# Code of Conduct

It is important that ESIA's activities are at all times carried out in accordance with the applicable law, especially competition law. Business must be conducted in an atmosphere of free competition, i.e. on the basis of price and quality. Competition law is meant to stimulate free competition, something which has ESIA's full support. ESIA feels it is important to confirm this by adopting a Code of Conduct. This Code of Conduct shall be binding on all members as well as on other participants when taking part in activities of ESIA. The Code of Conduct aims at providing clear rules to ESIA's members, thus reducing the risk of improper conduct and consequently of fines being imposed.

## The following rules shall at all times be respected within ESIA:

## Core Procedures

**1.** Meetings of a body, committee, working group or other form of cooperation within ESIA shall only take place after the members have been invited to the meeting in writing. The notice inviting to the meeting shall also include the agenda of the meeting.

**2.** Minutes shall be kept of each meeting as referred to in 1., above; these shall be sent to all members of the relevant body, committee, working group or other form of cooperation. The minutes shall be kept in an organised form for a period of at least 7-10 years.

**3.** Consultations and discussions in a body, committee, working group or other form of cooperation on the topics on the agenda and other topics, where these are related to the market (i.e. topics that may be of interest for the position and for determining the position of the individual members in competition), shall be limited to the official meeting, of which minutes will be kept.

**4.** During the consultations as referred to in 3., above, it shall not be decided to discuss certain topics during the meeting subject to the condition that this will not be recorded in the minutes. If such condition is stipulated the chairman of the meeting shall refuse to proceed to discuss the topic in question.

**5.** Each meeting of a body, committee, working group or other form of cooperation during which market-related topics are discussed, shall be attended by at least one staff member of the association. This staff member shall monitor topics that are sensitive from a competition law point of view. If there are doubts about such sensitivities, the topic shall not be discussed until the advice of an expert in the field of competition law is obtained, and this advice is to the effect that the topic may be discussed without any objection, or until the limits to be observed during the discussion are clear.

### A. Prohibited Topics

The following topics are prohibited and out of bounds during meetings of bodies, committees, working groups or other forms of cooperation within ESIA, particularly if information on these topics is exchanged between companies which might be considered as competitors:

- Sale prices, rates, (intended) price adjustments, recommended prices, discounts, mark-ups and other price-related topics concerning products or services of companies;
- Division/sharing of the market, e.g. by allocating a specific geographical area, specific customers or specific groups of customers to specific companies;
- Restriction of production or sales;
- Pre-consultations between competitors when responding to invitations to tender (in tender procedures with both public and private purchasers), or when responding to other customer requests;
- Agreeing that all competitors add a surcharge to their bid (which would then be used for "compensating" the bidding costs of those companies that would not win the tender);
- Exchanging market information by the individual members and companies, i.e. information about production, turnover, sales, costs, investments, divestments, R&D expenses and other information, as far as this is related to specific (categories of) products or services, that may be regarded as commercially sensitive information;
- Publishing of the average price or of the price bandwidth within the sector;
- Exclusivity for specific members or companies to represent producers and importers;
- Boycotting specific suppliers or customers;
- Agreement holding back improvements in the quality of the product;
- Agreeing on wage levels or that members or companies shall refrain from approaching each other's employees and/or offering a job (please note that all companies are competitors on the labour market);
- Any other topic that could lead to coordination of market behaviour restricting competition;

### B. Topics That Might Present A Problem

The following topics might present a problem from a competition law perspective, especially in a highly concentrated market (i.e. a market with only few players). This means that these topics shall only be discussed within ESIA in proper consultation with an expert in the field of competition law:

- General terms and conditions of sale and delivery. If these pertain to sensitive competitive parameters (e.g. prices, rates, manner of indexation, on-charging specific costs) or if the use of the conditions is mandatory, the competition authorities may object;
- Restrictions on participating in trade fairs. As a general rule, each company should be free to participate in any trade fair it likes and companies must not be asked to boycott any trade fair. Restrictions to this freedom to participate are only allowed under specific conditions. Collective bargaining by the members of ESIA or by companies to obtain a better price or other conditions from the trade fair organisation will normally not constitute a problem under competition law;
- quality labels/membership criteria. For as long as the use of the quality label or membership of ESIA or a trade association does not offer substantial competitive advantages to the members in the market (e.g. through information or due to customer demands), there are no objections to this from a competition law point of view. As soon as there are substantial competitive advantages, these schemes must satisfy specific criteria;
- The secretariat of ESIA is allowed, in principle, to collect commercial information about individual members and companies on their sales volumes and turnover and to make this information available to the members and companies in an aggregated manner. The information should not include data on prices and tariffs. It must in any event be absolutely guaranteed that no information on individual members or companies can be deducted from this aggregate information. Additional requirements related to the data collection (e.g. age of the data, level of granularity, frequency of the collection) may need to be applied depending on the market structure and conditions.
- Sustainability agreements. Companies may agree on specific sustainability goals to enhance protection of the environment, human rights, labour rights, etc. Quite often, competition will not be restricted. Otherwise, it must be assessed whether the claimed benefits justify the restriction of competition.

### C. Topics That Do Not Present A Problem

The following topics constitute the core business of most of ESIA's activities and discussions and consultations on these topics do normally not present any problem under competition law, provided that the topics mentioned under A. are not touched upon and no risk of restricting competition occurs:

- General cyclical economic data and business climate, as long as discussions on these topics do not relate to any individual company's behaviour; These discussions focus on the macro level and do not affect any company's behaviour in the market;
- Lobbying activities relating to general interests in the sector and concentrating on legislation and other public issues which may affect the sector;
- Legal issues. These issues are by definition of a general nature, as these will affect any company's business similarly;
- Standardisation issues, if (i) the standard-setting procedure is transparent and open for participation by any interested party, (ii) there is no obligation to comply with the standard (In particular, there must be no duty to adopt a certain technical solution which could be seen as limitation of innovation competition), (iii) access to the standard is provided on fair, reasonable and non-discriminatory terms, and (iv) any discussions within the standard-setting procedure are restricted to technical aspects. Standardisation is aimed at compatibility of products and at technical progress; this will normally be to the benefit of the end user;
- Safety and health issues. ESIA has an interest in enhancing safety and health with respect to the use of the sector's products, provided there is no limitation on companies' freedom to address health and safety issues beyond minimum legal or agreed requirements;

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