

Agreement

between

the Government of the Kingdom of Denmark

and

the Government of the Federal Republic of Germany

on the Establishment of a Framework for the Partial Opening of National Support Schemes
to Support the Generation of Energy from Solar Photovoltaic Projects and for the Cross-
border Administration of such Projects in the Context of a Single Pilot Run
in 2016

The Government of the Kingdom of Denmark
and
the Government of the Federal Republic of Germany,
hereinafter collectively referred to as “Contracting Parties” or individually as “Contracting
Party” –

With a view to further developing the friendly relations on energy matters between the
Contracting Parties,

Aiming at strengthening regional cooperation and jointly understanding and meeting the
challenges of market integration of renewable energies,

Recognising that energy markets alone currently do not deliver the desired level of
renewables in either the Federal Republic of Germany or the Kingdom of Denmark,
meaning that national support schemes are needed to overcome this market failure and spur
increased investment in renewable energy,

Desiring to establish a framework for the partial opening of the national support schemes
of both Contracting Parties to support renewable energy generated by photovoltaic
installations located on the territory of the other Contracting Party with the aim of ensuring
a cost-effective deployment of renewable energy sources,

Aiming to facilitate cross-border support of energy from renewable sources without
affecting the proper functioning of national support schemes,

Stressing that 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 (Directive 2009/28/EC) allows the Member States of the European Union (EU) to decide if and to what extent they want to support energy from renewable sources in other EU Member States,

Underlining the importance that EU Member States remain in control over costs and effects of their national support schemes for renewable energy in order to allow for their effective and efficient functioning,

Understanding that this cooperation provides an important test case,

Basing the cooperation on the principle of reciprocity in the sense that both Contracting Parties shall mutually open a single pilot auction round to bids concerning solar photovoltaic projects located in the territory of the other respective Contracting Party and with the understanding that this cooperation is mutually beneficial,

Understanding that for the Federal Republic of Germany the physical import of the electricity supported in the Kingdom of Denmark and for the Kingdom of Denmark the physical import of the electricity supported in the Federal Republic of Germany is important in the context of this cross-border cooperation, and that these preconditions are considered to be met for these pilot auction rounds given the high direct interconnection level between the Contracting Parties and the small volume of the pilot auction rounds,

Understanding that there are differences as regards the location specific conditions due to the relevant applicable national legislation and other regulations of the two Contracting Parties such as rules on planning and construction, licensing laws, conditions for grid connection or taxes and levies, which for the purposes of this Agreement however shall not be aligned,

Agreeing therefore, that in principle, the location-specific conditions of a Contracting Party on whose territory the solar photovoltaic projects are located, shall apply also to such projects supported by the other Contracting Party,

Recognising that according to German law site restrictions apply regarding the eligibility of solar photovoltaic projects located in the Federal Republic of Germany to receive financial support from the German national support scheme in order to limit changes in the landscape, in particular in rural areas, and to ensure the availability of agricultural land, and that since keeping up such site restrictions is crucial for the Federal Republic of Germany, the Kingdom of Denmark shall implement the same site restrictions on the eligibility for Danish financial support to solar photovoltaic projects located in the Federal Republic of Germany under this pilot run,

Recognising that it is crucial for the Federal Republic of Germany, in the context of ensuring the stability of the electricity grid, that the German regulations on remote control also apply to installations located on German territory and financially supported by the Kingdom of Denmark, and that therefore the Kingdom of Denmark shall implement the same regulations in its auctioning conditions for its pilot auction for solar photovoltaic projects located in the Federal Republic of Germany,

Recognising that under its applicable legislation the Federal Republic of Germany may currently conclude cooperation agreements only regarding support to ground-mounted photovoltaic installations, and any financial support provided by the Kingdom of Denmark to solar photovoltaic projects located in the Federal Republic of Germany under this pilot run is thus granted only to ground-mounted photovoltaic installations,

Understanding that the access to and the use of guarantees of origin is regulated differently in the Kingdom of Denmark and in the Federal Republic of Germany, respectively, which means that the Federal Republic of Germany restricts the use of guarantees of origin issued for renewable energy installations supported under the German Renewable Energy Sources Act 2014 (Gesetz für den Ausbau erneuerbarer Energien -- EEG 2014), while the Kingdom of Denmark issues guarantees of origin to financially supported renewable energy installations and allows them to use them, and that this difference for the purpose of this Agreement may cause effects in the disclosure of the electricity mix to final consumers in the Federal Republic of Germany,

Considering, however that this pilot run is only a test case and that the maximum amount of guarantees of origin that can be issued to solar photovoltaic projects under this Agreement is small,

Keeping in mind and complying with the provisions concerning guarantees of origin as provided for in Directive 2009/28/EC,

Basing themselves on the cooperation mechanism between EU Member States which allow the Contracting Parties to agree on the extent to which the energy production from renewable sources should count towards the national overall target of one or the other by applying the cooperation mechanism of statistical transfers as provided for in Directive 2009/28/EC,

Understanding that each Contracting Party is responsible for the consistency of the reporting to the European Commission regarding the development of renewable energy and ensures that its national renewable energy development path is traceable by documenting it in a transparent and comprehensive manner,

Bearing in mind that Directive 2009/28/EC is currently under revision,

Promoting the further development of renewable energy as part of the ongoing transition of the European Union's energy sector to renewables –

have agreed as follows:

Part I
Definitions, Objective and Scope

Article 1
Definitions

For the purposes of this Agreement, the following terms shall have the meaning set forth below:

- a) “Federal Republic of Germany”: when used in a geographical sense means the land territory of the Federal Republic of Germany, including inland waters, and the air space and the territorial sea of the Federal Republic of Germany and any maritime area beyond the territorial sea within which the Federal Republic of Germany may exercise sovereign rights or jurisdiction in accordance with international law;
- b) “Kingdom of Denmark”: when used in a geographical sense means the land territory of the Kingdom of Denmark, including inland waters, and the air space and the territorial sea of the Kingdom of Denmark and any maritime area beyond the territorial sea within which the Kingdom of Denmark may exercise sovereign rights or jurisdiction in accordance with international law; the term, however, does not comprise the Faroe Islands and Greenland;
- c) “PV installation”: a solar photovoltaic installation;

- d) “ground-mounted PV installation”: a PV-installation that is not installed on or integrated into a building or any other edificial structure which has been primarily constructed for purposes other than the production of electricity from solar radiation energy;
- e) “solar PV project”: a project concerning renewable energy production from a PV installation;
- f) “solar PV project supported by the Federal Republic of Germany”: a solar PV project where the ground-mounted PV installation is located in the Kingdom of Denmark and its renewable energy production is financially supported by the Federal Republic of Germany;
- g) “solar PV project supported by the Kingdom of Denmark”: a solar PV project where the ground-mounted PV installation is located in the Federal Republic of Germany and its renewable energy production is financially supported by the Kingdom of Denmark;
- h) “MW”: for the purpose of determining the size of a solar PV project supported by the Federal Republic of Germany the maximum rated peak capacity in megawatt of the PV modules in the solar PV project and for the purpose of determining the size of a solar PV project supported by the Kingdom of Denmark the maximum rated capacity in megawatt which the PV installation or PV installations in the solar PV project can deliver to the electricity grid;
- i) “opened pilot auction round in the Federal Republic of Germany in 2016”: an auction of support for a total capacity of 50 MW of ground-mounted solar PV installations to be held in the Federal Republic of Germany in 2016 and opened also to ground-mounted solar PV projects located in the Kingdom of Denmark;

- j) “partially opened pilot auction round in the Kingdom of Denmark in 2016”: an auction of support for a total capacity of 20 MW of solar PV installations to be held in the Kingdom of Denmark in 2016, with an opening of 2.4 MW of the total capacity also to ground-mounted solar PV projects located in the Federal Republic of Germany;
- k) “national support scheme”: a support scheme to promote the deployment and production of renewable energy in the Kingdom of Denmark or in the Federal Republic of Germany with the aim to spur increased investment in renewable energy in the Kingdom of Denmark or in the Federal Republic of Germany, respectively;
- l) “the German auctioning authority” designates the authority in the Federal Republic of Germany calling for bids in the opened pilot auction round in the Federal Republic of Germany in 2016 and awarding the eligibility to receive financial support to winning bids: the Federal Network Agency (Bundesnetzagentur);
- m) “the Danish auctioning authority” designates the authority in the Kingdom of Denmark calling for bids in the partially opened pilot auction round in the Kingdom of Denmark in 2016 and awarding the eligibility to receive financial support to winning bids: the Danish Energy Authority (Energistyrelsen);
- n) “the Danish administrative entity” designates the entity in the Kingdom of Denmark paying out the financial support to a winning solar PV project in the partially opened pilot auction round in the Kingdom of Denmark in 2016: Energinet.dk;
- o) “Directive 2009/28/EC”: Directive 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;

- p) “statistical transfers”: the cooperation mechanism set up in Article 6 of Directive 2009/28/EC providing that energy produced in one EU Member State can be virtually transferred to the renewable energy statistics of another EU Member State, counting towards the national renewable energy target of that EU Member State;
- q) “guarantee of origin (GO)”: in accordance with lit. j) of Article 2 of Directive 2009/28/EC an electronic document which has the sole function of providing proof to a final customer that a given share or quantity of energy was produced from renewable sources;
- r) “the competent body designated by the Kingdom of Denmark”: the agency or institution located in the Kingdom of Denmark responsible for the issuance, transfer and cancellation of GOs in accordance with Directive 2009/28/EC: Energinet.dk;
- s) “SPU”: the Danish Act on a Pilot Auction for Price Premiums for Electricity Produced by Solar Photovoltaic Installations (Lov om pilotudbud af pristillæg for elektricitet fremstillet på solcelleanlæg);
- t) “EEG”: the German Renewable Energy Sources Act 2014 (Gesetz für den Ausbau erneuerbarer Energien – EEG 2014);
- u) “GEEV”: the German Ordinance for Cross-Border Renewable Energy Auctions (Verordnung zur grenzüberschreitenden Ausschreibung der Förderung für Strom aus erneuerbaren Energien sowie zur Änderung weiterer Verordnungen zur Förderung der erneuerbaren Energien – GEEV);
- v) “StromNEV”: The German Ordinance on Grid Tariffs (Verordnung über die Entgelte für den Zugang zu Elektrizitätsversorgungsnetzen (Stromnetzentgeltverordnung – StromNEV)).

Article 2

Scope and Objective

(1) This Agreement shall cover the cooperation between the Contracting Parties regarding the financial support to renewable energy through the partial opening of their respective national support schemes to bids from solar PV projects located in the territory of the other Contracting Party. The cooperation is thereby based on the principle of reciprocity and on the understanding that it leads to a mutual benefit for both Contracting Parties, as well as on the understanding that for the Federal Republic of Germany the physical import of the electricity supported in the Kingdom of Denmark to the Federal Republic of Germany and for the Kingdom of Denmark the physical import of the electricity supported in the Federal Republic of Germany to the Kingdom of Denmark is important in the context of this cross-border cooperation, and that these preconditions are considered to be met for these pilot auction rounds in 2016 given the high direct interconnection level between the Contracting Parties and the small volume of the pilot auction rounds.

(2) The objective of this Agreement shall be to provide a cooperation framework for opening a part of the Danish national support scheme in order to provide financial support to a winner or winners in the partially opened pilot auction round in the Kingdom of Denmark in 2016 concerning bids regarding solar PV projects located in the Federal Republic of Germany in the context of a single pilot auction round in 2016, and for opening a part of the German national support scheme in order to provide financial support to a winner or winners in the opened pilot auction round in the Federal Republic of Germany in 2016 concerning bids regarding solar PV projects located in the Kingdom of Denmark in the context of a single pilot auction round in 2016.

(3) This Agreement shall further form the base for statistical transfers between the Contracting Parties under Article 6 of Directive 2009/28/EC.

Part II
Financial Support to Solar PV Projects

Article 3
National Support Schemes

This Agreement shall only lay down provisions regarding a pilot run concerning the opened pilot auction round in the Federal Republic of Germany in 2016 and the partially opened pilot auction round in the Kingdom of Denmark in 2016. Where necessary in the course of the opened pilot auction round in the Federal Republic of Germany in 2016, this Agreement shall provide for adaptations to the German national support scheme in accordance with the GEEV. The national support schemes in the Federal Republic of Germany and the Kingdom of Denmark, respectively, shall remain otherwise unaffected by this Agreement.

Article 4
Access to Support

(1) The Contracting Parties shall commit to providing financial support to the solar PV projects covered by this Agreement in accordance with their respective legislative and contractual framework, including that:

- a) German financial support under this Agreement shall be granted in accordance with the relevant provisions of the GEEV and the EEG. Thus, the financial support shall be granted in form of a sliding market premium. To this end, the market value of electricity relevant for calculating the market premium under paragraph 1 of Clause 27 and paragraph 2 of Clause 27 of the GEEV and of Clause 19 of the EEG shall be the market value of electricity on the spot market of the price zone in which the solar PV project is located. In times of lasting negative prices, to be understood as times where the price on the market where the solar PV project is located has been below zero for at least six consecutive hours, no sliding market premium shall be paid. In deviation from paragraph 1 sentence 2 no. 2 of Clause 32 of the GEEV, the value to be considered in the calculation of the sliding market premium shall be zero for the entire period of time in which the value of the hourly contracts are continuously negative, when the value of the hourly contracts in the relevant price zone in the auctions of the day before had been negative for at least six consecutive hours; and
 - b) Danish financial support under this Agreement shall be granted in the form of a fixed market premium and shall be paid in accordance with the provisions of the contract concluded between the Danish auctioning authority and the winning solar PV project. No fixed market premium shall be paid in times of negative prices, i.e. from the first moment that the prices on the market where the PV installation is located fall below zero.
- (2) The level of the financial support paid by a Contracting Party to a solar PV project under this Agreement shall be determined through the respective pilot auction rounds, which are the opened pilot auction round in the Federal Republic of Germany in 2016 and the partially opened pilot auction round in the Kingdom of Denmark in 2016. The details on the calculation of the financial support shall be published as part of the auction conditions.

(3) After expiry of the support period determined by the national auction conditions and any concluded contracts, the financial support awarded from a Contracting Party to a solar PV project located on the territory of the other Contracting Party shall cease automatically.

(4) In case a Contracting Party fails to comply with the obligation in paragraph 1 of this Article, leading to a shortfall in support payments to a solar PV project, it shall immediately contact the other Contracting Party explaining in writing the reasons for the shortfall. In accordance with paragraph 3 of Article 14, the Contracting Parties shall in such event discuss in good faith whether and to what extent any further production of electricity from that solar PV project shall be statistically transferred between the Contracting Parties.

Article 5

Avoidance of Supplementary Payments

(1) A Contracting Party providing financial support to a solar PV project covered by this Agreement and located on the territory of the other Contracting Party shall be responsible for ensuring compatibility of the financial support it provides with paragraph 1 of Article 107 of the Treaty on the Functioning of the European Union.

(2) The Federal Republic of Germany shall ensure that it shall not pay any support under the German national support scheme to a solar PV project supported by the Kingdom of Denmark.

(3) The Kingdom of Denmark shall ensure that it shall not pay any financial support that falls within paragraph 1 of Article 107 of the Treaty on the Functioning of the European Union under the Danish national support scheme to a solar PV project supported by the Federal Republic of Germany.

(4) Notwithstanding paragraphs 1, 2 and 3 of this Article, if the Kingdom of Denmark awards financial support contrary to paragraph 1 and 3 of this Article to a solar PV project supported by the Federal Republic of Germany under this Agreement, or the Federal Republic of Germany awards financial support to a solar PV project supported by the Kingdom of Denmark under this Agreement contrary to paragraph 1 and 2 of this Article, the awarding Contracting Party shall immediately send notice of the award to the other Contracting Party.

Article 6

Payments Procedure

(1) The payments of financial support as set out in paragraph 1 of Article 4 from a Contracting Party to a solar PV project located on the territory of the other Contracting Party and covered by this Agreement shall be made directly to the solar PV project and not through entities or bodies of the other Contracting Party.

(2) The Federal Republic of Germany shall oblige the relevant German transmission system operator to pay the financial support directly to a solar PV project supported by the Federal Republic of Germany and located on the territory of the Kingdom of Denmark.

(3) The Danish administrative entity shall pay the financial support directly to a solar PV project supported by the Kingdom of Denmark and located on the territory of the Federal Republic of Germany.

Part III
Opened Pilot Auction Rounds and Conditions

Article 7

The Opened Pilot Auction Round in the Federal Republic of Germany in 2016

- (1) The Federal Republic of Germany shall open a single pilot auction round in 2016 in which a total capacity of 50 MW of solar PV projects shall be auctioned. Bids regarding solar PV projects located in the Federal Republic of Germany as well as in the Kingdom of Denmark can participate in this auction round. No restrictions shall apply regarding whether the winning solar PV projects are located in the Kingdom of Denmark or in the Federal Republic of Germany, provided that the solar PV projects meet the requirements under the applicable German legislation and the auction conditions laid down by the German auctioning authority in accordance with this Agreement.
- (2) Bids submitted in this opened pilot auction round in the Federal Republic of Germany in 2016 shall be eligible with a minimum capacity of 100 kW and a maximum capacity of 10 MW. If the full installed capacity of a final bid for a solar PV project cannot be contained within the limits of 50 MW, financial support shall be awarded to this final bid up to its full installed capacity, in line with paragraph 2 of Clause 13 of the GEEV.
- (3) Financial support to a solar PV project located in the Kingdom of Denmark shall be awarded only if a bid for the solar PV project in the Kingdom of Denmark wins the opened pilot auction round in the Federal Republic of Germany in 2016 in competition with bids for solar PV projects located in the Federal Republic of Germany.

(4) In its auction conditions for the opened pilot auction round in the Federal Republic of Germany in 2016, the Federal Republic of Germany will include the restriction on permitted sites that only ground-mounted PV installations can participate in the auction. The Kingdom of Denmark shall have the obligation to assess that any solar PV project supported by the Federal Republic of Germany under this Agreement and located in the Kingdom of Denmark is a ground-mounted PV installation within the meaning of Article 1 lit. d).

Article 8

The Partially Opened Pilot Auction Round in the Kingdom of Denmark in 2016

(1) The Kingdom of Denmark shall partially open a single pilot auction round in 2016 in which a total capacity of 20 MW of solar PV projects will be auctioned. Bids regarding solar PV projects located in the Federal Republic of Germany as well as in the Kingdom of Denmark can participate in the opened share of 2.4 MW of this pilot auction round in the Kingdom of Denmark in 2016. No restrictions shall apply regarding whether the winning solar PV projects for the 2.4 MW are located in the Kingdom of Denmark or in the Federal Republic of Germany, provided that the solar PV projects meet the requirements under the applicable Danish legislation, contracts and the auctioning material laid down by the Danish auctioning authority.

(2) Bids submitted in this partially opened pilot auction round in the Kingdom of Denmark in 2016 shall be eligible with a maximum capacity of 2.4 MW. If the full installed capacity of a final bid concerning a solar PV project located in the Federal Republic of Germany cannot be contained within the limits of 2.4 MW and 20 MW, respectively, financial support shall be awarded to this final bid up to a maximum of 4.799 MW and 22.399 MW, respectively, in line with Subclause 2 of Clause 1 of the SPU.

(3) For solar PV projects supported by the Kingdom of Denmark and located in the Federal Republic of Germany, in its auction conditions the Kingdom of Denmark shall stipulate in accordance with no. 3 of Clause 3 and paragraph 5 of Clause 22 of the GEEV that financial support is only paid if the maximum rated capacity of the PV installation does not exceed 10 MW, multiple modules being treated as one installation irrespective of the ownership structure solely for the purpose of calculating the support level for the respective last generator put into operation if they are located on the same site, the same property or otherwise in direct proximity and have become operational within twelve successive calendar months or have been set up in the same municipality, and have become operational within 24 successive calendar months in a linear distance of up to 2 kilometres, measured from the outer edge of the respective installation. However, the Federal Republic of Germany shall have the obligation to assess that this requirement is actually met and confirm to the Kingdom of Denmark that the requirements of paragraph 4 lit. i) of Article 10 are fulfilled in line with paragraph 2 of Article 12.

(4) Financial support to a solar PV project located in the Federal Republic of Germany shall be awarded only if a bid for the solar PV project in the Federal Republic of Germany wins the partially opened pilot auction round in the Kingdom of Denmark in 2016 in competition with bids for solar PV projects located in the Kingdom of Denmark. Furthermore, a contract has to be concluded with each of the winners of the auction.

(5) In its auction conditions for the partially opened pilot auction round in the Kingdom of Denmark in 2016, the Kingdom of Denmark shall require that solar PV projects supported by the Kingdom of Denmark and located in the Federal Republic of Germany meet the restrictions regarding eligible sites stemming from paragraph 1 no. 2 lit. a) of Clause 22 of the GEEV. However, it is the Federal Republic of Germany that shall have the obligation to assess that these requirements are actually met and confirm to the Kingdom of Denmark that the requirements of paragraph 4 lit. g) of Article 10 are fulfilled in line with paragraph 2 of Article 12.

(6) In its auction conditions for the partially opened pilot auction round in the Kingdom of Denmark in 2016, the Kingdom of Denmark shall require that any solar PV project supported by the Kingdom of Denmark and located in the Federal Republic of Germany is equipped with remote control that allows for remotely controlling the feed-in of the electricity produced as well as providing information on the real-time feed-in, according to Clause 36 of the EEG. However, the Federal Republic of Germany shall have the obligation to assess that this requirement is actually met and confirm to the Kingdom of Denmark that the requirements of paragraph 4 lit. j) of Article 10 are fulfilled in line with paragraph 2 of Article 12.

(7) The Kingdom of Denmark shall in its auction conditions for the partially opened pilot auction round in the Kingdom of Denmark in 2016, require that solar PV projects supported by the Kingdom of Denmark and located in the Federal Republic of Germany cannot claim compensation for distributed feed-in of electricity under Clause 18 of the StromNEV or any succeeding German legislation. However, the Federal Republic of Germany shall have the obligation to assess that this requirement is actually met and confirm to the Kingdom of Denmark that the requirements of paragraph 4 lit. k) of Article 10 are fulfilled in line with paragraph 2 of Article 12 and shall further have the obligation to notify the Danish auctioning authority if a solar PV project applies for this compensation.

Article 9

Guarantees of Origin (GOs)

(1) The Federal Republic of Germany shall issue GOs relating to the solar PV projects located on the territory of the Federal Republic of Germany and supported by the Kingdom of Denmark if a request for the issuance of GOs is received from such projects.

(2) If the competent body designated by the Kingdom of Denmark issues a GO relating to a solar PV project on the territory of the Kingdom of Denmark and supported by the Federal Republic of Germany, it shall immediately forward a notification of the issuance of that GO to the German auctioning authority. The notification shall include:

- a) the identification of the solar PV project supported by the Federal Republic of Germany by means of the registration numbers from both the Danish registry and the German registry of the PV installation(s) of the solar PV project;
- b) the amount of production for which GOs were issued for the solar PV project supported by the Federal Republic of Germany;
- c) the timeframe over which the electricity was produced for which GOs were issued for the solar PV project supported by the Federal Republic of Germany.

(3) In its auction conditions the Federal Republic of Germany shall ensure that a solar PV project supported by the Federal Republic of Germany can receive GOs and use them instead of receiving financial support from the Federal Republic of Germany under the condition that the change to GOs is effectuated on the first day of a month and communicated in line with the provisions of the EEG, the GEEV and the German auction conditions.

Part IV
Supervision

Article 10
Information to Be Exchanged

(1) Each Contracting Party shall collect the information as listed in this Article with respect to a solar PV project located on its territory receiving financial support from the other Contracting Party under this Agreement and exchange this information with the other Contracting Party.

(2) When a Contracting Party has received the identification number in the Danish or in the German registry regarding a winning solar PV project in its pilot auction under this Agreement and when that solar PV project is located in the territory of the other Contracting Party it shall immediately send a notification to the other Contracting Party that this solar PV project has won part in the national pilot auction round. Thereafter the other Contracting Party can start sending production data concerning this solar PV project in accordance with paragraph 3 of this Article and the Contracting Party can require confirmations in accordance with paragraph 4 of this Article.

(3) The Contracting Parties shall exchange information on the following production data:

- a) the identification number of the PV installation, or the identification numbers if the PV installation is registered in both the Danish and the German registry;
- b) the amount of electricity produced in each hour; and
- c) the market price in the relevant price zone of the electricity market for each hour.

(4) A Contracting Party shall when relevant confirm in accordance with paragraph 2 of Article 11 and paragraph 2 of Article 12 that to its best knowledge the following conditions for providing financial support to a solar PV project located on its territory but financially supported by the other Contracting Party are met. These confirmations shall include information:

- a) on the identification number of the PV installation, or the identification numbers if the PV installation is registered in both the Danish and the German registry;
- b) on the location of the solar PV project,
- c) on the size of the solar PV project either as maximum rated capacity of the solar PV panels or as maximum rated power which can be delivered to the grid;
- d) on the date when the solar PV project became operational;
- e) that all electricity produced by a PV installation from a solar PV project located in its territory but supported by the other Contracting Party is fed into the grid and has not been self-consumed;
- f) that the electricity was not marketed multiple times or otherwise transferred multiple times;
- g) that the solar PV project supported by the Kingdom of Denmark and located in the Federal Republic of Germany is a ground-mounted PV installation and that it meets the restrictions regarding eligible sites as will be required by the Danish auction conditions in accordance with paragraph 5 of Article 8;

- h) that the size of the solar PV project does not exceed the respective maximum size;
- i) that for solar PV projects supported by the Kingdom of Denmark and located in the Federal Republic of Germany the rules on calculating the size are observed in accordance with paragraph 3 of Article 8;
- j) that the solar PV project supported by the Kingdom of Denmark and located in the Federal Republic of Germany meets the requirements regarding remote control, in line with paragraph 6 of Article 8;
- k) that the solar PV project supported by the Kingdom of Denmark and located in the Federal Republic of Germany meets the requirement not to claim compensation for distributed feed-in of electricity as will be included in the auction specifications for the partially opened pilot auction round in the Kingdom of Denmark in 2016 pursuant to paragraph 7 of Article 8;
- l) that the solar PV project supported by the Federal Republic of Germany and located in the Kingdom of Denmark is a ground-mounted PV installation, as required by the auction conditions for the opened pilot auction round in the Federal Republic of Germany in 2016, in accordance with paragraph 4 of Article 7;
- m) that the solar PV project supported by the Federal Republic of Germany and located in the Kingdom of Denmark has not claimed GOs in line with Article 9.

Article 11

Solar PV Projects Supported by the Federal Republic of Germany

(1) Production data within the meaning of paragraph 3 of Article 10, shall be sent on a monthly basis and without request by the Danish administrative entity to the German auctioning authority, which will pass it on to the German transmission system operator responsible for the payment to the relevant solar PV project supported by the Federal Republic of Germany. In addition, in February each year, the Danish administrative entity shall without request send an annual overview of the production data to the German auctioning authority, which will pass it on to the relevant German transmission system operator.

(2) The German auctioning authority shall request confirmations with relevant information for the solar PV solar projects supported by the Federal Republic of Germany from the Danish administrative entity in accordance with paragraph 4 lit. a), b), c), d), e), f), h), l) and m) of Article 10. Thereafter, the confirmations shall be renewed on a monthly basis and sent without request. The German auctioning authority will pass on the confirmations to the German transmission system operator responsible for the payment of financial support to the relevant solar PV project supported by the Federal Republic of Germany.

Article 12

Solar PV Projects Supported by the Kingdom of Denmark

(1) The German Auctioning Authority shall send production data within the meaning of paragraph 3 of Article 10 on a monthly basis and without request to the Danish administrative entity. The data shall be sent at the latest by the fifth of each month, as well as upon request. The German auctioning authority will receive the production data from the German grid operator of the grid to which the solar PV project supported by the Kingdom of Denmark is connected according to the procedure laid down by the German auctioning authority, and will pass it on to the Danish administrative entity.

(2) The Danish auctioning authority shall request confirmations with relevant information for the solar PV projects supported by the Kingdom of Denmark from the German auctioning authority in accordance with paragraph 4 lit. a), b), c), d), e), f), g), h), i), j) and k) of Article 10. Thereafter, the confirmations shall be renewed on a monthly basis and sent without request. The German auctioning authority will receive the confirmation from the German grid operator of the grid to which the solar PV project supported by the Kingdom of Denmark is connected according to the procedure laid down by the German auctioning authority, and will pass it on to the Danish Auctioning Authority.

Article 13

Control and Organisation of the Exchanged Information

(1) The control system of a Contracting Party applying to information on solar PV installations on its territory supported by its national support scheme shall apply also to the information regarding PV installations on its territory which are supported by the other Contracting Party.

(2) The procedures and other practical circumstances that are necessary for the exchange of information as is described in Article 10 shall be agreed on between the German auctioning authority and the Danish auctioning authority or the Danish administrative entity depending on whom the concerned information is to be exchanged with.

(3) If a Contracting Party that has sent information to the other Contracting Party under Article 10 is made aware of changes to the sent information then it shall immediately send a notification to the other Contracting Party describing the changes to the previously sent information using the same channels as used for the submission of the original information.

Part V

Statistical Transfers

Article 14

Statistical Transfers

(1) The renewable energy target amounts corresponding to the energy produced in the course of a solar PV project supported by the Federal Republic of Germany shall in their entirety be statistically transferred to the Federal Republic of Germany for target compliance purposes under Directive 2009/28/EC and under any European legislation succeeding Directive 2009/28/EC. For the time beyond 2020 it shall be transferred accordingly to be accounted towards the German national contributions to the binding renewable energy target at EU level.

(2) The renewable energy target amounts corresponding to the energy produced in the course of a solar PV project supported by the Kingdom of Denmark shall in their entirety be statistically transferred to the Kingdom of Denmark for target compliance purposes under Directive 2009/28/EC and under any European legislation succeeding Directive 2009/28/EC. For the time beyond 2020 it shall be transferred accordingly to be accounted towards the Danish national contributions to the binding renewable energy target at EU level.

(3) Paragraphs 1 and 2 of this Article shall apply only in so far as a solar PV project located in the territory of one Contracting Party is receiving financial support from the other Contracting Party. If the financial support ceases for any reason, the Contracting Party ceasing the support to the solar PV project shall inform the other Contracting Party on whose territory the solar PV project is located. The Contracting Parties shall in good faith discuss whether and to what extent any further energy production of that solar PV project shall be statistically transferred.

(4) Each Contracting Party shall be responsible for ensuring that statistical transfers under this Agreement do not affect the Contracting Party's target achievement in line with paragraph 1 of Article 6 of Directive 2009/28/EC.

(5) As the support to the renewable energy production to be statistically transferred under this Agreement is already financed by the Contracting Party to which the target amount is statistically transferred, no further payment obligations will arise with regards to the statistical transfers.

Article 15

Notification to the European Commission

(1) The Federal Republic of Germany shall notify to the European Commission according to paragraph 2 of Article 6 of Directive 2009/28/EC the statistical transfer of the renewable energy production from the PV installation of the solar PV project supported by the Kingdom of Denmark while it is financially supported under the Danish national support scheme under this Agreement.

(2) The Kingdom of Denmark shall receive a copy of the notification as stated in paragraph 1 of this Article and shall notify the statistical transfer to the European Commission, in line with paragraph 3 of Article 6 of Directive 2009/28/EC.

(3) The Kingdom of Denmark shall notify to the European Commission according to paragraph 2 of Article 6 of Directive 2009/28/EC the statistical transfer of the renewable energy production from the PV installation of the solar PV project supported by the Federal Republic of Germany while it is financially supported under the German national support scheme under this Agreement.

(4) The Federal Republic of Germany shall receive a copy of the notification as stated in paragraph 3 of this Article and shall notify the statistical transfer to the European Commission, in line with paragraph 3 of Article 6 of Directive 2009/28/EC.

(5) To facilitate the European Commission's task of monitoring the overall progress of implementation of and compliance with Directive 2009/28/EC, the Contracting Parties shall notify the European Commission of the full content of this Agreement.

(6) For the time beyond 2020, or in any event should the legislative framework at EU level for statistical transfers change, the Contracting Parties shall in that case automatically follow the revised rules. Should this for any reason prove not to be practical, the Contracting Parties undertake to discuss in good faith how to proceed.

Part VI
Responsibilities of the Contracting Parties (Risk Sharing and Liability)

Article 16
General Commitment

The Contracting Parties commit to execute this Agreement and all obligations under this Agreement with due diligence and in good faith.

Article 17
Force Majeure

- (1) Responsibility for non-performance or delay in performance on the part of a Contracting Party with respect to any obligations or any part thereof under this Agreement shall be suspended to the extent that such non-performance or delay in performance is caused or occasioned by force majeure within the meaning of this Article.
- (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 a Contracting Party 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 Contracting Party,

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 Contracting Party of its obligations, or any part thereof, are beyond the relevant Contracting Party's control.

(3) If a Contracting Party is prevented from carrying out its obligations or any part thereof under this Agreement as a result of force majeure, it shall inform the other Contracting Party in writing. The notice must:

- a) specify the obligations or any 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.

Part VII
General Provisions

Article 18
Transfer of Tasks

(1) Both Contracting Parties can appoint another authority, agency, institution or private or public entity than those already appointed in lit. l), m), n) and r) of Article 1 to perform a task under this Agreement.

(2) If a Contracting Party appoints another authority, agency, institution or private or public entity to perform a task in accordance with paragraph 1 of this Article it shall immediately notify the other Contracting Party and provide all necessary information.

Article 19
Dispute Settlement

The Contracting Parties shall attempt in good faith to resolve through negotiation any disputes arising from or relating to this Agreement.

Article 20
Public Disclosure of this Agreement

- (1) Each Contracting Party is entitled to publish this Agreement partly or in its entirety.
- (2) Each Contracting Party is entitled to disclose this Agreement partly or in its entirety to any third party.

Article 21
Relationship to Other International Obligations

- (1) Nothing in this Agreement shall derogate from any rights or obligations of a Contracting Party under any relevant other international treaty to which the Contracting Parties are party or from international law.
- (2) In the event of any inconsistency between this Agreement and any other international agreement to which a Contracting Party is a party to, or to international law, the Contracting Parties shall immediately consult one another with a view to finding a mutually satisfactory solution.

Article 22
Entry into Force

This Agreement shall enter into force on the day when the Contracting Parties have notified each other in writing that their respective internal requirements necessary for its entry into force have been completed. This shall be considered to be the day of receipt of the last notification.

Article 23
Duration

This Agreement shall be effective until all financial support covered by this Agreement to solar PV projects ceases, unless terminated in accordance with Article 26.

Article 24
Modifications

This Agreement may only be amended and modified by a written agreement duly signed by the Contracting Parties.

Article 25
Implementation of this Agreement

Representatives of the Contracting Parties shall meet whenever necessary at the request of a Contracting Party to discuss the implementation of this Agreement and, if deemed necessary, propose amendments to this Agreement, in particular in the light of the forthcoming changes to Directive 2009/28/EC.

Article 26
Termination

- (1) This Agreement may only be terminated in accordance with the provisions of the Vienna Convention on the Law of Treaties of 23 May 1969.
- (2) Notwithstanding paragraph 1 of this Article, the Contracting Parties shall in good faith seek to negotiate an amicable solution prior to terminating this Agreement.

Done in Berlin, on 20 July 2016, in two duplicates, each in the English, Danish and German languages, each of these texts being authentic. In case of any differences in interpretation the English text shall prevail.

For the Government of the
Kingdom of Denmark



For the Government of the
Federal Republic of Germany

