

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

## **JOINT PROCUREMENT AGREEMENT TO PROCURE COMMON AUCTION PLATFORMS**

This Joint Procurement Agreement (the "Agreement") is made and entered into on 9 November 2011 by and between:

the European Commission (the "Commission") on behalf of the European Union, represented for the purposes of this Agreement by Jos Delbeke, Director-General of the Directorate-General for Climate Action;

and

the following Member States of the European Union:

- 1) L'Etat belge / De Belgische Staat représenté dans le cadre de cet accord par le Ministre fédéral compétent pour l'environnement / vertegenwoordigd voor de toepassing van deze overeenkomst door de federale minister bevoegd voor Leefmilieu Paul Magnette, au nom du service public fédéral santé publique, sécurité de la chaîne alimentaire et environnement / namens de federale overheidsdienst volksgezondheid, veiligheid van de voedselketen en leefmilieu
- 2) Република България, представлявана за целта на настоящото споразумение от Ивелина Василева, заместник-министър на околната среда и водите;
- 3) Česká republika pro účely této smlouvy zastoupená Ivo Hlaváčem, náměstkem ministra a ředitelem sekce technické ochrany životního prostředí, Ministerstvo životního prostředí České republiky;
- 4) Danmark repræsenteret i forhold til denne aftale af Ib Peter Larsen, direktør, Energistyrelsen, Klima-, Energi- og Bygningsministeriet;
- 5) Eesti Vabariik, keda käesolevas lepingus esindab Allan Gromov, Keskkonnaministeeriumi asekancler;
- 6) Ar son na hÉireann – Tá Ken Macken, Bainisteoir Cláir, An Ghníomhaireacht um Chaomhnú Comhshaoil, ina ionadaí chun críocha an Chomhaontaithe seo;
- 7) Ελληνική Δημοκρατία νομίμως εκπροσωπούμενη για τους σκοπούς της παρούσας Σύμφωνίας από τον Γεώργιο Παπακωνσταντίνου, Υπουργό Περιβάλλοντος, Ενέργειας και Κλιματικής Αλλαγής, του Υπουργείου Περιβάλλοντος, Ενέργειας και Κλιματικής Αλλαγής;
- 8) España representada a los efectos de este Acuerdo por Teresa Ribera Rodríguez, Secretaria de Estado de Cambio Climático del Ministerio de Medio Ambiente, y Medio Rural y Marino;

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

- 9) Le gouvernement de la République française représenté dans le cadre de cet accord par Benoît Coeuré, Directeur général adjoint du Trésor du Ministère de l'Economie, des Finances et de l'Industrie;
- 10) Repubblica Italiana, rappresentata ai fini del presente accordo dal Dott. Domenico Casalino, Amministratore Delegato di Consip S.p.A. (Consip S.p.A.);
- 11) Κυπριακή Δημοκρατία εκπροσωπούμενη για τους σκοπούς της παρούσας Συμφωνίας από τον Θεόδουλο Μεσημέρη, Ανώτερος Λειτουργός Περιβάλλοντος του Υπουργείου Γεωργίας, Φυσικών Πόρων και Περιβάλλοντος;
- 12) Latvijas Republika, kuru šī nolīguma ievaros pārstāv vides aizsardzības un reģionālās attīstības ministrs Edmunds Sprūdzs, Vides aizsardzības un reģionālās attīstības ministrija;
- 13) Lietuvos Respublika šio susitarimo tikslais atstovaujama Dr. Aleksandro Spruogio, aplinkos viceministro, Aplinkos ministerija;
- 14) Grand-Duché de Luxembourg représenté dans le cadre de cet accord par Marco Schank, Ministre délégué du Ministère du Développement durable et des Infrastructures;
- 15) A Magyar Köztársaság képviselőjében Dr. Fellegi Tamás, nemzeti fejlesztési miniszter, Nemzeti Fejlesztési Minisztérium;
- 16) Republic of Malta represented for the purposes of this Agreement by Mr. Alfred Camilleri, Permanent Secretary at the Ministry of Finance, the Economy and Investment / Ir-Repubblika ta' Malta, irrappreżentata għall-finijiet ta' dan il-Ftehim mis-Sur Alfred Camilleri, Segretarju Permanenti fil-Ministeru tal-Finanzi, Ekonomija u Investiment;
- 17) De Staat der Nederlanden vertegenwoordigd voor de toepassing van deze overeenkomst door Bernard ter Haar, directeur-generaal Milieu van het Ministerie van Infrastructuur en Milieu;
- 18) Österreich, für die Zwecke dieser Vereinbarung vertreten durch Günter Liebel, Leiter der Sektion Allgemeine Umweltpolitik des Bundesministeriums für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft;
- 19) Portugal representado para efeitos deste Acordo por Nono Lacasta, Presidente da Agência Portuguesa do Ambiente, Ministério da Agricultura, Mar, Ambiente e Ordenamento do Território;
- 20) România este reprezentată în sensul prezentului acord de Cristina Trăilă, Președintele Autorității Naționale pentru Reglementarea și Monitorizarea Achizițiilor Publice;
- 21) Republika Slovenija ki jo za namene podpisa tega sporazuma zastopa dr. Peter Gašperšič, Državni sekretar;

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

22) Slovenská republika reprezentovaná na účely tejto dohody Radoslavom Jonášom, vymenovaným na zastupovanie generálneho riaditeľa sekcie zmeny klímy a ekonomických nástrojov, Ministerstvo životného prostredia Slovenskej republiky;

23) Suomi edustajanaan Esa Härmälä, energiaosaston ylläjohtaja, työ- ja elinkeinoministeriö;

24) Sverige representeras vid undertecknandet av detta avtal av Lena Ingvarsson, Expeditions- och rättschef vid Miljödepartementet;

(the "participating Member States" or individually as a "participating Member State").

-

(the "non-participating Member States" or individually as a "non-participating Member State").

In this Agreement, the Commission and the Member States are referred to collectively as the "Contracting Parties" or individually as a "Contracting Party".

## PREAMBLE

### WHEREAS:

- (1) The participating Member States have decided to engage in a joint action, within the meaning of the third subparagraph of Article 91(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>1</sup> (the "Financial Regulation"), for the purpose of auctioning allowances as required under Article 10(1) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowances trading within the Community and amending Council Directive 96/61/EC<sup>2</sup> (the "ETS Directive") and in accordance with Article 26 of Commission Regulation (EC) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community<sup>3</sup> (the "Auctioning Regulation").
- (2) The participating Member States, each of which is a contracting authority, intend to pursue the joint action, through the appointment of one or more auction platform(s) provided for in Article 26(1) or (2) of the Auctioning Regulation following a joint procurement procedure within the meaning of the first paragraph of Article 125c of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom)

---

<sup>1</sup> OJ L 248, 16.9.2002, p. 1.

<sup>2</sup> OJ L 275, 25.10.2003, p. 32.

<sup>3</sup> OJ L 302, 18.11.2010, p. 1.

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>4</sup> (the "Implementing Rules").

- (3) The auction platform(s) provided for in Article 26(1) or (2) of the Auctioning Regulation will auction the participating Member States' share of the volume of allowances covered by Chapters II and III of the ETS Directive pursuant to the provisions of the Auctioning Regulation. The auction platform(s) provided for in Article 26(1) or (2) of the Auctioning Regulation will provide services to participating Member States, pursuant to Articles 27 and 28 of that Regulation and to the Commission, pursuant to Article 29 of the same Regulation.
- (4) The non-participating Member States have informed the Commission of their decision not to participate in the joint action provided for in Article 26 of the Auctioning Regulation, in accordance with Article 30(4) of that Regulation. Each non-participating Member State will appoint its own auction platform(s) for the auctioning of its share of the volume of allowances covered by Chapters II and III of the ETS Directive pursuant to Article 30(1) and (2) of the Auctioning Regulation, subject to listing in Annex III of that Regulation, as provided for in Article 30(7) of the same Regulation, following notification pursuant to Article 30(6) of the same Regulation.
- (5) Pursuant to the second subparagraph of Article 30(7) of the Auction Regulation, in the absence of any listing, each non-participating Member State is required to use the auction platform(s) appointed pursuant to Article 26(1) or (2) of that Regulation to auction its share of the volume of allowances covered by Chapters II and III of the ETS Directive. By virtue of the third subparagraph of Article 30(7) of the Auctioning Regulation, a non-participating Member State may nevertheless participate in the joint action for the sole purpose of being able to make use of the auction platform(s) appointed pursuant to Article 26(1) and (2) of that Regulation, in the absence of any listing of its own auction platform(s) in Annex III of the same Regulation.
- (6) Non-participating Member States may only participate in the joint action pursuant to the third subparagraph of Article 30(7) of the Auctioning Regulation in accordance with the provisions of the second subparagraph of Article 26(6) of that Regulation and subject to the terms and conditions of this Agreement. Pursuant to the second subparagraph of Article 26(6) of the Auctioning Regulation, non-participating Member States may be given observer status in this Agreement subject to any applicable public procurement rules.
- (7) Non-participating Member States that subsequently join the joint action may, pursuant to the first subparagraph of Article 52(2) of the Auctioning Regulation, be required to bear additional costs not borne by participating Member States. Such additional costs are to be borne from the date when a joining Member State commences auctioning through the auction platform(s) appointed pursuant to Article 26(1) or (2) of that Regulation until the termination or expiry of the term of appointment of the auction platform concerned. Pursuant to the second subparagraph of Article 52(2) of the

---

<sup>4</sup> OJ L 357, 31.12.2002, p. 1.

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

Auctioning Regulation, this also applies to participating Member States that have not joined the joint action within six months of the entry into force of this Agreement, pursuant to Article 51(4) of this Agreement.

- (8) The specific amount of any such additional costs will be provided for in the contract(s) with the auction platform(s) appointed pursuant to Article 26(1) or (2) of the Auctioning Regulation.
- (9) As foreseen in the first subparagraph of Article 26(6) of the Auctioning Regulation, any Member State joining the joint action pursuant to Article 26(1) or (2) of that Regulation after the entry into force of this Agreement pursuant to Article 51(4) of this Agreement must accept this Agreement as well as any decisions already adopted under this Agreement.
- (10) Given that the joint procurement procedure which forms the subject matter of this Agreement is substantially similar to the joint procurement procedure which forms the subject matter of the joint procurement agreement to procure an auction monitor, the text of this Agreement mirrors the text of the joint procurement agreement to procure an auction monitor, except for certain differences required by the specific nature of this Agreement. In particular, given that not all Member States are participating in the joint action to procure the auction platform(s) referred to in Article 26(1) and (2) of the Auctioning Regulation, a new Title V on Provisions for Non-participating Member States has been added to this Agreement.
- (11) However, since the rights and obligations of non-participating Member States are different in this Agreement from the rights and obligations of participating Member States, Article 1(6) of this Agreement excludes the application of the Articles of this Agreement in respect of non-participating Member States unless otherwise provided for in Title V. Thus, references to Member States or a Member State, to Contracting Parties or a Contracting Party, throughout this Agreement, do not include non-participating Member States unless otherwise provided for in Title V.
- (12) Nothing in this Agreement affects the rights and obligations of the Member States or the Commission under the Treaties.
- (13) Article 339 of the Treaty on the Functioning of the European Union (the "Treaty") on the obligation of professional secrecy, Article 62 of the Auctioning Regulation on the protection of confidential information, Article 52 of the Financial Regulation and Article 34 of the Implementing Rules on the absence of conflicts of interest and the second subparagraph of Article 100(2) of the Financial Regulation on the non-disclosure of certain information emanating from the procurement procedure as well as Article 143(3) of the Implementing Rules on the secrecy of tenders apply to information handled under this Agreement,

THE CONTRACTING PARTIES HAVE AGREED

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

on the terms below including the following Annexes:

- Annex I** – Declaration of absence of conflict of interest and protection of confidentiality to be given by members of the evaluation committee(s) in accordance with Article 32(4)
- Annex II** – Confirmation of completion of national procedures for the approval of this Agreement or the absence of a need for such procedures in accordance with Article 40 or Article 51(4)
- Annex III** – Agreement on participation in the work of the Joint Procurement Steering Committee as an observer in accordance with the first paragraph of Article 52
- Annex IV** – List of authentic linguistic versions of this Agreement in accordance with Article 51(1)

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

## Title I

### GENERAL PROVISIONS

#### Article 1

##### Subject Matter

1. The Contracting Parties shall pursue the joint action referred to in this Agreement, through the appointment of the common auction platform(s), following a joint procurement procedure.
2. This Agreement lays down the practical modalities governing the joint procurement procedure in accordance with the third paragraph of Article 125c of the Implementing Rules.
3. This Agreement also covers ancillary matters such as the management of the resulting contract(s), the conduct of any legal action arising under the joint procurement procedure or the resulting contract, any lack of compliance with this Agreement and the amicable settlement of any disagreements between the Contracting Parties.
4. This Agreement is made under Union law and relates to matters within the scope of the Treaties.
5. A person who is not a party to this Agreement shall not be entitled to enforce or enjoy any rights or benefits of any term of this Agreement.
6. No Article in this Agreement shall apply in respect of non-participating Member States unless otherwise provided in Title V.

#### Article 2

##### Definitions

1. All terms in this Agreement derived from or defined in the Financial Regulation or the Implementing Rules shall have the same meaning as under those acts.
2. All terms in this Agreement derived from or defined in the ETS Directive or the Auctioning Regulation shall have the same meaning as under those acts.
3. For the purposes of this Agreement:
  - (a) "common auction platform(s)" means any auction platform appointed pursuant to Article 26(1) or (2) of the Auctioning Regulation including any clearing system(s) or settlement system(s) connected to it;

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

- (b) "resulting contract" means either a public contract or a framework contract, as referred to in Article 88 of the Financial Regulation, resulting from a joint procurement procedure conducted pursuant to this Agreement and signed by the contractor and the Commission, acting on its own account and on behalf of the Member States;
- (c) "handling" information or documents means generating, processing, storing, transmitting or destroying information or documents;
- (d) "persons working in connection with this Agreement" means any person working for a Contracting Party in connection with this Agreement regardless of whether or not they are employed by that Contracting Party;
- (e) "need-to-know basis" means the need of a person working in connection with this Agreement to have access to information under this Agreement in order to be able to perform a function or a task in connection with this Agreement. Access shall not be authorised merely because a person occupies a particular position, however senior.

### Article 3

#### **Rules governing the Joint Procurement Procedure**

The first paragraph of Article 125c of the Implementing Rules shall apply to this Agreement. In case of conflict, the Financial Regulation and the Implementing Rules shall prevail over this Agreement.

### Article 4

#### **Authority given by the Member States to the Commission**

1. Where an act is adopted by the Commission further to and in accordance with this Agreement, that act shall bind all Contracting Parties.
2. Subject to this Agreement, each Member State authorises the Commission to act on its behalf in accordance with Union law in all matters relating to the subject matter of this Agreement, including without limitation:
  - (a) the conduct of the joint procurement procedure including the award and signature of the resulting contract;
  - (b) the management of the resulting contract including the signature of any amendments thereto.
3. The Member States hereby authorise the Commission to act as their sole representative in defending any legal action or counter-claim brought by a contractor under the resulting contract, except for any legal action or counter-claim brought



**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

against a Contracting Party under a specific contract, to which the Commission is not a party, based on a framework contract entered into pursuant to Article 117 of the Implementing Rules.

The Commission, as sole representative of the Member States, shall seek the opinion of the Joint Procurement Steering Committee on the conduct of any legal action or counter-claim covered by this paragraph at the first available opportunity, in accordance with Article 13(2) of this Agreement.

4. The Member States hereby authorise the Commission to act as their sole representative in bringing any legal action or counter-claim against a contractor under the resulting contract, except for any legal action or counter-claim under a specific contract, to which the Commission is not a party, based on a framework contract entered into pursuant to Article 117 of the Implementing Rules.

The Commission's authority under the first subparagraph is subject to the approval of the Joint Procurement Steering Committee to bring such legal action in accordance with Article 13(1) of this Agreement, upon a proposal from the Commission. Thereafter, the Commission shall seek the opinion of the Joint Procurement Steering Committee on the conduct of any legal action or counter-claim covered by this paragraph at the first available opportunity, in accordance with Article 13(2).

5. The Commission may settle any claim or counter-claim brought under paragraphs 3 or 4 following the approval of the Joint Procurement Steering Committee based on a Commission proposal to this effect, in accordance with Article 13(1).
6. Each Member State hereby authorises the Commission to sign on its behalf an agreement with a State acceding to the Union and allowing such a State to join this Agreement, in accordance with the act of accession, subject to the approval of the Joint Procurement Steering Committee of a Commission proposal to this effect pursuant to Article 13(1).
7. Without prejudice to the first paragraph of Article 125c of the Implementing Rules, each Member State shall remain responsible for compliance with any procedural requirements under its national law.

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

## Title II

### ORGANISATION

#### Chapter I

#### **Joint Procurement Steering Committee**

##### Article 5

##### **Duties**

A Joint Procurement Steering Committee is hereby set up. The Joint Procurement Steering Committee shall be responsible for steering matters relating to the subject matter of this Agreement, including:

- (a) the joint procurement procedure;
- (b) the management of the resulting contract;
- (c) any legal action under the joint procurement procedure or the resulting contract;
- (d) the process necessary to address any lack of compliance with this Agreement by a Contracting Party or breaches of the resulting contract by either the contractor or a Contracting Party;
- (e) the amicable settlement of disagreements between two or more Contracting Parties.

##### Article 6

##### **Composition and Membership**

1. The Joint Procurement Steering Committee shall be composed of one representative of each Contracting Party and their alternates.

Only staff of a Contracting Party may be members of the Joint Procurement Steering Committee or their alternates.

2. The members of the Joint Procurement Steering Committee and their alternates may, subject to its rules of procedure, be assisted by advisers.
3. The meetings of the Joint Procurement Steering Committee shall be chaired by the Commission's representative or its alternate.
4. Member States shall, within two weeks of signature of this Agreement, forward to the Commission information on the identity and contact details of their members of the

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

Joint Procurement Steering Committee, their alternates and any advisers assisting them as well as any observers in that Committee.

The Commission shall draw up a list of such persons based on information provided by the Member States. Contracting Parties shall notify one another of any changes in the identity and contact details of such persons.

## Chapter II

### **Contract Management Committee**

#### Article 7

##### **Duties**

A contract management committee is hereby set up. It shall oversee the management of the resulting contract with the contractor. In particular, the contract management committee shall:

- (a) oversee the implementation of the resulting contract and monitor its performance by the contractor and the Contracting Parties;
- (b) report to the Joint Procurement Steering Committee on the management of the resulting contract recommending any further action that should be taken by the contractor or the Contracting Parties;
- (c) recommend any necessary amendments to the resulting contract permitted under the Financial Regulation and the Implementing Rules;
- (d) mediate disagreements relating to the implementation of the resulting contract between the contractor and a Contracting Party with a view to an amicable settlement.

#### Article 8

##### **Composition**

1. The contract management committee shall be comprised of:
  - (a) no more than five persons and their alternates designated by the Commission;
  - (b) no more than five persons and their alternates nominated by the Member States in accordance with Article 9(1). Such persons shall not be the same as those designated by the Commission.
2. The members of the contract management committee and their alternates may, subject to its rules of procedure, be assisted by advisers.

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

3. The meetings of the contract management committee shall be chaired by a representative of the Commission or its alternate.

## Article 9

### Membership

1. Upon request by the Commission, each Member State may nominate one candidate for membership of the contract management committee by forwarding information on the identity, education, professional qualifications and experience of the relevant nominee to the Joint Procurement Steering Committee through its Chair, in accordance with a pro-forma application form provided by the Commission. The pro-forma application form shall be adopted by the Commission, following approval of the Joint Procurement Steering Committee pursuant to Article 13(1).

Alternatively, where a Member State does not nominate a candidate, it may second one candidate nominated by another Member State. Each nominating Member State shall circulate the completed pro-forma application form to all other Member States and provide them with an opportunity to second its nominee, prior to submission of the pro-forma application to the Commission.

A candidate shall only be nominated by one Member State. Each nomination may be seconded by other Member States.

2. The Commission shall only accept ten nominations. For this purpose, the Commission shall, to the extent possible, first accept two nominations from Member States that have informed the Commission of their decision not to participate in the joint action to appoint a common auction platform, pursuant to Article 30(4) of the Auctioning Regulation. The Commission shall then accept the eight highest ranking nominations from the remaining Member States.

Ranking shall be determined as follows:

- (a) nominations shall be ranked in order of preference based on the number of Member States seconding each nomination;
- (b) where ranking (a) produces a tie, relevant candidates nominated by Member States that have not had nominees appointed to the contract management committee in the preceding term of appointment, if applicable, shall be preferred;
- (c) where ranking (b) continues to produce a tie, the relevant nominations shall be ranked in order of preference on the basis of the time of receipt of each nomination by the Commission.

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

3. The Commission may refuse to accept a nomination due to a conflict of interest within the meaning of Article 52 of the Financial Regulation.
4. The Joint Procurement Steering Committee shall assess the suitability of the nominated and accepted candidates, upon a proposal from the Commission, based on the criteria set out in paragraphs 2 and 3 of this Article.

Within two weeks from when the Commission's proposal is sent to the Member States, and prior to the approval of the Commission's proposal, any member of the Joint Procurement Steering Committee may require the Committee to:

- (a) interview any of the candidates nominated by the Member States;
- (b) require additional information from the nominated candidates or the nominating Member State(s);
- (c) request the submission of the identity, education, professional qualifications and experience of further candidates, nominated pursuant to paragraph 1.

The Commission shall appoint no more than five members of the contract management committee and five alternates from amongst the persons nominated by the Member States in accordance with paragraph 1 and accepted by the Commission pursuant to paragraphs 2 and 3, as the Member States' designees to the contract management committee, upon approval of a Commission proposal to this effect by the Joint Procurement Steering Committee, in accordance with Article 13(1).

The term of appointment shall be at least two and no more than three years unless it is renewed upon approval by the Joint Procurement Steering Committee, in accordance with Article 13(1), based on a Commission proposal. Three months prior to the expiry of the term of appointment, the Commission shall submit a request in accordance with the first subparagraph of paragraph 1.

5. The Commission shall draw up a list of the members of the contract management committee, their alternates and any advisers assisting them based on information provided by the Member States.
6. Members of the contract management committee nominated or designated by the Contracting Parties shall be appointed *ad personam*. When carrying out their tasks members shall pursue the collective interest of the Contracting Parties. Members shall not seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Contracting Parties undertake to respect this principle and not to seek to influence the members of the contract management committee in the performance of their tasks.
7. Members of the contract management committee or their alternates shall resign if they become subject to a conflict of interest within the meaning of Article 52 of the

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

Financial Regulation or are otherwise unable to carry out their role, upon giving seven days notice to the Chair of the committee.

Members of the contract management committee or their alternates may be removed if they become subject to a conflict of interest within the meaning of Article 52 of the Financial Regulation, for any breach of this Agreement, or if they are otherwise unable to carry out their role, upon approval of a Commission proposal to that effect by the Joint Procurement Steering Committee, in accordance with Article 13(1) of this Agreement.

Any resigning or removed member shall be replaced by its alternate, if any, pending the nomination of a replacement to serve for the remainder of the term of appointment of the resigning or removed member.

The appointment of a replacement shall take place in accordance with paragraph 1 except that the priority given to nominations from Member States that have informed the Commission of their decision not to participate in the joint action to appoint a common auction platform, pursuant to Article 30(4) of the Auctioning Regulation shall only apply where the resigning or removed member is a nominee of such a Member State.

8. Any Member State whose nominated or seconded candidate was not appointed by the Joint Procurement Steering Committee shall be entitled to appoint an observer to attend the contract management committee's meetings, subject to its rules of procedure.

Paragraph 5 shall apply to such observers.

### Chapter III

#### **Evaluation Committee**

##### Article 10

#### **Composition**

1. Without prejudice to the third subparagraph of Article 146(1) of the Implementing Rules, the Commission shall appoint an evaluation committee for the evaluation of requests to participate or tenders within the meaning of Article 98(4) of the Financial Regulation.

The Commission may appoint two separate evaluation committees:

- (a) a committee for the selection of requests to participate or tenders on the basis of the exclusion and selection criteria; and
- (b) a committee for the evaluation of tenders on the basis of the award criteria.

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

2. The evaluation committee(s) shall be comprised of:
  - (a) no more than five persons designated by the Commission in accordance with the first subparagraph of Article 146(2) of the Implementing Rules;
  - (b) no more than five persons nominated by the Member States in accordance with Article 11(1) of this Agreement. Such persons shall not be the same as those designated by the Commission.

The same person may be a member of both evaluation committees referred to in the second subparagraph of paragraph 1.

3. The evaluation committee(s) shall be chaired by a Commission staff member that is a member of the relevant committee.
4. Contracting Parties may nominate experts who are not staff of a Contracting Party as members of the evaluation committee(s).
5. Members of the evaluation committee(s) shall not participate in the work of the committee until they have signed the Declaration of absence of conflict of interest and protection of confidentiality provided for in the first subparagraph of Article 32(4) *vis-à-vis* the Contracting Party that has nominated or designated them or their employer.

Without prejudice to the third subparagraph of this paragraph, where a member of an evaluation committee is not employed by a Contracting Party, the Contracting Party concerned shall enter into a contractual arrangement with the relevant employer by which the latter assumes full responsibility for any breach of the Declaration referred to in the first subparagraph *vis-à-vis* the Contracting Party concerned.

Each Contracting Party shall be responsible towards every other Contracting Party for ensuring compliance with this paragraph and for making good any damage caused in the case of any breach of the Declaration referred to in the first subparagraph by any member of the evaluation committee(s) nominated or designated by that Contracting Party.

## Article 11

### **Membership**

1. Upon request by the Commission, each Member State may nominate one candidate for membership of the evaluation committee(s) by forwarding information on the identity, education, professional qualifications and experience of the relevant nominee to the Joint Procurement Steering Committee through its Chair, in accordance with a pro-forma application form provided by the Commission. The pro-forma application form shall be adopted by the Commission, following approval of the Joint Procurement Steering Committee pursuant to Article 13(1).

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

Alternatively, where a Member State does not nominate a candidate, it may second one candidate nominated by another Member State. Each nominating Member State shall circulate the completed pro-forma application form to all other Member States and provide them with an opportunity to second its nominee, prior to submission of the completed pro-forma application to the Commission.

A candidate shall only be nominated by one Member State. Each nomination may be seconded by other Member States.

2. The Commission shall only accept five nominations. For this purpose, the Commission shall, to the extent possible, first accept one nomination from Member States that have informed the Commission of their decision not to participate in the joint action to appoint a common auction platform pursuant to Article 30(4) of the Auctioning Regulation. The Commission shall then accept the four highest ranking nominations from the remaining Member States.

Ranking shall be determined as follows:

- (a) nominations shall be ranked in order of preference based on the number of Member States seconding each nomination;
  - (b) where ranking (a) produces a tie, relevant candidates nominated by Member States that have not had nominees appointed to the evaluation committee(s) in the preceding joint procurement procedure, if applicable, shall be preferred;
  - (c) where ranking (b) continues to produce a tie, the relevant nominations shall be ranked in order of preference on the basis of the time of receipt of each nomination by the Commission.
3. The Commission may refuse to accept a nomination due to a conflict of interest within the meaning of Article 52 of the Financial Regulation.
  4. The Joint Procurement Steering Committee shall assess the suitability of the nominated and accepted candidates, upon a proposal from the Commission, based on the criteria set out in paragraphs 2 and 3 of this Article.

Within two weeks from when the Commission's proposal is sent to the Member States, any member of the Joint Procurement Steering Committee may require the Committee to:

- (a) interview any of the candidates nominated by the Member States;
- (b) require additional information from the nominated candidates or the nominating Member State(s);



**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

- (c) request the submission of the identity, education, professional qualifications and experience of further candidates, nominated pursuant to paragraph 1.

The Commission shall appoint no more than five members of the evaluation committee(s) from amongst the persons nominated by the Member States in accordance with paragraph 1 and accepted by the Commission pursuant to paragraphs 2 and 3, upon approval of a Commission proposal to this effect by the Joint Procurement Steering Committee, in accordance with Article 13(1).

5. The Commission shall draw up a list of the members of the evaluation committee(s), based on information provided by the Member States. The Commission shall also keep duly certified copies of the Declaration of absence of conflict of interest and protection of confidentiality provided for in the first subparagraph of Article 32(4) signed by such persons.
6. Members of the evaluation committee(s) nominated or designated by the Contracting Parties shall be appointed *ad personam*. When carrying out their tasks under the Financial Regulation and the Implementing Rules, they shall not seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Contracting Parties undertake to respect this principle and not to seek to influence the members of the evaluation committee(s) in the performance of their tasks.

Members of the evaluation committee(s) shall not take part in any discussion, reaching of a common accord or vote taking place in a meeting of the Joint Procurement Steering Committee, which is based on any written record referred to in Article 18(3) to which they contributed.

7. Members of an evaluation committee shall resign if they are unable to honour the Declaration of absence of conflict of interest and protection of confidentiality provided for in the first subparagraph of Article 32(4) or are otherwise unable to carry out their role, upon giving seven days notice to the Chair of the committee.

Members of an evaluation committee may be removed by the Commission for breach of the Declaration referred to in the first subparagraph of this paragraph or if they are otherwise unable to carry out their role. Where the member concerned was nominated by a Member State, the Commission decision removing that member shall be submitted at the first available opportunity for the opinion of the Joint Procurement Steering Committee, in accordance with Article 13(2).

Any resigning or removed member of an evaluation committee shall not be replaced unless the number of members of the committee falls below three persons at least two of whom are Commission staff, in which case the Commission shall appoint the requisite number of members from its staff to ensure that the minimum number of members of an evaluation committee is respected, in accordance with Article 146(2) of the Implementing Rules.

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

### Title III

## PROCUREMENT PROCEDURE

### Article 12

#### **Role of the Commission in the Joint Procurement Procedure**

1. The Commission, having sought the opinion of the Joint Procurement Steering Committee pursuant to Article 13(2), shall determine the appropriate form of the:
  - (a) resulting contract, which may be one or more public contracts or one or more framework contracts on the basis of the principles laid down in Article 88 of the Financial Regulation and Articles 116 and 117 of the Implementing Rules;
  - (b) procurement procedure, from amongst those listed in Article 91(1)(a) to (e) of the Financial Regulation on the basis of the principles laid down in Article 89 of that Regulation and Articles 122 and 129 of the Implementing Rules.
2. The Commission shall, as required under this Agreement, ensure the overall orientation, preparation and organisation of the joint procurement procedure and facilitate the amicable resolution of relevant disagreements between Contracting Parties.
3. The Commission shall act on its own account and on behalf of the Member States, as provided for in this Agreement.
4. The Commission shall be the sole representative of the Contracting Parties towards economic operators, candidates or tenderers throughout the joint procurement procedure, including any matters arising in relation to the joint procurement procedure following the award of the resulting contract.
5. The Commission shall be the sole representative of the Contracting Parties towards the contractor under the resulting contract, except for any specific contracts based on framework contracts entered into pursuant to Article 117 of the Implementing Rules.
6. The Commission shall act as the sole representative of the Member States in any legal action or counter-claim in accordance with Article 4(3) and (4) of this Agreement.
7. The Commission may request one or more Member States to assist it in its defence or pursuit of any legal action. When such assistance is requested by the Commission, the Member State concerned shall use its best endeavours to extend any assistance necessary for the defence or pursuit of the interests of the Contracting Parties and shall abstain from any action that could jeopardise the defence or pursuit of any legal action. A Member State shall assist the Commission where it is named in an action.

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

8. The Commission shall provide administrative support in the course of the joint procurement procedure and the performance of the resulting contract.

It shall draw up the necessary documentation and administrative correspondence on behalf of the Contracting Parties.

It shall chair the work of the Joint Procurement Steering Committee, and all other committees referred to in this Agreement. It shall keep a record of committee proceedings.

It shall make appropriate arrangements for the handling of information or documents related to the joint procurement procedure or the resulting contract.

### Article 13

#### **Joint Procurement Steering Committee – Procedure**

1. Where approval of a Commission proposal is required under this Agreement, Member States represented in the Joint Procurement Steering Committee shall endeavour to act by common accord.

Abstentions by Member States shall not prevent the Joint Procurement Steering Committee reaching a common accord.

Where the Member States represented in the Joint Procurement Steering Committee cannot reach a common accord, they shall vote. The Commission shall determine when to call a vote but shall not participate in the voting.

A Commission proposal shall be considered approved by the Joint Procurement Steering Committee if there is a common accord in favour or if a qualified majority of the Member States present or represented are in favour.

For the purposes of determining a qualified majority of the Member States, where all the Member States of the Union are participating Member States, the majority laid down either in Article 16(4) or (5) of the Treaty on European Union shall apply, depending on whichever paragraph is in force when the Member States cast their votes. Where not all the Member States of the Union are participating Member States, a qualified majority of the participating Member States shall be determined in accordance with Article 238(3) of the Treaty.

If two consecutive votes, each held at a different meeting of the Joint Procurement Steering Committee, result in a blocking minority against the Commission's proposal, the Commission proposal shall stand approved following the second vote unless there was a qualified majority against it.

Where the Joint Procurement Steering Committee approves the Commission's proposal, the Commission shall adopt it. If the Commission wishes to adopt a revised

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

act it shall seek the approval of the Joint Procurement Steering Committee of the revised act under this paragraph.

2. Where the opinion of the Joint Procurement Steering Committee on a Commission proposal is required under this Agreement, Member States represented in the Joint Procurement Steering Committee shall endeavour to act by common accord.

Abstentions by Member States shall not prevent the reaching of a common accord.

Where the Member States represented in the Joint Procurement Steering Committee cannot reach a common accord, they shall vote. The Commission shall determine when to call a vote but shall not participate in the voting.

The Joint Procurement Steering Committee delivers a favourable opinion if a simple majority of the Member States present or represented votes in favour.

Where an opinion of the Joint Procurement Steering Committee has been delivered, or where no opinion is delivered despite the Commission calling for a vote, the Commission may adopt its proposal, taking into utmost account any opinion delivered. The opinion shall not be binding on the Commission.

3. Unless otherwise stated in this Agreement, Commission proposals under this Agreement which would, after adoption, produce binding legal effects on the Member States may be adopted by the Commission upon approval of the Joint Procurement Steering Committee in accordance with paragraph 1; whereas Commission proposals under this Agreement which would not produce such effects after adoption may be adopted by the Commission subject to an opinion of that Committee, in accordance with paragraph 2.
4. The Joint Procurement Steering Committee may dispense the Commission from seeking its approval or opinion on any matter under this Agreement, based on a proposal from the Commission, following approval by the Joint Procurement Steering Committee, in accordance with paragraph 1.
5. The Chair shall submit to the Joint Procurement Steering Committee a draft of the acts to be adopted by the Commission upon which the Committee's approval or opinion is required under this Agreement.
6. The Joint Procurement Steering Committee shall adopt its own rules of procedure, by a simple majority of its members on a proposal from the Commission.

#### Article 14

#### **Contract Management Committee – Procedure**

1. The contract management committee shall agree with the contractor the detailed modalities on reporting to it, subject to its rules of procedure and in accordance with

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

the resulting contract. These modalities may concern, *inter alia*, the frequency of oral or written exchanges between the contractor and the contract management committee, and the circumstances under which additional reporting may be necessary.

That agreement shall provide that the contractor may, without limitation, be required to:

- (a) respond to questions put by the contract management committee on the contractor's written report;
  - (b) provide any additional information or clarification deemed necessary by the contract management committee.
2. The contract management committee may take decisions either by common accord or by a simple majority of the representatives of the Member States in that committee, upon a proposal from the Commission, without referring to the Joint Procurement Steering Committee on all matters not reserved for the Joint Procurement Steering Committee or the Commission under the resulting contract with the contractor.
  3. When taking a decision, the representatives of the Member States in the contract management committee shall endeavour to reach a common accord on a proposal from the Commission. Abstentions by Member State representatives shall not prevent the reaching of a common accord.

Where no common accord can be found within the contract management committee, a vote shall be held. The Commission shall determine when to call a vote but shall not participate in the voting.

A decision shall be adopted only where a simple majority of the representatives of the Member States present or represented in the contract management committee are in favour of the Commission's proposal. In the event of no simple majority of the representatives of the Member States being present or represented in two consecutive votes, held at two different meetings of the contract management committee, the Commission's proposal shall be submitted to the Joint Procurement Steering Committee in accordance with Article 13(3).

4. The contract management committee shall report to the Joint Procurement Steering Committee. The frequency of reporting shall be proposed by the Commission for the approval of the Joint Procurement Steering Committee in accordance with Article 13(1).

The contract management committee may, without limitation, be required to:

- (a) respond to questions put by the Joint Procurement Steering Committee on the contract management committee's written or oral reports;

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

- (b) provide any additional information or clarification deemed necessary by the Joint Procurement Steering Committee.
5. Contracting Parties may bring to the attention of the contract management committee, through its Chair, any difficulties or irregularities observed in the performance of the resulting contract.

The contract management committee shall examine the situation and take any appropriate action. It shall report thereon to the Joint Procurement Steering Committee and make appropriate recommendations for the determination of that Committee, if necessary.

6. When making a recommendation, the representatives of the Member States in the contract management committee shall endeavour to reach a common accord on a proposal from the Commission. Abstentions by Member State representatives shall not prevent the reaching of a common accord.

Where no common accord can be found within the contract management committee, a vote shall be held. The Commission shall determine when to call a vote but shall not participate in the voting.

A recommendation shall be adopted only where a simple majority of the representatives of the Member States present or represented in the contract management committee are in favour of the Commission's proposal. In the event of no simple majority of the representatives of the Member States being present or represented in two consecutive votes, held at two different meetings of the contract management committee, the Commission's proposal shall be submitted to the Joint Procurement Steering Committee in accordance with Article 13(3).

7. The contract management committee shall adopt by a simple majority of its members, its own rules of procedure on a proposal from the Commission.

## Article 15

### **Specific Provisions regarding the Opening of Requests to participate or Tenders**

1. Requests to participate and tenders shall be opened by an opening committee made up of Commission staff in accordance with Article 98(3) of the Financial Regulation and Article 145 of the Implementing Rules.
2. Any Member State may request the Commission to allow one of its representatives to observe the opening of requests to participate or tenders.
3. Observers shall neither participate in the deliberations of the opening committee nor make known any views to members of that committee.

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

4. The Commission shall make available to the Joint Procurement Steering Committee the written record of the opening of requests to participate or tenders referred to in the fourth subparagraph of Article 145(3) of the Implementing Rules.

## Article 16

### Organisation of Meetings

1. The Commission shall convene meetings of the Joint Procurement Steering Committee, the contract management committee, the opening or evaluation committee(s).
2. To the extent practicable, meetings of the Joint Procurement Steering Committee, the contract management committee, the opening or evaluation committee(s) shall be convened at least two weeks in advance of the scheduled date of the meeting.
3. Without prejudice to Article 32, information or documents relevant for the meetings referred to in paragraph 1 shall be submitted, to the extent practicable, to the members of the Joint Procurement Steering Committee, the contract management committee and their alternates, including any observers in those committees, and members of the opening or evaluation committee(s) at least two weeks in advance of the scheduled date of the meeting.
4. Meetings referred to in paragraph 1 shall be held in Brussels (Belgium) at a venue made available by the Commission.
5. The Commission shall not reimburse travel, accommodation or any other *per diem* expenses of any person nominated by any Member State taking part in the meetings referred to in paragraph 1.

## Article 17

### Content of Tender Documents

The content of all tender documents shall be determined by the Commission in accordance with the relevant provisions of the Financial Regulation and the Implementing Rules, subject to an opinion of the Joint Procurement Committee, in accordance with Article 13(2) of this Agreement.

Notwithstanding the first paragraph, but without prejudice to Article 12(1), the Commission shall adopt the following upon approval by the Joint Procurement Steering Committee, in accordance with Article 13(1):

- (a) the tender specifications, including any exclusion and selection criteria published separately from the award criteria;
- (b) any descriptive document, in the case of a competitive dialogue procedure;

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

- (c) the model contract(s).

## Article 18

### **Evaluation Committee – Procedure**

1. Where the Commission invokes the third subparagraph of Article 146(1) of the Implementing Rules, it shall propose for the approval of the Joint Procurement Steering Committee, in accordance with Article 13(1) of this Agreement, the precise modalities for the application of Article 146(1) of the Implementing Rules.
2. Tenders shall be evaluated in a non-discriminatory manner. Without prejudice to paragraph 1, the evaluation shall be based on the exclusion, selection and award criteria set out in the specifications referred to in point (a) of the second paragraph of Article 17 or the requirements set out in any descriptive document in the case of a competitive dialogue.

Without prejudice to the second subparagraph of Article 146(3) of the Implementing Rules, only requests to participate or tenders that satisfy the requirements in accordance with the first subparagraph of Article 146(1) of the Implementing Rules, and that are not excluded on the basis of the exclusion criteria and which meet the selection criteria, shall be considered admissible for evaluation under the award criteria, as provided for in the third subparagraph of Article 146(3) of the Implementing Rules.

3. The evaluation committee referred to in the first subparagraph of Article 10(1) of this Agreement shall keep a written record of its evaluation in accordance with Article 147(1) and (2) of the Implementing Rules, which shall be drawn up by common accord.

Where the evaluation is conducted by means of two evaluation committees as provided in the second subparagraph of Article 10(1) of this Agreement, the written record of the evaluation based on the exclusion and selection criteria may be drawn up separately from the written record based on the award criteria.

## Article 19

### **Elimination of Candidates or Tenderers**

Where appropriate, the Commission may submit a proposal eliminating a candidate or tenderer from participating in any stage of the joint procurement procedure pursuant to the second subparagraph of Article 18(2) for the opinion of the Joint Procurement Steering Committee, in accordance with Article 13(2).



**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

The Commission shall indicate the reasons for eliminating the candidate or tenderer concerned. The Commission's proposal shall be accompanied by the written record(s) of the evaluation referred to in Article 18(3).

## Article 20

### **Notification of the Elimination of Candidates or Tenderers**

1. The Commission shall notify each candidate or tenderer that has been eliminated pursuant to Article 19 of the reasons for eliminating them from further stages of the joint procurement procedure.
2. The notification shall be made in accordance with point (a) of the first subparagraph of Article 149(3) and the second subparagraph of Article 149(3) of the Implementing Rules. Such notification shall be made as soon as practicable following the opinion of the Joint Procurement Steering Committee.

## Article 21

### **Award of the resulting Contract**

1. The Commission shall adopt the award decision on its own account and on behalf of the Member States, in accordance with Article 100(1) of the Financial Regulation and Article 138 and Article 147(3) of the Implementing Rules.
2. Before it adopts an award decision, the Commission shall submit a proposal together with a copy of the written record of the evaluation referred to in Article 18(3) of this Agreement, for approval by the Joint Procurement Steering Committee, in accordance with Article 13(1).
3. Should the Commission not follow the recommendations of the evaluation referred to in Article 18(3), the reasons for such deviation shall be substantiated in a note accompanying the proposal submitted to the Joint Procurement Steering Committee.

## Article 22

### **Notification of the Award Decision to Tenderers or Candidates**

The award decision shall be notified simultaneously to all unsuccessful tenderers or candidates in accordance with Article 149(3) of the Implementing Rules.

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

## Article 23

### **Specific Provisions relating to the Signature of the resulting Contract and Entry into Force**

1. After the award decision is adopted by the Commission and without prejudice to Article 101 of the Financial Regulation, the Commission shall sign the resulting contract on its own account and on behalf of the Member States.
2. A resulting contract with a selected tenderer shall be approved by the Joint Procurement Steering Committee, in accordance with Article 13(1) of this Agreement, before it is signed, if or to the extent that it differs substantively from the relevant model contract, approved in accordance with the second paragraph of Article 17.

For the purposes of the first subparagraph, a resulting contract with a selected tenderer shall not be deemed to differ substantively from a model contract where differences are limited to the insertion of particulars that are missing in the model contract.

3. The signing of the resulting contract shall be subject to the rules on standstill provided for in Article 158a of the Implementing Rules.
4. The resulting contract shall not enter into force until it is signed by the contractor and the Commission pursuant to paragraph 1.
5. Any amendments of the resulting contract shall be subject to the prior approval of the Joint Procurement Steering Committee, in accordance with Article 13(1).

## Article 24

### **Specific Provisions relating to Contacts with Economic Operators, Candidates or Tenderers during the Joint Procurement Procedure**

1. The Commission shall be the sole point of contact between the Contracting Parties and economic operators, candidates, tenderers, or their representatives, concerning any matter pertaining to the joint procurement procedure following the entry into force of this Agreement.

The Commission shall adopt and publish arrangements for contact with economic operators or their representatives on its website prior to the launch of the joint procurement procedure.

After the launch of the joint procurement procedure, contact between economic operators, candidates, tenderers, or their representatives and the Commission may only take place, by way of exception, under the conditions set out in Article 148(2) and (3) of the Implementing Rules.

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

2. Each Member State shall ensure that where persons working in connection with this Agreement for that Member State are approached by an economic operator, candidate, tenderer, or their representative concerning any matter pertaining to the joint procurement procedure following the entry into force of this Agreement, they shall respond that under Article 24(1) of this Agreement the Commission is the sole contact point with economic operators, candidates, tenderers, or their representatives and refer any such person to the Commission. They shall simultaneously inform the Commission of the details of the approach and the referral.
3. Any contact with economic operators, candidates, tenderers or their representatives referred to in paragraphs 1 and 2, including any exchange of correspondence involved, shall be duly recorded.

The Commission shall inform the Joint Procurement Steering Committee of such contacts.

## Article 25

### **Abandonment and Cancellation**

1. The Commission may, for well grounded and substantiated reasons, abandon the procurement before the resulting contract is awarded or cancel the award procedure before the resulting contract is signed, pursuant to the first paragraph of Article 101 of the Financial Regulation.
2. For the application of Article 101 of the Financial Regulation, the call for tender shall provide that the Commission may either abandon the procurement before the resulting contract is awarded or cancel the award procedure before the resulting contract is signed, without the candidates or tenderers being entitled to claim any compensation.
3. Before adopting any decision under paragraph 1, the Commission shall seek the opinion of the Joint Procurement Steering Committee, in accordance with Article 13(2), on its proposed decision.

The Commission's decision shall be brought to the attention of the candidates or tenderers as soon as practicable following the opinion of the Joint Procurement Steering Committee.

## Article 26

### **Specific Provisions applicable in the Case of a Negotiated Procedure**

1. Where the joint procurement is pursued through a negotiated procedure, paragraphs 2 to 8 shall apply to:
  - (a) the invitation to submit offers for negotiation;

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

- (b) the negotiations with tenderers or their representatives;
  - (c) the evaluation of the tenders.
2. In negotiated procedures without prior publication of a contract notice in the *Official Journal of the European Union*, before inviting candidates to submit their tender offers for negotiation, the Commission shall submit a draft shortlist of candidates that it proposes to invite to negotiate to the Joint Procurement Steering Committee for its approval, in accordance with Article 13(1).
  3. Following the approval referred to in paragraph 2, the Commission shall invite the shortlisted candidates to negotiate, on behalf of all Contracting Parties.
  4. In negotiated procedures following publication of a contract notice in the *Official Journal of the European Union*, the negotiated procedure may take place in stages by applying the award criteria set out in the tender specifications to reduce the number of tenders to be negotiated. Where that is the case, the tender specifications shall stipulate that this option is to be used and indicate how it shall be used.

If the option envisaged under the first subparagraph is used, the Commission shall submit for approval by the Joint Procurement Steering Committee, in accordance with Article 13(1), a proposal with a list of tenderers to be eliminated from participating in further stages of the joint procurement procedure based on application of the award criteria.

A written record of the application of the award criteria to reduce the number of tenders to be negotiated in accordance with the first subparagraph shall be transmitted to the Joint Procurement Steering Committee with the Commission proposal referred to in the second subparagraph.

5. Following approval as referred to in paragraph 4, the Commission, acting on behalf of all Contracting Parties, shall notify each tenderer so eliminated of the reasons for its elimination from further stages of the joint procurement procedure.

The notification shall be made in accordance with Article 149(3) of the Implementing Rules. Such notification shall be made as soon as practicable following the approval of the Joint Procurement Steering Committee.

6. The negotiations shall be conducted by the evaluation committee(s) referred to in Article 10(1) of this Agreement with tenderers that have not been eliminated in accordance with the second subparagraph of Article 18(2) or through the application of the option envisaged under paragraph 4 of this Article.
7. The negotiations shall be carried out, on the basis of pre-announced criteria provided for in the tender specifications, in accordance with Article 124 of the Implementing Rules.

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

Where the negotiations are conducted orally, a written record of the negotiations shall be drawn up by the evaluation committee(s) referred to in paragraph 6. It shall be sent to the tenderer concerned, indicating a time limit for communicating any proposed addition or correction. During meetings with tenderers the evaluation committee(s) shall be represented by at least two members, one of whom is designated by the Commission and another nominated by a Member State.

The negotiations shall not concern the contract notice or documents relating to the invitation to tender referred to in Article 130(1) of the Implementing Rules.

8. During the negotiations, tenderers may be requested by the evaluation committee(s) referred to in Article 10(1) of this Agreement to modify their tenders, in which case their offers shall be evaluated on the basis of their modified tenders.

## Article 27

### **Specific Provisions applicable in the Case of a Competitive Dialogue**

1. Where the joint procurement is pursued through a competitive dialogue procedure, paragraphs 2 to 7 shall apply to dialogues with candidates and their representatives that have not been eliminated in accordance with the second subparagraph of Article 18(2) or through the application of the option envisaged in paragraph 3 of this Article.
2. The dialogues shall be conducted by the evaluation committee(s) referred to in Article 10(1), in conformity with Article 125b of the Implementing Rules.

A written record of the dialogues shall be drawn up by the evaluation committee(s) referred to in the first subparagraph. It shall be sent to the candidate concerned, indicating a time limit for communicating any addition or correction. The evaluation committee(s) shall also draw up a report setting out its overall assessment of and recommendations on the results of the dialogues, in particular on whether or not the dialogues should be concluded.

The dialogues shall not concern the contract notice or descriptive document referred to in Article 125b of the Implementing Rules.

3. The dialogues may take place in successive stages in order to reduce the number of solutions to be discussed by applying criteria set out in the descriptive document accompanying the contract notice. Where that is the case, the descriptive document shall stipulate that this option is to be used and indicate how it shall be used.

If the option envisaged under the first subparagraph is used, the Commission shall submit for the approval of the Joint Procurement Steering Committee, in accordance with Article 13(1), a proposal with a list of candidates to be eliminated from participating in further stages of the joint procurement procedure based on application of the criteria set out in the descriptive document.

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

A written record of the application of the criteria set out in the descriptive document to reduce the number of solutions to be discussed, in accordance with the first subparagraph, shall be transmitted to the Joint Procurement Steering Committee with the Commission proposal referred to in the second subparagraph.

4. Following approval of the list of candidates eliminated from participation in further stages of the joint procurement procedure, on the basis of criteria set out in the descriptive document, by the Joint Procurement Steering Committee, in accordance with Article 13(1), the Commission, acting on behalf of the Contracting Parties, shall notify each candidate that has been so eliminated of the reasons for their elimination from further stages of the joint procurement procedure.

The notification shall be made in accordance with Article 149(3) of the Implementing Rules. Such notification shall be made as soon as practicable following the approval of the Joint Procurement Steering Committee.

5. Before concluding the dialogues, a Commission proposal informing candidates that the dialogues are concluded and inviting them to submit their final tenders on the basis of solutions presented and specified during the dialogue, shall be submitted by the Commission for the approval of the Joint Procurement Steering Committee in accordance with Article 13(1) of this Agreement.
6. Following approval of the Commission proposal by the Joint Procurement Steering Committee, the Commission, acting on behalf of the Contracting Parties, shall notify each participant in the dialogues that has not been eliminated under paragraph 4 of the conclusion of the dialogues and shall invite them to submit their final tenders on the basis of solutions presented and specified during the dialogue.

The notification shall be made in accordance with Article 100(2) of the Financial Regulation and Article 149(3) of the Implementing Rules. Such notification shall be made as soon as practicable following the approval of the Joint Procurement Steering Committee.

7. The tenders submitted shall be evaluated by the evaluation committee(s) referred to in the first subparagraph of paragraph 2, in conformity with the second and third subparagraphs of Article 125b(4) of the Implementing Rules.

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

#### Title IV

### **PROVISIONS APPLICABLE TO THE HANDLING OF INFORMATION OR DOCUMENTS**

#### Article 28

#### **Sharing of Information or Documents**

Contracting Parties shall supply each other with the information or documents required for the purposes of carrying out their respective roles under this Agreement.

#### Article 29

#### **Professional Secrecy**

1. Without prejudice to paragraph 2, persons working in connection with this Agreement shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy within the meaning of Article 339 of the Treaty.
2. Without prejudice to Article 31(2) of this Agreement, information or documents covered by the obligation of professional secrecy handled by the Contracting Parties under this Agreement shall be disseminated on a need-to-know basis only to persons working in connection with this Agreement.

Once the information or documents referred to in the first subparagraph have lawfully been made available to the public, the obligation of professional secrecy shall no longer apply.

3. Each Contracting Party shall be responsible for ensuring that all persons working in connection with this Agreement for that Contracting Party are legally bound to respect the obligations in paragraphs 1 and 2 during their employment and following the termination of their employment.
4. Without prejudice to Article 33(1), where persons working in connection with this Agreement are not employed by a Contracting Party, the Contracting Party that they are assisting shall enter into a contractual arrangement with the relevant employer by which the latter imposes the obligations in paragraphs 1 and 2 on its employee.

#### Article 30

#### **Conflict of Interest**

1. Each Contracting Party shall be responsible for ensuring that all persons working in connection with this Agreement for that Contracting Party are not in a situation that

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

might create a conflict of interest or otherwise compromise the impartiality or objectivity of their work in connection with this Agreement during their employment.

2. Without prejudice to Article 33(1), where persons working in connection with this Agreement are not employed by a Contracting Party, the Contracting Party that they are assisting shall enter into a contractual arrangement with the relevant employer by which the latter imposes the obligations in paragraph 1 on its employee.

## Article 31

### Use of Information or Documents

1. Contracting Parties shall not use any information or document handled under this Agreement for purposes other than those pertaining to this Agreement.
2. Nothing in this Agreement shall preclude a Contracting Party from complying with provisions of Union or national law applicable to it regarding public access to documents, the protection of personal data or the protection of classified information.
3. To the extent possible under the applicable Union or national law, any Contracting Party considering the release of any information or document handled under this Agreement, shall consult in writing the originator of the information or document in good time prior to releasing the information or document in question, and shall take the utmost account of the views of the originator.

Where prior consultation in accordance with the first subparagraph is not possible, the Contracting Party shall nonetheless inform the originator of the release including the factual and legal circumstances pertaining to it without undue delay.

4. Each Contracting Party shall be responsible for ensuring that all persons working in connection with this Agreement for that Contracting Party are legally bound to respect the obligations in paragraphs 1 and 3 during their employment and following the termination of their employment.
5. Without prejudice to Article 33(1), where persons working in connection with this Agreement are not employed by a Contracting Party, the Contracting Party that they are assisting shall enter into a contractual arrangement with the relevant employer by which the latter imposes the obligations in paragraphs 1 and 3 on its employee.



English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

## Article 32

### **Measures for protecting Information or Documents handled under this Agreement**

1. The Commission shall propose specific handling instructions applicable to information or documents handled under this Agreement and security measures applicable to meetings of the Joint Procurement Steering Committee, the contract management committee and the opening or evaluation committee(s).
2. Handling instructions applicable to information or documents handled within the Joint Procurement Steering Committee or the contract management committee and security measures applicable to meetings of the Joint Procurement Steering Committee and the contract management committee shall be adopted as part of the rules of procedure of these committees on the basis of a proposal from the Commission.
3. Handling instructions applicable to information or documents handled within the opening or evaluation committee(s) and security measures applicable to meetings of the opening or evaluation committee(s), including any Code of conduct for evaluators, shall be submitted by the Commission for the approval of the Joint Procurement Steering Committee pursuant to Article 13(1), prior to their adoption by the Commission.
4. Each member of the evaluation committee(s) referred to in Article 10(1) shall sign the Declaration of absence of conflict of interest and protection of confidentiality attached as Annex I, as provided for in Article 10(5).

The Commission may also require each member of the evaluation committee(s) to sign a Code of conduct for evaluators referred to in paragraph 3.

5. The Commission may propose amendments to the Annexes in the light of acquired experience. Such amendments shall enter into force forthwith upon approval by the Joint Procurement Steering Committee pursuant to Article 13(1).

## Article 33

### **Compliance**

1. Each Contracting Party shall be responsible towards every other Contracting Party for ensuring compliance with this Title and for making good any damage caused in the case of any breach of those provisions.
2. Each Contracting Party shall take appropriate measures in accordance with the rules, laws or regulations applicable to it, to:
  - (a) prevent and detect the disclosure of information or documents covered by the obligation of professional secrecy handled under this Agreement to unauthorised persons;

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

- (b) comply with handling instructions relating to information or documents covered by the obligation of professional secrecy handled under this Agreement;
  - (c) prevent, detect and eliminate conflicts of interests that may arise in the performance of this Agreement.
3. Each Contracting Party shall notify the Joint Procurement Steering Committee, through its Chair, of any breach of this Title or where information or documents protected under this Title have been lost or inappropriately handled, without undue delay, upon becoming aware of such a breach, loss or inappropriate handling.

The Contracting Party concerned shall promptly investigate, in accordance with the rules, laws or regulations applicable to it, the breach, loss or inappropriate handling of the information or documents, where it is known or where there are reasonable grounds for suspecting that the information or documents covered by the obligation of professional secrecy handled under this Agreement may have been lost or inappropriately handled. It shall report to the Joint Procurement Steering Committee on the results of its investigation.

Without prejudice to the rules, laws or regulations applicable to them, Contracting Parties shall co-operate with one another in the investigation of any breach of this Title or where information or documents protected under this Title have been lost or inappropriately handled.

Without prejudice to the fifth subparagraph, Contracting Parties shall co-operate with one another in finding appropriate solutions to eliminate, remedy or mitigate the impact of any breach of this Title.

Each Contracting Party shall remain responsible for eliminating, remedying or mitigating the impact of any breach of this Title, even after having consulted the Joint Procurement Steering Committee.

## Title V

### **PROVISIONS FOR NON-PARTICIPATING MEMBER STATES**

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

#### Article 34

##### **Sharing of Information or Documents with Non-participating Member States**

Subject to the rules of procedure of the Joint Procurement Steering Committee and the contract management committee, the Commission shall share information or documents relating to the joint procurement procedure and the resulting contract, on a need-to-know basis, with non-participating Member States, provided that they have observer status pursuant to Article 35.

Notwithstanding the first paragraph, and subject to the rules of procedure of the Joint Procurement Steering Committee and the contract management committee, the Commission may share information or documents relating to the joint procurement procedure and the resulting contract with non-participating Member States, where they do not have observer status pursuant to Article 35, on an *ad hoc* basis whenever necessary to ensure co-ordination with those Member States.

#### Article 35

##### **Observer Status**

1. A non-participating Member State may appoint a representative with observer status to follow the work of the Joint Procurement Steering Committee. That representative shall have the right to attend meetings of the Joint Procurement Steering Committee, subject to that Committee's rules of procedure, provided that:
  - (a) the non-participating Member State in question has not launched its own national procurement procedure for the appointment of an auction platform pursuant to Article 30(5) of the Auctioning Regulation; and
  - (b) the participating Member States and the Commission have not launched the joint procurement for the appointment of the common auction platform(s), under this Agreement.

Notwithstanding the first subparagraph, the Commission may invite representatives of non-participating Member States to attend meetings of the Joint Procurement Steering Committee on an *ad hoc* basis where necessary to ensure co-ordination with those Member States.

The Commission shall draw up a list of such observers based on information provided by the non-participating Member States.

2. A non-participating Member State may appoint a representative with observer status to follow the work of the contract management committee. That representative shall have the right to attend meetings of the contract management committee subject to that committee's rules of procedure, provided that the non-participating Member State is

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

using the common auction platform(s) in accordance with the second subparagraph of Article 30(7) of the Auctioning Regulation.

Notwithstanding the first subparagraph, the Commission may invite representatives of non-participating Member States to attend meetings of the contract management committee on an *ad hoc* basis where necessary to ensure co-ordination with those Member States.

The Commission shall draw up a list of such observers based on information provided by the non-participating Member States.

#### Article 36

##### **Use of the Common Auction Platform(s) by Non-participating Member States**

1. Non-participating Member States may make use of the services of the common auction platform(s) for the purposes referred to in the second subparagraph of Article 30(7) of the Auctioning Regulation, provided that:
  - (a) the contract concluded with the common auction platform(s) is *mutatis mutandis* identical to the resulting contract;
  - (b) their auctioneer concludes and implements the arrangements referred to in Article 22(3) of the Auctioning Regulation with the common auction platform(s).
2. When using the common auction platform(s) pursuant to the second subparagraph of Article 30(7) of the Auctioning Regulation, non-participating Member States shall aggregate their volume of allowances with those auctioned by the participating Member States and auction them in accordance with the auction calendar provided for in Chapter III of the Auctioning Regulation.

#### Article 37

##### **Non-participating Member States joining the Joint Action under this Agreement**

1. A non-participating Member State may join the joint action provided for in this Agreement, in accordance with Article 30(8) of the Auctioning Regulation, by signing a joining agreement, which may take the form of an amendment to this Agreement, setting out the terms and conditions subject to which the joining Member State may join this Agreement. The joining agreement shall enter into force and the joining Member State shall become a participating Member State as provided for in that agreement.
2. Each other participating Member State hereby authorises the Commission to sign on its behalf such a joining agreement with any non-participating Member State, subject

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

to the approval of the Joint Procurement Steering Committee pursuant to Article 13(1) of this Agreement.

## Article 38

### **Other Articles Applicable to Non-participating Member States**

Without prejudice to the provisions of this Title, Articles 1 to 4 and 12, Article 14(5), Articles 15, 16, 24, 28 to 33, 41 to 44, 46, 47, and 49, Article 51(1), (2) and (3), and Article 53 shall apply in respect of non-participating Member States.

Without prejudice to the provisions of this Title, Article 45 shall also apply in respect of non-participating Member States. However, the third sentence of the second subparagraph of Article 45(3) shall only apply to non-participating Member States where they have observer status or where they have received information or documents pursuant to the second paragraph of Article 34.

Without prejudice to the provisions of this Title, Article 48 shall also apply in respect of non-participating Member States. However, any amendment to Article 1(6), this Title and the provisions referred to in the first paragraph of this Article as well as Annexes II and III, insofar as they relate to non-participating Member States, shall also require the unanimous approval of those Member States.

Without prejudice to the provisions of this Title, Article 52 shall also apply in respect of non-participating Member States. However, references therein to Article 51(4) shall be read as references to Article 40.

## Article 39

### **Costs**

Where the contract with the contractor provides for terms of payment and prices which affect non-participating Member States pursuant to Article 36(1), those Member States shall be given an opportunity to make their views known to the participating Member States and the Commission prior to the approval of any Commission proposal submitted under the second paragraph of Article 17.

## Article 40

### **Entry into Force for Non-participating Member States**

This Agreement shall enter into force for each non-participating Member State 14 days following the day on which the Commission has received a signed duplicate of this Agreement from that non-participating Member State in all authentic linguistic versions, the Commission has signed a duplicate, and that non-participating Member State has submitted to the Commission the Confirmation of completion of national procedures for

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

the approval of this Agreement or the absence of a need for such procedures, attached as Annex II.

## Title VI

### FINAL PROVISIONS

#### Article 41

##### **Duty of Sincere Cooperation**

Article 4(3) of the Treaty on European Union applies to the performance of this Agreement. Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement or resulting from any action taken under it. They shall abstain from any measure that could jeopardise the attainment of the objectives of the ETS Directive, any regulation adopted pursuant to Article 19(3) of that Directive (the "Registry Regulation"), the Auctioning Regulation, or this Agreement.

#### Article 42

##### **Consequences in the Case of Lack of Compliance**

1. In the event of lack of compliance by any Contracting Party with this Agreement, the Contracting Parties shall use their best endeavours to promptly and jointly determine together in the Joint Procurement Steering Committee the means to address the situation as soon as possible.
2. In the event of any disagreement between two or more Contracting Parties with regard to the interpretation or application of this Agreement, the parties concerned shall use their best endeavours to settle the matter directly.

Should this not be possible, any of the parties to the disagreement may refer the matter to the Joint Procurement Steering Committee, where the Contracting Parties shall use their best endeavours to resolve the matter through mediation between the parties concerned.

3. If the processes set out in paragraphs 1 and 2 do not remedy the lack of compliance or settle the disagreement, within three months of the matter being referred to the Joint Procurement Steering Committee either under paragraph 1 or the second subparagraph of paragraph 2, the matter may be referred to the Court of Justice of the European Union (the "Court of Justice") in accordance with Article 43.

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

#### Article 43

##### **Competent Court for Hearing Disagreements**

1. Any lack of compliance with this Agreement, or disagreement with regard to the interpretation or application of this Agreement between the Contracting Parties, that remains unresolved within the Joint Procurement Steering Committee, following the application of Article 42(3), may be brought before the Court of Justice:
  - (a) by the Commission or the Member State(s) concerned, pursuant to Article 272 of the Treaty, where the unresolved matter is outstanding between the Commission and one or more Member State(s);
  - (b) by any Member State(s) against any other Member State(s), pursuant to Article 273 of the Treaty, where the unresolved matter is outstanding between two or more Member States.
2. The Court of Justice shall have exclusive jurisdiction to decide upon any lack of compliance with this Agreement or disagreement with regard to the interpretation or application of this Agreement.
3. The Court of Justice may award any remedy it deems appropriate in any case brought before it under this Article.

#### Article 44

##### **Applicable Law and Severance**

1. Matters or disputes arising within the subject matter of this Agreement shall be governed by applicable Union law, the terms of this Agreement and, on a subsidiary basis, the general principles of law common to the Member States of the Union.
2. The law applicable to any resulting contract pursuant to this Agreement and the competent court for the hearing of disputes under that resulting contract shall be determined in the resulting contract with the contractor.
3. If any one or more of the provisions of this Agreement should be or become fully or partly invalid, illegal or unenforceable in any respect under the applicable law, the validity, legality and enforceability of the remaining provisions contained therein shall not be affected or impaired thereby. Provisions which are fully or partly invalid shall be interpreted in accordance with the spirit and purpose of this Agreement.

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

## Article 45

### **Non-contractual Liability and Indemnity for Damages Actions**

1. Without prejudice to Articles 43 and 44, each Member State shall, in accordance with Union law, make good any non-contractual damage to third parties, other Member States or the Commission, arising in connection with this Agreement caused by its authorities or by any persons working in connection with this Agreement for those authorities.

The Commission's non-contractual liability arising in connection with this Agreement is governed by the second paragraph of Article 340 of the Treaty.

2. Without prejudice to Articles 43 and 44 of this Agreement, where the Commission is required to compensate a third party or a Member State for non-contractual damage arising in connection with this Agreement caused in whole or in part by one or more Member State(s) and where the Member State(s) concerned can be identified, the Member State(s) in question shall indemnify the Commission in full for the cost of making good any damage not caused by the Commission, including the related costs of any legal action.
3. Without prejudice to Articles 43 and 44, where the Commission is required to compensate a third party or a Member State for non-contractual damage arising in connection with this Agreement caused in whole or in part by one or more Member State(s) but where the Member State(s) concerned cannot be identified, all the Member States of the Union shall indemnify the Commission in full for the cost of making good any damage not caused by the Commission, including the related costs of any legal action.

The share payable by each Member State of the total amount due to the Commission shall be in accordance with its share in the total volume of allowances auctioned during the year(s) when the damage was caused. A Member State shall be excluded from the calculation if it can prove that it could not have caused the damage even in part. However, no Member State shall be excluded from the calculation solely on the grounds that it was not part of the Joint Procurement Steering Committee that approved or gave a favourable opinion to a Commission proposal which once adopted by the Commission caused the damage, either because it was not present or represented at the meeting, or because it did not take part in the vote; nor shall a Member State be excluded from the calculation on the grounds that it abstained from voting, or it voted against the Commission's proposal.

4. Without prejudice to Articles 43 and 44, where the Commission is required to compensate a third party or a Member State for non-contractual damage in connection with this Agreement caused in whole or in part by one or more Member State(s) or by the Commission but where neither the Member State(s) concerned nor the Commission can be identified as having caused the damage, the Commission shall bear  $1/(n + 1)^{\text{th}}$  part of the total amount of any damages awarded, whilst the Member



English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

States shall bear the remaining  $n$  parts, where 'n' is the number of Member States of the Union that are not excluded from the calculation in accordance with the second subparagraph of paragraph 3.

The share payable by each Member State of the total amount due to the Commission shall be calculated in accordance with the second subparagraph of paragraph 3.

5. Without prejudice to Articles 43 and 44, the Commission, not the Member States, shall be solely responsible to make good any non-contractual damage, arising in connection with this Agreement, caused to a third party or a Member State by acts adopted by the Commission without the approval or favourable opinion of the Joint Procurement Steering Committee under this Agreement, except where the Commission is dispensed from seeking such approval or opinion under Article 13(4).
6. This Article shall not apply to contractual liability arising under the resulting contract.

#### Article 46

### **Terms of Payment and Prices**

1. Contracting Parties shall comply with all prices and terms of payment specified in the:
  - (a) descriptive document accompanying the contract notice, in the case of a competitive dialogue procedure, in favour of participants in the dialogue;
  - (b) resulting contract with the contractor following its signature by the Commission.
2. The terms of payment and prices referred to in point (b) of paragraph 1 shall comply with Article 52(2) of the Auctioning Regulation.

#### Article 47

### **Preamble and Annexes**

This Agreement shall be interpreted in the light of its Preamble and Union law, in particular, the ETS Directive, the Auctioning Regulation, the Registry Regulation, the Financial Regulation and the Implementing Rules. The Annexes to this Agreement shall constitute an integral part thereof.

#### Article 48

### **Amendments**

Contracting Parties may propose amendments to this Agreement. The proposed amendments shall be submitted in writing to the Joint Procurement Steering Committee, through its Chair.

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

Without prejudice to Article 4(6), an amendment to this Agreement shall enter into force and become an integral part of this Agreement as and when specified in the amendment upon unanimous approval of that amendment by the members of the Joint Procurement Steering Committee.

In addition, the Commission may propose amendments to the Annexes in the light of acquired experience. Such amendments shall enter into force forthwith upon approval by the Joint Procurement Steering Committee pursuant to Article 13(1).

To the extent that an amendment to this Agreement is provided for in an agreement entered into by the Commission, on its own account and on behalf of the Member States, pursuant to Article 4(6) of this Agreement, such amendment shall enter into force and become an integral part of this Agreement as and when specified in the agreement entered into pursuant to Article 4(6) of this Agreement.

#### Article 49

#### **Term and Termination**

1. This Agreement shall subsist for as long as the obligations under Article 26(1) or (2) of the Auctioning Regulation are in force and until it is either replaced by another agreement in accordance with paragraph 2 of this Article or it is terminated in accordance with paragraph 3 of this Article.
2. Upon a request supported by a qualified majority of the Member States in the Joint Procurement Steering Committee and subject to any applicable provisions of the Auctioning Regulation or the Registry Regulation, the Commission may develop a proposal either to replace this Agreement with another agreement or to terminate this Agreement. The Commission proposal shall, if appropriate, be accompanied by a comprehensive plan for an orderly transition to an alternative framework and the continuation of auctioning in the interim.

Subject to the second paragraph of Article 52, a qualified majority under the first subparagraph of this paragraph shall be determined in accordance with the fifth subparagraph of Article 13(1).

3. This Agreement shall only be terminated if agreed in writing unanimously by the Contracting Parties.

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

## Article 50

### **Communication**

All notices under this Agreement shall be valid if given in writing and sent to the addresses and contact details by the transmission means provided for in the rules of procedure of the Joint Procurement Steering Committee or the contract management committee.

## Article 51

### **Signature and Entry into Force**

1. This Agreement shall be established and executed in the equally authentic linguistic versions set out in Annex IV, each linguistic version being in an official language of the Union.
2. The Contracting Parties shall sign one or more duplicates of each of the authentic linguistic versions of this Agreement. Signatures on different duplicates of an authentic linguistic version shall have the same effect as if the signatures were on a single duplicate of this Agreement.
3. The Commission shall act as depository of all signed authentic linguistic versions of this Agreement. It shall supply duly certified copies of this Agreement to each of the Member States as soon as practicable after the receipt of signed duplicates of this Agreement from all Member States.
4. This Agreement shall enter into force for the participating Member States 14 days following the day on which the Commission has received a signed duplicate of this Agreement from each participating Member State in all authentic linguistic versions, the Commission has signed a duplicate in the same authentic linguistic versions, and the ninth participating Member State has submitted to the Commission the Confirmation of completion of national procedures for the approval of this Agreement or the absence of a need for such procedures, attached as Annex II.
5. The tenth and each following participating Member State to submit the Confirmation referred to in paragraph 4 shall be bound, as of 14 days following its submission of that Confirmation, by all acts already adopted by the Commission in connection with this Agreement as of when the Agreement entered into force as set out in paragraph 4.

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

## Article 52

### Transitional Measures

Member States that have not notified the Commission that this Agreement has entered into force for themselves, as set out in Article 51(4), may participate in the work of the Joint Procurement Steering Committee, as observers, subject to such Member States signing the Agreement on participation in the work of the Joint Procurement Steering Committee as an observer, attached as Annex III.

Member States that have not submitted to the Commission the Confirmation referred to in Article 51(4) shall not be taken into account for the purposes of reaching a common accord, qualified majority or simple majority under this Agreement.

## Article 53

### Publication

This Agreement and any amendments thereto shall be published in all official languages of the Union in the "C" Series of the *Official Journal of the European Union*.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Agreement.

Signed in \_\_\_\_\_, on \_\_\_\_\_

- 1) For the European Commission: [signed][Brussels][9 November 2011]  
Jos Delbeke, Director-General of the Directorate-General for Climate Action
- 2) Pour L'Etat belge/De Belgische Staat : [signed][Brussels][24 November 2011]  
le Ministre fédéral compétent pour l'environnement / Minister bevoegd voor leefmilieu
- 3) За Република България: [signed][Bulgaria][4 November 2011]  
Ивелина Василева, заместник-министър на околната среда и водите
- 4) Za Českou republiku: [signed][Prague][8 November 2011]  
Ivo Hlaváč, náměstek ministra a ředitel sekce technické ochrany životního prostředí,  
Ministerstvo životního prostředí České republiky
- 5) For Denmark: [signed][Copenhagen][4 November 2011]  
Ib Peter Larsen, direktør, Energistyrelsen, Klima-, Energi- og Bygningsministeriet
- 6) Eesti Vabariigi poolt: [signed][Tallinn][2 November 2011]  
Allan Gromov, asekanstler, Keskkonnaministeerium

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

- 7) Thar ceann na hÉireann: [signed][Dublin][9 November 2011]  
Ken Macken, Bainisteoir Cláir, An Ghníomhaireacht um Chaomhnú Comhshaoil
- 8) Εκ μέρους της Ελληνικής Δημοκρατίας: [signed][Brussels][9 November 2011]  
Γεώργιος Παπακωνσταντίνου, Υπουργός Περιβάλλοντος, Ενέργειας και Κλιματικής Αλλαγής
- 9) Por España: [signed][Madrid][3 November 2011]  
Teresa Ribera Rodríguez, Secretaria de Estado de Cambio Climático
- 10) Pour le gouvernement de la République française : [signed][Paris][7 November 2011]  
Benoît Coeuré, Directeur général adjoint du Trésor
- 11) Per la Repubblica Italiana: [signed][Rome][8 November 2011]  
Dott. Domenico Casalino, Amministratore Delegato
- 12) Εκ μέρους της Κυπριακής Δημοκρατίας: [signed][Brussels][9 November 2011]  
Θεόδουλος Μεσημέρης, Ανώτερος Λειτουργός Περιβάλλοντος, Υπουργείο Γεωργίας, Φυσικών Πόρων και Περιβάλλοντος
- 13) Latvijas Republikas vārdā: [signed][Riga][7 November 2011]  
Edmunds Sprūdžs, vides aizsardzības un reģionālās attīstības ministrs
- 14) Lietuvos Respublikos vardu: [signed][Vilnius][4 November 2011]  
Aleksandras Spruogis, aplinkos viceministras, Aplinkos ministerija
- 15) Pour le Grand-Duché de Luxembourg: [signed][Luxembourg][9 November 2011]  
Marco Schank, Ministre Délégué au Développement durable et aux Infrastructures
- 16) A Magyar Köztársaság részéről: [signed][Budapest][7 November 2011]  
Dr. Fellegi Tamás, nemzeti fejlesztési miniszter
- 17) For Republic of Malta / Ghar-Repubblika ta' Malta: [signed][Malta][2 November 2011]  
Mr. Alfred Camilleri, Permanent Secretary at the Ministry of Finance, the Economy and Investment / is-Sur Alfred Camilleri, Segretarju Permanenti, Ministeru tal-Finanzi, l-Ekonomija u Investiment
- 18) Voor de Staat der Nederlanden: [signed][The Hague][1 November 2011]  
Bernard ter Haar, directeur-generaal Milieu, Ministerie van Infrastructuur en Milieu
- 19) Für Österreich: [signed][Vienna][2 November 2011]  
Günter Liebel, Leiter der Sektion Allgemeine Umweltpolitik, Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft, für den Bundesminister

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

- 20) Por Portugal: [signed][Lisboa][25 July 2012]  
Presidente da Agência Portuguesa do Ambiente
- 21) Pentru România: [signed][Bucharest][4 November 2011]  
Cristina Trăilă, Președintele Autorității Naționale pentru Reglementarea și Monitorizarea Achizițiilor Publice
- 22) Za Republiko Slovenijo: [signed][Ljubljana][4 November 2011]  
dr. Peter Gašperšič, Državni sekretar
- 23) Za Slovenskú republiku: [signed][Brussels][9 November 2011]  
Radoslav Jonáš, vymenovaný na zastupovanie generálneho riaditeľa sekcie zmeny klímy a ekonomických nástrojov
- 24) Suomen puolesta: [signed][Helsinki][31 October 2011]  
Esa Härmälä, energiaosaston ylijohtaja, työ- ja elinkeinoministeriö
- 25) För Sverige: [signed][Stockholm][28 October 2011]  
Lena Ingvarsson, Expeditions- och rättschef vid Miljödepartementet

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

**ANNEXES**

**Annex I**

**Declaration of absence of conflict of interest and protection of confidentiality to be given by members of the evaluation committee(s) in accordance with Article 32(4)**

Title of contract:

.....

Reference:

(Call for tenders No):

.....

I, the undersigned ....., having been [appointed to the evaluation committee] [given the responsibility of assessing exclusion and selection criteria and/or award criteria] for the above-mentioned contract, declare that I am aware of Article 52 of the Financial Regulation, which states that:

*“1. All financial actors and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any action which may bring their own interests into conflict with those of the Communities. Should such a case arise, the person in question must refrain from such actions and refer the matter to the competent authority.*

*2. There is a conflict of interest where the impartial and objective exercise of the functions of a financial actor or other person, a referred in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.”*

I hereby declare that, to my knowledge, I have no conflict of interest with the economic operators who have [applied to participate] [submitted a tender] for this contract, including persons or members of a consortium, or the subcontractors proposed.

I confirm that, if I discover during the evaluation that such a conflict exists, I will declare it immediately and resign from the committee.

I also confirm that I will keep all matters entrusted to me confidential. I will not communicate outside the committee any confidential information that is revealed to me or that I have discovered or any information relating to the views expressed during the evaluation. I will not make any adverse use of information given to me.

[I agree to abide by the terms of the Commission's Code of conduct for evaluators of which I have received a copy.]

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

Signed: .....



English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

## **Annex II**

### **Confirmation of completion of national procedures for the approval of this Agreement or the absence of a need for such procedures in accordance with Article 40 or Article 51(4)**

**[Letter-head of authority representing a Member State for the purposes of this Agreement]**

European Commission  
Director-General  
Directorate-General for Climate Action  
[Address]  
Fax: [xxx]

**Re: Confirmation of completion of national procedures for the approval of the Joint Procurement Agreement for the appointment of common auction platform(s) or the absence of a need for such procedures in accordance with Article 40 or Article 51(4) of that Agreement**

Dear Sir/Madam

We refer to Article 40 or Article 51(4) of the above-mentioned Joint Procurement Agreement entered into between the Commission and the Member States of the European Union.

#### **EITHER**

We hereby notify you that our national procedures for the approval of the above-mentioned Joint Procurement Agreement were completed on [date].

#### **OR**

We hereby notify you that no national procedures are required for the approval of the above-mentioned Joint Procurement Agreement by [Name of Member State].

Yours faithfully

[Name of Member State]  
[National Authority]  
[Name, Function]  
[Address]  
Fax: [xxx]

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

### **Annex III**

#### **Agreement on participation in the work of the Joint Procurement Steering Committee as an observer in accordance with the first paragraph of Article 52**

**[Letter-head of authority representing a Member State for the purposes of this Agreement]**

European Commission  
Director-General  
Directorate-General for Climate Action  
[Address]  
Fax: [xxx]

**Re: Agreement on participation in the work of the Joint Procurement Steering Committee as an observer in accordance with the first paragraph of Article 52 of the Joint Procurement Agreement for the appointment of common auction platform(s)**

Dear Sir/Madam

We refer to the first paragraph of Article 52 of the above-mentioned Joint Procurement Agreement entered into between the Commission and the Member States of the European Union.

We understand that [Name of Member State]'s participation in the work of the Joint Procurement Steering Committee pending the completion of the national procedures for [Name of Member State] to approve the above-mentioned Agreement is subject to:

- [Name of participating Member State]'s agreement to be bound by Articles 5, 6, 24, 28 to 33, 41 to 45, and 50 and the second paragraph of Article 52 of the above-mentioned Joint Procurement Agreement; and
- [Name of non-participating Member State]'s agreement to be bound by the provisions of Title V of the above-mentioned Joint Procurement Agreement; and
- [Name of Member State]'s compliance with the rules of procedure of the Joint Procurement Steering Committee including any measures promulgated under the said rules.

We hereby agree on behalf of [Name of Member State] to be so bound and to be so compliant.

Yours faithfully

[Name of Member State]  
[National Authority]  
[Name, Function]

**English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.**

[Address]

Fax: [xxx]

English version, published purely for information purposes. This has been signed by the Commission and 24 Member States in 2011 and 2012, in six equally authentic linguistic versions. Croatia signed in 2013 a separate agreement with the Commission, by which it joined this Agreement. Germany, Poland and United Kingdom are non-participating Member States. They have decided not to sign this Agreement. This Agreement will be published in all official languages of the Union in the "C" Series of the Official Journal of the European Union in due course.

#### **Annex IV**

##### **List of authentic linguistic versions of this Agreement in accordance with Article 51(1)**

Spanish  
German  
Greek  
English  
French  
Italian