



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 14 November 2013**

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**COVER NOTE**

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from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	12 November 2013
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Subject:	Commission Staff Working Document Annexes to the Commission Staff Working Document Guidance on the use of renewable energy cooperation mechanisms <i>Accompanying the document</i> Communication from the Commission - Delivering the internal electricity market and the most of public intervention
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Delegations will find attached Commission document SWD(2013) 441 final.

Encl.: SWD(2013) 441 final

Brussels, 5.11.2013  
SWD(2013) 441

**COMMISSION STAFF WORKING DOCUMENT**

**Annexes to the Commission Staff Working Document Guidance on the use of renewable  
energy cooperation mechanisms**

*Accompanying the document*

**Communication from the Commission**

**Delivering the internal electricity market and making the most of public intervention**

{ C(2013) 7243 final }  
{ SWD(2013) 438 final }  
{ SWD(2013) 439 final }  
{ SWD(2013) 440 final }  
{ SWD(2013) 442 final }

## COMMISSION STAFF WORKING DOCUMENT

### Annexes to the Commission Staff Working Document Guidance on the use of renewable energy cooperation mechanisms

#### *Accompanying the document*

#### Communication from the Commission

#### Delivering the internal electricity market and the most of public intervention

### ANNEX I NOTIFICATION FORMS

#### *a) Notification of statistical transfer*

Place and Date: \_\_\_\_\_

Directorate-General for Energy  
European Commission  
1049 Brussels

#### Notification of a Statistical Transfer between Member States

according to Article 6 of Directive 2009/28/EC

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[Name of buying Member State] and [Name of selling Member State]<sup>1</sup>  
herewith notify the European Commission of a statistical transfer for the calendar year 20xx.

#### Details of the Statistical Transfer Arrangement

In accordance with Article 6 (1) of Directive 2009/28/EC the amount of [xx] ktoe shall be deducted from the amount of energy from renewable sources that is taken into account for measuring compliance with the requirements of Article 3(1) and 3(2) of Directive 2009/28/EC by [the selling

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<sup>1</sup> In case of a statistical transfer both Member States will have to notify. It would therefore be the easiest solution if a joint notification letter would be sent.

Member State] in the calendar year [20xx] and added to the respective amount taken into account for that purpose by [the buying Member State].

The price paid by [the selling Member State] for this transfer is € [xx] per ktoe.

For any clarifications with regard to the notification, please contact [...].

Sincerely,

[Signatures of competent officials of the participating Member States]

.....

.....

*b) Ex-ante notification of a joint project*

Place and Date: \_\_\_\_\_

Directorate-General for Energy  
European Commission  
1049 Brussels

**Ex-ante Notification of [an] agreed Joint Project[s] between Member States  
according to Article 7 and 8 of Directive 2009/28/EC**

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[Name of host Member State]

according to Article 7 (2) and (3) of Directive 2009/28/EC herewith notifies the European Commission of [a] proposed Joint Project[s] with [Name of off-taking Member State] as off-taking Member State.

**Details of the proposed Joint Project[s]**

[Name of host Member State] and [Name of off-taking Member State] have agreed to engage in [a] joined project[s] in accordance with Article 7 and 8 of Directive 2009/28/EC with the following specifications:

- Project site:
- Technology used:
- Capacity (MW) / Anticipated average production volume (MWh and/or ktoe):
- Time-frame of cooperation (in whole calendar years):
- Share of project capacity that shall be transferred to off-taking Member State (in % or according to a distribution formula)

For any clarifications with regard to the notification, please contact [...].

Sincerely,

[Signature of competent official of the host Member State]

.....

*c) Annual ex-post notification of a joint project*

Place and Date: \_\_\_\_\_

Directorate-General for Energy  
European Commission  
1049 Brussels

**Ex-post Notification of a Joint Project Agreement between Member States  
according to Article 7 and 8 of Directive 2009/28/EC**

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[Name of host Member State],

according to Article 8 (1) and (2) of Directive 2009/28/EC and making reference to the ex-ante notification sent to the European Commission on [xx.yy.zzzz], herewith notifies the European Commission that

- a) the total amount of energy produced in the Joint Project [A] subject to the above mentioned ex-ante notification has been [xx] ktoe in calendar year [20xx], and that of this amount [xx] ktoe shall be deducted from the amount of the gross final consumption of energy from renewable sources taken into account in measuring compliance with Article 3 (1) and (2) of Directive 2009/28/EC by [the host Member State] and added to the amount of the gross final consumption of energy from renewable sources taken into account for that purpose by [the off-taking Member State];
- b) the total amount of energy produced in the Joint Project [B]...

For any clarifications with regard to the notification, please contact [...].

Sincerely,

[Signature of competent official of the host Member State]

.....

*d) Ex-ante notification of a joint project with a third country*

Place and Date: \_\_\_\_\_

Directorate-General for Energy  
European Commission  
1049 Brussels

**Ex-ante Notification of [an] agreed Joint Project[s] between Member States and a third country  
according to Article 9 and 10 of Directive 2009/28/EC**

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[Name of off-taking Member State/s]

according to Article 9 (4) and (5) of Directive 2009/28/EC herewith notif[y/ies] the European Commission of [a] proposed Joint Project[s] with [Name of third country hosting the project].

**Details of the proposed Joint Project[s]**

[Name of host Member State] and [Name of off-taking Member State] have agreed to engage in [a] joined project[s] in accordance with Article 9 and 10 of Directive 2009/28/EC with the following specifications:

1. As regards Project [A]<sup>2</sup>

- Project site:
- Technology used:
- Capacity (MW) / Anticipated average production volume (MWh and/or ktoe):
- Time-frame of cooperation (in whole calendar years):
- Share of project capacity that shall be transferred to off-taking Member State (in % or according to a distribution formula)
- Description of financial arrangements [investment and/or operational support by the off-taking Member State[s] or other arrangements]

2. As regards Project [B]

- ....

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<sup>2</sup> In case of multiple Joint Projects being notified.

Please find enclosed a letter of acknowledgement of the time-frame of the agreed joint project cooperation, the anticipated amount of electricity to be regarded as counting towards [the off-taking Member State's] target and the described financial arrangements.

[Specification of confidentiality requirements according to Article 9 (5) (b) of Directive 2009/28/EC, if any]

For any clarifications with regard to the notification, please contact [...].

Sincerely,

[Signature of competent official of the off-taking Member State]

.....



*e) Ex-post annual notification of a joint project with a third country*

Place and Date: \_\_\_\_\_

Directorate-General for Energy  
European Commission  
1049 Brussels

and

Competent Authority  
of the third country

**Ex-post Notification of a Joint Project Agreement between [a] Member State[s] and a third country  
according to Article 9 and 10 of Directive 2009/28/EC**

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[Name of off-taking Member State],

according to Article 10 (1) and (2) of Directive 2009/28/EC and making reference to the ex-ante notification sent to the European Commission on [xx.yy.zzzz], herewith notifies the European Commission that

- a) the total amount of energy produced in the Joint Project [A] subject to the above mentioned the ex-ante notification has been [xx] ktoe in calendar year [20xx], and that of this amount [xx] ktoe shall be added to the amount of the gross final consumption of energy from renewable sources taken into account in measuring compliance with Article 3 (1) and (2) of Directive 2009/28/EC by [the off-taking Member State];
- b) the total amount of energy produced in the Joint Project [B]...

Enclosed please find the following documents to demonstrate proof of compliance with the requirements set out in Article 9 (2) of Directive 2009/28/EC:

- a) Confirmation of electricity fed-in to the third country's grid along the timeline by the relevant DSO/TSO
- b) Confirmation of booked capacity on the interconnector split into corresponding time segments by the company operating the interconnector
- c) Confirmation of registration in the schedule of balance of the imported electricity by the TSO on the EU side of the interconnector split into corresponding time segments

- d) Certification of the data and of the extent of time consistency, as well as the fact that the electricity was produced from renewable source in an installation which became operational after 25 June 2009<sup>3</sup>.

For any clarifications with regard to the notification, please contact [...].

Sincerely,

[Signature of competent official of the host Member State]

.....

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<sup>3</sup> It would also be acceptable to only attach the latter certification at the notification stage, if the additional documentation would be available upon request.

*f) Notification of a joint support scheme*

Place and Date: \_\_\_\_\_

Directorate-General for Energy  
European Commission  
1049 Brussels

**Annual Notification of the Joint Project Support Scheme between Member State [A] and [B]  
according to Article 11 of Directive 2009/28/EC**

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[Name of Member State A] and [Name of Member State B]<sup>4</sup>,

according to Article 11 (1)(a) and (2) of Directive 2009/28/EC herewith notify the European Commission that

- a) they have agreed on joint support scheme covering [set out the scope of the joint support scheme as regards sub-sectors (electricity and/or heating and cooling) and technologies and geographical limitations, if applicable] which took effect on [xx.yy.zzzz],
- b) the amounts of energy production within the scope of this scheme are to be distributed to the participating Member States according to the following rule: [...];<sup>5</sup>
- c) the total amount of energy produced within the scope of the joint scheme in calendar year [20xx] was [xx] ktoe;
- d) according to the agreed distribution rule [yy] ktoe of energy from renewable sources shall be deducted from the amount of the gross final consumption of energy from renewable sources of Member State [A] and the same amount shall be added to the amount of the gross final consumption of energy from renewable sources of Member State [B] for the purpose of measuring compliance with Article 3 (1) and (2) of Directive 2009/28/EC.

For any clarifications with regard to the notification, please contact [...].

Sincerely,

[Signatures of competent officials of participating Member States]

.....

.....

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<sup>4</sup> The Directive provides for "each" Member State to make a notification. This can be done through two, identical, notifications or as suggested here via a single joint notification.

<sup>5</sup> Points a) and b) are only necessary in the first year's notification. In following years reference should be made to the notification of the first year when it comes to the scope of the scheme and the distribution rule.

## ANNEX II Exemplifying Model Agreements

### *a) Model agreement for statistical transfers*

#### **Agreement for Statistical Transfer**

Agreement between

[Member State]

and

[Member State]

on

THE ESTABLISHMENT OF A FRAMEWORK FOR  
THE STATISTICAL TRANSFER OF ENERGY FROM RENEWABLE SOURCES  
FOR TARGET COMPLIANCE PURPOSES UNDER DIRECTIVE 2009/28/EC

#### **Preamble**

[...]

#### **Instructions**

The model agreement has the purpose to visualise and exemplify possible legal arrangements between Member States to provide the basis for a statistical transfer. It has been drafted for Member States to be able to adapt and amend the text according to their requirements. It does not in any way purport to be legally comprehensive or limiting different choices that might be made by Member States. In fact a number of details will need to be added, adapted and specified according to the individual cooperation setting and could not be addressed comprehensively within this general model agreement.

The following flexible elements are already included:

Text in square brackets is leaving space for elements that will have to be completed during negotiations between Member States.

**General options** are introduced by a heading in bold type and different colours. Only one option per colour is to be chosen, therefore no duplication of articles or paragraphs should occur.

## **Part 1 OBJECTIVE AND DEFINITIONS**

### **Article 1 Objective**

(1) The objective of this Agreement is to provide a legal framework for the implementation of statistical transfers under Articles 6 of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (hereafter: Directive 2009/28/EC).

(2) The Parties enter into this Agreement with the purpose of

- a) contributing to the cost-efficient achievement of the EU target to increase the share of energy from renewable sources to 20 percent by 2020;
- b) optimise the balance of benefits from statistical transfers of renewable energy target amounts for both the buying and the selling Member State;
- c) create broad public acceptance with regard to statistical transfers
- d) *[... additional points]*

### **Article 2 Definitions**

Pursuant to the Agreement the following terms are defined as

- a) Selling Member State: a Member State of the European Union which, as a party to this Agreement, intends to transfer the renewable energy target amounts to the buying Member State according to this agreement;
- b) Buying Member State: a Member State of the European Union which, as a party to this Agreement, intends to receive the renewable energy amounts for target compliance purposes under Directive 2009/28/EC from the host Member State;
- c) Directive 2009/28/EC: Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC;
- d) Renewable energy target amount: the statistical value of energy from renewable sources as reported for the purpose of compliance with the mandatory national targets for the share of energy from renewable sources in final energy consumption as set out in the third column in part A of Annex I to the Directive 2009/28/EC;

## **Part 2 KEY OBLIGATIONS**

### **Article 3 Cooperation**

(1) The Parties shall at all times co-operate in order to establish and maintain the necessary and favourable conditions for the implementation of the statistical transfer.

(2) National contact points are established to facilitate the implementation of this Agreement and deal with any matters arising in the course of the implementation. The contact point of the selling Member States will be [xx]. The contact point of the buying Member State will be [yy].

#### **Article 4 Obligations of the Parties**

(1) The selling Member State enters into an obligation to notify the statistical transfer according to the terms of this agreement to the European Commission within the deadline set out in Article 6 paragraph 2 of Directive 2009/28/EC.

(2) The buying Member State remunerates the selling Member State according to the terms laid down in Article 7 of this Agreement for each unit of renewable energy target amounts notified by the selling Member States according to paragraph (1) as being subject to a statistical transfer to the benefit of the buying Member State.

### **Part 3 SPECIFICATIONS AND NOTIFICATION OF STATISTICAL TRANSFERS**

#### **Article 5 Specifications of Statistical Transfers**

(1) This Agreement covers the statistical transfer of [Amount preferably in ktoe] of energy from renewable energy sources [in 2013/each year until and including the year 2020 and starting in 2013].

#### **Option for additional buying options**

(2) In addition the buying Member States is granted the option to receive an additional amount of [xx in the years 2015 to 2020/ of [xy] in the year 2015, [xz] in the year 2016, [yx] in the year 2017, as well as [yz] each year thereafter until and including 2020].

#### **Article 6 Notification to the European Commission**

(1) Statistical transfers as agreed between the Parties, shall be notified by the selling Member State to the European Commission according to Art. 6 paragraph 2 of the Directive 2009/28/EC, specifying the exact amount of energy from renewable sources to be statistically transferred from the selling Member State to the buying Member State for each relevant calendar year measured in ktoe, as well as the corresponding price paid by the buying Member State.

(2) A copy of this notification shall be sent to the buying Member State's contact point at least a month in advance of the deadline provided for in Article 6 paragraph 2 of Directive 2009/28/EC. The buying Member State shall notify the Commission of its agreement with the statistical transfer within the deadline of Article 6 paragraph 2 of Directive 2009/28/EC.<sup>6</sup>

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<sup>6</sup> Alternatively a notification signed jointly by competent representatives of both Parties could be foreseen.

(3) To facilitate the European Commission's task of monitoring the overall progress of implementation of and compliance with Directive 2009/28/EC the Parties will also notify the Commission of the overall content of the agreement in particular including the amounts to be transferred during the entire time period of the Agreement, possible options for additional transfers and price adaptation arrangements within a month after the coming into force of this agreement.

## **Part 4 PAYMENTS AND OTHER RESPONSIBILITIES**

### **Article 7 Payments**

(1) The price per renewable target amount transferred shall be xx Euros per ktoe in the years 2013 to 2015. In the years thereafter the price shall be adjusted according the development of the average costs for supporting the generation of energy from renewable energy in the selling country according to the following formula<sup>7</sup>: [definition of adjustment formula]

(2) The buying Member State shall disburse the due amount onto [the account xx] at the latest by 30 April of the year following the year for which a notification according to Article 6 paragraph 1 of this agreement has been made by the selling Member State.

### **Article 8 Responsibilities in case of non-compliance**

(1) The Member States as project parties assume the responsibility for any failure or refusal to perform their obligations under this Agreement other than for reasons of force majeure according to Article 10 of this agreement.

(2) In case of non-compliance with any obligation under this Agreement a party is obliged to compensate the injured party fully for any damages incurred due to the non-compliance.

(3) The payment of such damages shall not limit the right to seek further compensation under the Agreement or otherwise.

## **Part 5 GENERAL PROVISIONS**

### **Article 9 Relationship between this Agreement and other International Obligations**

Nothing in this Agreement shall derogate from the rights or obligations of any State under any relevant international treaty or rule of international law.

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<sup>7</sup> Further adjustments could be envisaged to account for the increased uncertainty of the rate of deployment and consequently the availability of surpluses for the selling Member State.

## **Article 10            Force Majeure**

(1) Responsibility for non-performance or delay in performance on the part of any Party to this Agreement with respect to any obligations or any part thereof under this Agreement, other than an obligation to contribute financially, shall be suspended to the extent that such non-performance or delay in performance is caused or occasioned by *Force Majeure*, as defined in this Agreement.

(2) Force Majeure shall be limited to:

- a) Natural disasters (earthquakes, landslides, cyclones, floods, fires, lightning, tidal waves, volcanic eruptions and other similar natural events or occurrences);
- b) War between sovereign States where the relevant State has not initiated the war under the principles of international law, acts of terrorism, sabotage, rebellion or insurrection;
- c) International embargoes against States other than the relevant State, provided, in every case, that the specified event or cause of the above mentioned types and any resulting effects preventing the performance by the relevant State of its obligations, or any part thereof, are beyond the relevant State's control.

(3) If a Party to this Agreement is prevented from carrying out its obligations or any part thereof under this Agreement (other than an obligation to pay money) as a result of Force Majeure, it shall notify in writing the other affected Parties to which performance is owed. The notice must:

- a) Specify the obligations or part thereof that cannot be performed;
- b) Fully describe the event of Force Majeure;
- c) Estimate the time during which the Force Majeure will continue; and
- d) Specify the measures proposed to be adopted to remedy or abate the Force Majeure.

Following this notice, and for so long as the Force Majeure continues, any obligations or parts thereof which cannot be performed because of the Force Majeure, other than the obligation to pay money, shall be suspended.

## **Article 11            Dispute Settlement**

### **OPTION 1**

#### **(Detailed arbitration-clause)**

(1) The Parties shall endeavour initially to settle any disputes concerning the application or interpretation of this Agreement through diplomatic channels.

(2) If a dispute has not been settled in accordance with paragraph 1 of this Article within a reasonable period of time, any Party may, upon written notice to all other Parties, submit the matter for final and binding resolution to an arbitral tribunal under this Article, if it relates exclusively to the interpretation of this Agreement. The notice shall specify the other Party as respondent to the arbitral proceedings and shall include a statement of the general nature of the claim and the relief or remedy (including declaratory relief) sought, including an indication of any financial amount involved.

(3) Within [XX] days of receipt of the written notice referred to in paragraph (2), the respondent(s) shall provide a written notice of defence to all other Parties. The notice shall include a statement of



the general nature of the defence and any relief or remedy (including declaratory relief) sought by way of counterclaim, including an indication of any financial amount involved.

(4) At any time prior to the Closure Date (as defined below), any Party to this Agreement not already a party to the proceedings may by written notice to all other Parties become a party to the proceedings. The notice shall specify the general nature of the joining Party's interest in the proceedings and any relief or remedy (including declaratory relief) sought by the joining Party, including an indication of any financial amount involved.

(5) At any time prior to the Closure Date, any party to the proceedings may by written notice to all other Parties to this Agreement join any other Party not already a party to the proceedings. The notice shall specify the grounds of joinder and the relief or remedy (including declaratory relief) sought against the State thus joined, including an indication of any financial amount involved.

(6) The Closure Date shall be the first day upon which [XX... Option: 30] days have elapsed after the date of receipt of the last notice under paragraph (3), (4) or (5).

(7) Following the Closure Date, the arbitral tribunal shall be constituted as follows:

- a) If there are two parties to the dispute:
  - i. The tribunal shall consist of three members;
  - ii. The party instituting the proceedings shall within [XX... Option: 30] days of the Closure Date by notice in writing to the other party to the dispute appoint one member of the tribunal;
  - iii. Within [XX... Option: 60] days of the Closure Date, the other party to the dispute shall by notice in writing to the party instituting the proceedings appoint one member of the tribunal. If the appointments not made within the time limit prescribed, the party having instituted the proceedings may, within [XX... Option: 90] days of the Closure Date, request that the appointment be made by the Secretary-General;
  - iv. A third member, who may not be a national or citizen of a party to the dispute, shall be appointed by both parties to the dispute. That member shall be the President of the tribunal. If, within [XX... Option: 150] days of the Closure Date, the parties are unable to agree on the appointment of a third member, that appointment shall be made by the Secretary-General at the request of either party submitted within [XX... Option: 180] days of the closure date.
- b) If there are more than two parties to the dispute:
  - i. The tribunal shall consist of [three] members;
  - ii. Any party to the dispute may in writing request the Secretary-General to appoint all members of the tribunal and designate one member to be President of the tribunal. The President of the tribunal may not be a national or citizen of a State party to the dispute.
  - iii. Appointments made by the Secretary-General shall be made with regard to the qualifications and experience, particularly in matters covered by this Agreement, of the members to be appointed;

(8) In the absence of an agreement to the contrary between the Parties, [the Arbitration Rules of UNCITRAL] shall govern, except to the extent modified by the parties to the dispute or by the arbitrators. The tribunal shall take its decisions by a majority vote of its members.

(9) The tribunal shall decide the dispute in accordance with this Agreement and applicable rules and principles of international law.

(10) The arbitral award shall be final and binding upon the parties to the dispute.

(11) A copy of the award shall be deposited with the [...] which shall make it generally available.

(12) The expenses of the tribunal, including the remuneration of its members, shall be borne in equal shares by the parties to the dispute. The tribunal may, however, at its discretion direct that a higher proportion of the costs be paid by one of the parties to the dispute.

(13) Unless the parties to the dispute agree otherwise, the tribunal shall sit in [...The Hague...] and shall use the premises of the Permanent Court of International Arbitration.

(14) Matters for which a decision depends on the interpretation of a legal act of the European Union may not be decided by the tribunal. Such disputes shall be determined in the [... court ...] to the exclusion of the jurisdiction of the courts of any other place.

## OPTION 2

### (UNCITRAL-Clause)

(1) Any dispute, controversy or claim arising out of or relating exclusively to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.

(2) The following conditions will apply:

- a) The appointing authority shall be ... [name of institution or person];
- b) The number of arbitrators shall be ... [one or three];
- c) The place of arbitration shall be ... [town and country];
- d) The language to be used in the arbitral proceedings shall be [...] .

## OPTION 3

### (Jurisdiction Clause, application of national law)

Except as otherwise provided herein, any claim or dispute arising under this Agreement shall be governed by the law of [... Member State ...] and determined in the [... court ...] to the exclusion of the jurisdiction of the courts of any other place.

#### Note:

Option 3 can be used in place of an arbitration clause whether the domestic law shall be applicable for the disputes arising.

It should be noted that increasingly jurisdiction clauses are replaced by arbitration clauses with

regard to bilateral or multilateral agreements. This may have several reasons. On the one hand it is difficult for two or more Member States to agree upon the jurisdiction of only one of the Member States because the remaining States are not familiar with the procedures or may have objections to the objectivity of the selected jurisdiction. On the other hand the decision on the jurisdiction also touches upon a question of prestige for each of the parties. Thus it can be a practical solution to use an arbitration clause and to constitute a tribunal in a neutral third country with arbitrators from different nationalities.

There are further advantages of an arbitration clause:

- 1) Speedy final judgment of the arbitration tribunal (only one level jurisdiction);
- 2) Influence of the parties on the election of the arbitrators;
- 3) Influence of the parties on the design of the arbitration proceeding;
- 4) Ensuring of confidentiality (no publication of the arbitration judgments and no public in the proceedings);
- 5) Better enforceability of judgments of arbitration tribunals compared to national judgments.

The following disadvantages of an arbitration clause have to be considered:

- 1) Matters of EU law (i.e. going beyond the scope of the Agreement) cannot be decided by an arbitral tribunal to avoid potential contradictions between different legal orders;
- 2) Cost advantages cannot be assessed;
- 3) The lack of an additional level of jurisdiction can be a disadvantage;
- 4) The arbitration judgment does not necessarily provide any contribution regarding the harmonisation of law.

## **Article 12      Confidentiality**

(1) The Parties to this Agreement are committed to confidentiality against third parties for all information and objects that are not to be notified to the European Commission according to Article 6 of the Agreement or have not been otherwise published and are conveyed in confidence by any other Party. The receiving Party shall not use any such information or objects for any purpose other than in accordance with the terms of this Agreement. The disclosure of confidential information or objects requires the express written consent by the conveying Party.

(2) The confidentiality clause excludes objects or types of information that

- a) have been developed or are being developed by the receiving Party independently of the information;
- b) are part of the generally accessible state of technology or that reach this status without the fault of the receiving Party or

- c) were already in the possession of the receiving Party at the time of the announcement.

### **Article 13          Written Form**

All additions and modifications to this Agreement, which will be numbered consecutively, shall be duly signed by both parties prior to affecting any of the changes therein contained. No addition or modification of this Agreement shall be effective or binding on either of the parties hereto unless agreed in writing and duly signed by the parties.

### **Article 14          Severability Clause**

If any part of this Agreement shall be or become invalid, then it shall be replaced by that valid regulation which comes closest to its meaning and intention. All other parts of this disclaimer shall remain valid in that case.

### **Article 15          Entry into Force**

This Agreement shall enter into force on [...*date*...].

### **Article 16          Period of Agreement/Termination/Modification/Review**

#### **OPTION 6**

- (1) The agreement will terminate on [...*date*...].

#### **OPTION 7**

- (1) By way of exception, this Agreement can be terminated [...]

- (2) The agreement can be amended at any time by mutual consent of the parties documented in writing. Any such amendment shall be deposited according to Article 17 paragraph 2 of this Agreement and enter into force one month after the date of the deposit. The parties will review this agreement at least once every three years to determine whether it should be revised, renewed [or canceled].

### **Article 17          Depositary**

- (1) [*Member State X*] shall act as the Depositary of the Agreement.

(2) The original of the Agreement, in the [...] languages, each version being equally authentic, shall be deposited with the Depositary. The Depositary shall transmit certified copies of each of these versions to the Parties which have signed the Agreement.

*b) Model agreement for a joint project*

**Agreement for Joint Projects**

Agreement between

[Member State]

and

[Member State]

on

THE ESTABLISHMENT OF A FRAMEWORK FOR JOINT PROJECTS FOR THE GENERATION OF ENERGY  
FROM RENEWABLE SOURCES

**Preamble**

[...]

**Instructions**

The model agreement has the purpose to visualise and exemplify possible legal arrangements between Member States to provide the basis for a joint project. It has been drafted for Member States to be able to adapt and amend the text according to their requirements. It does not in any way purport to be legally comprehensive or limiting different choices that might be made by member States. In fact a large number of details will need to be added, adapted and specified according to the individual cooperation setting and could not be addressed comprehensively within this general model agreement.

The following flexible elements are already included:

Text in square brackets is leaving space for elements that will have to be completed during negotiations between Member States.

**General options** are introduced by a heading in bold type and different colours. Only one option per colour is to be chosen, therefore no duplication of articles or paragraphs should occur.

Physical transmission of electricity (as well as one other option in Article 17) is addressed as an *[Add-on option]* in italic type and red colour throughout the text. These will need to be deleted in case they are not to be used in the agreement.

**Part I      OBJECTIVE AND DEFINITIONS**

## **Article 1 Objective**

(1) The objective of this Agreement is to provide a legal framework for the implementation of Joint Projects under Articles 7 and 8 of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (hereafter: Directive 2009/28/EC) which provide the basis for Member States of the European Union to cooperate to realise joint projects relating to the production of electricity, heating or cooling from renewable energy sources. The aim of the implementation of joint projects between Member States is to share the produced energy for the purpose of accounting towards their respective targets.

(2) The Parties enter into this Agreement with the purpose to

- a) contribute to the cost-efficient achievement of the EU Member States' mandatory national targets by allowing them to count the Joint Projects' renewable electricity production towards their national renewable energy target;
- b) enable the construction of additional renewable energy generation capacity based on [...technologies...] in [...Member State...];
- c) unlock economic opportunities along the value chain of renewable energy technologies including infrastructure;
- d) create broad public acceptance with regard to joint projects and the concept of cross-border co-financing of renewable energy installations;
- e) [... additional points]

## **Article 2 Definitions**

Pursuant to the Agreement the following terms are defined as

- a) Host Member State: a Member State of the European Union which is a party to this Agreement transferring the renewable energy amounts to another Member State, party to this agreement;
- b) Off-taking Member State: a Member State of the European Union which is a party to this Agreement receiving the renewable energy amounts from the host Member State;
- c) Joint Project: one or more installations generating energy from renewable sources and which are operated under this agreement;
- d) Directive 2009/28/EC: Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC;
- e) National support schemes: according to Art. 2 lit. k) of the Directive 2009/28/EC any instrument, scheme or mechanism applied by a Member State or a group of Member States, that promotes the use of energy from renewable sources by reducing the cost of that energy, increasing the price at which it can be sold, or increasing, by means of a renewable energy obligation or otherwise, the volume of such energy purchased;
- f) Renewable energy target amounts: the statistical value of energy from renewable sources for the purpose of compliance with the mandatory national targets for the share of energy from

renewable sources in final energy consumption as set out in the third column in part A of Annex I to the Directive 2009/28/EC;

g) Joint Project operator: legal entity implementing and operating a Joint Project;

*h) ["Add-on option" physical transfer]*

Physical transmission: Physical flow of electricity from the installation to the off-taking country's grid, which is deemed to have happened, where the capacity, which corresponds with regard to volume and time period [.../1 week/one month/...] to the installation's production, has been booked on the relevant interconnector, and the equivalent volume of electricity has in the same time period entered the schedule of balance of the off-taking Member State's transmission system operator.

*[Can be much simpler where the joint project is exclusively connected to the off-taking Member State's grid.]*

## **Part II      RIGHTS AND OBLIGATIONS OF THE PARTIES**

### **Article 3 Cooperation**

The Parties shall co-operate in order to establish and maintain necessary and favourable conditions for the implementation of the Joint Project.

### **Article 4 Obligations of the host Member State**

(1) The host Member State ensures that construction permits and all other necessary permits and licenses for the construction and operation of a Joint Project shall be obtainable in a non-discriminatory manner and shall be issued without delay.

(2) The host Member State shall ensure that the Joint Project Operator is able to comply with all obligations with regard to the monitoring of production and create the necessary conditions to enable him to provide the required proof.

*["Add-on option" physical transfer]*

(2) The host Member State shall ensure that the Joint Project Operator is able to comply with all obligations with regard to the monitoring of production and the tracking of cross-border transmission of the electricity, and create the necessary conditions to enable him to provide the required proof.

(3) The host Member State shall ensure that the domestic grid operator grants guaranteed access to the grid at the applicable voltage level to feed the electricity generated by the Joint Project installation into the distribution or transmission grid.



## Article 5 Obligations of the off-taking Member State(s)

The off-taking Member State(s) guarantee/s the respective contribution to the financial support of the renewable energy production of the Joint Project during the entire support period.

## Article 6 Responsible Body

(1) A Responsible Body consisting of at least one representative of each party<sup>8</sup> to this agreement shall be established. Each party shall have one vote with the Responsible Body deciding by consensus.

(2) The Responsible Body shall have the following tasks:

- a) Identification of Joint Projects;
- b) Definition of the tendering procedure including specification of the evaluation criteria and determination of their weighting;
- c) Selection of the bidder; *[can also be delegated to an existing domestic body e.g. of the Host Member State]*
- d) Definition of the details of the Financing Mechanism;
- e) Supervision of the financing mechanism and the regulations regarding monitoring, tracking and issuing of proof and verifications;
- f) Reporting back to the Parties on a regular basis.

*g) ["Add-on option" physical transfer]*

Definition of the details of procedures for collecting and presenting required proof of origin and real time dispatching of electricity in EU;

### Note:

In order to implement joint projects and cooperation between Member States a Responsible Body should be set up. In this way the development of the projects could be organised more efficiently. Size and structure of the body can vary according to the scale of the project.

The responsible body can be organised either on a project by project basis level or on as a permanent body overseeing the development of multiple individual projects.

As regards award criteria, these should in any case be specified by the Responsible Body where they have not yet been defined in the agreement. However, the tendering procedure and selection of the successful bid can well be left to e.g. the Host Member State's competent authority for equivalent domestic activities.

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<sup>8</sup> Membership should be defined in more detail. Depending on the functions given to the responsible body, these could either be representatives of the national regulatory authorities, already mandated to run tendering procedures, or representatives of the competent government authority, if a broader range of policy related decisions is left to the responsible body as well.

## Part III SPECIFICATIONS OF THE JOINT PROJECT

### OPTION 1 (single project, Art. 7)

#### Article 7 Specifications of Joint Projects

Note:

In case that the Joint Project consists of only one single project (single plant) the Agreement should specify the used technology and the location.

(1) This Agreement covers [XX projects with<sup>9</sup>] a maximum capacity of [Amount of MW<sub>installed</sub>] with a view to produce a volume of electricity from renewable energy sources between [XX] MWh and [XX] MWh.

(2) The Joint Project may use [XX technologies] to be eligible under the tender procedure according to Article 8.

### OPTION 2 (multiple projects, Art. 7 and 8)

Note:

Option 2 can be used in case the Agreement is intended to cover more than one installation. Even if initially parties aim to realise only one project, it is advisable to set up a broader framework that can be used to scale cooperation up, if desirable in a second stage.

Furthermore there are various possibilities to regulate the specification and/or the selection of joint project(s) by Agreement. The following model only describes an example (on the one hand the clear and precise definition of the project regarding technology, location and maximum capacity of energy production; on the other hand the tender procedure). In addition to these examples various options to select joint projects exist which can be defined here by the Member States.

The implementation of a tender procedure requires agreement on basic procedural principles (in line with EU public procurement law). The key award criteria deemed decisive by cooperating countries shall be mentioned in the Agreement. The more detailed definition of the criteria can be left to the "Responsible Body".

#### Article 7 Specifications of Joint Projects

(1) This Agreement covers [XX] projects with a maximum capacity of [Amount of MW<sub>installed</sub>] with a view to produce a volume of electricity from renewable energy sources between [XX] MWh and [XX] MWh.

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<sup>9</sup> It will be most effective to restrict oneself to defining only the generation capacity covered by the agreement, rather than also pre-defining the number of projects.

(2) These projects may use [XX technologies] to be eligible under the tender procedure according to Article 8.

### **Article 8 Selection of Joint Projects and Tender Procedure**

(1) The joint project[s] supported in the framework of this agreement [is/are] identified according to a tender procedure.

(2) The tender specifications shall be agreed upon by the Responsible Body according to the terms laid down in this agreement and will inter alia include [*in case not already defined in Article 7 above*]:

- a) Maximum production support;
- b) The capacity of the plant or volume of renewable electricity to be produced;
- c) The technology;
- d) The site selection;
- e) Economic and financial, as well as technical and professional capacity of the tenderers;
- f) [...]

(3) The contracts[s] will be awarded to the project requiring least production support per unit of energy produced.

### **OPTION 3 (More detailed evaluation criteria)**

(3) The contract[s] will be awarded according to the following evaluation criteria [as defined in more detail by the Responsible Body], on the basis of the economically most advantageous tender:

- a) [Local environmental effects both positive and negative]
- b) [Effects on the local economy including job creation]
- c) [...]

(4) The Responsible Body will define the weight of each of these evaluation criteria in a maximum score of 100 points to be specified in the tender specifications. The contract will be awarded to the tender, which offers the best ratio between quality in points according to the evaluation and production support per unit of energy produced.

## **Part IV RENEWABLE ENERGY TARGET ACCOUNTING**

### **Article 9 Distribution of production for target compliance purposes**

#### **OPTION 4 (The entire production counts towards the off-taking Member State's target)**

(1) The renewable energy target amounts corresponding to the energy produced in the course of the Joint Project[s] during the production period [according to Article 12 of this Agreement] and fed into the host Member State's electricity grid will in its entirety be statistically transferred to the off-taking

Member State for target compliance purposes under Directive 2009/28/EC. This provision will apply *mutatis mutandis* under any European legislation succeeding Directive 2009/28/EC.

#### **OPTION 5 (The production is shared for target compliance purposes)**

(1) The renewable energy target amounts corresponding to the energy produced in the course of the Joint Project[s] will in part be statistically transferred to the off-taking Member State for target compliance purposes under Directive 2009/28/EC according to the distribution rule set out in Article [10] of this Agreement. This provision will apply *mutatis mutandis* under any European legislation succeeding Directive 2009/28/EC.

#### **OPTION 6 (The production is shared amongst a number of off-taking Member States for target compliance purposes)**

(1) The renewable energy target amounts corresponding to the energy produced in the course of the Joint Project[s] will be statistically transferred to the off-taking Member States for target compliance purposes under Directive 2009/28/EC according to the distribution rule set out in Article [10] of this Agreement. This provision will apply *mutatis mutandis* under any European legislation succeeding Directive 2009/28/EC.

#### **[Add-On OPTION "Physical Transfer"]**

(2) The electricity produced by the Joint Project[s] shall be physically transmitted to and consumed in the off-taking Member State. The requirements set out in Article 9 paragraph 2 of Directive 2009/28/EC shall apply *mutatis mutandis*.

[(3) In case this necessitates additional infrastructure investment with cross-border effects the allocation of investment costs for such infrastructure will be attributed according to the ex-ante cross-border cost allocation mechanism as laid down in the Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure<sup>10</sup>]

(4) Compensation for cross-border electricity flows will be dealt with according to the mechanisms established under Commission regulation No 838/2010 of 23 September 2010.

#### **OPTION 5 and 6 (The production is shared for target compliance purposes)**

### **Article 10                      Distribution formula**

(1) The amounts of the energy generated by the Joint Project[s] are allocated to the Member States according to an agreed formula [*corresponding to the support paid respectively*].

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<sup>10</sup> Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009, OJ L 115/39

(2) The distribution formula is defined as: [...]

Note:

If this option shall be used the required formula has to be elaborated and agreed on between Member States. It should correspond to the share of production support paid for by the off-taking Member State.

#### **OPTION 5bis**

**(The production counts towards the off-taking Member State up to a predefined maximum)**

(1) The off-taking Member State will receive the renewable energy target amounts of [... MWh per year/over the support period according to Article 12 paragraph 2 of this agreement]. Additional amounts generated by the joint project[s] will count towards the renewable energy target of the host Member State.

### **Article 11 Notification to the European Commission**

(1) After a joint project has been agreed upon between the host Member State and the off-taking Member State, the host Member States shall notify the European Commission of their intentions and shall submit the following documents according to Art. 7 (3) of the Directive 2009/28/EC:

- a) A description of the proposed installation[s];
- b) The identification of the Member State in whose favour the notification is being made and written consent with the content of the notification by the off-taking Member State;
- c) The proportion or amount of energy generated by the plant that shall be counted towards the national target of each respective EU Member State;
- d) The time period for which the electricity generated by the joint project[s] shall be counted towards the Member States' respective targets in full years.

(2) Once the plant is in operation, the host Member State shall, within three months of the end of each year falling into the period notified according to paragraph 1d) of this Article, notify to the European Commission and the off-taking Member State the total amount of energy generated in the joint project[s] as well as the amount of that energy which is to count towards the off-taking Member State's national target.

(3) Members of the Responsible Body shall receive a copy of this notification.

Note:

The requirements for notification comply with Art. 7 (2) and (3) as well as Art. 8 (1) and (2) of

## Part V FINANCING ARRANGEMENTS

### Article 12 Financial Commitments

Note:

Depending on the share of the produced amount of energy in the course of the joint project, the parties can contribute different levels of financial support.

#### **OPTION 7** *(following from Option 4 above)*

##### **(Bilateral Agreement/ Financial support provided exclusively by the off-taking Member State)**

(1) The financial support for the Joint Project[s] will be provided by the off-taking Member State. The form and amount of investment support, if any, and the *[in case of tender: maximum]* level of operational support shall be determined by the Responsible Body to be included in the [tender specifications/support agreement]. The final level of operational support paid by the off-taking Member State over the support period will be determined through the tender procedure *[alternatively can be fixed ex-ante]*.

(2) Operational support shall be granted only for energy which is generated in the course of the Joint Project[s] over a support period of [15 years].

(3) The off-taking Member State is responsible for notifying the European Commission for state-aid compatibility, if applicable.

#### **OPTION 7bis** *(following from option 5 above)*

##### **(Bilateral Agreement/ Financial support shared by the parties of the Agreement)**

(1) The financial support for the Joint Project shall be shared among the parties of the Agreement. The form and amount of investment support, if any, and the *[in case of tender: maximum]* level of operational support shall be determined by the Responsible Body to be included in the [tender specifications/support agreement]. The final level of operational support paid by the off-taking Member State over the support period will be determined through the tender procedure *[alternatively can be fixed ex-ante]*. The off-taking Member State is responsible to finance [xx share] of the overall financial commitments. The remaining financial support is to be borne by the host Member State.

(2) Operational support shall be granted only for energy which is generated in the course of the Joint Project[s] over a support period of [15 years].

(3) Both parties will be jointly responsible for notifying the European Commission for state-aid compatibility, if applicable.

#### **OPTION 8** *(following from option 6 above)*

##### **(Multilateral Agreement)**

(1) The burden of providing financial support for the Joint Project[s] shall be shared among the off-taking Member States. The exact financial commitment by each off-taking Member State, the respective composition of each contribution regarding of investment support, if any, the share of operational support borne by each off-taking Member State and the overall maximum level of operational support for an individual Joint Project will be determined by the Responsible Body and will form part of the [tender specifications/support agreement]. The final level of operational support paid by the off-taking Member States over the support period will be determined through the tender procedure [*alternatively can be fixed ex-ante*].

(2) Operational support shall be granted only for energy which is generated in the course of the Joint Project[s] over a support period of [15 years].

(3) According to the proportion of the financial contribution of the respective contributing Member States to the Joint Project, renewable energy target amounts for the energy produced will be allocated to the contributing Member States respectively.

### **Article 13                      Financing Mechanism**

#### **OPTION 9**

##### **(Financing via national support scheme of the off-taking Member State)**

(1) The off-taking Member State finances the operational support for the Joint Project[s] through its national support scheme. In making the necessary legal arrangements, the application of the national scheme to Joint Projects may be adjusted to take into account the specificities of Joint Projects as regards support levels, technologies supported, geographic limitations etc. in accordance with this agreement.

(2) The operational support will be paid through the existing instruments and according to the rules of the national support scheme of the off-taking Member State.

#### **OPTION 10**

##### **(Financing via a “Joint Fund” in case of multilateral agreement following form Options 6 and 8)**

(1) The off-taking Member States shall establish a financing mechanism [e.g. “Joint Fund”], which shall have the function of collecting the financial contributions from the off-taking Member States, clearing the revenues and expenditures and directing the financial flows.

(2) This fund shall collect all financial support, including investment and operational support, as determined to be provided by the off-taking Member States according to Article 12 [option 7]. The fund shall from these proceeds realise the due support payments to the Joint Project Operator.

#### **OPTION 11**

##### **(Financing by national support scheme/ “Integration of the Joint Project in national financing mechanism”)**

(1) The project operator is remunerated by participating in the host Member State's national support scheme, which may allow for special arrangements for Joint Projects [*to be specified in detail*].

(2) The host Member State shall ensure that the Joint Project[s] is/are eligible for support under its national support scheme [*possibly with specific amendments for Joint Projects as regards level of support etc.*].

(3) The off-taking Member State shall reimburse the host Member State for all support cost incurred [*define more concretely depending on type of support scheme, specify to what institution the reimbursement are to be paid and possibly if they shall be earmarked*].

### **Article 14          Design of Financial Support**

#### **OPTION 12**

##### **(Tendering process)**

1) The main element of support to the Joint Project Operator shall be operational support paid per unit of electricity fed into the electricity grid over the support period. Operational support may be combined with further investment support as determined in the financial commitments according to Article 12. The share will be part of the tender specifications.

(2) Operational support shall be paid as a [floating] premium [*or feed in tariff*]<sup>11</sup>.

(3) The tender shall be awarded to the project which submits the offer complying with all award criteria that is most competitive when comparing the level of operational support needed.

#### **OPTION 13**

##### **(Fixed premium/tariff)**

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<sup>11</sup> Will need to be specified in more detail, in particular if opting for a floating premium scheme.



The project operator shall receive [... €] per MWh as a premium<sup>12</sup> [*or feed in tariff*] produced in the course of the joint project by means of the financing mechanism according to Article 13 and over the entire support period.

## **Article 15      Network integration**

### **OPTION 14**

#### **(Shallow cost approach)**

(1) The costs for grid connection and potential grid reinforcements necessitated by the Joint Project[s] will not be borne by the project operator but shared between the host Member State and the off-taking Member State. These costs will be defined by the responsible body according to the relevant regulation [in the host Member State].

(2) The costs of grid connection are borne [directly by the off-taking Member State].

(3) The costs of necessary grid reinforcements are borne [*by the responsible transmission system operator*].

#### **Note:**

Grid costs could be shared between host Member State and off-taking Member State along the lines of the shallow cost approach. It is suggested that the off-taking Member State pays for the grid connection costs while the host Member State is responsible for any grid reinforcements necessary in order to integrate the new RES-E source into its power system.

The differentiation between costs for grid connection and grid reinforcements WOULD E.G. follow the host Member State's regulation to that effect. Thus the agreement will have to refer to these rules.

### **OPTION 15**

#### **(Integration of grid costs)**

All costs of network connection and reinforcement are borne according to the host Member State's regulatory regime.

#### **Note:**

This may imply that, assuming a shallow cost approach of the host Member State, the grid connection costs will be borne by the project operator – and thus at least partly by the off-taking member State through the support payments – while the grid reinforcement costs will be socialised

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<sup>12</sup> Will need to be specified in more detail, in particular if opting for a floating premium scheme.

in the host Member State through the network charges.

## **Article 16          Payment Procedure**

The payments of operational support shall be made directly to the Joint Project Operator after the submission of the required proof as laid down in Article 20 of this Agreement.

## **Part VI          RESPONSIBILITIES OF THE JOINT PROJECT PARTIES (RISK SHARING)**

Note:

The regulation of part VI refers to the responsibilities of the parties to this Agreement in case that a Party fails to fulfil its obligations.

## **Article 17          General Commitment**

(1) In case of non-compliance with any obligation under this Agreement a party is obliged to compensate the injured party fully for any damages incurred.

(2) The payment of such damages shall not limit the right to seek further compensation under the Agreement or otherwise.

*[add-on OPTION: Sanctions towards project operator]*

(X) Sanctions towards the project operator will be laid down and further specified in [the tender specifications/the support agreement between the project operator[s] and the off-taking Member State/host Member State/"Joint Fund"] in case he fails to construct the Joint Project by the date determined in the [tender specifications/support agreement] or in case yearly production of the Joint Project falls beneath [xx MWh].

Note:

The project operator is not party to the Agreement. Nevertheless the project operator assumes responsibilities which have to be addressed by specific contracts between Member States and project operator in order to regulate issues of risk sharing and consequential liability.

## **Article 18          Responsibilities of the host Member State**

(1) The host Member State shall ensure guaranteed grid access for the Joint Project[s] *[“add-on” OPTION for physical transfer: ... and the transmission of electricity produced in the joint project]*. This obligation includes the bearing of costs for maintaining the grid infrastructure. In case of curtailment

action the host Member State shall reimburse the project operator according to [national regulation].

(2) Once a Joint Project has been identified and [a tender awarded/support agreement signed] the host Member State guarantees the transfer to the off-taking Member State for target compliance purposes under the Directive of a minimum of [XX%] of the expected yearly production of the Joint Project[s] as defined in [the tender specifications/support agreement].

#### **OPTION 14 (financial compensation)**

(3) In case and to the extent that a breach of the host Member State's obligations under this Agreement, in particular of a guarantee according to Article 18, causes the off-taking Member State to fail to reach its target under Directive 2009/28/EC, the host Member State is under an obligation pay to the off-taking Member State a penalty amounting to [the price for a statistical transfer to make up for it/the penalty imposed for an infringement of European law by the European Court of Justice/fixed amount per Mwh] (financial compensation).

#### **OPTION 15 (replacement obligation)**

(3) In case of failure of the Joint Project[s] to deliver on the guaranteed production and corresponding transfer of target amounts to the off-taking Member State according to Article 18, the host Member State is under an obligation to compensate this shortfall by purchasing statistical transfers according to Article 6 of Directive 2009/28/EC from other Member States which have a surplus available.

### **Article 19            Responsibilities of the off-taking Member State[s]**

(1) In accordance with Article [5] and [12 to 14] of this Agreement the off-taking Member State[s] will be responsible for the provision of the financial support over the agreed time period.

(2) In case it fails to comply with its obligations leading to a shortfall in support payments to the project operator, it loses all rights under this Agreement. It shall additionally pay the host Member State a penalty amounting to a percentage in the amount of [XX%] of the financial support due.

## **Part VII    MONITORING, PROOF AND VERIFICATION**

### **Article 20            Eligibility Criteria and required proof**

(1) In accordance with Art. 7 (2) of Directive 2009/28/EC the Joint Project needs to comply with the following requirements in order to receive the support payments:

- a) The energy is produced exclusively from renewable energy sources;

- b) The energy is produced by a newly constructed installation that became operational after 25 June 2009 or by the increased capacity of an installation that was refurbished after that date.

(2) In accordance with Article 16 of this Agreement, the Joint Project Operator shall be granted production support after presenting the following proof:

- a) Proof of electricity production from renewable energy sources (stating the amount, time period and renewable origin of the electricity produced by the Joint Project).
- b) [*"Add-on" Option for physical transfer*]: Proof of nominated interconnector capacity at an interconnector between host Member State and off-taking Member State [in form of physical transmission rights], referring to the same period of time [e.g. the same month] as the proof of electricity production from renewable energy sources;
- c) [*"Add-on" Option for physical transfer*]: Proof of registration in the schedule of balance in the off-taking Member State.

(3) Details of the administration of support payments are specified in the [tender specifications/support agreement] as agreed upon by the Responsible Body.

#### **Article 21            Verification**

Power meter and energy production shall be verified annually by an independent verifier. The verification needs to confirm that:

- a) The electricity comes from an eligible renewable energy plant;
- b) The electricity is produced from renewable sources;
- c) The meter operates correctly and is properly accounted for.

### **Part VIII    GENERAL PROVISIONS**

#### **Article 22            Relationship between this Agreement and other International Obligations**

Nothing in this Agreement shall derogate from the rights or obligations of any State under any relevant international treaty or rule of international law.

#### **Article 23            Force Majeure**

(see above for statistical transfer model agreement)

#### **Article 24            Dispute Settlement**

(see above for statistical transfer model agreement)

## **Article 25            Confidentiality**

(1) The Parties to this Agreement are committed to confidentiality against third parties for all information and objects that are not to be notified to the European Commission according to Article 11 of the Agreement or have not been otherwise published and are conveyed in confidence by any other Party. The receiving Party shall not use any such information or objects for any purpose other than in accordance with the terms of this Agreement. The disclosure of confidential information or objects requires the express written consent by the conveying Party.

(2) The confidentiality clause excludes objects or types of information that

- a) have been developed or are being developed by the receiving Party independently of the information;
- b) are part of the generally accessible state of technology or that reach this status without the fault of the receiving Party or
- c) were already in the possession of the receiving Party at the time of the announcement.

## **Article 26            Written Form**

All additions and modifications to this Agreement, which will be numbered consecutively, shall be duly signed by both parties prior to affecting any of the changes therein contained. No addition or modification of this Agreement shall be effective or binding on either of the parties hereto unless agreed in writing and duly signed by the parties.

## **Article 27            Severability Clause**

If any part of this Agreement shall be or become invalid, then it shall be replaced by that valid regulation which comes closest to its meaning and intention. All other parts of this disclaimer shall remain valid in that case.

## **Article 28            Entry into Force**

This Agreement shall enter into force on [...date...].

## **Article 29            Period of Agreement/Termination/Modification/Review**

Note:

Options 16a and 16b are mutually exclusive; either can be combined with paragraph 2 and/or paragraph 3.

### **OPTION 16a**

(1) The agreement will terminate on [...*date*...].

**OPTION 16b**

(1a) This Agreement shall terminate after at the day of the decommissioning of the Joint Project[s] build in the course of the Joint Project.

(2) By way of exception, this Agreement can be terminated [...]

(3) The agreement can be amended at any time by mutual consent of the parties. The parties will review this agreement at least once every three years to determine whether it should be revised, renewed [or canceled].

**Article 30          Depositary**

(1) [...*Member State*...] shall act as the Depositary of the Agreement.

(2) The original of the Agreement, in the [...] languages, each version being equally authentic, shall be deposited with the Depositary. The Depositary shall transmit certified copies of each of these versions to the Parties which have signed the Agreement.