

# CharIN Compliance Guidelines



Code of Conduct for the Association's work

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## Introduction

The German Charging Interface Initiative e. V. (CharIN e. V.) brings together more than 200 companies worldwide. The primary objective of the CharIN e. V. is to develop and establish the Combined Charging System (CCS) as the global standard for charging all kinds of battery-powered electric vehicles.

Together with its membership consisting, among others, of truck, car, bus, boat, and airplane manufacturers as well as of 1<sup>st</sup> and 2<sup>nd</sup> tier suppliers along the whole value chain of charging, CharIN is an internationally acting alliance promoting standards for charging solutions, creating requirements for the evolution of charging systems, and developing a certification system for manufacturers to implement charging systems into their products.

CharIN is committed to ensure lawful practice and organizes its activities in strict compliance with German, European and international competition law. These Guidelines shall provide compliance information to CharIN bodies, members, and staff. Adherence to the Guidelines shall ensure, in the interest of both the CharIN Association and its members, that any potential breach of compliance is avoided in all Association's activities.

The Guidelines aim at providing clarification to CharIN members and staff on how to act in defined situations; the Guidelines should serve as reliable point of reference. They include regulations on topics allowed to being addressed at Association's meetings, on market information systems, on Association's recommendations, as well as on the conduct of Association meetings. The rules are binding for all parties being involved in CharIN Association's work and serve to protect both the Association and its members.

CharIN e. V., May 2021

## 1. General ban on restrictive practices

Competition law is designed to combat all forms of restrictive practice by businesses. In Germany, anticompetitive practices are prohibited under Section 1 of the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, GWB). This section prohibits agreements between undertakings, decisions by associations of undertakings, and concerted practices which have as their object or effect the prevention, restriction, or distortion of competition. Additionally, the EU ban on restrictive practices applies in cases where the practices listed in Section 1 GWB could affect trade between Member States (Art. 101 (1) Treaty on the Functioning of the European Union (TFEU)). Competition law prohibits agreements which fix prices, terms, and conditions, etc.; agreements in this sense are not limited to express, and in particular not to written declarations. An agreement may also be implied by the actions of the parties. Competition law prohibits not only agreements but also concerted practices by businesses which lead to similar results. Even the mere exchange, or the unilateral disclosure of competitively sensitive data is prohibited, particularly if this allows coordinated actions towards other market players, or if it removes uncertainty regarding future market behavior.

## 2. Topics and conduct of Association meetings

Association meetings are primarily held to discuss political and technical topics; nonetheless, competition law applies to all aspects of Association work. Certain topics may be critical from a compliance perspective if they relate to competitively sensitive data. This is the case if the exchange of information, its unilateral disclosure, or discussions about this defined information by Association's members, could lead to reduce or remove uncertainty on the current or future market behavior of competitors and thus, affect hidden competition (for example in calls for tender). The term "competitor" is to be understood in a broad sense.

- Companies compete both in sales and in purchasing. A competitor is any party that offers or requires the same or similar products or services.
- A party offering different products to the same customer or purchasing different goods from the same supplier may also constitute a competitor.
- A party that has not yet but is likely to offer the same or a similar product in the relatively near future also constitutes a (potential) competitor. The term "near future" may cover a period of significantly more than a year (or even several years).
- Companies from different stages of the distribution chain might also be in competition, for example if a manufacturer distributes its goods both directly and through retailers.
- Companies that are not currently competing in a defined product area could be considered (potential) competitors if they were able to easily start competing within short time.

The following summary of permitted and not permitted topics does not only apply to Association meetings themselves but also to discussions during breaks, associated events, and related correspondence.

### **a. Topics permitted at Association meetings**

At Association meetings, competitors may in principle exchange information on the subject area of the meeting. This includes:

- currently planned legislation and resulting implications for the membership as a whole,
- the political environment, general technical/scientific developments, and regulatory measures of general interest,
- current economic developments and general developments in the industry (provided these are in the public domain),
- discussions on CharIN relationship building activities,
- general sector analysis (provided data is aggregated by CharIN or another neutral third party),
- the exchange of general, freely available, information (e. g. general economic data from the Internet, or from member companies' annual reports which have already been published),
- the review of general business developments provided the information relates to the company as a whole, the entire product range or other aggregated business areas, and has already been lawfully published by the companies in question.

### **b. Topics not permitted at Association meetings**

Information that companies are not allowed to exchange at Association meetings includes but is not limited to:

- information or agreements on prices, price components, discounts, pricing strategies, price calculations, or planned price changes,
- delivery or payment terms, nor any other contractual provisions in contracts with customers/suppliers provided they have competitive implications,
- information on business strategies or on current or future market behavior ("signaling"),
- information not yet lawfully published concerning current business,
- developments or business expectations (in particular, sales figures), even if such information does not provide any indication of the market position of individual products,
- information on profits, profit margins, market shares, or planned investments which is not in the public domain,
- information on internal research and development projects which are not in the public domain,

- information allowing coordinated action vis-à-vis players on the other side of the market such as customers or suppliers, in particular with regards to quotations to third parties (e. g. if parties respond to a Request for Quotation (RFQ) or a tender: information on the lot they want to bid for; engagement and interest in winning the contract),
- the division of geographic or labor markets or sources, as well as express or implied agreements on supply, purchase, or other boycotts of specific companies,
- demands from customers or suppliers including the company's own response to these or the response of competitors,
- verification of information received from a customer or supplier,
- the joint discussion and analysis of statistics permitted pursuant to item a, in particular, the disaggregation of aggregated data.

### **c. Preparation and conduct of Association meetings**

In alignment with the meeting's Chair, either CharIN Coordination office or an elected member of the association sends out the official invite to all meetings in good time. Attached to the invite, an agenda draft (as detailed as possible) will be shared with the invitees. CharIN staff assists the meeting's Chair and makes sure that the agenda and other documents for the meeting are worded in a clear and understandable way, and do not raise any competition concerns.

In the event of any doubt, the CharIN management will provide clarification and/or amendments.

The CharIN Coordination Offices ensure that the meetings are conducted in accordance with due and proper procedure (agenda and minutes).

At the beginning of the meeting, the Chair instructs all attendees on the compliance with competition law. The Chair shall intervene in proceedings that might present a breach or a potential breach of competition law.

The CharIN staff assists the Chair in ensuring that the agenda is followed, especially when it comes to topics that might have competition law implications. Should attendees wish to deviate from the agenda, the Chair shall put the decision on the change to a formal vote and record the resolution in the minutes.

The meeting attendees should object to new items to be put on the agenda which they feel are not in compliance with competition law, or which have not passed a formal resolution. The objection or removal of a topic from the agenda imperatively needs to be recorded in the meeting minutes. The Chair shall evaluate the objections and, if necessary, reject the topics in question.

#### **d. Minutes of Associations meetings**

The CharIN Coordination Offices assist the meeting's Chair in ensuring that correct, complete, and accurate meeting minutes are taken, and that all resolutions have been submitted and carried out properly. Attendees are asked to object if they notice that minutes are not being taken.

The CharIN staff shall help ensure that the wording of the minutes is clear and comprehensible. Association meeting minutes are sent out to all attendees and invitees of the meeting as soon as possible after the meeting, preferably within one week.

Attendees are asked to check whether the meeting minutes record correctly the main proceedings and the resolutions passed at the meeting. They should inform the CharIN staff immediately if they notice any omissions or mistakes in the minutes, especially with regards to subjects relating to competition law, and they should request corrections.

#### **e. Conduct at Association meetings**

With the assistance of the CharIN Coordination office, the meeting's Chair ensures that there are no resolutions, agreements, discussions or spontaneous comments which might have competition law implications, and that there is no unlawful exchange or disclosure of information as defined in the competition law.

The Chair shall immediately notify any party who fails to comply with competition law requirements. The Chair should stop or postpone the discussion or if necessary, the entire meeting if legal aspects need to be clarified.

Meeting attendees should request that a discussion or the meeting will be stopped or postponed if they have concerns as to its legality. Such requests must be imperatively recorded in the meeting minutes.

Attendees should leave the meeting if a discussion with competition law implications is pursued. Their departure must be recorded in the minutes together with the attendee's name and departure time.

### **3. Market information systems / Association statistics**

Market information systems are databases providing information, for example Association statistics on charging infrastructure figures. Market information systems and other statistics are only lawful if they serve a legitimate purpose (e. g. the analysis of industry trends), and if they are officially managed by the Association or by another neutral body which only publishes anonymized, non-identifiable, aggregated overall data. CharIN ensures that the market information systems which the association manages comply with statutory requirements, that they do not artificially increase market transparency, and that (as a rule) at least five companies are covered per reporting category. Company data assessed in market information systems may only be used in the relevant processes and may not be communicated separately in Association meetings.

### **4. CharIN position papers and press releases**

The CharIN e. V. shall ensure that the wording of its position papers and press releases does not, either intentionally or unintentionally, suggest anticompetitive agreements, concerted practices, or CharIN endorsement of any such measures.

The following is permitted:

- the objective presentation of the market environment and market developments,
- the presentation of all useful possible responses, without advocating for a particular one.

### **5. Association recommendations**

In expert committees, the CharIN e. V. draws up Association recommendations on several issues including technical standards (e.g., in accordance with ISO/IEC).

The CharIN e. V. assesses the statutory framework for its recommendations. Terms, conditions, and standards are drawn up in an open, transparent, and non-discriminatory process.

CharIN's recommendations are provided to the member companies on a non-binding basis. CharIN does not issue any recommendations to its members, neither directly nor indirectly, with regards to specific market behavior.



## **6. Voluntary commitments**

The CharIN is free to develop voluntary commitments of its member companies as far as:

- this serves a stated or statutory objective (such as environmental or consumer protection),
- the advantages provided by such commitments primarily benefit the consumer,
- the voluntary commitment is the most efficient way to achieve the objective in question,
- the commitment is available to third parties; the commitment does not unreasonably restrict the freedom of action of those involved,
- the commitment does not restrict potential competitors to get access to the market,
- the commitment does not restrict involved companies or potential competitors to develop or produce market products,
- the commitment does not result in any significant restriction of competition through concerted action.

## **7. Acceptance and refusal of new members**

CharIN is fundamentally free to decide on whether to accept or refuse new members. Detailed regulations governing the prerequisites for membership are defined in the Articles of Association.

CharIN shall respect the membership right under competition law of each company that wishes to join the Association. CharIN is entitled to reject the membership application of companies which do not meet the membership criteria defined in the Articles of Association. Rejection may not, however, be discriminatory. Companies may, for example, not be refused membership if other comparable companies have already been accepted despite failure to meet the membership criteria.

## **8. In case of doubts, please turn to the CharIN Coordination Office**

All staff and members of CharIN bodies may contact the CharIN Coordination Office with any questions regarding these guidelines. The CharIN Coordination Office should also be consulted in the event of any doubt as to the lawfulness of a procedure or matter raised before calling an Association meeting. It shall immediately be informed of any breaches established or suspected.