

Guidelines

on Antitrust Law Compliant Conduct in Association Activities

(in the version dated 25th of September 2024)

A. Preamble

The Digital Lending Association e.V. (DLA) is committed to an economic system based on free and fair entrepreneurial competition. A core component of the association's work is compliance with all legal requirements - this includes in particular the standards of antitrust law. With this in mind, the General Meeting has adopted these Guidelines as binding rules for the association's work in order to prevent violations of antitrust law.

The aim is to provide all employees of member companies represented on the Association's committees and all employees of the Association with assistance in complying with antitrust law. The guidelines are intended to ensure that the association itself neither acts in violation of antitrust law nor participates in behaviour by third parties that violates antitrust law or directly or indirectly promotes such behaviour by creating opportunities to violate the law.

On 21st of February 2020, the General Meeting of the DLA adopted the following provisions in accordance with Para. 3. Sec. 1. Lit. d. of the Articles of Association, which were amended and supplemented by resolution on 25th of September 2024. The Guidelines in their new version came into force immediately upon adoption by the General Meeting. The German version shall prevail.

B. Antitrust Law Basics in the Association's Work

All activities of the DLA must comply with the limitations of antitrust law.

Antitrust law prohibits agreements between companies or concerted practices aimed at preventing, restricting or distorting free and fair competition. The guiding idea behind this is the so-called independence principle. According to this concept, companies must operate independently on the market and determine their corporate policy autonomously. Market participants should set their prices and conditions in response to market conditions and not coordinate with other market participants.

Restrictions of competition only violate the ban on cartels if they are based on a deliberate coordination of the market behaviour of different companies. Under certain circumstances, however, the tacit receipt of information by merely listening to it may be sufficient to constitute prohibited conduct if this results in uniform behaviour.

Violations of antitrust law can result in considerable penalties. Fines for serious antitrust violations can amount to up to 10 % of an annual turnover. Fines imposed by the EU Commission against long-standing price cartels have often amounted to more than EUR 1 billion. In addition to fines against the companies concerned, fines can also be imposed on managers, i.e. senior executives,

managing directors and Executive Board members who were directly involved in cartel violations. These fines can amount to up to EUR 1 million.

The supervisory authority can also remove members of the Executive Board or Supervisory Board in the event of significant violations of the law, including serious antitrust violations.

Furthermore, Executive Board or Supervisory Board members can be dismissed in the event of significant legal violations, including serious antitrust violations.

C. Association Activities

Antitrust authorities require associations to ensure compliance with antitrust law in their organization and not to provide a forum for conduct by member companies that violates antitrust law. The following therefore provides information and guidelines on what must be observed in connection with active association work. The guidelines do not claim to address all possible areas. Rather, the presentation is limited to the aspects that are particularly relevant under antitrust law.

I. Invitation to Association Meetings

- The employees of the association's head office shall, in coordination with the chair, issue invitations to association meetings in good time and in text form, generally by means of electronic media, on behalf of the chair. Each meeting must have a written agenda, which must be communicated to all participants with the invitation to the meeting.
- The chair must ensure that the invitation, the agenda and all meeting documents are formulated clearly and unambiguously and do not contain any points of concern under antitrust law.
- The following note must be included in all agendas of DLA bodies:

"Strict compliance with antitrust law is a central requirement and part of the DLA's committee work. Participants will not initiate any discussion or engage in any other behaviour that could violate applicable antitrust laws. In particular, they will not discuss, disclose or exchange sensitive business information; this includes, but is not limited to, information on prices, marketing and advertising strategies, costs and revenues, terms and conditions with third parties, including purchasing and sales strategies, delivery terms and trading programs. These requirements apply not only to discussions during the formal association meeting, but also to informal discussions before, during or after the meeting."

At the beginning of a committee and association meeting, the chair reiterates this information verbally:

"I draw your attention to antitrust law, which prohibits us from discussing competition-related topics such as prices or conditions and exchanging other sensitive company data during association meetings. It is also forbidden to coordinate industry-related behaviour or to make corresponding agreements. Such conduct can be punished with heavy fines."

However, in the case of regular meetings with the same group of participants, this instruction does not have to be repeated at every meeting, but can be repeated at appropriate intervals.

II. Association Meetings and Minutes

- At least one permanent employee of the association is always present at all association meetings and, together with the chair, ensures that the agenda is adhered to and that the minutes accurately and completely reflect the meeting. Meeting participants should raise an objection if they notice that no minutes are being taken.
- Minutes must be sent to all meeting participants promptly so that they can check that the contents of the meeting have been correctly reproduced. They shall immediately inform the Chair or the Secretariat of any incomplete or incorrect minutes and request a correction.
- If the majority of meeting participants wish to deviate from the agenda, a formal resolution must be passed by vote and recorded accordingly. The meeting participants should object to new agenda items if they believe that these are questionable under antitrust law. They should request that the deviation from the agenda and their objection be recorded in the minutes, stating the time, and then leave the room or the conference call, for example. The competition authorities regularly do not allow an objection to suffice, but require the objecting participant to leave the meeting in order to document that they were not involved in any way.
- Every participant in an association meeting has a duty to ensure that topics not permitted under antitrust law are not discussed and that there are no inadmissible agreements, discussions or spontaneous statements. This also applies to informal discussions on the fringes of a meeting. Everyone has a duty to intervene if this rule is breached. If, for example, the discussion of dubious issues under antitrust law continues unabated in a meeting or telephone conference despite an intervention, the chair must end the meeting extraordinarily as a last resort. Both must be noted in the minutes of the meeting with a time stamp.
- The agendas, minutes and lists of participants must be archived by the association.

III Subjects of an Association Meeting

Before an association meeting, the agenda must be set to determine which subjects can be discussed. However, it is not possible to make a generally valid distinction between permissible and impermissible behaviour.

1. Permissible Topics in an Association Meeting

The representatives of the member companies may, in principle, exchange information in abstract and general form on the respective subject area during a committee meeting. This exchange may, for example, relate to:

- general economic, political and technical trends and developments, insofar as they are publicly known;
- business development in the market as a whole and the economic situation of the industry in particular;
- information on business expectations of the specific, entire member company, its entire product range or other aggregated business areas that do not allow conclusions to be drawn about the market position of individual products;
- laws, current legislative projects, case law, requirements of supervisory authorities and their scope and consequences for the member company as a whole;

- negotiations training;
- general socio-political topics;
- lobbying activities of the association and the association's annual program;
- preparation of an industry overview;
- elaboration of model contract terms;
- general exchange of freely accessible data from national and international official bodies, scientific institutions and market research institutes.

2. Impermissible Topics in an Association Meeting

The representatives of the member companies may not, however, discuss company-specific, sensitive information or data during a committee meeting. This includes in particular, but is not limited to

- commission levels and other commission components paid to intermediaries, for example;
- specific cost factors and calculations;
- forecasts of future business development between competitors;
- prices, price components, pricing strategies and calculations as well as other conditions;
- discussion or exchange of specific conditions from contracts with customers;
- cooperation or non-cooperation with third parties (e.g. intermediaries);
- information on corporate strategies and future market behaviour, which regularly constitute trade secrets within the meaning of the EU Trade Secrets Directive;
- information on profits, profit margins, market shares and planned investments, provided these are not public;
- sensitive and strategically important information about plans and considerations, e.g. about the type and timing of product launches, investments, changes to conditions, unless this is already publicly known;
- specific legal action vis-à-vis debtors, investors and other claimants or their lawyers;
- information on internal research and development projects from which conclusions can be drawn for future market behaviour;
- coordination of offers to third parties, division of markets or sales territories or sources of supply in terms of geography and personnel as well as express or tacit agreement on boycotts and supply and purchase blocks against certain companies or customers;
- internal quality standards;
- a uniform interpretation of a judgment must not be used as a reason for concerted action in the market; a court judgment is not a justification for agreements or coordination in violation of antitrust law.

Discussions and exchanges of information that are conducted in an abstract, general form but touch on impermissible topics should be treated critically. This includes prices and conditions, for example. For example, a discussion about a mirror prepared in a permissible manner must not lead to a discussion about the individual handling of the results of the price comparison list.

Similarly, sensitive information specific to the company may not be exchanged during the creation and preparation of a price comparison list. In case of doubt, discussions with critical content should be stopped immediately.

IV. Other Association Events

The same rules apply to all other association events as to association meetings. In particular, no coordination on the market behaviour or business policy of the individual companies may take place in this context either.

V. Market information procedures/association statistics

Market information procedures, particularly in the form of statistics, are of particular importance to member companies as they can form the basis for economic decisions. To obtain this information, the member companies cooperate by exchanging the relevant market data via the DLA. The DLA evaluates the data internally, summarizes it and passes it on to the member companies in aggregated and anonymized form or publishes it accordingly. This ensures that no conclusions can be drawn about individual participants or individual competitive parameters.

The DLA is responsible for ensuring that the market information procedures it conducts comply with antitrust regulations. This means, for example, that company-related data may only be transmitted as part of market information procedures in the procedures intended for this purpose, but not in association meetings. As a general rule, sensitive individual information and raw data sent to the association by a member company must be treated as strictly confidential by the association's employees. They may not be passed on, especially not to other member companies.

The following requirements must be met cumulatively for admissibility under antitrust law:

- a minimum number of participants of five independent (not group-affiliated) companies;
- anonymization of the collected data;
- aggregation of the data, but without too great a level of detail;
- implementation only in markets with effective competition; this can generally be assumed if the largest five independent (non-affiliated) companies have a combined market share of no more than two thirds (66%);
- no behavioural recommendations or votes in the results report.

VI. Communication

The DLA ensures that its position papers, circulars, newsletters, press releases, podcasts and social media activities do not contain any content or wording that is questionable under antitrust law and that intentionally or unintentionally indicates collusion, uniform behaviour or corresponding recommendations by the DLA or its member companies.

Permissible wording is:

- objective representation of the market situation and market development;
- presentation of alternative response options without unilaterally favouring a particular response option (this applies, for example, to legal advice on the interpretation or implementation of laws, regulations, case law or regulatory requirements; if there are different legal alternatives for action, it is permissible to present their pros and cons; it is also permissible to give plausible reasons that speak for one or the other legal solution, but without unilaterally emphasizing developments that are favourable to the industry).

Impermissible wording is:

- caution should always be exercised when making further-reaching recommendations for action if there is a risk that this could lead to an inadmissible standardization of the business policy of the individual member companies; whether this is the case always depends on the specific facts of the case.

VII. Self-Commitment Declarations

In principle, the DLA is legally permitted to develop voluntary declarations of commitment by member companies. The prerequisite is that:

- this serves to achieve a recognizable objective, e.g. in consumer protection;
- the addressees have a significant share in the expected benefits;
- the declaration of commitment is the most economically advantageous way to achieve the objective;
- the declaration is open to third parties;
- the parties' freedom of action is not unreasonably restricted;
- the market access of potential competitors is not made more difficult;
- no appreciable restriction of competition is caused by concerted behaviour.

D. Admission and Rejection of New Members

In principle, the DLA is free to decide on the admission of new members. The conditions are set out in detail in the Articles of Association. Companies wishing to join that do not meet the admission criteria may be refused admission. However, this decision must be made in a non-discriminatory manner.

The prohibition of discrimination requires that associations may not refuse to admit a company if the refusal would constitute objectively unjustified unequal treatment and would lead to an unfair competitive disadvantage for the company or association. A refusal is therefore only permissible if there is an objective justification for this.

In this context, a balance must be struck between the applicant's interest in membership and the DLA's interest in not admitting the applicant. The unequal treatment inherent in the rejection can be justified on two types of grounds. Firstly, because the applicant does not meet the admission requirements set out in the articles of association. Or secondly, if there are reasons that lie in the individual characteristics of the applicant and preclude admission. Such a justification would be given, for example, if the admission of a particular member would damage the reputation of the DLA. It would also be conceivable that this would lead to considerable dissatisfaction among the other DLA association members.

In this context, however, it is not sufficient if the admission of the new member is merely unwelcome to the existing members. Rather, it is necessary that the activities of the DLA are effectively blocked because, for example, previously disclosed, admissible information is withheld in view of the new member, thus making participation in company meetings unattractive. Even if a large number of companies threaten to resign, a justification could be assumed in individual cases.

E. Responsibilities

Each employee of the association is responsible for complying with the rules set out in these guidelines. The Executive Board ensures that employees are familiar with the content of the guidelines and comply with them. The employees are supported by ad hoc training courses and the learning success is monitored, e.g. in the form of online training programs.

Each member company is also responsible for ensuring that the employees delegated to the association's committees are familiar with the content of the guidelines, observe its rules and receive training on an ad hoc basis.