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the contract reference.

Invoices shall indicate the place of taxation of the contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

The contracting authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

The contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the contract are exempt from taxes and duties, including VAT exemption.

II.15.5 Pre-financing and performance guarantees

Pre-financing guarantees shall remain in force until the pre-financing is cleared against interim payments or payment of the balance and, in case the latter takes the form of a debit note, three months after the debit note is notified to the contractor. The contracting authority shall release the guarantee within the following month.

Performance guarantees shall cover performance of the service in accordance with the terms set out in the tender specifications until its final acceptance by the contracting authority. The amount of a performance guarantee shall not exceed the total price of the contract. The guarantee shall provide that it remains in force until final acceptance. The contracting authority shall release the guarantee within a month following the date of final acceptance.

Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfill the following conditions:

- (a) the financial guarantee is provided by a bank or an approved financial institution or, at the request of the contractor and agreement by the contracting authority, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

The cost of providing such guarantee shall be borne by the contractor.

II.15.6 Interim payments and payment of the balance

The contractor shall submit an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in Article I.4 or in the tender specifications.

The contractor shall submit an invoice for payment of the balance within 60 days following the end of the period referred to in Article I.2.3, accompanied by a final progress report or any other documents provided for in Article I.4 or in the tender specifications.

Upon receipt, the contracting authority shall pay the amount due as interim or final payment within the periods specified in Article I.4, provided the invoice and documents have been approved and without prejudice to Article II.15.7. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

II.15.7 Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.4 at any time by notifying the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the contract, or because the appropriate documents have not been produced.

The contracting authority shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the contracting authority. The remaining payment period shall start to run again from the date on which the requested information or revised documents

are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the contracting authority reserves the right to terminate the contract in accordance with Article II.14.1(c).

II.15.8. Interest on late payment

On expiry of the payment periods specified in Article I.4, and without prejudice to Article II.15.7, the contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate), plus eight points. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the *Official Journal of the European Union*.

The suspension of the payment periods in accordance with Article II.15.7 may not be considered as a late payment.

Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article II.15.1.

However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the contractor only upon request submitted within two months of receiving late payment.

ARTICLE II.16 - REIMBURSEMENTS

II.16.1 Where provided by the special conditions or by the tender specifications, the contracting authority shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets, or failing that, on production of copies or scanned originals, or on the basis of flat rates.

II.16.2 Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

II.16.3 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;

In addition, travel outside Union territory shall be reimbursed provided the contracting authority has given its prior written consent.

II.16.4 Subsistence expenses shall be reimbursed on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance shall be payable;
- (b) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;
- (d) daily subsistence allowance shall be reimbursed at the flat rates specified in Article I.3;
- (e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.3.

II.16.5 The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the contracting authority has given prior written authorisation.

II.16.6 Conversion between the euro and another currency shall be made as specified in Article II.15.2.

ARTICLE II.17 – RECOVERY

II.17.1 If an amount is to be recovered under the terms of the contract, the contractor shall repay the contracting authority the amount in question according to the terms and by the date specified in the debit note.

II.17.2 If the obligation to pay the amount due is not honoured by the date set by the contracting authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.15.8. Interest on late payments shall cover the period from the day following the due date for payment, up to and including the date when the contracting authority receives the full payment of the amount owed.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

II.17.3 If payment has not been made by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community or by calling in the financial guarantee, where provided for in Article I.4.

ARTICLE II.18 – CHECKS AND AUDITS

II.18.1 The contracting authority and the European Anti-Fraud Office may check or have an audit on the performance of the contract. It may be carried out either directly by their own staff or by any other outside body authorised to do so on their behalf.

Such checks and audits may be initiated during the performance of the contract and during a period of five years which starts running from the date of the payment of the balance.

The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits shall be carried out on a confidential basis.

II.18.2 The contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the date of payment of the balance.

II.18.3 The contractor shall allow the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

II.18.4 On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the contractor, which shall have 30 days following the date of receipt to submit observations. The final report shall be sent to the contractor within 60 days following the expiry of that deadline.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made and may take any other measure which it considers necessary.

II.18.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EC) No 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigation conducted by the European Anti-Fraud Office (OLAF), the OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the contracting authority.

II.18.6 The Court of Auditors shall have the same rights as the contracting authority, notably right of access, for the purpose of checks and audits.

Annex I

Tender Specifications (Invitation to Tender No [complete] of [insert date])

Annex II

Contractor's Tender (No [complete] of [insert date])

ANNEX 5

Model for cover page for studies
Template on Intranet