

ALLIANCE FOR ZERO-EMISSION AVIATION

DECLARATION

Objectives

As signatories of this declaration, private and public actors shaping Europe's future air transport system, we declare to work towards achieving the objectives of the Alliance for Zero-Emission Aviation ("the Alliance"), namely to prepare the aviation ecosystem for the earliest possible entry into service of hydrogen- and electric-powered aircraft as outlined in the Destination 2050 Roadmap¹ leveraging the investments and building on the technologies developed under the aviation research programmes (especially the Clean Aviation and the SESAR3 Joint Undertakings) and contributing to Europe's 2050 climate neutrality target.

The Alliance contributes to achieving the objectives reaffirmed by the Toulouse Declaration on future sustainability and decarbonisation of aviation². It will establish a roadmap defining the milestones and the actions to be undertaken to enable the widespread use of hydrogen- and electric-powered aircraft. It will identify barriers to the entry into service of such aircraft as well as policy, regulatory and standardisation needs and make recommendations on how to address these. It will promote the necessary investments and maximise synergies across the ecosystem. It is open to all actors in the value chain, including aircraft and component manufacturers, Maintenance, Repair and Overhaul (MRO) organisations, airports, airlines, air navigation service providers, energy providers, research and technology organisations and networks, standardisation and certification agencies, public and private investors, non-governmental organisations, trade unions, Member States and regions.

Principles

The Alliance adheres to the following principles:

- *Openness*: The Alliance is open to participation by any company or organisation willing to sign this Declaration ("Declaration") and which complies with the eligibility criteria outlined in the Terms of Reference annexed to this declaration, throughout the lifetime of the Alliance.
- *Transparency*: The Alliance has a dedicated website where all information related to the industrial Alliance's activities, for example minutes of the Steering Committee and any sub-groups are made publicly available. The list of signatories to this Declaration and the deliverables and deadlines of the Alliance will be published and updated.
- *Diversity and inclusiveness*: The Alliance is open to all actors of the relevant industrial value chains, investors, Member States as well as representatives from civil society.

All members and persons involved in the activities of the Alliance shall fully respect all applicable laws and regulations, in particular EU and national competition rules. The Alliance members shall abide by the competition compliance programme annexed to this Declaration.

Without prejudice to necessary measures in relation to Union security interests (including security of information, of supply and of IP and knowhow), conflict of interest and reciprocity, the Alliance shall

¹ See the analysis "Destination 2050 – A route to net zero European aviation" and industry's commitment, <https://www.destination2050.eu/>

² https://presidence-francaise.consilium.europa.eu/media/2hkh2v33/declaration-de-toulouse-pfue-ang_fr.pdf

maintain relations and lines of communication that are as open as possible with other industry collaboration fora and associations, both in Europe and at international level, as well as with interested non-member undertakings with relevant actual or potential activities in zero-emission aviation.

The EU market is among the most open in the world, and the tasks of the Alliance shall in no way affect access to the EU market, whether through sales or establishment, or to EU or national funding - these remain governed by EU law (including programme conditions, State aid rules, international trade commitments, etc.) and national law where applicable.

Working methods

Any organisation with existing or planned activities of relevance to the introduction into service of hydrogen and electric aircraft can join the Alliance by signing up to this Declaration, provided they meet the eligibility criteria set out in the Terms of Reference annexed to this Declaration. Eligible organisations can join at any point in time. For this purpose, an invitation to participate will remain available on the European Commission's website³.

The activities of the Alliance may be organised in working groups covering the main issues at stake. These working groups will be open for participations to all Member Organisations with appropriate activities and expertise in relation to the working groups' area of work. Participants commit to support the objectives of the working groups of which they are members and to actively participate in them, providing inputs and contributing to the collective work within their remit and area of expertise.

The European Commission will steer the work of the Alliance, monitoring progress against the EU's policy and investment agenda and acting as a facilitator for dialogue and match-making and engagement of all stakeholders. It will organise at least twice a year a General Assembly for all participants of the Alliance to stir cooperation and engagement of all stakeholders and maintain the dialogue with all Member Organisations.

Deliverables

The Alliance will deliver actionable roadmap(s) describing the detailed actions, including at international level, to be undertaken and their appropriate timing to enable the earliest possible entry into service of electric and hydrogen- powered aircraft. It will identify investment opportunities and act as a facilitator to attract investments and to establish the dialogue and match-making between the relevant actors..

Signature of the Declaration

I, the undersigned, certify that I am authorised to sign on behalf of my Organisation, and to declare its adherence under this Declaration and its terms of reference.

Organisation:

Name of the authorised representative and her/his title in the Organisation:

Date and place:

Signature:

³ https://ec.europa.eu/defence-industry-space/eu-aeronautics-industry/alliance-zero-emission-aviation_en

Annex Guidelines for Competition Law Compliance within Alliance for Zero-Emission Aviation

Disclaimer: These guidelines offer general guidance and are without prejudice to the application of EU or national competition rules.

The Alliance for Zero-Emission Aviation ⁴ (“the Alliance”) is a voluntary collaboration of private and public stakeholders open to participation by any company or organisation willing to sign the alliance declaration.

General Principles

The members of the Alliance for Zero-Emission Aviation should strive for these general principles:

- ✓ **Open access:** As mentioned above, the Alliance is open to all companies or organisations willing to sign the Declaration, regardless of industry association.
- ✓ **Transparency:** Meetings, discussions, information exchanged and agreements reached will be well documented and minuted. Documents and minutes will be made available to the Commission, on request.
- ✓ **Necessity:** Meetings, discussions, information exchanges will be strictly limited to what is indispensable to achieve the objectives set out below.

Envisaged Actions

The Alliance members join force to reach the objectives of the Alliance as outlined in the alliance declaration and, accordingly, engage in discussions and dialogue, data exchange and collaborations⁵.

In view of those activities and the risk of both intentional and inadvertent competition law infringements that they may pose, the Alliance declaration provides that:

“All members and persons involved in the activities of the Alliance for Zero-Emission Aviation shall fully respect all applicable laws and regulations, in particular EU and national competition rules. The alliance members will adopt a competition compliance program and abide by it.”

The Alliance for Zero-Emission Aviation has adopted the following guidelines and instructions to ensure that the alliance members take particular care to ban any form of anti-competitive

⁴ https://ec.europa.eu/defence-industry-space/eu-aeronautics-industry/alliance-zero-emission-aviation_en

⁵ In accordance with the below outlined guidelines to ensure full compliance with competition law.

behaviour from their participation and activities in this alliance and comply with EU competition law and relevant national competition laws (hereafter the “competition laws”).⁶

1. Competition risks in the Alliance for Zero-Emission Aviation

The members of the Alliance must always take into account that they may be exposed to certain competition law risks including – but **not limited to** – the following considerations:

- ✓ Members should be aware that even a single verbal or non-verbal exchange or a unilateral disclosure of commercially sensitive information can violate the competition laws;
- ✓ Conversations between members at both formal and informal (including social) meetings may turn to commercially sensitive information being unlawfully exchanged;
- ✓ A court or competition authority may use competitor meetings in the context of an alliance, together with other factors suggesting collusion, as evidence of a cartel or an anti-competitive agreement in the industry;
- ✓ Rules of an alliance or its members on *e.g.* standard setting, if any, may be deemed to restrict competition;⁷ and
- ✓ EU competition law provides that both associations of undertakings and undertakings can be addressed for competition law infringements. A fine imposed on an association of undertakings may be collected from any of its members unless that member can prove that it was not aware of the anti-competitive infringement or actively distanced itself from the

⁶ The members are also encouraged to visit the dedicated webpage of the Commission’s DG Competition, which provides information on compliance with EU competition law: https://ec.europa.eu/competition/antitrust/compliance/index_en.html.

The Commission has issued several sets of guidelines that can help undertakings assess the compatibility of their business arrangements with EU competition law (see notably Communication from the Commission — Notice — Guidelines on the application of Article 81(3) of the Treaty ([OJ C 101, 27.4.2004, p. 97](#)) (“Guidelines on Article 101(3)”), the Communication from the Commission — Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements ([OJ C 11, 14.1.2011, p. 1](#)) (“Horizontal Guidelines”) and Commission Notice – Guidelines on Vertical Restraints ([OJ C 130, 19.5.2010, p. 1](#)) (“Vertical Guidelines”). See also Commission Regulation (EU) No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements ([OJ L 335, 18.12.2010, p. 36](#)) (“R&D Block Exemption Regulation”), Commission Regulation (EU) No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements, ([OJ L 335, 18.12.2010, p. 43](#)) (“Specialisation Block Exemption Regulation”), Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements ([OJ L 93, 28.3.2014, p. 17](#)) (“Technology Transfer Block Exemption Regulation”), Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices ([OJ L 102, 23.4.2010, p. 1](#)) (“Vertical Block Exemption Regulation”).

⁷ See [Guidelines](#) on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (OJ 2011 C 11/1).

infringement prior to an investigation into the case (effectively reversing the burden of proof).⁸

- ✓ The involvement of the European Commission, notably in the context of the Alliance meetings, does not exonerate participants from the application of competition law.

2. Information exchanges to avoid

Members of the Alliance must not have formal or informal discussions, in particular with other members who are or may become competitors, relating – but **not limited to** – the following prohibited subjects amounting, in the senses of competition law, to commercially sensitive information⁹:

- ✓ Current or future individual company or industry pricing or any matters likely to have an impact on current or future prices such as competitive strengths and weaknesses, price changes, profit margins, discounts, rebates, surcharges, credit lines offered or other terms of sale;
- ✓ Individual company cost information including any cost components such as production or distribution costs, cost accounting formulas and cost computing methods;
- ✓ Individual company sales or production information including sales volumes, sales revenues, market share, production volumes, production capacity, capacity utilisation, stock levels and supplies, bid amounts and terms, and any limits on sales; current and future company plans and business strategy relating to – but not limited to – bidding, investment, marketing and advertising, production, purchasing, sales or technology;
- ✓ Any matters relating to individual customers, distributors or suppliers such as, for example, boycotting or blacklisting; and
- ✓ Salaries and wages, or limitations on hiring a competitor's employees.

3. Allowed Information exchanges

To the extent that they do not amount, in the sense of competition law, to commercially sensitive information. Members of the Alliance may have formal or informal discussions, and exchange of information, on the following subjects:

- ✓ Public policy and regulatory matters of general interest;
- ✓ Non-confidential current or historical information that is in the public domain;

⁸ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance); OJ L 1, 4.1.2003, p. 1–25; in particular Article 23(4).

⁹ See also Communication from the Commission — Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements ([OJ C 11, 14.1.2011, p. 1](#)) (“Horizontal Guidelines”).

- ✓ Non-confidential technical issues relevant to the industry in general such as standards or health and safety matters;
- ✓ General, non-proprietary technology and related issues such as the characteristics and suitability of particular equipment (but not a particular company's proposals regarding the adoption of specific equipment or technology);
- ✓ General promotional opportunities relevant to the industry in general (but not a particular company's promotional plans);
- ✓ Non-strategic educational, technical or scientific data that results in consumer benefits;
- ✓ Industry public relations or lobbying initiatives; and
- ✓ Non-strategic information needed to build new business partnerships between members of the alliance.

4. Appropriate conduct at alliance meetings

As a general matter, it should be highlighted that just being present when illegal discussions are taking place may be sufficient to consider a company liable for a competition law infringement, even if that company and/or its representative(s) did not proactively engage in those discussions.

Transparency, notably through the documentation of all exchanges in the context of the alliance meetings is essential. Alliance members should therefore, when attending alliance meetings, always:

- ✓ Carefully review the agenda and purpose of meeting in advance for possible problems under the competition laws and seek advice from the members' legal department if necessary;
- ✓ Be vigilant to ensure that discussions at meetings stick to the agenda items and object if they do not, making sure such an objection is reflected in the meeting minutes; and
- ✓ Ensure that they make or promptly receive detailed, accurate minutes of meetings and immediately voice any objections to the minutes.

5. How to address competition law related problems?

If while present at a formal or informal meeting of the Alliance or with representatives of competitors the conversation turns to prohibited anti-competitive subjects, the members of the Alliance should:

- ✓ Immediately and expressly state that they cannot be party to discussions on the subject at issue due to competition law concerns and ask that the subject be changed at once;
- ✓ If their objection and request is ignored, immediately leave the meeting in a manner that makes the reason for their departure apparent to all present;

- ✓ Ensure that their departure be recorded in any formal minutes or, if there are no such minutes, record that departure in their own notes of the meeting; and
- ✓ Promptly report the matter to members' legal department and ensure that a note is made thereof for the file.

The presence of a Commission representative does not release participants from liability should the exchange of sensitive information occur.

In addition, members of the Alliance should, if they become aware of a competition law infringement or are uncertain whether particular conduct within the alliance is allowed under the competition laws:

- ✓ Immediately inform their company legal counsel and/or compliance officer;
- ✓ If concerns are confirmed, report the anti-competitive conduct to the secretariat of the Alliance who can then inform competition authorities about this.

In addition, anyone can make use of the Anonymous Whistleblower Tool, available under this link: <http://ec.europa.eu/competition/cartels/whistleblower/index.html>

Lastly, members of the Alliance should always keep in mind that any failure to take the above actions promptly will make it difficult to later convince a court or competition authority of their opposition to an infringement.