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# Pilot Opening Auction For Ground-Mounted PV To Bidders From Other EU Member States

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*Concept-Note*

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# I. Introduction

## 1. Background

The EU Renewable Energy Directive – 2009/28/EC – provides the basis for enhanced cooperation on the expansion of renewable energy between Member States by introducing cooperation mechanisms (articles 5 to 11). The EU guidelines on state aid for environmental protection and energy call on the Member States to make better use of these cooperation mechanisms. As part of the state aid approval for Germany's Renewable Energy Sources Act 2014 (EEG 2014), the German government and the European Commission agreed that from 2017 onwards, 5 percent of the newly installed renewables capacity per year will be opened to installations from other EU Member States ("partial opening").

As a first step, a pilot auction for ground-mounted PV systems will be opened for test purposes in 2016 ("pilot-opening").

Paragraph 2, section 6, of the Renewable Energy Sources Act 2014 and the authorisation to issue ordinances specified in paragraph 88, sections 2–4 of the Renewable Energy Sources Act 2014, provide three pre-conditions for supporting renewable electricity from other countries:

1. Germany and its partner country must conclude a cooperation agreement in accordance with the cooperation mechanisms laid out in the Renewable Energy Directive.
2. Cooperation should be based on the principle of reciprocity. This means that Germany should open its auctions to countries which, in turn, open their auctions to installations in Germany.
3. RES installations abroad can only receive support payments under the Renewable Energy Sources Act if their electricity can be 'physically' imported to Germany.

These pre-conditions are implemented by the outlined concept. The concept for the partial opening of auctions for other technologies from 2017 will be developed based on the lessons learned from the pilot opening of auctions in 2016. Exchanges with potential partner countries played an important role in developing the outlined concept.

## 2. Goals of the auction opening

### Regional integration of the "Energiewende"

Germany will only be able to transform its energy system by coordinating this process with its neighbours. One objective of partially opening auctions is to foster a common understanding of the challenges of market integration of renewables between Member States and to improve the alignment of national support rules.

Encompassing wider regions generates synergies in market integration of renewables since it also increases the potential for flexibility.

Consequently, the partial opening of the auctions follows the European orientation of Germany's 'Electricity Market 2.0' as laid out in Germany's Electricity Market Act. The implementation of initial joint projects would strengthen cooperation with the 'electricity neighbours'<sup>1</sup> and send a strong signal in the discussion on a new European framework for electricity.

### 'Real impact' on the transformation of the energy system in Germany

The partial opening of auctions to other EU Member States will create a 'real impact' on the transformation of the energy system in Germany. Purely virtual cross-border accounting of RES-electricity generation in another country is insufficient; the RES electricity has to "arrive" in Germany. The Renewable Energy Sources Act aims to contribute to a new sustainable, secure and cost-effective energy system in Germany that is based on renewable energy, energy efficiency and flexibility. Using regional synergies will help to achieve this goal.

### Creating a "win-win-situation"

For consumers to accept cross-border RES support, the auction opening should be based on the principle of reciprocity and lead to the mutual benefits for both countries. This requires that both partner countries need to be able to control the conditions and the volume of the opening. This

1 The 'electricity neighbours' are the 12 states (Belgium, Netherlands, Luxembourg, France, Germany, Austria, Switzerland, Norway, Sweden, Denmark, Poland and the Czech Republic) that signed a joint declaration on enhanced regional cooperation on 8 June 2015 regarding security of electricity supply in the context of the Internal Energy Market.

is also crucial for the long-term grid planning. By fairly sharing costs and benefits, neighbouring countries can become strategic partners in energy cooperation.

### Ensuring EU-compatibility

The partial opening of auctions is designed to help implement the guidelines on state aid for environmental protection and energy, and ensures that the Renewable Energy Sources Act remains in line with EU law.

From the perspective of the European Commission, the partial opening presents an adequate solution for eliminating any lingering doubts that remain in terms of European law as to whether or not foreign electricity that is marketed in Germany can be subjected to the Renewable Energy Act levy.<sup>2</sup>

## 3. Process and timeline

The key points discussed here are in line with the plan for opening up auctions described in the Federal Ministry for Economic Affairs and Energy's draft of an ordinance for opening up ground-mounted PV auctions to other EU Member States. Germany is simultaneously in consultation with other Member States on potential cooperation in this area. The preliminary results have already been fed into this concept note.

The German support system, as provided for in the Renewable Energy Sources Act, will be switched to auctions from 2017 onwards. The lessons learned from pilot-opening for participants from other Member States will help to set the rules for opening up auctions for other renewable technologies (partial opening).

This plan was discussed with relevant stakeholders on 16 March 2016 in a meeting of the German Electricity Market Platform. It is planned that the ordinance of the pilot-opening will enter into force with a decision of the German Federal Cabinet in June 2016. During this year, two open pilot auctions are to be carried out with two partner countries. This is of course contingent upon the successful outcome of the negotiations with the respective partner countries.

<sup>2</sup> The European Commission considers that imposing the levy of the Renewable Energy Act on imported electricity, without at least a proportional opening of EEG support for investments in other EU member states or other compensatory measures, would lead to an infringement of Article 30/110 of the TFEU. The Federal Government does not share this legal view, particularly since the "Ålands Vindkraft" decision of the ECJ. Since the Aland judgment did not explicitly refer to Article 30/110 of the TFEU, remaining legal doubts within the Commission could not be conclusively resolved. However, from the European Commission's perspective, the proportional opening of Renewable Energy Act support, with the amount of 5 percent of the newly installed RES capacity per year, constitutes an adequate compensation for the potential infringement of Article 30/110 of the TFEU.

## II. The concept in short

There are two options provided for within the partial opening of auctions for ground-mounted PV installations:

- Each partner country conducts a separate auction which will also be opened to installations in the other partner country (*mutually-opened auctions*).
- The partner countries conduct a *joint auction*.

In *mutually-opened auctions* the partner countries agree on the main principles for their cooperation. However, every country implements its own auction and is free to design the auction itself (price system, maximum amount, auctioning kW or kWh, etc.). However, as regards the local investment conditions (e.g. licensing law, permitted areas and sites) the terms and rules of the country of location apply, i.e. the rules of the country where the installation will be built.

In a *joint auction*, rather than separate auctions, the partner countries conduct one joint auction that is open to installations in both partner countries. Funding for the renewables installations is provided from the existing national support schemes of the two partner countries. A predetermined distribution rule is used to determine **the country from which a successful bidder will receive support**.

**Partner countries have to agree on the auction design before conducting the auction.** With regard to location-specific aspects (planning and construction rules, taxes and levies, etc.) the conditions of the country where the installation will be located will apply unless otherwise agreed by the partner countries. Consequently, bidders will have all the necessary information about the *funding terms and investment conditions* when they submit their bid. The only thing bidders will not know ahead of the bid is which *funding scheme* they will be assigned to i.e. *who is paying the bill*.

On the German side, the *cross-border support* will be disbursed directly by the transmission system operator (TSO) managing the **closest interconnector**. The distribution system operator of the partner country where the installation is located will supply the necessary data to the German TSO. In Germany, the *regulatory body for inviting the bids* is the Federal Network Agency (BNetzA). Alternatively, another body can be assigned by the two countries.

The German ordinance for implementing this concept provides for the different design options and for possible deviations from the German auction design. The cooperation agreement between the partner countries defines specific conditions for each and every auction opened to other EU Member States. These specific auction conditions will be published by the **regulatory body inviting the bids**. The agreement also includes a balanced cost-benefit ratio and defines rules for accounting towards national and EU renewable energy targets in accordance with Directive 2009/28/EC.

# III. Details of the opening concept

## 1. Compliance with the principle of reciprocity

Opening the Renewable Energy Sources Act to other EU Member States is not a one-way process, but rather a means of gradually integrating the support schemes of EU Member States. This is an important step for public acceptance in all partner countries. The ordinance provides for two different options to comply with the principle of reciprocity: *mutually-opened auctions* and *joint auctions*.

### a. Mutually-opened auctions

The first option is for partner countries to conduct two separate auctions, and open these auctions to installation on the territory of the partner country. Conducting such an auction means that countries need to agree on the basic principles of their cooperation. However, as regards the details, every country is free to design the auction it is conducting (price system, maximum amount, auctioning kW or kWh, etc.).

The question of which installation will be awarded in which country is solely determined by the level of each bid. Every associated country uses its own national support scheme to award the funding to the installations that have been successful in its own auction procedure regardless of whether the installation will be located on its own territory or abroad.

### b. Joint auction

Conducting a joint auction eliminates the need for the partner countries to conduct two separate auctions; a joint auc-

tion is produced that is open to installations on the territory of either one of the partner countries.

However, the funding for the installations is provided from the existing national support schemes of the partner countries by assigning each installation entirely to the support scheme of one country or the other. Planned installations are assigned to one of the national support schemes once the winning bids have been announced. Installations are assigned to the countries at random (unless the partner countries have agreed on a different method beforehand).

At the time the bidder submits his bid, he does not know which support scheme he will be assigned. However, he needs to know all of the relevant investment and support terms and conditions before he submits his bid. This means that the partner countries need to agree on joint auction design.

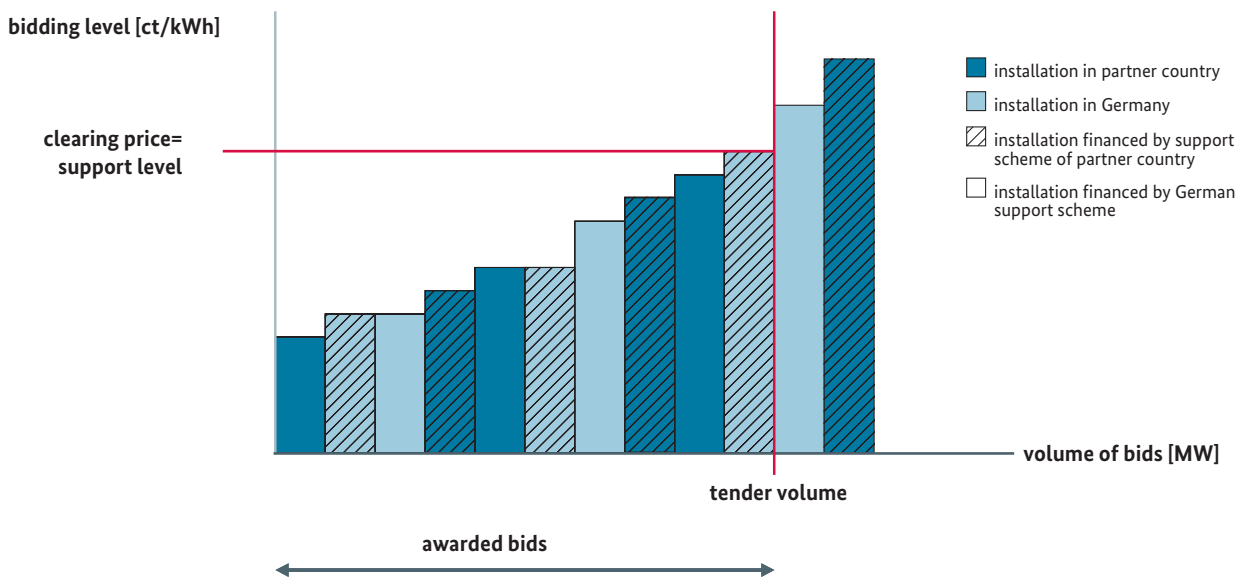
As regards location-specific conditions, the partner countries will attempt to agree on as many rules as possible (licensing law, conditions and costs for grid connection, curtailment, etc.). Wherever the countries do not agree on common rules and regulations, the terms and conditions of the country where the installation will be located apply.

As a result, the bidder has all the information on the support and investment conditions as well as on the location-specific investment conditions before he submits his bid. The only thing he does not know is which support scheme he will be assigned to, and consequently, which country will disburse the funding (Germany or the partner country). He will obtain this information only after the winning bids have been announced.

#### Example of mutually-opened auctions:

Germany holds an auction for ground-mounted PV installations with a capacity of 50 MW, and opens its auction to installations in the partner country. The partner country also holds an auction for PV installations with a capacity of 50 MW, and opens up its auction to installations in Germany (auction volume does not need to be exactly the same). They negotiate the terms of their cooperation agreement, agree to auction 50 MW each and to offer a market premium. All other details of the design of the two separate auctions are defined by the individual Member State. Consequently, there are two separate auctions with different sets of rules (pay-as-bid/uniform pricing, maximum bid, etc.). In both auctions, the winning bids may either come from installations in Germany or from installations in the partner country. Both countries provide funding from their national support schemes for the installations that have won the open auction.

**Figure 1: Announcement of the winning bids and assignment of each planned installation to the support scheme of one country or the other according to a pre-determined distribution rule.**



Joint auctions with pre-determined distribution rules assigning each individual successful bid to the support scheme of one country or the other, allows for the intensification of cooperation between the partner countries without having to set up a new joint financing mechanism.

The existing mechanisms are used and clicked together like puzzles. In this way the partners can agree on the most important funding terms, without having to harmonise all of their rules.

#### Example joint auction:

Germany and a partner country want to cooperate. They both want to invite bids for ground-mounted PV installations with a capacity of 50 MW and open this auction to the other country. Instead of holding two separate auctions that the countries open up to one another, they decide to conduct a joint auction with a combined capacity of 100 MW. They agree on a regulatory body to conduct the auction and on the auction design (pay-as-bid/uniform pricing, auctioning kW or kWh, maximum bid level (ct/kWh) and bid volume (MW), pre-qualification requirements, etc.). They also agree to award a sliding market premium. They are unable to agree which areas and **sites** will be eligible for funding. Thus, they agree that the rules of the country where the installation will be located apply. **Consequently, the sites eligible for funding differ for installations being built in Germany and those being built in the partner country.**

As far as other location-specific conditions are concerned, such as conditions for grid connection, licensing law or tax law, the partners agree that the conditions in the country where the installation is to be built will apply.

In the joint auction, the winning bids may come from installations in Germany or installations in the partner country. The bids are awarded solely based on the level of the bid. Installations are assigned to the countries at random.



On this basis, two partner countries can also form a regional cluster, including additional support schemes from different countries subsequently joining the cluster, in a stepwise fashion.

## 2. Cross-border disbursement of funding

The partner countries create a cooperation agreement in which they set out rules for the cross-border disbursement of funding. For the pilot-opening, it is provided that the installations built abroad and supported by the Renewable Energy Act will receive their payments directly from the German TSO that operates the closest cross-border interconnector. An exception can arise when a direct connection to the German grid exists. In this case and as laid out in the Renewable Energy Act, the relevant network operator of the direct line is obliged to pay.

The cooperation agreement sets out the rules for transmitting the data necessary to determine the amount of funding that will be disbursed (technical data of the installations, feed-in data). In the pilot opening, the foreign or German network operator that connects the installation to the grid (or any other agency that manages the relevant data) will be responsible for transmitting the data directly to the German or foreign TSO. In addition, it is envisaged that the data transmitted can be examined by an independent auditor.

The TSO that disburses the funding will incur costs due to the cross-border disbursement. These costs will feed into the German compensation mechanism. After the pilot opening, it can be evaluated whether or not direct disbursement by the TSOs will cause transaction costs that are inappropriately high.

The bids that are accepted in Germany as part of an auction opened up to other EU Member States and that receive funding under Germany's Renewable Energy Sources Act will receive payment in accordance with the German disbursement system.

## 3. 'Physical' import

According to Germany's Renewable Energy Sources Act, electricity produced abroad is only eligible to funding if it is 'physically' imported into Germany, which is because

installations abroad that receive German funding must have a "real" impact on the transformation of the energy system in Germany, which is comparable to the contribution to the "Energiewende" made by installations located in Germany.

However, it is essentially impossible to trace cross-border electricity flows back to an individual installation due to the special characteristics of flows of electricity in an European meshed grid. There is one exception, namely installations that are connected exclusively to the German grid via a direct line.

It has to be ensured that the requirement to prove 'physical' imports to Germany will not limit actual flows of electricity in interconnected markets. This means, for example, that reserving part of the interconnection capacity is not an option. As a result, proving that electricity produced abroad is 'physically' imported to Germany will be limited to proving that there is a reliable and general impact on the electricity market in Germany that is comparable to the impact of an installation located in Germany. In this context, the availability of interconnection capacities needs to be taken into account and the fact that it is not always possible to use interconnection capacities solely for RES-E imports.

For the pilot opening, it will not be required to prove that electricity produced abroad is physically imported to Germany, since the pilots will be implemented with direct neighbours and only have small volumes.

However, from 2017 onwards, when auctions will be partially opened to encompass five percent of the newly installed overall RES-capacity per year, the concept of a reliable proof of the 'physical' import will be required.

## 4. Auction design

The basis for the design of an open auction is the auction design developed for ground-mounted PV installations in Germany. The ordinance implementing the pilot opening of auctions for ground-mounted PV installations to other EU Member States will enable deviation from this auction design as follows:

- As far as *mutually-opened auctions* are concerned, deviations from the original German auction design are generally only partially provided for. This reflects the basic idea of a mutually-opened auction, which is to agree on the principles of cooperation between the partner countries. Apart from this premise, every country is largely free to define the design of the auction it opens up to others.
- As far as *joint auctions* are concerned, the focus is on defining a common auction design. Here, more deviation from the German auction design may become necessary in order to agree on common rules. These rules are laid out in the cooperation agreement, and are published by the regulatory body for inviting the bids once the agreement has been signed by the partner countries.

#### a. Market premium

In the German auctions, the intention is to grant a sliding premium to winning bidders corresponding to the regulation in Germany. As in Germany, the market premium will be calculated based on the difference between the market value of PV in the country where the winning bidder plans to build the PV installation and the price awarded in the auction.

#### b. Content and volume of the auction

In the pilot opening, a total of 100 MW of ground-mounted solar capacity will be auctioned either in *mutually-opened auctions* or in *joint auctions*. From 2017 onwards, 5 percent of the newly installed RES capacity per year will be up for cross-border auctioning.

The total annual capacity does not have to be auctioned in one round, but can be spread out over several auctions. Auctions that are opened up to EU Member States are conducted separately from the German RES-auctions. Opening up part of a German auction is not provided for as the conditions for opened auctions will deviate from those used for purely German auctions (e.g. pre-qualification requirements).

As in the German RES-auctions, bids are made on the value against which the market premium is calculated according to the EEG 2014, which is the levelised cost of

electricity. Where no other rules are agreed in the cooperation agreement, neither a limit with regard to the electricity (kWh) receiving support nor a minimum delivery quantity (kWh) applies.

#### c. Regulatory body inviting bids

For *mutually-opened auctions*, the Federal Network Agency (BNetzA) will serve as the regulatory body inviting bids. For *joint auctions*, the body inviting bids will be laid out in the cooperation agreement that is produced by the partner countries (e.g. BNetzA in cooperation with the responsible agency in the partner country).

#### d. Auctioning procedure

As with the German auctions, bidders taking part in an opened auction will submit single, sealed bids. Bidders are bound to their bids and are not allowed to subsequently change them. If the auction is oversubscribed, bids will be accepted, starting with the lowest, until the amount of capacity that is being auctioned is reached. For *joint auctions* cooperation partners have to agree to a price system which is going to be used (pay-as-bid or uniform pricing).

#### e. Minimum and maximum price

No minimum price will be set since all stakeholders are sufficiently aware of the existing cost structures.

For *mutually-opened auctions*, a maximum price will be set and announced. This maximum price will correspond to the maximum price set in the regular (non-opened) German PV-auctions.

For *joint auctions*, the partner countries have to agree on a maximum price beforehand.

#### f. Material and financial pre-qualification requirements

In the German pilot auctions for ground-mounted PV installations, bidders are currently obliged to name the area or site where they plan to set up their installation. In addition, bidders must at least submit the resolution by the

local authorities on the preparation of a local area development plan as a material pre-qualification requirement. However, these planning and permitting requirements do not exist in most other Member States, so the rules for *mutually-opened auctions* as well as for *joint auctions* deviate from the German rules in this respect.

In order to take part in the auctions, bidders will simply be asked to name the area and site where they plan to set up the ground-mounted PV installation. They then need to submit the proof that they have secured the land. This will also apply to installations in Germany that take part in opened auctions.

In order to ensure a high realisation rate despite the comparably low material pre-qualification requirements, financial pre-qualification requirements and penalties for *mutually-opened auctions* are increased to 70 euros per kilowatt of installed capacity compared to the 50 euros per kilowatt installed capacity in the German (non-opened) auction.

For *joint auctions*, pre-qualification requirements and penalties are defined jointly by the partner countries beforehand. These can deviate from the rules applying for the mutually-opened auctions or for the national German auctions for PV ground mounted installations as appropriate.

Contrary to purely German auctions, bidders do not need to provide a first and a second collateral. For auctions opened up to EU Member States, bidders only need to provide one initial collateral (70 euros per kilowatt of installed capacity) to the inviting agency.

## 5. Location-specific conditions

It will not always be possible for the cooperating countries to agree on aligning all rules and regulations, such as areas and sites eligible for funding, connection to the grid, planning and construction rules, licensing law, and tax law, etc. Therefore, as regards location-specific conditions the following principle applies: the rules of the country where the installation is to be built will apply unless the partner countries are able to agree on common rules.

For *joint auctions*, the partner countries will make every effort to align as many rules as possible. However, it is likely that in joint auctions the countries will not be able to agree

in all areas. In such cases, the location-specific conditions of the country where the installation is going to be built will also apply to joint auctions.

### a. Areas and sites

The areas and sites eligible for funding under the German PV auction system include strips of land alongside motorways and railways, conversion areas and sealed areas (paragraph 51 (1), number 2 and 3 of the 2014 Renewable Energy Sources Act). From 2016 onwards, cropland sites are also eligible for funding under the German system for ground-mounted PV installations. However, the latter will not apply to auctions opened up to other EU Member States.

In both cases, *mutually-opened auctions* and *joint auctions*, the German site restrictions do not apply to foreign installations. Every country has the authority to autonomously decide on their regulation as regards land use. Consequently, the rules of the country where the installation is to be set up will apply unless the cooperating countries can agree on a common view as regards site restriction; when Germany conducts an auction with another country, the areas and sites eligible for funding in Germany may differ from those in the partner country.

### b. Planning and construction rules, and licensing law

In cases of *mutually-opened auctions* and *joint auctions*, the terms and conditions of the country where the installation is going to be built will apply.

### c. Conditions for grid connection/compensation when output is curtailed

The priority of national regulation also applies to the conditions for grid connection if the cooperating countries are unable to agree on common rules.

This also applies to situations where grid management causes the curtailment of an installation and to the compensation for curtailment. If the grid operator of the country where the installation is set up curtails the output of the installation, compensation is awarded according to the rules of the country where the installation is located. The costs are settled in accordance with the national compen-

sation mechanism. This means that installations located in Germany and funded by a partner country are curtailed and compensated for in line with German regulations. Costs are passed on to consumers via the German grid charges.

#### **d. Remuneration during periods of negative prices on wholesale markets**

In both *mutually-opened auctions* and *joint auctions*, partner countries should adopt uniform rules on remuneration during periods of negative prices because this can have a significant impact on the decision of where to set up an installation and on the bidding price. This is even more relevant for *joint auctions*.

If the partner countries are unable to reach an agreement, they need to decide whether the conditions of the country where the installation will be built or those of the country funding the support will apply. In the first case, installations funded by Germany and built in the partner country would only receive funding in times of negative prices if the rules of the partner country provide for this.

#### **e. Taxes and levies**

For both, *mutually-opened auctions* and *joint auctions*, the rules regarding taxes and levies of the country where the installation will be built shall apply.

### **6. Accounting for RES electricity generation towards national and EU targets**

When accounting for the renewable energy that is funded under *mutually-opened* or *joint auctions* towards meeting renewables targets, a distinction needs to be made between targets at the national and the EU level.

As far as the German deployment corridor (as defined in the EEG 2014) is concerned, all installations that are built in Germany are accounted for, even if they are funded by another country. This ensures that Germany will be able to follow its deployment corridor, and that the requirements for renewables capacity added will neither be missed or

exceeded. The setting of a specific deployment corridor is intended to make sure that all stakeholders can plan ahead (particularly in terms of the expansion of the grid) and that renewable energy installations can be integrated into the system. In order to ensure this, Germany's deployment corridor covers all renewable installations that are built on German territory.

A different principle is used for meeting the national renewables target as defined in EU Directive 2009/28/EC. Here, the renewable energy generated is counted towards the target of the country that funds the installation. The details are set out in the cooperation agreement concluded by the partner countries.

Regarding the reporting obligations at national or EU level, it must be ensured that the German deployment corridor and the national target in the context of the EU directive are clearly distinguished.

### **7. Cooperation agreement for implementing the cooperation**

Opening-up an auction to bidders planning to build installations in a partner country is only possible if the governments of the two partner countries have produced a cooperation agreement before the auction is held. This agreement sets out the conditions for the cross-border funding. Concluding such an agreement is key in order to avoid disputes, reduce risks for investors, and ensure a fair cost-benefit distribution between the two partners.

The German ordinance for opening up auctions to other EU Member States details the various options that exist for designing an auction. The cooperation agreement determines which of these options should be used for each specific case.

The cooperation agreement ensures that double-funding for installations is not possible. The agreement further stipulates how financial support and the amount of energy from renewable sources are to be allocated between the participating Member States and how they are to be counted towards their renewables targets. This has to be in line with the rules of statistical transfer according to Renewable Energy Directive 2009/28/EC.







