

Guide for Competition-Compliant Association Work

figawa e. V.

Version of October 2023

This is a free English translation of the following original document written in German: [Complianceleitfaden](#).
Only the German version of the document is legally binding.

figawa Guide for Competition-Compliant Association Work (Version of October 2023)

– according to the decision of the figawa presidial board and the board of directors –

The member companies of figawa in the areas of Gas, Liquid Fuels, and Water commit themselves to the competition-based economic order. This includes, on the one hand, the use of existing leeways and, on the other hand, compliance with antitrust and business ethical requirements. This also applies to association work within figawa e.V. When collaborating with a multitude of experts from different organizations in the same industry, there is always the risk of actions that restrict competition according to § 1 Act Against Restraints of Competition – GWB; Art. 101 Vertrag über die Arbeitsweise der Europäischen Union – AEUV.

„Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) states:

All agreements between undertakings, decisions by associations of undertakings and concerted practices shall be prohibited as incompatible with the internal market, which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular

- a) directly or indirectly fixing purchase or selling prices or any other trading conditions;
- b) limiting or controlling production, markets, technical development or investment;
- c) the division of markets or sources of supply;
- d) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- e) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.”

§ Section 1 of the Act Against Restraints of Competition (Gesetz Gegen Wettbewerbsbeschränkung – GWB) states:

Agreements between undertakings, decisions by associations of undertakings, and concerted practices that aim to prevent, restrict, or distort competition are prohibited.

In order to prevent behavior that is questionable under antitrust law in the context of association work, the Executive Board and the Board of Directors of figawa e.V. adopted this guidelines on competition-compliant association work on October 18, 2023.

The following rules must be strictly observed when working in the organs and committees of the association:

1. Publication of the figawa guidelines on competition-compliant association work

The Executive Board ensures that these compliance rules are known to all committees within the association and endeavors to ensure compliance with them.

2. Antitrust behaviour

All agreements, decisions and behaviour that are likely to affect

trade between member states and have the purpose or effect of preventing, restricting or distorting competition on the relevant market are fundamentally questionable under antitrust law (Section 1 (1) GWB). So-called core restrictions, which are listed as examples in Art. 101 (1) (a) to (e) TFEU, are deemed to have a significant impact on the market.

3. Dubious exchange of experience between members

Any exchange of experience among members that leads to uniform market behavior must be prohibited. The same applies to facilitating or coordinating any violations of competition by companies or any form of participation in them (see especially Clauses 16 ff). Not only agreements can constitute legal violations but also the exchange or even the unilateral disclosure or receipt of sensitive information. Therefore, company-related information that violates trade secrets should never be disclosed during association meetings.

4. Compliance with formal requirements for invitations to association meetings

Meetings of the association's committees, specialized groups and working groups are convened by the responsible full-time association employees in coordination with the respective chairpersons appointed in accordance with the articles of association.

They shall ensure that the agendas of the invitations to the meetings do not contain any aspects that could give rise to competition law concerns. The wording must be clear and unambiguous. It must be avoided that the choice of wording gives agenda items that are neutral under competition law (e.g. „Miscellaneous“) the appearance of being illegal. If, for example, appointments are to be made, the agenda item must also be labelled as such („appointments“). Terms such as „prices“, „discounts“, „agree“ etc. are generally critical.

Also, other meeting documents must always be formulated unambiguously and may not address any antitrust concerns.

5. Compliance with proper meeting procedures and obligations to take minutes

During the meeting, a full-time employee of the association must always be present to ensure compliance with proper meeting procedures.

Before or at the beginning of a meeting, participants must be informed in a suitable form of the rules for antitrust-compliant action in the association resulting from this guide. By attending the meeting, participants confirm that they are aware of and comply with these rules.

The meeting must be minuted by the chairperson. The minutes must be correct and complete, they must reflect all resolutions passed. They must not contain any ambiguous wording or

wording that could be considered unlawful under competition law. Behavior at meetings that is questionable under antitrust law must also be recorded in the minutes. Behavior that is questionable under antitrust law must always be pointed out immediately. The chairperson of the meeting must prevent such behavior. This also applies to spontaneous comments on topics that are questionable under competition law. If a legal clarification of a topic appears necessary at first, the chair of the meeting must stop the discussion and, if necessary, interrupt or even postpone the meeting. The management must be informed immediately in such cases.

Any participant in the meeting can request that the discussion be cancelled and adjourned if there are legal concerns, and this should be recorded in the minutes. If a discussion against which a meeting participant has raised concerns is nevertheless continued, the participant should leave the meeting, which must be recorded in the minutes with their name and time.

6. Resolutions and unilateral Acts

Resolutions that directly or indirectly unjustifiably restrict the members of the association in their competitive behavior must not be adopted. The same applies to unilateral actual acts of the association in competitively relevant areas, for example, in the form of press releases that can be interpreted as resolutions of the association.

7. Association recommendations/conditions recommendations

The association does not issue recommendations that are likely to influence the competitive behavior of its members. If the association creates non-binding conditions recommendations for its members (e.g., General Terms and Conditions for supply contracts), this is done exclusively in special expert committees after a separate examination of the antitrust acceptability. The application of such condition's recommendations must always be voluntary for the members. An agreement on uniformly applicable contract conditions, even on individual clauses, is prohibited.

8. Position papers and press releases

Position papers and press releases of the association must not contain formulations that intentionally or unintentionally suggest agreements or uniform behavior of the members or cause such uniform behavior or give the impression of a corresponding recommendation by the association, for example, that additional burdens must be passed on to customers through price increases. It must always be recognizable that members are free and independent in their entrepreneurial decisions.

9. Market information procedures

Market information systems, industry statistics, and benchmarks that serve to gain an overview of the industry must be designed in such a way that they do not allow specific conclusions to be drawn about the market behavior of individual market participants. The necessary product- and company-related data must not be collected by the association during association meetings but exclusively as part of a formalized market information procedure. The exchange of sensitive company data, especially current and planning data, is always problematic (see Clause 12). The older the data, the less their influence on current or future market behavior, the more permissible their exchange. The data must be collected only by a neutral and

obligated to confidentiality entity and published only in the form of anonymized and aggregated total data that does not allow conclusions to be drawn about the market behavior of individual companies. Publication of total data must be avoided, especially if it is not based on the individual data of at least five independent companies. Employees who, in the course of collecting market information, become aware of competition-relevant company-related information, are expressly obligated to confidentiality by the management.

10. Creation of calculation schemes or individual calculation elements

When creating calculation schemes or individual calculation elements, care must be taken to ensure that they cannot lead to a standardization of competition parameters.

11. Supplier evaluations

Supplier evaluations that could lead to uniform demand behavior among the members of the association should be avoided.

12. Disclosure of company data

The disclosure of sensitive, especially company-specific data on prices, price-relevant factors (cf. section 18), or individual market data (cf. section 19) to member companies, third parties, or the public by the association or its officials is to be avoided in principle and is only permitted in exceptional cases if it is not expected to have a restrictive effect on competition.

13. Prohibition of boycott calls

The association does not call for boycott measures.

14. Self-commitments of members

The association generally does not organize self-commitments of its members unless these self-commitments are justified in individual cases to promote a higher-ranking goal, e.g., environmental protection, consumer protection, or technical or economic progress.

15. Admission of new association members

In admitting and rejecting new members, the association is subject to the prohibition of discrimination. The association may refuse admission to a company that fulfills the statutory requirements for membership only for substantive reasons. Substantive reasons for rejection exist if admission would harm the reputation of the association or lead to significant unrest within the association. If the association admits new members even though they do not meet the statutory requirements for membership, it may not reject other comparable companies in a discriminatory manner.

The following points are to be observed by companies and organizations in contact with each other within the framework of association work:

16. No voting on prices or price-relevant factors

Agreements or votes on prices (list prices, market prices, minimum prices, offer prices, price increases or decreases, including price components, price calculations, costs, and passing on items) and other price-relevant factors such as price strategies,

margins, discounts, cash discounts, or other contract conditions such as payment terms, delivery times, transport conditions, warranties, and guarantees are not permitted.

17. Exchange of information on individual market data

The exchange of information on individual market data is generally not permitted in terms of competition law, especially if it relates to data that is usually kept secret, such as capacity utilization, delivery quantities, offers, prices and price-relevant factors, costs, stocks, stock ranges, sales figures and turnover, customers, market shares, and if the exchange of information takes place promptly or can influence future market behavior. The same applies to agreements on planned introductions of products or processes.

18. Benchmarking

Participation in benchmarking should be avoided if such comparisons between competitors allow conclusions to be drawn about prices or other competitive parameters (e.g., production quantity, product quality, product variety, and innovation).

19. Market division or strategic agreements

Division of markets (by regions or products) or customers as well as agreements on capacities, investments or closures are prohibited under competition law. The same applies to the determination of market shares or quotas for productions or deliveries.

20. Specialization

The coordination of manufacturing programs in the sense of specialization is not permitted.

21. Submission agreements

Agreements aimed at submitting coordinated bids in the context of tenders are not permitted.

www.figawa.org

We are figawa. We are stakeholder, innovation booster and a knowledge network. For everyone who shapes safe and sustainable technologies around gas, liquid fuels and water for our common future.

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