

**TENDER FILE / TERMS OF REFERENCE**  
(Competitive bidding procedure / One-off contract)

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**Commission of a Study on the feasibility, pertinence and design of a distribution support scheme for the Eurimages Fund**

**Reference No. Eurimages 2020/33**

This tender procedure is a competitive bidding procedure. In accordance with Rules 1395 of the Secretary General of the Council of Europe on the procurement procedures of the Council of Europe<sup>1</sup>, the Organisation shall invite to tender at least three potential providers for any purchase between €2,000 (or €5,000 for intellectual services) and €150,000 tax exclusive.

**A. SCOPE OF THE TENDER PROCEDURE AND TENDER RULES**

Eurimages intends to commission a **study on the feasibility, pertinence and design of a scheme aimed at supporting the distribution, circulation and sales of feature-length fiction, animation and documentary films originating in its member States.**

This specific tender procedure aims at concluding a **one-off contract** for the provision of the following deliverables:

Expected deliverables ▼	No. of units ▼	Closing Date ▼
<b>Study reporting on the feasibility, pertinence and design of a distribution support scheme for the Eurimages Fund</b>		
Study implementation plan	1	<b>19 October 2020</b>
Draft report	1	<b>25 January 2021</b>
Final report	1	<b>19 February 2021</b>

A tender is considered valid for 120 calendar days as from the deadline for submission (see table hereafter). The selection of tenderers will be made in the light of the criteria indicated under Section E hereafter. All tenderers will be informed in writing of the outcome of the procedure.

The tenderer must be either a natural person or a legal person except consortia.

**B. MODALITIES OF THE TENDERING**

Tenders must be sent to the Council of Europe **electronically via e-procurement** (offer created inside the tool and submitted before the deadline).

Link : <https://community.vortal.biz/sts/Login?SkinName=conseileurope>

**Electronic copies** must be sent via e-procurement only. Tenders submitted by any other mean (including using the Messages functionality) will be excluded from the procedure; no paper hardcopies are required, except if specifically requested.

**C. SUPPLEMENTARY INFORMATION**

Questions regarding this specific tendering procedure shall be sent at the latest by **one week before the deadline for submissions of tenders**, in English or French, and shall be exclusively sent via the Message functionality inside e-procurement.

This Message functionality should be used for questions only; for modalities of tendering, please refer to "B. Modalities of the Tendering". This functionality should also not be used to submit an offer.

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<sup>1</sup> The activities of the Council of Europe are governed by its [Statute](#) and its internal Regulations. Procurement is governed by the Financial Regulations of the Organisation, by [Rule 1395 of 20 June 2019 on the procurement procedures of the Council of Europe](#).

**Support / Helpdesk :**

Please visit the Council of Europe's Supplier Portal to find further information, videos and support guides on our procurement tool.

<https://www.coe.int/fr/web/portal/e-procurement>

If you have any technical question to register or submit your offer in the electronic platform, please contact :

[info.coe@vortal.biz](mailto:info.coe@vortal.biz)

+33 9 70 01 95 53

Type of contract ▶	One-off contract
Duration ▶	Until complete execution of the obligations of the parties (See Article 2 of the Legal conditions)
Deadline for submission of questions ▶	21/09/2020, 9 am
Deadline for submission of offers ▶	28/09/2020, 11 am

**Appendix I sets out general information, the expected services and describes the work and deliverables to be provided.**

#### D. FEES

Tenderers must provide a detailed breakdown of their financial offer in a separate document, attached to the other requested documents (number of working days, daily fee and daily fee per category of team personnel, other administrative expenses, travel expenses, etc.).

The financial offer must consist of an all-inclusive package in Euros. It is understood that this amount must include all fees, remunerations or expenses related to the completion of this study (in particular travel, per diem, translation and other administrative expenses).

Tenderers offering prices above the **€ 60,000 exclusion threshold** will be totally and automatically excluded from the tender procedure.

#### Provider subject to VAT

As Eurimages is a department of an international organisation, a specific procedure will be undertaken with the selected supplier to proceed with a VAT exemption certificate (see article 4 of Appendix III).

#### E. ASSESSMENT

*Exclusion criteria and absence of conflict of interests (see declaration in Appendix II)*

Tenderers shall be excluded from participating in the tender procedure if they:

- have been sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;
- are in a situation of bankruptcy, liquidation, termination of activity, insolvency or arrangement with creditors or any like situation arising from a procedure of the same kind, or are subject to a procedure of the same kind;
- have received a judgment with *res judicata* force, finding an offence that affects their professional integrity or serious professional misconduct;
- do not comply with their obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of their country of incorporation, establishment or residence;
- are or are likely to be in a situation of conflict of interests.

#### *Eligibility criteria*

Tenderers must demonstrate that they meet the following criteria (to be evaluated on the basis of all the supporting documents listed in Section G):

- the tenderer has completed at least two studies or reports on the film and audiovisual sector over the last three years;
- at least one member of the team dedicated to this project has knowledge of the film distribution, circulation and sales branches;

- the members of the project team have a proficiency in English and French of at least B2 / C1 level of the Common European Framework of Reference for Languages (this competence is assessed for the entire team and not for each member of the team).

Award criteria	max. nb of points
<b>A. References and experience</b>	<b>50</b>
Level of experience in the film distribution, circulation and sales branches and in relevant public policy	25
Level of qualification of the team members (number of years of experience in the required fields, quality of the track record, proficiency in Eurimages member States' languages, etc.) and capacity to undertake studies in different Eurimages member States (network of consultants and partners, international offices, previous international studies or evaluations, etc.)	25
<b>B. Methodology and study plan</b>	<b>50</b>
Implementation strategy of the study showing an understanding of the framework and the specific issues involved	25
Methodology of the study including proposed activities and sources of information (work plan, desk research, list of possible interviews, etc.) and implementation schedule	25
<b>C. Technical score = A+B</b>	<b>100</b>
<i>Offers below a minimum technical score of 70/100 will not be considered.</i>	
<b>D. Financial proposal: Financial score = 100 x [lowest financial offer] / [considered financial offer]</b>	<b>100</b>
<i>Offers exceeding the available budget of €60,000 will not be considered.</i>	
<b>E. Final Score = [C x 80%] + [D x 20%]</b>	<b>100</b>

All the meeting reports and discussions related to this procurement procedure will be strictly confidential.

The Council of Europe - Eurimages reserves the right to cancel the procedure if none of the bids meets the requirements of the terms of reference.

## F. NEGOTIATIONS

The Council of Europe reserves the right to negotiate with the tenderers in accordance with Article 20 of Rule 1395.

## G. DOCUMENTS TO BE PROVIDED

Tenderers are invited to submit:

- A completed and signed declaration on exclusion criteria (see Appendix II):**
- Legal registration documents of the tenderer with indication of ownership;
- A description of the company and its core activities (maximum one page);

4. A list of the most pertinent studies on the film and audiovisual sector and in relevant public policy, in particular the film distribution, circulation and sales sector completed by the Tenderer during the last three years with information on their object (including a brief description of the services provided, activities undertaken, the overall value of the contract, date and commissioning party) and contact details of a reference person for each study cited;
5. A short description of the composition of the team and of the back-office structure of the tenderer;
6. CVs of the team members including language proficiency;
7. A note of a maximum of 2 pages explaining the implementation strategy of the study demonstrating an understanding of the framework and issues of the question asked;
8. A detailed description of the study methodology, planned activities, sources of information and interviews and schedule;
9. A detailed breakdown of the financial offer [in line with the requirements of Section D of the Tender File (see above)].

**All documents shall be submitted in English or French. Failure to do so will result in the exclusion of the tender. If any of the documents listed above are missing, the Council of Europe reserves the right to reject the tender.**

**The Council of Europe reserves the right to reject a tender if the scanned documents are of such quality that the documents cannot be read once printed.**

#### **H. CONTRACTUAL REQUIREMENTS**

Tenderers will find in Appendix III a copy of **the Council of Europe's standard Legal Conditions** for the type of contract which will be signed with the selected tenderer.

Tenderers are invited to read these conditions, and to specify in their offer any clauses that they are unable to accept, together with a justification for this, and a proposal of alternative clause(s).

Alternatively, tenderers may provide a copy of their own standard legal conditions. However, tenderers should note that the capacity to meet the Council of Europe's contractual requirements is one of the award criteria to be taken into account when assessing offers. Tenderers should also note that any contract signed following this consultation will have to contain the following clauses: Article 3.6 (Disclosure of the terms of the contract), Article 3.7 (Use of name) and Article 11 (Disputes). Moreover, the Council reserves the right to ask for the contract proposed by the selected tenderer to be amended in order to protect the Council's interests, to meet the requirements of its status as an international organisation, and to keep a fair balance between the parties.

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**Appendix I – General information and expected services**

**Appendix II – Declaration on the exclusion criteria**

**Appendix III – Legal conditions**

## 1. Background

### 1.1. The Council of Europe

The Council of Europe plays a pioneering role in the process of European integration. It was founded in 1949, in the aftermath of the Second World War, to ensure the political reconstruction of Europe based on a number of fundamental values. The Council of Europe works with its 47 member states to **strengthen human rights, democracy and the rule of law** throughout the continent of Europe and beyond. It has devised an effective system for the protection of rights, of which the best-known component is the European Court of Human Rights. The Court was established by the European Convention on Human Rights, which has been ratified by all member states of the Council of Europe.

The Council of Europe advocates freedom of expression and of the media, freedom of assembly, equality, and the protection of minorities. It has launched campaigns on issues such as child protection, online hate speech, and the rights of the Roma, Europe's largest minority. The Council of Europe helps member states fight corruption and terrorism and undertake necessary judicial reforms. Its group of constitutional experts, known as the Venice Commission, offers legal advice to countries throughout the world.

The Council of Europe promotes human rights through international conventions, such as the Convention on Preventing and Combating Violence against Women and Domestic Violence and the Convention on Cybercrime. It monitors member states' progress in these areas and makes recommendations through independent expert monitoring bodies. The work of the Council of Europe may therefore take a variety of forms such as the drafting and signature of international conventions, recommendations or guidelines, monitoring and evaluation mechanisms or partial agreements on specific subjects (for example the Eurimages Fund).

**For more information on the Council of Europe and its activities, see:**

<https://www.coe.int/en/web/about-us/who-we-are>  
and appended documents

### 1.2. The Directorate General of Democracy

The long-term strategic objective of the Directorate General of Democracy – DG2 – is to strengthen and develop the democratic principles of the member states, an objective that is one of the three pillars of the Council of Europe's work.

In pursuit of this long-term objective, the Directorate General of Democracy invests in democratic security for Europe by working with the member states in three main areas:

- ✓ reinforcing democratic institutions and public trust in them;
- ✓ building inclusive societies free from discrimination, hatred and violence;
- ✓ support for young people in developing their trust in a common European future.

Achieving these goals entails multilateral activities pursued through intergovernmental committees, which frame policies and legal standards, monitor them and help to ensure that they are implemented and complied with. To that end, the DG Democracy also co-operates with local and regional authorities, civil society, the private sector and other international organisations.

As part of its remit the DG Democracy assists and advises the Secretary General and other bodies of the Council of Europe – the Committee of Ministers, the Parliamentary Assembly and the Congress – on policy issues relating to the strengthening of democratic institutions and processes and the building of European societies free from discrimination and violence and underpinned by the shared European values that have their basis in human rights.

The DG Democracy plans and implements relevant programmes to meet the needs of intergovernmental and other bodies of the Council of Europe, as well as the conferences of specialised ministers. It designs and implements targeted programmes to help the member states develop their relevant structures and policies and fulfil their commitments under the Organisation's treaties.

Lastly, the DG Democracy assists the work of the governing bodies of the partial agreements<sup>2</sup> concluded in its fields of competence, in accordance with their respective terms of reference, and provides management services for the implementation of their programmes.

**For more information on the DG Democracy and its activities, see:** <https://www.coe.int/en/web/democracy>

<sup>2</sup> European Centre for Global Interdependence and Solidarity – "North-South Centre" / European Centre for Modern Languages / "Eurimages" – the European Support Fund for the Co-production and Distribution of Creative Cinematographic and Audiovisual Works / European and Mediterranean Major Hazards Agreement – EUR-OPA / Partial Agreement on Youth Mobility through the Youth Card / Enlarged Partial Agreement on Cultural Routes / European Directorate for the Quality of Medicines and Healthcare – European Pharmacopoeia / Enlarged Partial Agreement on Sport – EPAS / Enlarged Partial Agreement on the Council of Europe Development Bank - CEB

### 1.3. Eurimages

Eurimages is the Council of Europe's Fund for co-operation in the field of filmmaking. The Fund aims to promote the member states' film sectors by encouraging the co-production and distribution of films and by fostering co-operation among professionals. There are two aspects to this objective:

- cultural – the Fund seeks to support artistic works that reflect the many facets of society in the member states;
- economic – the Fund finances an industry that creates jobs and is governed by market forces.

Founded in 1988, Eurimages is an enlarged partial agreement of the Council of Europe. An enlarged partial agreement is a specific form of co-operation within the Organisation. It authorises certain member states of the Council of Europe, and non-member states, to participate in activities without requiring that the other member states do so too. From a statutory point of view, a partial agreement remains an activity of the Organisation in the same way as other activities, but it has its own budget and working methods. Eurimages currently has 41 members and is now open to countries that are not Council of Europe member states (Canada joined in 2017, Argentina in 2019 and Ukraine, a Council of Europe member state, in 2020).<sup>3</sup>

**For more information on the Eurimages Fund and its activities, see:**

<https://www.coe.int/en/web/eurimages>  
[www.coe.int/en/web/eurimages/-/external-evaluation-of-eurimages](http://www.coe.int/en/web/eurimages/-/external-evaluation-of-eurimages)

### 1.4. Eurimages' Distribution Support Programme (2013-2019)

The aim of the Distribution Support Programme - Support for "marketing and publicity costs" for eligible films destined for distributors selected by Eurimages - was, until it was suspended by the Eurimages Board on Management in October 2019, to reinforce the distribution of eligible films, as defined in the Regulations of this Programme, and to increase their audiences.

Distributors (natural or legal persons) who met the following requirements were eligible for financial support:

- have a head office in one of the Eurimages member States which does not have access to the EU Creative Europe-MEDIA distribution programme, i.e. at the end of 2019 Argentina, Armenia, Canada, Georgia, Russian Federation, Switzerland, Turkey, or in the case of a natural person (sole trader), are a resident of one of these countries;
- have fulfilled their obligations to Eurimages for films previously supported by Eurimages;
- distribute films which do not originate from the country in which the distributor has his/her head office or residency. Co-productions involving a producer originating from the country where the distributor has his/her head office were excluded;
- have a theatrical distribution strategy.

Full-length feature films, animations or documentaries (minimum duration: 70 minutes) were considered as eligible for support if:

- screened by digital cinema projection in conformity with DCI standards (Digital Cinema Initiative) or on 35 mm support;
- produced either by a single producer from a Eurimages member State or by more than 50% by co-producers from Eurimages member States;
- released on one copy or more for Armenia and Georgia, on a minimum of 5 copies for Canada and on a minimum of 10 copies for the Russian Federation, Switzerland, Turkey;
- not yet released in the territory covered by the application;
- released in the country of origin no more than five years before the date of the request for distribution support;
- released in at least one of the official languages of the territory for which support is being requested during the calendar year of the application.

Co-productions supported by Eurimages where the applying distributor was involved in the financing were considered ineligible.

Films of a blatantly pornographic nature, advocating violence or openly inciting to the violation of human rights were not eligible for support by Eurimages.

Distributors were deemed eligible for support by the Eurimages Board of Management on the basis of an application for selection presented once a year. Payment of support was made on presentation of requests for payment of support for the films released during the previous trimester and after approval of the amounts by the Board of Management. 3 calls for requests were foreseen. The maximum support for marketing and publicity costs incurred was up to a limit of €10,000 per film, plus a supplementary bonus of €1,000 for films supported by the Eurimages co-production programme. The basis for calculating the support amount was the marketing and publicity costs, reduced to 70 or 50% depending on the country.

<sup>3</sup> Albania, Argentina, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, North Macedonia, Montenegro, Netherlands, Norway, Poland, Portugal, Russian Federation, Slovak Republic, Romania, Serbia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine

It should be noted that the level of contributions of the member States to the budget of the Fund are currently linked to the co-production support scheme only. While all members of the Fund pay their contributions calculated, inter alia, on the co-production support per country, only a limited number of member States benefited from the distribution support programme (those that were not members of the Creative Europe - MEDIA Sub-programme of the EU).

The complete list of films and companies supported by the Eurimages Distribution Support Programme is available on the Eurimages' website (Distribution funding history).

Additional information is also available in the document entitled "2015-2019 Distribution support in figures and charts" (see Appendix IV).

**For more information on the Eurimages Distribution Support Programme, see:**

<https://www.coe.int/en/web/eurimages/distribution>

## 2. Framework and objectives of the study

In 2018, Eurimages commissioned the consultancy firm Ernst & Young to carry out an external evaluation. The evaluation included governance and strategic & operational components and resulted in 24 recommendations.

In the light of the contents of the evaluation report, the Board of Management of Eurimages decided in December 2018 to set up an Evaluation Study Group (ESG) which met several times during 2019 and at the beginning of 2020. The ESG is composed of representatives of 22 member States, from large and small countries in both the North and in the South of Europe.

The ESG made a series of proposals based on the recommendations set out in the external evaluation report. These proposals, which were presented to the Board during its plenary meeting in October 2019, were the result of extensive exchanges and discussions between ESG members. Not all recommendations were considered relevant and some were partially accepted and adapted to the specific context of Eurimages.

During their discussions, ESG members stressed that despite Eurimages' many successes over the past 30 years, it is now imperative that the Fund adapt to its ever-changing environment. Eurimages now has 41 members and its governance rules are no longer adapted to the critical mass of projects that the Fund must assess in a professionally transparent and impartial manner. In addition, the Fund will inevitably have to face new challenges, including mainstreaming gender equality in all the its activities, the protection of diversity (beyond gender parity) in all projects supported, increased awareness of environmental issues (both in the operation of the Fund and the projects supported), the emergence of new technologies and artificial intelligence, the development of streaming services, etc.

One of the recommendations adopted by the Board of Management in October 2019 concerned the Distribution Support Programme. The ESG – along the lines of the external evaluation report – considered that the impact of the current Distribution Support Programme was limited and could be improved. The ESG thus recommended to:

- suspend it in its current form (after the end of the current cycle in March 2020);
- replace it by a more efficient form of support for the circulation of the films supported by the Eurimages co-production support programme, which would be open to all member States of the Fund.
- commission an independent study to assess whether a new programme would add value in the national and/or international distribution of Eurimages-supported films and what format this revised programme could take.

**The aim of the study is:**

- **to assess the pertinence of a distribution support, open to all member countries of the Fund and intended exclusively for projects supported by the Eurimages co-production support programme,**
- **to make recommendations on the format(s) of a possible new support programme in order to optimise its impact and visibility, given the available budget and the potential beneficiaries and stakeholders,**
- **to take into consideration, while making its recommendations, Eurimages' decision-making process and administrative burden for the Fund and the beneficiaries, with the aim of maximising efficiency and simplicity.**

**In doing so, the selected Supplier will suggest possible new designs for a programme supporting the circulation of films supported by Eurimages as part of co-production support and in particular determine:**

- **which beneficiaries would be the most pertinent: co-producers of the film, current or future distributors on national territories, international sales agents?**

- which films amongst the films supported by Eurimages as part of co-production support could be selected to receive this support?
- which cost items are the most relevant for Eurimages to support? These cost items must be easily verified by the Fund without creating a disproportionate administrative burden.
- how a degree of flexibility can be built into such scheme in order to adapt the support to the situation of the distribution/international sales sector in the co-producing countries?

The selected Supplier will take into consideration both the changes in the film and audiovisual landscape in recent years (emergence of new players, shifts in consumption habits, situation of the independent film distribution sector...) and the diversity of the film industry in the member States. Moreover, an assessment of the impact that the current coronavirus crisis has on the film distribution market and of the post-crisis situation should form part of this analysis.

The study will put forward a limited number of recommendations on any useful and necessary actions which Eurimages might undertake for its 41 member States in order to support a wider circulation of Eurimages-supported films.

These proposals must be compatible with Eurimages' operating scope and be feasible in terms of its mandate, roles and available resources.

Conclusions and recommendations must be backed up by verifiable data and information. Each recommendation must also be accompanied by a brief analysis of its potential economic consequences for players in the market.

### 3. Organisation of the study and methods

The study will be conducted under the supervision of the Eurimages' Secretariat. The Eurimages team will provide the Supplier with the requisite documentation and information on Eurimages' programmes and activities (Activity reports, Evaluation report...).

The methodology to be used in the study must be set out in the Supplier's bid. Collection and analysis of data by the Supplier may take account of the following:

- review of existing literature: analysis of documents or other relevant studies on the film and audiovisual sector, in particular the distribution, exploitation and circulation of theatrical features in the member States;
- pertinent publications of the European Audiovisual Observatory;
- overview of pertinent measures taken in this field by public funds (international, national or regional) in the member States;
- interviews with film and audiovisual industry professionals and stakeholders in the areas of distribution, exploitation and circulation of theatrical features (producers, distributors, TV channels, professional associations, VOD and SVOD operators, etc.) including leading figures in the relevant film and audiovisual markets;
- consultation with national representatives, members of the Eurimages Board Management, and with relevant members of the Eurimages Secretariat.

Some study tools are suggested below but are not exhaustive. The Supplier could:

- consult, organise workshops or undertake surveys with films industry professionals (distributors, international sales agents, exhibitors or producers) based in Eurimages' member States,
- consult national funds and professional organisations, such as Europa Distribution, Europa International, Club des Producteurs Européens,
- identify other studies or publications with conclusions relevant to the Study,

**Should the Supplier recommend the creation of a new programme, corresponding financial simulations and quantitative projections would have to be provided.**

The study report must be sent to the Eurimages Secretariat, which reserves the right to publish it. The Supplier may not publish the report without the Council of Europe's consent.

The Supplier will be responsible for the logistics of the study: offices, administrative and secretarial support, printing of documents, etc. The Eurimages Secretariat will, however, provide all possible assistance on a case-by-case basis.

**It should be noted that the Supplier will be required to work in a multicultural context, interacting with professionals from the member States of the Council of Europe.**



#### 4. Deliverables

##### 4.1. Deliverable 1 (in English):

A **study implementation plan**, prepared on the basis of the Supplier's bid, setting out the methodology envisaged, phases of the work, proposed data collection methods, data sources, details of qualitative analysis methods (proposed contacts, interviews, etc.), which will be used to answer the questions raised in point 2. This document must also include a full timetable.

##### 4.2. Deliverable 2 (in English):

A **draft report** will be submitted so that the Supplier and the Council of Europe can exchange views and comments. The report must cover the points raised in the scope and objectives of the study.

##### 4.3. Deliverable 3 (in English and French):

The **final report on the study** must contain conclusions in respect of the issues raised and must take account of the methodological guidelines set out above. The recommendations, which must be practicable, must be backed up by the findings of research work done, conclusions drawn, and analysis findings. The final report must include an executive summary.

#### 5. Estimated timetable

The estimated timetable for conducting and completing the study is as follows:

<b>31 August 2020</b>	<b>Call for tenders</b>
21 September 2020, 9 am	Deadline for receipt of queries about the specifications
<b>28 September 2020, 11 am</b>	<b>Deadline for receipt of bids</b>
5 October 2020	Selection of supplier, signature of service contract and start of study
<b>5 October (week) 2020</b>	<b>Launch meeting</b>
12-16 October 2020	<i>Meeting of the Eurimages Board of Management (for information on Eurimages Secretariat availabilities)</i>
19 October 2020	Submission of study implementation plan
14 December 2020	Interim meeting (progress report)
<b>25 January 2021</b>	<b>Submission of draft report</b>
8 February 2021	Interim meeting (draft report)
<b>19 February 2021</b>	<b>Submission of final report</b>
15-19 March 2021	<i>Meeting of the Eurimages Board of Management</i>
<b>15-19 March 2021</b>	<b>Presentation of the final report during the Eurimages Board of Management meeting</b>

As far as possible, meetings with the Supplier will take place via videoconferencing.

After its submission, the final report will be communicated to the Eurimages Board of Management.

Suppliers must take account of the draft timetable when preparing their own work schedules (to be included with the bid) and the study implementation plan.

## Appendix II – Declaration on the exclusion criteria

<b>Name of the signatory ▶</b>	
<b>Name of the Provider ▶</b>	
<b>Full address of the Provider ▶</b>	

I hereby declare<sup>4</sup> that neither I, nor the company I represent:

- have been sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;
- are in a situation of bankruptcy, liquidation, termination of activity, insolvency or arrangement with creditors or any like situation arising from a procedure of the same kind, or are subject to a procedure of the same kind;
- have received a judgment with *res judicata* force, finding an offence that affects their professional integrity or serious professional misconduct;
- do not comply with their obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of their country of incorporation, establishment or residence;
- are or are likely to be in a situation of conflict of interests.

<b>Name ▶</b>	
<b>Date ▶</b>	
<b>Signature ▶</b>	

<sup>4</sup> The Council of Europe reserves the right to ask tenderers, at a later stage, to supply an extract from the record of convictions or failing that an equivalent document issued by the competent judicial or administrative authority of the country of incorporation, indicating that the first three above listed exclusion criteria are met, and a certificate issued by the competent authority of the country of incorporation indicating that the fourth criterion is met.

## Appendix III – Council of Europe’s standard Legal Conditions regarding one-off contracts

### ARTICLE 1 – GENERAL PROVISIONS

- 1.1 The Provider undertakes, on the conditions and in the manner laid down by common agreement hereafter excluding any accessory verbal agreement, to provide the list of Deliverables reproduced in the Terms of reference (see Section A above) related to the present contract and in the tender submitted by the Provider.
- 1.2 The present contract is composed, by order of precedence, of:
  - a) the Act of Engagement, in its entirety (cover page, Sections A and B and the present Legal Conditions); and b) the tender submitted by the Provider.
- 1.3 Any general purchasing terms and conditions of the Provider shall never prevail over these legal conditions. Any provision proffered by the Provider in its documents (general conditions or correspondence) conflicting with the clauses of these legal conditions shall be deemed void, except for any clauses which may be more favourable to the Council.
- 1.4 For the purposes of this Contract:
  - a) “Contract” shall refer to the documents described in 1.2, above;
  - b) “Council” shall mean the Council of Europe;
  - c) “Deliverables” shall mean the services or goods as described in the Terms of reference;
  - d) “Parties” shall mean the Council and the Provider;
  - e) “Provider” shall mean the legal or physical person selected by the Council for the provision of the Deliverables. This person may equally be referred to as the “Service Provider” or the “Consultant”.

### ARTICLE 2 – DURATION

The contract is concluded until complete execution of the obligations of the parties and takes effect as from the date of its signature by both parties. The services shall be executed in accordance with the timeframe indicated in the Terms of reference or, by default, in the tender submitted by the Provider.

### ARTICLE 3 – OBLIGATIONS OF THE PROVIDER

#### 3.1 General obligations

- 3.1.1. The Provider bears sole responsibility for all the decisions made and the human, technical, logistic and material resources used in the context of the Contract in order to provide the Deliverables, with due respect for the Council of Europe’s needs and constraints, as contractually defined.
- 3.1.2. The Provider recognises that it is subject to a general obligation to provide advice, including, but not limited to, an obligation to provide any relevant information or recommendations to the Council. In this context, the Provider shall supply to the Council all the advice, warnings and recommendations necessary particularly in terms of quality of Deliverables, security and compliance with professional standards. The Provider also undertakes to inform the Council as soon as it becomes aware, during the execution of the Contract, of any initiatives and/or adopted laws and regulations, policies, strategies or action plans or any other development related to the object of the Contract.

#### 3.2 Intellectual services

- 3.2.1. The provisions of Articles 3.2.2 to 3.2.10 shall apply insofar as the contract concerns the provision of intellectual services.
- 3.2.2. Unless agreed otherwise by the Parties, any written documents prepared by the Provider under the contract shall be written in English and produced on a word processing file. In case the Parties agree that a written document shall be prepared in a language other than English or French, a summary in English or French shall be included in the said document.
- 3.2.3. Unless agreed otherwise by the Parties, all written documents of more than 1,500 words shall be preceded or accompanied by a text summarising the subject and main conclusions and shall not, unless specifically required, exceed 5,000 words.
- 3.2.4. The Provider guarantees that the Deliverables conform to the highest academic standards.
- 3.2.5. The Provider cedes irrevocably and exclusively to the Council throughout the entire world and for the entire period of copyright protection, all rights on the Deliverable(s) produced as a result of the execution of the present contract. Such rights shall include in particular the right to use, reproduce, represent, publish, adapt, translate and distribute – or to have used, reproduced, represented, published, adapted, translated and distributed - in any country, in any language, in any form and on any kind of support, including on a CD-ROM or the Internet, the said Deliverables, or any part thereof.
- 3.2.6. The Council reserves the right to exercise the above-mentioned rights for any purpose falling within its activities.
- 3.2.7. The Provider guarantees that use by the Council of the Deliverable(s) produced as a result of the execution of the present contract will not infringe the rights of third parties. However, should the Council incur liability as the result of any such infringement; the Provider will compensate it in full for any damage it may suffer in consequence.
- 3.2.8. Notwithstanding the provision in Article 3.2.5 above, the Council may, on prior application by the Provider, authorise the Provider to use the Deliverable(s) referred to above. When giving the Provider such authority, the Council will inform the Provider of any conditions to which such use may be subject.
- 3.2.9. Any intellectual property rights of the Provider over methods, knowledge and information which are in existence at the date of the conclusion of the Contract and which are comprised in or necessary for or arising from the performance of the Contract shall remain the property of the Provider. However, in consideration of the fees payable pursuant to the Contract the Provider hereby grants the Council a non-exclusive and free licence for the entire world and for the entire period of protection by the applicable intellectual property rights law for the use of such methods, knowledge and information insofar as they are an integral part of the Deliverable(s).
- 3.2.10. If the Deliverable(s) result(s) in the provision of a training session, and provided the training materials are not the property of the Council, the Provider shall grant the participants in the training a non-exclusive licence for the entire world and for the entire period of protection by the applicable intellectual property rights law for their own professional use of those training materials.

#### 3.3 Health and social insurance of the Provider or its employees

The Provider shall undertake all necessary measures to arrange for health and social insurance during the entire contract. The Provider acknowledges and accepts in this regard that the Council shall not assume any responsibility for any health and social risks concerning illness, maternity or accident which might occur during the performance of work under the contract.

#### 3.4 Fiscal obligations

The Provider undertakes to inform the Council about any change of its status with regard to VAT, to observe all applicable rules and to comply with its fiscal obligations in:

- a) submitting a request for payment, or an invoice, to the Council in conformity with the applicable legislation;
- b) declaring all fees received from the Council for tax purposes as required in his/her/its country of fiscal residence.

**3.5 Loyalty and confidentiality**

- 3.5.1. In the performance of the present contract, the Provider will not seek or accept instructions from any government or any authority external to the Council. The Provider undertakes to comply with the Council's directives for the completion of the Deliverables and to refrain from any word or act that may be construed as committing the Council.
- 3.5.2. The Provider shall observe the utmost discretion in all matters concerning the contract, and particularly any matters or data that have been or are to be recorded that come to the Provider's attention in the performance of the contract. Unless obliged to do so under the terms of the contract, or expressly authorised to do so by the Secretary General of the Council, the Provider shall refrain at all times from communicating to any person, legal entity, government or authority external to the Council any information which has not been made public and which has come to the Provider's notice as a result of dealings with the Council. Nor shall the Provider seek to gain private benefit from such information. Neither the expiry of the contract nor its termination by the Council shall lift these obligations.

**3.6 Disclosure of the terms of the contract**

- 3.6.1. The Provider is informed and gives an authorisation of disclosure of all relevant terms of the contract, including identity and price, for the purposes of internal and external audit and to the Committee of Ministers and to the Parliamentary Assembly of the Council with a view to these latter discharging their statutory functions, as well as for the purpose of meeting the publication and transparency requirements of the Council of Europe or its donors. The Provider authorises the publication, in any form and medium, including the websites of the Council of Europe or its donors, of the title of the contract/projects, the nature and purpose of the contract/projects, name and locality of the Provider and amount of the contract/project.
- 3.6.2. Whenever appropriate, specific confidentiality measures shall be taken by the Council to preserve the vital interests of the Provider.

**3.7 Use of the Council of Europe's name**

The Provider shall not use the Council's name, flag or logo without prior authorisation of the Council.

**3.8 Data Protection**

- 3.8.1. Without prejudice to the other provisions of this contract, the Parties undertake, in the execution of this contract, to comply at all times with the legislation applicable to each of them concerning the processing of personal data.
- 3.8.2. Where the Provider, pursuant to its obligations under this contract, processes personal data on behalf of the Council, it shall:
- i. Process personal data only in accordance with written instructions from the Council;
  - ii. Process personal data only to the extent and in such manner as is necessary for the execution of the contract, or as otherwise notified by the Council;
  - iii. Implement appropriate technological measures to protect personal data against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction, or damage while having regard to the nature of the personal data which is to be protected;
  - iv. Take reasonable steps to ensure the reliability of the Provider's employees having access to the personal data and to ensure that they have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and thus agree to comply with the data protection obligations set out in this contract;
  - v. Obtain written consent from the Council prior to any transfer of possession or responsibility for the personal data to any subcontractors. If the Council chooses to authorise subcontracting, the same data protection obligations as set out in this contract shall be imposed on the subcontractor by way of a contract. The Provider shall remain fully liable to the Council for the performance of that subcontractor's obligations.
  - vi. Notify the Council within five working days if it receives:
    - a. a request from a data subject to have access (including rectification, deletion and objection) to that person's personal data; or
    - b. a complaint or request related to the Council's obligations to comply with the data protection requirements.
  - vii. Provide the Council with full assistance in relation to any such request or complaint and assist the Council to fulfil its obligation to respond to the requests for rectification, deletion and objection, to provide information on data processing to data subjects and to notify personal data breaches;
  - viii. Allow for and contribute to checks and audits, including inspections, conducted or mandated by the Council or by any authorised third auditing person. The Provider shall immediately inform the Council of any audit not conducted or mandated by the Council;
  - ix. Not process nor transfer personal data outside the jurisdiction of a Council of Europe Member State without the prior authorisation of the Council and provided that an adequate level of protection is guaranteed by law or by ad hoc or approved standardised safeguards (such as binding corporate rules) in the jurisdiction of the recipient;
  - x. Make available to the Council all information necessary to demonstrate compliance with the obligations under the contract in connection with the processing of personal data and the rights of data subjects;
  - xi. Upon the Council's request, delete or return to the Council all personal data and any existing copies, unless the applicable law requires storage of the personal data.

**3.9 Parallel Activities**

Where the Provider is a natural person who is employed in parallel to this Contract, they hereby confirm that they:

- a) have been granted approval from their employer to perform paid services for the Council under this Contract, and/or
- b) have been granted leave during the performance of their obligations under this Contract.

**3.10 Other obligations**

- 3.10.1. In the performance of the present contract, the Provider undertakes to comply with the applicable principles, rules and values of the Council.
- 3.10.2. The Staff Regulations and the rules concerning temporary staff members shall not apply to the Provider.
- 3.10.3. Nothing in this contract may be construed as conferring on the Provider the capacity of a Council of Europe staff member or employee.

**ARTICLE 4 – FEES, EXPENSES AND MODE OF PAYMENT****4.1 Fees**

- 4.1.1. In return for the fulfilment by the Provider of its obligations under the contract, the Council undertakes to pay the Provider the fees as indicated in their offer, in the currency specified in the Table of fees.
- 4.1.2. Amounts are final and not subject to review.

#### 4.2 VAT

- 4.2.1. Should the Provider not be subject to VAT, the amount invoiced shall be net fixed amount. Should the Provider be subject to VAT, the amount shall be invoiced as indicated in Articles 4.2.2 to 4.2.5.
- 4.2.2. Should the deliverables be taxable in France, the amount invoiced shall be VAT inclusive.
- 4.2.3. Should the deliverables be taxable in another EU country, and unless otherwise agreed between the Parties, the Council will provide the Provider with an exemption certificate prior to the signature of the contract. The exemption certificate sent by the Council of Europe should be retained by the Provider and presented to the relevant tax authorities to justify tax-free invoicing. In accordance with Article 2 b) of Council Directive 2001/115/EC, the following should be stated in the invoice: *"Intra-Community sale/service to an exempted organisation: Articles 143 and 151 of Council Directive 2006/112/EC"* and should indicate the final total amount excluding VAT. In case the CoE will not be in a position to provide the said certificate, the Council will pay the invoice with VAT included.
- 4.2.4. Should the deliverables be taxable in a non-EU country, the amount invoiced will not include VAT if the local (national) legislation allows for it, or if the Council of Europe enjoys tax exemption through other means in the country concerned. Otherwise, it shall include VAT.
- 4.2.5. For the provision of "online services", should the Provider be established either in an EU country (other than France) or in a non-EU country, the invoiced amount shall include French VAT at the applicable rate. The invoice shall indicate the total amount without taxes, the rate and the amount of the VAT and the total amount 'all tax included'. The invoice shall also stipulate the following statement: *"Intra-community sale/service: French VAT collected by the Provider and paid to the Mini One-Stop shop in [Address/Country]"*.

#### 4.3 Invoicing and payment

- 4.3.1. Upon acceptance of the deliverable[s] by the Council, the Provider shall submit an invoice or a request for payment in triplicate and in the currency specified in the Table of fees, in conformity with the applicable legislation.
- 4.3.2. Before accepting the Deliverable(s), the Council reserves the right to ask the Provider to submit any other document or information that may serve the purpose of establishing that the Contract has been duly executed.
- 4.3.3. In the case of event organisation, the Provider shall in any case submit any document that proves that the event took place, including but not limited to an attendance sheet broken down into half days specifying the location, date(s) and time(s) of the event(s) or activity(ies), to be individually signed by each participant and the Provider.
- 4.3.4. The payment for the Deliverables to be paid by the Council shall be made within 60 calendar days of submission of the invoice described in Article 4.3.1, subject to the submission of the Deliverable(s) described in the Terms of reference and its/their acceptance by the Council.
- 4.3.5. In cases where an advance payment is foreseen, it shall be paid within 60 calendar days upon signature of the contract.

#### 4.4 Other expenses

- 4.4.1. In the event of the Provider being required to travel for the purposes of the contract, and provided the Terms of reference do not stipulate that the fees already include travel and subsistence expenses, the Council undertakes, subject to its prior agreement, to reimburse travel and subsistence allowances in compliance with the Council's applicable Rules.<sup>5</sup>
- 4.4.2. Travel expenses referred to under 4.4.1 will be reimbursed on the basis of the rail fare (first class) or air fare (tourist class) upon presentation of an invoice on the letterhead of the relevant vouchers. Subsistence expenses (including travel expenses within the locality visited) will be reimbursed at the applicable daily rate.
- 4.4.3. In the event of the Provider being required to travel for the purposes of the contract, the duration of the Provider's travel and stays will be covered by an insurance policy with the insurers CHARTIS (Policy No. 2.004.761). A telephone helpline is available in case of emergency (+ 32 (0)3 253 69 16). The said insurance will cover specific risks related to travel and stay of the Provider (including medical costs related to unforeseen illness or accident, repatriation, death, cancellation of journey or flight, theft or loss of personal possessions). The insurance policy does not cover persons over 75 years of age.

#### ARTICLE 5 - BREACH OF CONTRACT

- 5.1. In the event that the Provider does not satisfy the conditions laid down in this contract or those resulting from any modifications duly accepted in writing by both parties, in accordance with the provisions of Article 6 below, or the Deliverables provided as referred to under Article 1.1 do not reach a satisfactory level, the Council shall consider there to have been a breach of contract and may consequently refuse to pay to the Provider the amounts referred to in Article 4.1 above.
- 5.2. In the cases described in paragraph 5.1 above, the Council reserves further, at any moment and further to prior notification to the Provider, the right to terminate the contract in all or in part. In case of termination, the Council shall pay only the amount corresponding to the deliverables actually and satisfactorily provided at the time of termination of the contract and shall request reimbursement of the sums already paid for Deliverables not provided. In case of partial termination, the obligations of the parties shall endure for all deliverables which are not subject of the notification of termination.
- 5.3. The outstanding sums shall be paid to the Council's bank account within 60 calendar days from the notification in writing by the Council to the Provider regarding the outstanding sums to be paid.

#### ARTICLE 6 - MODIFICATIONS

- 6.1. The provisions of this contract cannot be modified without the written agreement of both parties. This agreement may take the form of an exchange of emails provided it is done using the contact details specified in Article 8.
- 6.2. Any modification shall not affect elements of the contract which may distort the initial conditions of the tendering procedure or give rise to unequal treatment between the tenderers.
- 6.3. This contract may not be transferred, in full or in part, for money or free of charge, without the Council's prior authorisation in writing.
- 6.4. The Provider may not subcontract all or part of the Deliverables without the written authorisation of the Council.

#### ARTICLE 7 - CASE OF FORCE MAJEURE

- 7.1. In the event of force majeure, the parties shall be released from the application of this contract without any financial compensation. Force majeure is defined as including the following: major weather problems, earthquake, strikes affecting air travel, attacks, a state of war, health risks or events that would require the Council or the Provider to cancel the contract.

<sup>5</sup> CM/Del/Dec(2010)1089/11.3 appendix 9 [https://search.coe.int/intranet/Pages/result\\_details.aspx?ObjectId=09000016805ceb14](https://search.coe.int/intranet/Pages/result_details.aspx?ObjectId=09000016805ceb14)

- 7.2. In the event of such circumstances each party shall be required to notify the other party accordingly in writing, within a period of 7 calendar days.

#### ARTICLE 8 - COMMUNICATION BETWEEN THE PARTIES

- 8.1. The Contact point within the Council of Europe is indicated on the cover page of the Act of Engagement (See page 1 above).
- 8.2. The Provider can be reached through the means indicated in the Act of Engagement (see page 1 above).
- 8.3. Any communication is deemed to have been made when it is received by the receiving party, unless the Contract refers to the date when the communication was sent.
- 8.4. Electronic communication is deemed to have been received by the receiving party on the day of successful dispatch of that communication, provided that it is sent to the addressees listed in paragraphs 1 and 2 above. Dispatch shall be deemed unsuccessful if the sending party receives a message of non-delivery. In this case, the sending party shall immediately send again such communication to any of the other addresses listed in paragraphs 1 and 2 above. In case of unsuccessful dispatch, the sending party shall not be held in breach of its obligation to send such communication within a specified deadline, provided the communication is dispatched by another means of communication without further delay.
- 8.5. Mail sent to the Council using the postal services is considered to have been received by the Council on the date on which it is registered by the department identified in paragraph 1 above.
- 8.6. Formal notifications made by registered mail with return receipt or equivalent, or by equivalent electronic means, shall be considered to have been received by the receiving party on the date of receipt indicated on the return receipt or equivalent.

#### ARTICLE 9 –ACCEPTANCE

The provision of Deliverables referred to in this contract shall be the subject of a written acceptance procedure. If acceptance is refused, the Council shall inform the Provider accordingly, giving reasons, and may set new modalities for the provision of the Deliverables. If acceptance is refused again, the Council may terminate the Contract in whole or in part without previous notice and without paying any financial compensation.

#### ARTICLE 10 – CHANGES IN THE PROVIDER'S SITUATION OR STANDING

- 10.1. The Provider shall inform the Council without delay of any changes in their address or legal domicile or in the address or legal domicile of the person who may represent them.
- 10.2. The Provider shall also inform the Council without delay:
- a) if they are involved in a merger, takeover or change of ownership or there is a change in their legal status;
  - b) where the Provider is a consortium or similar entity, if there is a change in membership or partnership.
  - c) if they are sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;
  - d) if they are in a situation of bankruptcy, liquidation, termination of activity, insolvency or arrangement with creditors or any like situation arising from a procedure of the same kind, or are not subject to a procedure of the same kind;
  - e) if they have received a judgment with *res judicata force*, finding an offence that affects their professional integrity or serious professional misconduct;
  - f) If they do not comply with their obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of their country of legal domicile;
  - g) If they are or are likely to be in a situation of conflict of interests.

#### ARTICLE 11 - DISPUTES

- 11.1. Any dispute regarding this Contract shall - failing a friendly settlement between the Parties - be submitted to arbitration.
- 11.2. The Arbitration Board shall be composed of two arbitrators each selected by one of the parties, and of a presiding arbitrator, appointed by the other two arbitrators; in the event of no presiding arbitrator being appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance of Strasbourg shall make the appointment.
- 11.3. Alternatively, the parties may submit the dispute for decision to a single arbitrator selected by them by common agreement or, failing such agreement, by the President of the Tribunal de Grande Instance of Strasbourg.
- 11.4. The Board referred to in paragraph 2 of this Article or, where appropriate, the arbitrator referred to in paragraph 3 of this Article, shall determine the procedure to be followed.
- 11.5. If the parties do not agree upon the law applicable the Board or, where appropriate, the arbitrator shall decide *ex aequo et bono* having regard to the general principles of law and to commercial usage.
- 11.6. The arbitral decision shall be binding upon the parties and there shall be no appeal from it.

#### ARTICLE 12 - ADDRESSES AND BANK DETAILS OF THE PARTIES

The bank details of the Provider are indicated in the Act of Engagement. The bank details of the Council of Europe-Eurimages are the following:

Account Holder: CONSEIL DE L'EUROPE - compte Eurimages  
 Bank Name: SOCIETE GENERALE  
 Address: Rue du Dôme F-67000 STRASBOURG  
 IBAN Account No: FR 76 30003 02360 00350034249 01 SWIFT Code: SOGEFRPP