



EUROPEAN COMMISSION
Internal Market and Services DG

Planning, administrative support and communication

Brussels,

LETTER OF INVITATION TO TENDER

Dear Sir/Madam,

Subject: Open call for tenders n° **MARKT/2006/15/F**

Contract Notice in the Official Journal of the European Union 2006/S74-076808 of 15.04.2006

Proportionality between Ownership and Control in EU listed companies: External Study.

Ref.: Your Request for tender documents dated [date]

I enclose the call for tenders relating to the above-mentioned contract.

If you are interested in the possibility of providing services with regard to the present invitation, you are hereby invited to submit a tender in triplicate in one of the official languages of the European Union, following the indications and procedures laid down in this Invitation to Tender, with the Specifications and with all the related annexes, including the Terms of Reference.

Tenders must be:

- either sent by registered post or by private courier service, not later than **29/05/2006**, the postmark, the date of dispatch or the date of the receipt being taken as a proof, to the following address:

European Commission
Internal Market and Services DG - Budget
Office: C107, 8/74
B - 1049 Brussels

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium.
Telephone: direct line (32-2) 295 40 31. Fax: (32-2) 299 30 88.

E-mail: ec-intmarket-contracts@cec.eu.int

Tender from: [Name of tenderer]

- or delivered by hand (by the tenderer in person or by an authorised representative) to the following address:

European Commission
Internal Market and Services DG - Budget
Office: C107, 8/74
1, rue de Genève
B - 1140 Brussels (Evere)

not later than 16.00 on **29/05/2006**. 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.

Tenders must be placed inside two sealed envelopes. The inner envelope, addressed to the department indicated in the invitation to tender, should be marked as follows: **"Call for tender no. MARKT/2006/15/F - Not to be opened by the Mail Department"**. If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

The inner envelope must also contain two sealed envelopes, one containing the technical specifications and the other the financial bid. Each of these envelopes must clearly indicate the content ("Technical" and "Financial").

The specifications and the draft contract are attached. The specifications list all the documents that must be produced in order to tender, including supporting evidence of economic, financial, technical and professional capacity.

Tenders must be:

- signed by the tenderer or his duly authorised representative;
- perfectly legible so that there can be no doubt as to words and figures;
- drawn up using the model reply forms in the specifications (Annexes III and IV).

Period of validity of the tender, during which the tenderer may not modify the terms of his tender in any respect: 9 months after the deadline for submission of tenders.

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

Tenders will be opened in public session at **10.00 h** on **06/06/2006**, at office 6/93, avenue de Cortenbergh 100, B-1000 Brussels. One person representing the tenderer may be present at the opening.

Tender from: [Name of tenderer]

Contacts between the contracting department 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 department 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 fax number (+32)2.299.30.88 or e-mail address ec-intmarket-contracts@cec.eu.int. Such requests for clarification, together with the responses, will be published by the Commission under the heading corresponding to this call for tenders, at: http://europa.eu.int/comm/dgs/internal_market/calls.htm.

Requests for additional information received less than five working days before the closing date for submission of tenders will not be processed (*for practical reasons*).

- * 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.

This information will be sent simultaneously to tenderers who have requested the specifications.

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

Please note that this invitation to tender is subject to a suspensive clause since related funds are not yet available at the date of dispatch of this letter (contract to be financed under funds to be committed during budgetary year 2006).

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.

Up to the point of signature, the contracting department may either withdraw from the contract or cancel the procurement procedure, without the candidates or tenderers being entitled to claim any compensation. This decision must be substantiated and the candidates or tenderers notified.

You will be informed whether or not your tender has been accepted.

The follow up of your response to the invitation to tender will require the recording and further processing of personal data (name, address, CV, for example). This data will be processed in accordance with the requirements of Regulation (CE) 45/2001 on the protection of individuals with regard to the processing of personal data by

Tender from: [Name of tenderer]

Community institutions and bodies and on the free movement of such data. Except if mentioned otherwise, replies to questions and personal data requested are necessary for the purpose of assessing your tender according to the specifications of the invitation to tender and will only be processed by the European Commission for this purpose. You may, upon request, obtain the communication of your personal data and rectify any inaccurate or incomplete personal data. Should you have any queries concerning the processing of your personal data, please address them to the European Commission. As regards the processing of your personal data, you have a right to recourse at any time to the European Data Protection Supervisor.

I look forward to receiving your tender in response to these tender documents.

Yours sincerely,

Hendrik Post
Director Resources

Enclosure: Specifications and annexes

Tender from: [Name of tenderer]

PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED
COMPANIES: EXTERNAL STUDY

**INVITATION TO TENDER
MARKT/2006/15/F**

Tender from: [Name of tenderer]

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Tender from: [Name of tenderer]

SPECIFICATIONS

Invitation to tender n° MARKT/2006/15/F

PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES: EXTERNAL STUDY.

1. OBJECT OF THE MARKET

The objective of the study is:

a) By using dual-class stock, non-voting stock, non voting ownership certificates, and similar devices, ownership (i. e. cash-flow) rights can be sold almost independently of control (i. e. voting) rights. The first objective of the study is to identify and describe the various devices which allow companies¹ across the EU not to apply the one share – one vote principle. These devices will have to be examined on the basis of a sample of EU listed companies. Furthermore the study shall describe with a view to these companies other existing deviations from the proportionate allocation of ownership and control (hereafter "proportionality principle"), i.e. pyramid structures and cross-shareholdings. Moreover, the study shall identify the reasons for such deviations from the proportionality principle. The sample to be examined shall be made of listed companies belonging to at least 16 EU Member States according to the modalities described below in the Terms of Reference, Methodology section.

b) The Study shall include an examination as to whether and to what extent the national regulatory framework has an impact on the functioning of such instruments that allow deviating from the proportionality principle.

c) The Study shall provide an analysis of the economic impact of such deviations from the proportionality principle. Such an analysis should examine whether the presence of such deviations has an impact on the economic performance of the companies that make recourse to them and whether it has an impact on the willingness of investors to acquire shares in companies that deviate from the proportionality principles.

d) The Study will have to provide a comparison of deviations from the proportionality principle outside the EU.

Eligibility

This invitation to tender is open to tenderers from the Member States of the European Union and the European Economic Area, as well as States covered by the Public Procurement Agreement concluded within the World Trade Organisation, in accordance with the principle of reciprocity.

¹ By listed companies it should be intended companies admitted to trading on a regulated market

Tender from: [Name of tenderer]

2. COSTS

Tenderers themselves will bear the costs of drawing up their tenders and the Commission will not be liable to pay any compensation if a tender is rejected or if it decides not to select any tender

3. LOTS

Not applicable to the present invitation to tender.

4. SUB-CONTRACTING

- Sub-contracting is permitted, provided that the value of the services to be sub-contracted does not exceed 50% of the value of the contract.
- All subcontracting must be approved by the Contracting Authority, either by accepting the Contractor's offer, or, if proposed by the Contractor after contract signature, by prior written approval, being requested and granted.
- The tenderer must indicate clearly in their methodology, which parts of the work will be sub-contracted, and the identity of all subcontractors. Full details of such subcontractors must also be provided in Annex III.

5. DOCUMENTATION AVAILABLE TO TENDERERS

At the beginning of the study, the Commission will supply documents to tenderers. Such documents will concern existing relevant studies (for instance the comparative study published in March 2005 by Deminor Ratings) as well any other relevant documents. The purpose of these studies is to make it possible to obtain the highest possible quality from the study.

6. VARIANTS

Tenderers may not submit tenders for only part of the services required. Variants are not allowed.

7. VOLUME OF THE MARKET

The estimated maximum amount is EUR 450,000.

8. PRICE

The price must be expressed in euro. For information purposes, tenderers will provide a breakdown of costs following the table enclosed in Annex IV of the enclosed letter of submission of tender:

1) Overall price:

Tenders will specify a fixed price for the various components of the cost of the study. That price should be the final price and will include all costs, i.e. fees, meetings, administrative expenses, overheads, and travel and subsistence expenses. No additional refund request in respect of the above mentioned costs will be accepted.

Different price options will not be accepted and will entail the refusal of the offer.

Tender from: [Name of tenderer]

2) VAT

As the Commission is exempt from all taxes and dues pursuant to the Protocol on the privileges and immunities of the European Communities annexed to the Treaty, signed in Brussels on 8 April 1965, establishing a Single Council and a Single Commission of the European Communities, value added tax (VAT) should not be included in the price tendered. The amount of VAT should be shown separately. Potential tenderers are informed that the Commission will take no account of VAT in examining the prices indicated in the various tenders.

9. PAYMENT MODALITIES

Payments will be made following the provisions of the draft contract.

10. CONTRACTUAL CONDITIONS AND GUARANTEES

All the conditions applicable as well as the possible guarantees requested are specified in the draft contract.

11. SELECTION OF CONTRACTOR AND AWARD OF A CONTRACT

12.1. CASES FOR EXCLUSION

In the case of consortia, the declaration and the request for evidence concerning the cases for exclusion will be applicable to all the members of the consortium.

- (1) Tenderers shall be excluded from participation in a procurement procedure if:
 - (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;
 - (c) they have been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
 - (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Contracting Authority or those of the country where the contract is to be performed;
 - (e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

Tender from: [Name of tenderer]

- (f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.
- (2) Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:
 - (a) are subject to a conflict of interest;
 - (b) are guilty of misrepresentation in supplying the information required by the Contracting Authority as a condition of participation in the tender procedure or fail to supply this information.
- (3) By completing and signing the form in Annex III, tenderers certify that they are not in one of the situations listed above.
- (4) Administrative or financial penalties may be imposed by the Contracting Authority on tenderers who are in one of the cases of exclusion provided for above, in accordance with Articles 93, 94 & 96 of the Financial Regulation (Council Regulation 1605/2002 of 25/6/02) and Article 133 of the Implementing Regulation (Commission Regulation 2342/2002 of 23/12/02).

12.2. SELECTION CRITERIA

The evaluation will be made in two stages: selection and award. Only the offers which fulfil the criteria detailed below will be selected for the award stage.

In the case of consortia, the selection criteria will be applicable to all the members of the consortium. The same principle will also be applied in the case that there are sub-contractors, in respect of the part of the work that they will perform.

The tenderer's capacity will be assessed on the basis of the following:

12.2.1. Economic and financial capacity

Tenderers will provide sufficient information to satisfy the Commission of their financial standing and more particularly but without prejudice to the generality of the foregoing that they and any subcontractors do have the necessary resources and financial means to carry out the work that is subject of the tender.

The Commission shall have sole discretion to judge the adequacy of tenderers financial standing and where it considers this insufficient the right to reject any offer, to accept an offer subject to any advance or stage payments being deferred until the work has been completed or to ask the tenderers to provide a guarantee or performance guarantee as referred to elsewhere. Submission of a tender implies acceptance that the Commission's decision will be final and that it will not enter into negotiations with tenderers on this subject.

Tender from: [Name of tenderer]

12.2.2. Technical capacity

The tenderer must be able to demonstrate **that the proposed project team** (on the whole) possess the following qualifications which are needed to perform this analysis to a satisfactory level:

1. a strong record of original, independent and high-quality research in areas of company law and corporate governance, as demonstrated by publications or previous research or other activities carried out;
2. capacity to provide the necessary comparative analysis in respect to listed companies belonging to different legal traditions.

All the criteria must be verifiable.

The capacity of tenderers and any subcontractors or correspondents will be assessed on the basis of the evidence detailed in Section 13.

12.3. AWARD CRITERIA

The contract will be awarded in favour of the economically most advantageous offer on the basis of the following award criteria:

Technical criteria:

- the breadth (number of listed companies as of the first "tired" of the indicative methodology provided in the Terms of Reference, below; number of smaller listed company as of the second "tired" of the indicative methodology; number of non-EU countries as of the third "tired" of the indicative methodology) and depth (in terms of quality and detail) of information to be analysed in the context of the study (weighting: 50 points out of 100);
- the soundness of the proposed methodology for undertaking the different stages of the analysis, especially as regards proposed methods to obtain quantitative information from institutional investors as of the fifth "tired" of the indicative methodology, and as regards the literature surveys as of the fourth "tired" of the indicative methodology (50 points);

An equal weight shall apply to each of the above criteria for the purposes of identifying the most economically advantageous tender.

The evaluation committee will consider further only those tenders that have obtained at least a technical quality score of 60 points, rated on a scale of 1 to 100.

Financial criterion

- the total price

The evaluation committee will then proceed with the financial comparison of the tenders retained for further consideration according to the following procedure.

Tender from: [Name of tenderer]

The retained tender with the lowest total price receives a financial score equal to the maximum score received for the technical quality award criteria. The other retained tenders are awarded points by means of the following formula:

Financial score = (lowest total price/total price of the tender being considered) x (maximum score received for the technical quality award criteria).

The most economically advantageous tender is established by means of the computation of a final score according to the following formula: Final score = (Technical quality score) + (Financial Score).

13. CONTENTS OF TENDERS

13.1. GENERAL REMARKS

- Tenders may be drafted in any official language of the European Union.
- Tenderers must complete correctly Annexes III and IV to the Specifications, indicating all the information requested. In addition, tenders must include at least all the documents detailed in this Section 13.
- Tenders submitted by consortia will:
 - show clearly the role, qualifications and experience of each of the members of the proposed consortium;
 - will include a letter signed by the authorised representatives of each of the other parties designating the company and/or the person who will represent the consortium for the signature of the contract and for all contacts with the Commission during the execution of the tasks.
- Other information to be included in the tender:
 - supporting evidence which is normally acceptable under their own law to demonstrate their registration at their business address; supporting evidence is not necessary for sub-Contractors;
 - where the tenderer is a natural person: a copy of the identity card, passport, driving license or any other document which can be used for officially for identification purposes.

13.2. ACCESS TO THE MARKET

Tenders will include the following documents

- Declaration of absence of conflict of interests;
- proof that the tenderer is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation or express authorisation;
- entry in the VAT register (i.e. VAT registration number) or official proof of exemption.

Tender from: [Name of tenderer]

13.3. EXCLUSION CRITERIA

	Documents to be provided
Evidence to demonstrate that tenderer is not in any of the situations detailed in points (a), (b), and (e), of paragraph (1) of Section 12.1.	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.
Evidence to demonstrate that tenderer is not in any of the situations detailed in point (d) of paragraph (1) of Section 12.1.	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.
	Where any document described 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.

13.4. SELECTION CRITERIA

	Documents to be provided
Economic and financial capacity (Section 12.2.1.)	Proof of economic and financial capacity may be furnished by one or more of the following documents: 1) In the case of legal persons, and in respect of each of them when more than one: <ul style="list-style-type: none"> ➤ appropriate statements from banks or evidence of professional risk indemnity insurance; ➤ the presentation of balance sheets or extracts from balance sheets for at least the last two years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established; ➤ a statement of overall turnover and turnover concerning the services covered by the contract during a period which may be no

Tender from: [Name of tenderer]

	more than the last three financial years. 2) In the case of natural persons: Appropriate statements from banks or evidence of professional risk indemnity insurance.
Technical capacity (Section 12.2.2.)	All the following evidence will be furnished: 1) A detailed presentation of the tenderer namely focused on its experience concerning the subject of the present invitation to tender; 2) a detailed curriculum vitae of each of the persons who participate in the conception and elaboration of the study specifying the different diplomas obtained (copies of which may be requested by the Commission where appropriate) and the expertise and experience relevant to the subject matter of the present invitation to tender; 3) a description of the technical equipment, if any, to be employed by the tenderer for performing the contract; 4) a description of the measures employed to ensure the quality of services, and a description of the tenderer's study and research facilities; 5) the list and a brief description (or a copy) of previous studies carried out on the same or a similar subject.

13.5. AWARD CRITERIA

For the appraisal of tenders on the basis of the Award Criteria set out in Section 12.3., tenders shall include a work programme containing a clear and detailed description of the following elements:

1. a detailed methodology;
2. the manner in which the research will be conducted;
3. the technical means to be used as well as of the resources in terms of time and personnel to be devoted to the various elements of the work;
4. the means by which the tenderer intends to ensure full and consistent coverage of all the aspects affecting the different costs of the current legal capital regime versus an alternative regime;
5. any other elements considered useful by the tenderer.

Tenderers will also have to indicate how they envisage exercising the control over subcontractor(s), if any.

– AWARD OF A CONTRACT

- The Commission will award the contract to the tenderer submitting the most advantageous offer, on the basis of the requirements set out in these Specifications.

Tender from: [Name of tenderer]

- The Contracting Authority shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be so liable if it decides not to award the Contract.
- The corresponding contract will be based on the draft contract annexed to the present invitation to tender, completed on the basis of the data detailed in the selected tender.
- The Commission reserves the right not to select a contractor if the price of the offers proposed is in excess of the budget allocated to this project or if the tenders received are considered inappropriate and/or unacceptable by the Evaluation Committee.

– **DURATION**

The contract to be awarded will be established on the basis of the enclosed draft. The duration of the tasks shall not exceed 8 months from the date of signature of the contract by the last contracting party. Work will follow the timetable detailed in the Terms of Reference.

– **PLACE OF WORK**

The tasks are to be performed at the premises designated by the Contractor. A maximum of 6 co-ordination meetings with the Commission will be held in Brussels. These will include:

- a kick-off meeting within two weeks from the date of signature of the contract by the last contracting party;
- three meetings to discuss the two provisional reports to be produced by the contractor and the draft final study (after 1, 4 and 7 months);
- a final meeting with the Commission's services to illustrate the final results of the study;
- should a public hearing be organised by the Commission, then the contractor would be requested to be present to illustrate the main findings of the study to the public.

– **ANNEXES**

The following documents are annexed to these Specifications and form an integral part of them:

Annex I.: Terms of Reference

Annex II: Draft contract (for information)

Annex III: Letter of submission of tender (to be filled in and signed by the tenderer)

Annex IV: Financial offer (to be filled in and signed by the tenderer)

Tender from: [Name of tenderer]

Annex I

TERMS OF REFERENCE

Invitation to tender n° MARKT/2006/15/F

Proportionality between Ownership and Control in listed companies: External Study.

1. AWARDING AUTHORITY

European Commission
Directorate General for Internal Market and Services
B - 1049 BRUSSELS
BELGIUM
Tel. (+32)-2.295.40.31; Fax: (+32)-2.299.30.88
E-mail: ec-intmarket-contracts@cec.eu.int

2. BACKGROUND INFORMATION

According to the Report of the High Level Group of Company Law Experts of 2002², proportionality between ultimate economic risk and control means that share capital which has an unlimited right to participate in the profits of the company or in the residue on liquidation, and only such share capital, should normally carry control rights, in proportion to the risk carried. The holders of these rights to the residual profits and assets of the company are best equipped to decide on the affairs of the company as the ultimate effects of their decisions will be borne by them.

In its Action Plan on Corporate Governance and Company Law of 21 May 2003³ the Commission considered that, although there was a strong medium to long term case for aiming to establish a real shareholder democracy in the EU, nevertheless any initiative in this direction required prior study, and proposed that this study be carried out in the Medium Term (i.e. 2006-2008) in order to serve as a basis for possible further legislative action thereafter. This conclusion was endorsed by the Council and by the European Parliament in the context of the Action Plan as a whole. In October 2005, Commissioner McCreevy emphasized publicly the intention of the Commission to address the subject at EU level.

In addition to the necessity of launching a broad study on pros and cons of the strict observance of the one share-one vote principle, the Commission in its 2003 Company Law and Corporate Governance Action Plan identified the issue of abusive pyramids as

² Report of the High Level Group of Company Law Experts on Issues related to Takeover Bids, p. 3, Brussels, 10 January 2002. http://europa.eu.int/comm/internal_market/company/docs/takeoverbids/2002-01-hlg-report_en.pdf

³ Communication from the Commission to the Council and the European Parliament, Modernising Company Law and Enhancing Corporate Governance in the European Union – A plan to Move Forward, Brussels, 21 May 2003, COM (2003) 284 final, http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2003/com2003_0284en01.pdf

Tender from: [Name of tenderer]

deserving particular attention in the context of existing deviations from the principle of proportionality between capital and control. Already in its first report on issues related to takeover bids of January 2002, the High Level Group of Company Experts had underlined the risks inherent in pyramidal structures whereby controlling shareholders, through chains of holding companies based on the extensive recourse to the financial contribution from minority shareholders, manage to control companies, including listed companies, with a minimum financial contribution.

In both cases the problem is to understand whether deviations from the one share-one vote principle are compatible with the Treaty Articles (56-60) on the free movement of capital as they might hinder cross-border direct and portfolio investment and thereby the proper functioning of the Internal Market.

The Commission already addressed this subject in a specific case concerning “Special rights” - also known as “golden shares” – which are used by governments to maintain control in privatized companies by granting themselves rights that go beyond those associated with normal shareholding. They enable governments to block takeovers, limit voting rights, and veto management decisions. The Commission has taken several steps to make sure that Member States comply with the Treaty rules in this area. The report published by the Commission at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/998&format=HTML&aged=0&language=EN&guiLanguage=fr> provides a comprehensive overview of the situation in the 25 Member States based on a survey carried out in the course of 2004.

3. CONTRACT OBJECTIVES AND EXPECTED RESULTS

- **OVERALL OBJECTIVES**

The main objective of the study is to identify existing deviations from the proportionality principle across EU listed companies; to analyse the relevant regulatory framework at Member State level; to evaluate their economic significance and whether such deviations have an impact on EU financial investors.

- **SPECIFIC OBJECTIVES**

The specific objectives to be pursued in order to ensure the achievement of the main objective are the following:

a) By using dual-class stock, non-voting stock, non voting ownership certificates, and similar devices, ownership (i. e. cash-flow) rights can be sold almost independently of control (i. e. voting) rights. The first objective of the study is to identify and describe the various devices which allow companies⁴ across the EU not to apply the one share –one vote principle. These devices will have to be examined on the basis of a sample of EU listed companies. Furthermore the study shall describe with a view to these companies other existing deviations from the proportionate allocation of ownership and control (hereafter "proportionality principle"), i.e. pyramid structures and cross-shareholdings. Moreover, the study shall identify the reasons for such deviations from the proportionality principle. The sample to be examined shall be made of listed companies belonging to at least 16 EU

⁴ By listed companies it should be intended companies admitted to trading on a regulated market

Tender from: [Name of tenderer]

Member States according to the modalities described below in the Terms of Reference, Methodology section.

b) The Study shall include an examination as to whether and to what extent the national regulatory framework has an impact on the functioning of such instruments that allow deviating from the proportionality principle.

c) The Study shall provide an analysis of the economic impact of such deviations from the proportionality principle. Such an analysis should examine whether the presence of such deviations has an impact on the economic performance of the companies that make recourse to them and whether it has an impact on the willingness of investors to acquire shares in companies that deviate from the proportionality principles.

d) The Study will have to provide a comparison of deviations from the proportionality principle outside the EU.

- **RESULTS TO BE ACHIEVED BY THE CONTRACTOR**

All the following results are expected:

A. List of deviations from the proportionality principle

The Study shall provide a list of deviations from the proportionality principle across the EU. Such a list shall be made with reference to the companies considered by the study (see Methodology section below). Where present, company pyramids and cross-shareholdings shall be included, as well as deviations from the proportionality principle allowed by the takeover directive.

The final list of such deviations will be part of the first progress report (see below, section 5.1, Progress Report/Interim Report, and section 6, specific timetable). This section of the study shall be supported by existing theoretical and empirical papers describing the objectives and function of such deviations from the proportionality principle.

B. Description of the regulatory framework (company law, stock exchange regulation etc) in the EU Member States included in the sample concerning financial instruments with different control rights.

Member States take different approaches to regulating the financing of firms. In some Member States company regulation is restrictive while in others companies are free to issue a wide spectrum of financial instruments. The Study shall examine and present a complete overview of the regulatory situation in this respect concerning the Member States included in the sample (see Methodology section below, first "tired"). Such overview will allow to evaluate the impact of a possible initiative from the Commission following the results of the study. To that end, the study shall describe the regulatory framework (company law, stock

Tender from: [Name of tenderer]

exchange regulation etc) in the same sample of at least 16 EU Member States concerning the various financial instruments⁵ mentioned in the Specific objectives under point a) above;

C. Estimations of the impact of deviations from the proportionality principle on companies, investors and financial markets

The Study shall provide a "demand side" estimation of the impact of such deviations on the willingness of institutional investors to acquire shares in companies that deviate from the proportionality principle. This shall be done by submitting questionnaires to the main institutional investors that have an international portfolio of shares issued by EU listed companies. Such questionnaires shall obtain the agreement of the Commission before being distributed.

The Study shall review the existing research and literature as to whether there are any indications that deviations from the proportionality principle are statistically relevant related to the performance of companies.

D. Comparison with the situation in some key jurisdictions outside the EU

Deviations of the proportionality principle are not strictly an issue for the EU, they also occur in different shapes and forms in other jurisdictions of major economic importance such as the USA and Japan. The Study shall review the existing research and literature available at least on the situation in the USA. In order to complete the picture, the Study should also evaluate the situation in at least one of the jurisdictions which are known for their open corporate structures and fully modernised company law, such as Australia or New Zealand.

• Methodology

The tenderers shall describe in their offers a methodology which delivers these expected results. Tender documents shall clearly identify the principal sources of information and data fields to be analysed for the purposes of the study.

In particular, tenderers shall identify:

- a range of listed companies to be examined by the study. Such range shall include the first 20 listed companies by capitalization as of 31 December 2005 or alternatively those listed companies that made up 40% of the total stock market capitalisation as of 31 December 2005 belonging at least to the 16 following EU Member States: Italy, Spain, Greece, Germany, France, the Netherlands, the United Kingdom, Belgium, Ireland, Denmark, Sweden, Finland, Poland, Hungary, Luxembourg, Estonia. Such a selection would ensure a highly representative sample of EU Member States according to population, legal system, and geographical representativeness;

⁵ The reference is to financial instruments and not just to shares as deviations from the proportionality principle are also such instruments as depositary receipts, transferring the voting right of the underlying share to a foundation.

Tender from: [Name of tenderer]

- a range of at least 2 smaller, recently-listed companies for every EU Member State belonging to the sample;
- as key jurisdiction outside the EU at least the USA, and at least one of the jurisdictions which are known for their open corporate structures mentioned in section D above;
- the relevant literature available to cover the subjects mentioned above in sections A to D;
- how to obtain quantitative information from institutional investors as referred to above in section B.

5. TECHNICAL REPORTS AND DELIVERABLES

- Each report will be submitted in 3 copies, in paper version and in electronic format compatible with Word in English and will be accompanied by an executive summary not exceeding 3 pages, in the same language and format. An annex will describe in detail the methodology followed (including assumptions used) and the model used to calculate the estimates.
- Where information is included in the report that is not publicly available but is provided by other institutions, associations or firms, the accuracy of this information, as expressed in the report, will have to be approved by those who have provided it to the Contractor.

5.1. PROGRESS REPORT / INTERIM REPORT

The progress report shall be submitted within 1 month after the date of signature of the contract by the last of the contracting parties. It shall contain:

- a list of the data sources which the contractor will use;
- a list of deviations from the proportionality principle across the EU;
- the proposed structure for the interim and final reports.

The Commission will comment on the document submitted within 15 days after the date of its reception. If the Commission does not react within this period, the progress report shall be deemed to have been approved.

The interim report shall be submitted within 4 months after the date of signature of the contract by the last of the contracting parties. It shall already contain draft tentative estimates, even if not yet entirely finalised, of the potential cost reductions and benefits identified.

The Commission will comment on the document submitted within 15 days after the date of its reception. If the Commission does not react within this period, the interim report shall be deemed to have been approved.

5.2. DRAFT FINAL STUDY / FINAL STUDY

Tender from: [Name of tenderer]

The draft final study shall be submitted within 7 months after the date of signature of the contract by the last of the contracting parties. The document shall include in addition to the above listed results:

- an executive summary
- a methodology in annex
- a list of references used and of surveys/interviews conducted

Ample recourse to annexes is encouraged so as to make the final document more readable.

The Commission will comment on the draft study submitted within 15 days after the date of its reception. If the Commission does not react within this period, the draft study shall be deemed to have been approved.

Within 8 months from the date of signature of the contract by the last of the contracting parties, the Contractor will submit the final study in the definitive form, taking full account of these observations, either by following them precisely, or by explaining clearly why not.

The Commission will accept the final study in the definitive form or comment on it within 30 days from its reception. If the Commission does not react within this period, the final study shall be deemed to have been approved.

Should the Commission still not consider the study acceptable, the Contractor will be invited to amend it until the Commission is satisfied. In this case, the corresponding liquidated damages will be applicable, following the provisions of Article II.16 of the Contract.

6. SPECIFIC TIMETABLE

Actions/Deliverables	Timetable
Signature of the contract	Reference date (Month A)
Progress report	Month A + 1 month
Commission's acceptance	Month A + 1 Month + 15days
Interim report	Month A + 4 months
Commission's acceptance	Month A + 4 months + 15 days
Draft final study	Month B [ref. date + 7 months]
Commission's comments	Month B + 15 days
Definitive version of study	Reference date + 8 months
Commission acceptance	Reference date + 8 months + 30 days

Tender from: [Name of tenderer]

Annex II

DRAFT CONTRACT

SERVICE CONTRACT

CONTRACT NUMBER -

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mr. Hendrik Post Authorising Officer by sub-delegation, Directorate General for Internal Market and Services,

of the one part,

and

[official name in full]

[*official legal form*]

[statutory registration number/identity card, passport or equivalent (natural persons)]

[official address in full]

[VAT registration number]

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

of the other part,

HAVE AGREED

the **Special Conditions** and the **General Conditions** below and the following Annexes:

Annex I – Tender Specifications (Invitation to Tender No MARKT/2006/15/F) and Monitoring

Annex II – Contractor's Tender (No [complete] of [complete])

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

Tender from: [Name of tenderer]

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

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

Tender from: [Name of tenderer]

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is a study aiming to identify existing deviations from the proportionality principle across EU listed companies; to analyse the relevant regulatory framework at MS level; to evaluate their economic significance and whether such deviations have an impact on EU financial investors.
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications and with his Tender, annexed to the Contract (Annex I and Annex II, respectively).

ARTICLE I.2 - DURATION

- I.2.1.** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2.** Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3.** The duration of the tasks shall not exceed 8 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses. In this case, liquidated damages will be applied as provided in Article II.16.

ARTICLE I.3 – CONTRACT PRICE

The maximum total amount to be paid by the Commission under the Contract shall be EUR *** covering all tasks executed.

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.

Invoices and/or payment requests will be addressed to:

Tender from: [Name of tenderer]

European Commission
Directorate General for Internal Market and Services
Budget (C107, 8/60)
B-1049 Brussels

I.4.1. Interim payment:

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

- the interim report in accordance with the instructions laid down in Annex I
- the relevant invoice

provided the interim report has been approved by the Commission.

Within 45 days of the date on which the document is approved by the Commission an interim payment corresponding to EUR *** equal to 20% of the total amount referred to in Article I.3. shall be made.

I.4.2. Payment of the balance:

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

- the final study in accordance with the instructions laid down in Annex I
- the relevant invoice

provided the final study has been approved by the Commission.

Within 45 days of the date on which the study is approved by the Commission payment of the balance corresponding to EURshall be made.

For Contractors established in Belgium, the provisions of the Contract constitute a request for VAT exemption No 450, provided the Contractor includes the following statement in his invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA” or an equivalent statement in the Dutch or German language.

For Contractors established in Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): “Operazione non imponibile ai sensi dell’articolo 72, comma 3) paragrafo 3 del D.P.R. n. 633 del 26/10/1972 come modificato da ultimo dal D.L. n. 323 del 20/06/1996 convertito in Legge n. 425 dell’8/8/1996”.

Tender from: [Name of tenderer]

ARTICLE I.5 – BANK ACCOUNT⁶

Payments shall be made to the Contractor's bank account denominated in euro⁷, identified as follows:

Name of bank: [complete]
Address of branch in full: [complete]
Exact designation of account holder: [complete]
Full account number including codes: [complete]
[IBAN/BIC code: [complete]]

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

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

Commission:

European Commission
Directorate-General for Internal Market and Services
Pierre Delsaux
Directorate Free Movement of Capital, Company Law and Corporate Governance
Unit F/2 "Company law, corporate governance and financial crime"
C107 3/32
B-1049 Brussels

Contractor:

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

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.7.1. The Contract shall be governed by the national substantive law of the Kingdom of Belgium.

⁶ In the case of consortiums, these should be the bank details of the unique bank account to which payments to the consortium will be made.

⁷ Or local currency where the receiving country does not allow transactions in EUR.

Tender from: [Name of tenderer]

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

ARTICLE I.8 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY

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

Tender from: [Name of tenderer]

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5.** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who executes the tasks assigned to him.

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

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
 - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of

Tender from: [Name of tenderer]

performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.

- II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.9.** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II.2 – LIABILITY

- II.2.1.** The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.
- II.2.2.** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.2.3.** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4.** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.
- II.2.5.** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

Tender from: [Name of tenderer]

ARTICLE II.3 - CONFLICT OF INTERESTS

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

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

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

II.3.3. The Contractor declares:

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

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

ARTICLE II.4 – PAYMENTS

II.4.1. Pre-financing:

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

Tender from: [Name of tenderer]

The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on his part.

The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the Contractor).

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

II.4.2. Interim payment:

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

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

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

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

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

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

II.4.3. Payment of the balance:

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

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

Tender from: [Name of tenderer]

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

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

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

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

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

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

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

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

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

ARTICLE II.6 – RECOVERY

Tender from: [Name of tenderer]

- II.6.1.** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.
- II.6.2.** In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- II.6.3.** The Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

ARTICLE II.7 - REIMBURSEMENTS

- II.7.1.** Where provided by the Special Conditions or by Annex I, the Commission shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.
- II.7.2.** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.7.3.** Travel expenses shall be reimbursed as follows:
- a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
 - b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
 - c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
 - d) travel outside Community territory shall be reimbursed under the general conditions stated above provided the Commission has given its prior written agreement.
- II.7.4.** Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:
- a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
 - b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;

Tender from: [Name of tenderer]

- c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.

II.7.5. The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Commission has given prior written authorisation.

ARTICLE II.8 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY

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

ARTICLE II.9 – CONFIDENTIALITY

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

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

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

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

II.10.2. Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied,

Tender from: [Name of tenderer]

the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.

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

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

ARTICLE II.11 – TAXATION

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

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

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

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

ARTICLE II.12 – FORCE MAJEURE

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

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

Tender from: [Name of tenderer]

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

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

ARTICLE II.13 – SUBCONTRACTING

II.13.1. The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.

II.13.2. Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.

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

ARTICLE II.14 – ASSIGNMENT

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

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

ARTICLE II.15 – TERMINATION BY THE COMMISSION

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

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;

Tender from: [Name of tenderer]

- (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within two months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

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

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

II.15.4. Consequences of termination:

Tender from: [Name of tenderer]

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

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

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

ARTICLE II.16 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3. per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

Tender from: [Name of tenderer]

ARTICLE II.17 – CHECKS AND AUDITS

- II.17.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance.
- II.17.2.** The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.17.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

ARTICLE II.18 – AMENDMENTS

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

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

SIGNATURES

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

For the Commission,
Hendrik POST
Authorising Officer by Sub-delegation

signature[s]: _____

signature: _____

Done at _____,
In duplicate in English.

Done at Brussels,

Tender from: [Name of tenderer]

Annex III

LETTER OF SUBMISSION OF TENDER

Dear Sirs,

You will find enclosed the tender of [name of tenderer] in response to invitation to tender MARKT/2006/15/F for a “Study on **PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN LISTED COMPANIES** .”

SECTION 1. - IDENTIFICATION

1.1. - Tenderer’s identification⁸

Tenderers will fill in the Legal Entity form that can be attained from the following internet addresses: http://europa.eu.int/comm/budget/execution/legal_entities_fr.htm or http://europa.eu.int/comm/dgs/internal_market/calls.htm. (link)

1.2. - Personal details⁹

1.2.1.- Person authorized to sign the contract on behalf of the tenderer

TITLE	Mr/Ms/Dr/other.....(delete or complete as appropriate)
NAME	Surname (in capital letters):..... Forename:.....
FUNCTION	
ADDRESS	
CONTACT DETAILS	Direct telephone:..... Direct facsimile:..... E-mail address:.....

1.2.2. - Contact person (if different from 1.)

TITLE	Mr/Ms/Dr/other.....(delete or complete as appropriate)
NAME	Surname (in capital letters):..... Forename:.....
FUNCTION	
MAILING ADDRESS	

⁸ In the case of consortia this Section must be completed for each member of the consortium.

⁹ In the case of consortia, only one person will be authorized to sign.

Tender from: [Name of tenderer]

CONTACT DETAILS	Direct telephone:..... Direct facsimile:..... E-mail address:.....
------------------------	--

<i>1.3. - Sub-contractor's details</i> ¹⁰

NAME	
ADDRESS	
CONTACT DETAILS	Telephone:..... Facsimile:..... E-mail address:.....
LEGAL FORM	
COMMERCIAL REGISTER , ETC. – REGISTRATION DETAILS	Denomination of register:..... Date of registration:..... Country of registration:..... Registration number:.....
FOR NATURAL PERSONS	Identity Card [No + expiry date]..... Or Passport or other [No + expiry date].....
VAT	Registration number:..... or Statement of exemption issued by the national VAT authority dated.....enclosed under reference..... Issued by.....
SHORT DESCRIPTION OF THE PART OF WORK SUB-CONTRACTED	

SECTION 2. - QUESTIONS RELATING TO EXCLUSION

By signing this form, I certify that the tenderer does not find himself in any of the following situations:

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

¹⁰ This section must be completed for each sub-contractor if any or if more than one

Tender from: [Name of tenderer]

Has been convicted of an offence concerning his professional conduct by a judgment which has the force of <i>res judicata</i>
Has been guilty of grave professional misconduct proven by any means which the contracting authority can justify.
Has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority or those of the country where the contract is to be performed.
Has been the subject of a judgment which has the force of <i>res judicata</i> for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests.
Following another procurement procedure or grant award procedure financed by the Community budget, has been declared to be in serious breach of contract for failure to comply with his contractual obligations

SECTION 3. - QUESTIONS RELATING TO THE SELECTION OF TENDERER

<i>3.1. - Financial capacity</i>	
	<i>Annex/Page No</i>
Material provided to prove economic and financial capacity: 1) 2)	

<i>3.2. - Technical capacity</i>	
CRITERIA	FULFILLED BY (NAME OF TEAM MEMBER)
Criterion 1 (Description)	
Criterion 2 (Description)	
	<i>Annex/Page No</i>
Other material provided to prove technical capacity: 1) 2)	

Tender from: [Name of tenderer]

SECTION 4. - BANK IDENTIFICATION

Tenderers will fill in the Bank Account form that can be attained from the following internet addresses: http://europa.eu.int/comm/budget/execution/ftiers_fr.htm or http://europa.eu.int/comm/dgs/internal_market/calls.htm. (link)

.....
(Signature of authorised representative¹¹)

Forename:.....
Name:.....
Position.....
Date:.....

¹¹ All the pages need also to be initialled by the authorised representative

Tender from: [Name of tenderer]

Annex IV

PRICE AND BREAKDOWN OF COSTS

	<i>PARTIAL AMOUNTS</i>	<i>TOTALS</i>
TOTAL PRICE OFFERED	
<i>Broken down as follows:</i>		
Man/day fees	
Total fees	
Travel and subsistence [including 6 meetings with the Commission services in Brussels]	
Administrative expenses	
Overheads	

.....
(Signature of authorised representative¹²)

Forename:.....
Name:.....
Position.....
Date:.....

¹² All the pages need also to be initialled by the authorised representative