

# ESTEP Internal Rules

in accordance with ESTEP's Articles of Association

Endorsed by the Board of Directors on [9Feb, 23Mar 2021].

## Provisions of the Articles of Association

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# ESTEP Internal Rules

in accordance with the Articles of Association

adopted by the Board of ESTEP on [9Feb, 23Mar 2021]

The following ESTEP Internal Rules shall apply as of 23 March 2021.

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## § 7 Competition Law Compliance

All members and their authorized representatives and/or other delegates shall conduct their activities within ESTEP at all times in full compliance with all applicable laws, the Articles of Association, and ESTEP's Competition Compliance Guidelines, including the ESTEP Guidelines for Discussions in Focus Groups meetings, copies of which are attached as Annex to the Internal Rules and which might be adapted by the Board from time to time.

All members must ensure that their authorized representatives and/or other delegates that may participate in any ESTEP activity dispose of profound knowledge of the competition laws and have undergone sound competition law compliance training. Authorized representatives and/or other delegates who do not fulfil these requirements or who otherwise by their behavior present a competition law compliance risk to ESTEP (for example the list of Don'ts in ANNEX Ia) can be excluded from any ESTEP activity.

ESTEP Secretariat ensures to properly train its staff on competition law compliance and integrate competition law compliance trainings for authorized representatives and/or other delegates of members on a regular basis in its committee work (e.g. by dedicated compliance training when several FGs have a meeting on the same day).

## ANNEX I according to § 7 of ESTEP's Internal Rules

### Competition Compliance Guidelines

#### **I. ESTEP AND ITS MEMBERS MUST RESPECT THE LAW AND ALWAYS FOLLOW THESE GUIDELINES**

ESTEP is a European Technology Platform that enjoys high public visibility. ESTEP members represent a significant proportion of the steel value chain.

ESTEP is therefore committed to respect all applicable European Union and national competition laws that relate to it and its members' conduct. Research and development is basically recognised as an element of competition, which merits being protected and is in principle pro-competitive under the condition that membership of the association is open to all qualifying stakeholders (companies, associations, research & technology organisations, universities, etc.) of the European steel sector, full transparency is provided on the research results on a non-discriminatory basis and that members of the association refrain from exchanging sensitive information.

Fundamental research is therefore basically unproblematic from a cartel law perspective. According to the European Commission, most research and development agreements do not fall under Art. 101 para. 1 TFEU, which governs the ban on cartels. This is particularly true for agreements to cooperate on research and development at a rather early stage, far removed from exploiting any possible results. The Commission also assesses that cooperative research and development which does not include exploiting possible results by way of licensing, production and/or marketing jointly rarely restricts competition as defined in Art. 101 para. 1 TFEU.

More precise acceptance criteria are the nature and/or subject matter of the research, how close to market and market-ready the results are, the companies involved, the scope of cooperation, publishing the research results and how the exploitation rights are formulated.

The European Commission thus distinguishes between existing production markets, existing technology markets and the innovation market. It believes there are two different ways of collaborating on research and development that can be anti-competitive: firstly, by raising barriers to a market, which assumes that only companies with market power and key technologies can be involved and that it is agreed that research results will be exploited exclusively; and, secondly, by reducing competition through innovation, resulting in fewer or inferior products becoming available on the market.

These Guidelines aim to ensure that nothing done by ESTEP and/or its members raise concerns under competition law. These Guidelines are relevant to every person involved in the activities of ESTEP. It is the obligation of all such persons – all ESTEP members and all ESTEP staff – to be familiar with these guidelines and abide by them at all times.

## **II. COMPETITION LAW COMPLIANCE IS VERY IMPORTANT: THOSE WHO BREAK THE RULES WILL BE HEAVILY PUNISHED**

Competition laws worldwide prohibit any type of cartel, secret conspiracy, agreement, gentlemen's agreement, arrangement, mutual understanding, concerted practices and any other form of coordination amongst competitors that aims at restricting or results in an appreciable restriction of competition on any market. Caution is therefore needed at any meeting or event where competing companies are present.

Some ESTEP members compete with each other. In addition, since ESTEP brings together a group of competing companies, its activities could be viewed as concerted conduct. This should not deter members from participating in ESTEP activities. However, great care is needed to ensure the law is respected. ESTEP and all ESTEP members must be sensitive to the competition issues that could arise from ESTEP's activities. That is why these Guidelines have been drawn up. The Guidelines must always be respected.

If the Guidelines are not respected and serious infringements of competition law take place, those responsible can expect harsh punishment. Breaches of competition rules are punished very severely:

- Companies which do not respect EU competition law are regularly fined hundreds of millions of euros (the maximum fine is 10% of worldwide group turnover).
- Individuals are regularly sentenced to several years of jail time. The leader in incarceration is the United States. Many other countries are following its lead – for example, the United Kingdom, Ireland and France. A number of individuals are currently serving jail time in Europe.
- Illegal agreements will be unenforceable.
- Any direct and, sometimes, any indirect customer may bring claims for damages suffered due to infringing activity. Such damages claims are common in the United States and are on the increase within the EU.

## **III. ESTEP's OBJECTIVES ARE LEGITIMATE**

ESTEP pursues legitimate objectives, including representing its members' common interests before EU Institutions, fostering research and development in steel technology and applications, conducting research and acting as an expert in its field. It informs its members, EU Institutions and the public on EU developments relating to technology, innovation and research in the steel industry. ESTEP acts in the public interest by allowing its membership to speak with one voice on technical, innovation and research issues. It is recognised that contributing to position papers and representing its members before EU institutions constitute a fundamental mission of European Technology Platforms and are consistent with competition laws.

The meaning of "non-market related objectives and/or non-market ready results", as set out in Article 4.1 of the Article of Association, has to be read in the sense of the "EU Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation Agreements", in particular its paragraph 137.

These Guidelines aim to ensure ESTEP's actions always remain on the right side of the line, i.e. that its activities are always legitimate.

#### **IV. ESTEP DOES NOT ADOPT POSITIONS ON COMPETITIVELY SENSITIVE TOPICS – MEMBERS DECIDE THESE TOPICS ON THEIR OWN**

ESTEP only aims at educating its members and others on the facts relating to the steel industry. ESTEP will never adopt any decisions, "recommendations" or disguised inferences on competitively sensitive topics, especially related to members' future competitive conduct. Members should always make their own unilateral educated decisions, whether on the basis of information provided by ESTEP or on the basis of information from other sources. This principle fully applies to research topics of possibly collaborative actions.

#### **V. AVOID MISINTERPRETATION AND AVOID UNNECESSARY PROBLEMS**

ESTEP seeks to avoid and urges its members to avoid any language that could be misinterpreted. Past cases show that ill-advised statements or unclear notes or documents can be misconstrued by competition enforcement agencies as reflecting collusion. Such statements can put associations at risk of being prosecuted no matter what the underlying reality is. This could apply to ESTEP despite its strong commitment to competition law compliance. Any comment, note, email or other type of correspondence should be carefully reviewed from this perspective before being made by any member.

#### **VI. LEGITIMATE SHARING OF STATISTICAL DATA (Benchmarking)**

ESTEP undertakes technology research. It collects, distributes and publishes useful historical statistical data from and to its members. These data can be used for benchmarking purposes at an aggregated (EU) level for processes and technologies.

Certain types of information sharing may raise competition concerns. The exchange of information on companies' intentions or their individual data as to future prices or quantities is particularly likely to raise serious competition concerns. No such data exchanges or discussions should ever take place in an ESTEP context.

By contrast, competition laws also acknowledge that the collection and distribution of statistical data is legitimate provided that strict safeguards are complied with. For instance, an exchange of information amongst members may not relate to individual market data usually considered as confidential (such as capacity utilisation, production and deliveries, bookings, prices, costs, stocks, customer relations, market shares) where the exchange is of current data. Thus, if an exchange of information require input from members which could be tagged as confidential (example: research spending), the collection and analysis of data will be outsourced by ESTEP to an external law firm. Only sufficiently aggregated data will be exchanged by the law firm with the project members and should always relate to at least five operators.

## **VII. FOCUS GROUPS MUST REMAIN ON THE SAFE SIDE OF THE LINE**

The establishment of Focus Groups within ESTEP is considered legitimate by competition laws, so long as their activities do not go beyond general information exchange and discussion of technology developments in a pro-competitive context. All ESTEP Focus Groups should avoid any type of conduct that would have the purpose or the effect of restricting competition on the market.

In particular, discussions within Focus Groups must not amount to, nor lead to, coordination with regard to any of the following: prices; any component of price or other factors with price relevance; market share; production, output or delivery quotas; capacity utilisation; sharing of geographical markets, customers or customer groups; investments or closures; or production programmes. Discussions related to these topics are not permitted, regardless of the underlying motive.

## **VIII. COMPLIANCE BY MEMBERS AND STAFF**

ESTEP is not responsible for competition law infringements of its members. ESTEP will never support, assist or get involved in any such conduct by members. ESTEP strives to ensure that no meetings of members organised or supported by ESTEP are ever used by members to discuss or coordinate future market behaviour resulting in a restriction of competition. More generally, the platform offered by ESTEP to its members should not be misused for activities prohibited by competition law.

The presence of an ESTEP representative, who disposes of profound knowledge of the competition laws and has undergone sound competition law training, is therefore essential during ESTEP meetings. No ESTEP Focus Group meetings are permitted without the presence of an ESTEP representative or legal counsel.

A written invitation must be sent together with a detailed agenda to participants at each ESTEP meeting. Discussions during meetings should reflect the agenda. Minutes of each meeting should be drafted accurately and comprehensively to reflect the discussions that took place at the meeting.

ESTEP representatives as well as chairpersons and anyone attending ESTEP meetings are under a duty to ensure strict adherence to the competition rules. At all meetings, the ESTEP representative and the chairperson must recognise situations where competition issues may arise. They must immediately react to potentially inappropriate discussions by giving suitable guidance (i.e. indicating that such discussion is not appropriate) and by bringing the potentially illegal behaviour immediately to an end. Where this cannot be achieved, the ESTEP representative should leave and the chairperson must end the meeting. This must be recorded in the minutes of the meeting concerned.

## **IX. SOCIAL GATHERINGS (for instance ESTEP Day)**

History tells us that social gatherings attended by competitors present a risk under competition law. There are many European Commission decisions imposing fines on companies that broke the competition rules which describe illegal conduct that took place at social gatherings. It is therefore crucial that ESTEP members and staff respect competition law during social gatherings just like at formal meetings.

These Guidelines must be followed at all social events organized by ESTEP. For social events not organised by ESTEP, the responsibility to respect competition law lies with the companies and individuals concerned. ESTEP does, however, strongly urge all individuals concerned to respect these Guidelines, which represent best practice, at all times.

## **X. FINAL MESSAGE**

Nothing in these Guidelines are intended to discourage membership of or participation at ESTEP. The opposite is true. ESTEP has adopted these Guidelines in order that its members can feel comfortable lawfully attending meetings and sharing legitimate concerns and information in a carefully regulated environment.

Please do feel free to ask questions about the scope and application of these Guidelines. Do not be shy - it is better to ask if you have a query rather than run the risk that you may be engaging in inappropriate conduct due to a lack of knowledge. Every question you ask helps us ensure that ESTEP's activities are conducted in compliance with the law.

## ANNEX Ia

### Compliance Guidelines for Discussions in Committee Meetings

#### **Do's**

- Follow the meeting agenda and limit discussions to the topics on the agenda
- Use clear language - avoid any language that could be misinterpreted
- Comply with the ESTEP competition compliance rules and the ESTEP competition compliance model when exchanging or discussing statistical data (benchmarking)
- The exchange or discussion of highly aggregated information is permitted within the limits of the Don'ts below as long as supervised by external counsel
- Be conservative when qualifying information as being highly aggregated and maintain the level of aggregation throughout discussions
- Individual company data can only be exchanged if sufficiently historic (at least 12 months old)
- If in doubt discuss the issue first with the ESTEP representative at the meeting
- Apply the self-assessment guideline for collaborative research projects

#### **Cautious (be particularly cautious regarding the following):**

- Exchanges of information on possibly exploiting the results of individual research projects specifically, e.g. progressing to prototype status and/or prototype processes and industrialisation of processes and /or technologies.
- Exchanges of information on what research projects would cost if companies were to conduct them themselves.
- Exchanges of individual companies' technical knowhow which is not in the public domain (confidential) and which is essential and material to continuing to develop or exploiting the research results presented by such individual companies.
- Exchange of the companies' own research and development which they may be or are actually planning based on the results presented and their own comparable research.

#### **Don'ts (the following statements describe topics, which must under no circumstances be addressed or discussed during ESTEP meetings):**

- No limitation of a company's own research and development in a field outside the specific research project concerned and no restriction of a company's own research and development in the field of the specific research project concerned once it is completed.
- No discussions on past, current or future prices or pricing terms such as rebates and discounts

- No discussions on how to react to changes in pricing from suppliers or how to pass on any costs to customers
- No discussions on individual output levels, production capacity or capacity utilisation
- No discussions on current or future aggregated output levels, production capacity or capacity utilisation
- No discussion of ESTEP statistics unless supervised by external counsel
- No discussions on investment
- No discussions on inappropriate concerted actions
- No discussion on sensitive information concerning customers or suppliers
- No discussion on forward views on demand for specific products which would allow for drawing conclusions in respect of the competitive situation and actions of individual competitors
- No discussion on individual forward looking operational or commercial strategies
- No exchange of other sensitive business data relating to the current or future market position of individual companies such as shutdowns, costs, bids, sales, orders, inventories, market shares or exports