



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR ENERGY

***INFORMAL COMMISSION EXPERT GROUP  
EU ENERGY PLATFORM INDUSTRY  
ADVISORY GROUP***

TERMS OF REFERENCE

## **1. BACKGROUND**

Considering the recent surges in energy prices and the further impact of the war in Ukraine on energy supply and prices, energy security concerns have become a priority in the political agenda, and the diversification of gas supplies is chief among them.

On 8 March 2022, the Commission published the Communication “*REPowerEU: Joint European Action for more affordable, secure and sustainable energy*”<sup>1</sup>. Ensuring appropriate gas storage levels and the elimination the Union’s dependence on fossil fuels are at the heart of that communication. The diversification of gas supplies plays a key role in the delivery of those goals. LNG in particular has proven its added value in minimising the impact of a possible disruption in pipeline deliveries of natural gas.

On 18 May 2022, the Commission published the REpowerEU Plan putting forward a number of communications and legislative proposals operationalising the aforementioned objectives<sup>2</sup>. Notably, the Plan sets up the EU Energy Platform responsible for coordinating voluntary common purchases of natural gas, LNG and hydrogen.

The EU Energy Platform shall fulfil three functions supporting common purchase of natural gas, LNG and, in the future, hydrogen:

- (a) demand aggregation, structuring and assessment of joint purchasing opportunities;
- (b) optimised and transparent use of the import, storage and transmission gas infrastructure maximising security of supply and replenishment of storage;
- (c) coordinated international outreach focusing on the conclusion of cooperation frameworks with trusted partners via binding or non-binding agreements that support the purchasing of natural gas, LNG and hydrogen and clean energy project development, while fully using the collective strength of the Union.

It is essential that the actions and solutions implemented in the context of the EU Energy Platform are designed on the basis of an in-depth understanding of the Union and international market dynamics. It is therefore proposed to create an informal expert group to provide the Commission with the necessary industrial perspective to meet the objectives of the EU Energy Platform and address current energy challenges.

---

<sup>1</sup> COM(2022)108 final

<sup>2</sup> COM(2022)230 final

## **2. SUBJECT MATTER**

The “EU Energy Platform Industry Advisory Group” (‘the group’) is set up as an informal expert group pursuant to Article 4 of Commission Decision C(2016)3301 establishing horizontal rules on the creation and operation of Commission expert groups (‘the horizontal rules’).

## **3. TASKS**

1. The group shall assist the Commission in the following urgent tasks, necessary to deliver on the objectives identified in the REPower EU Communication and subsequent Plan:
  - (a) to provide feedback and comments on options issued by the Commission for natural gas and LNG (and, in the future, hydrogen) demand aggregation and joint purchasing;
  - (b) to provide the Commission with insights and advice on how to ensure that the Union’s goal of the reduction of dependency on gas supplies from Russia can be achieved in line with the timeline provided by the REPowerEU Communication, with a particular focus on the diversification of gas supply;
  - (c) to exchange market data and information<sup>3</sup> to support outreach activities, to leverage the European buying power for the benefit of European consumers;
  - (d) to provide other input and advice relevant for the delivery of the RePowerEU objectives, within the remit of the missions of the EU Energy Platform.
2. The group will comply with all applicable EU and national regulations, including EU competition rules, in particular Article 101 TFEU, in both its setting-up and its activities. The Group will adopt a compliance programme and abide by it.
3. The Executive Vice President and the Commissioner for Energy might participate in the group’s meetings to exchange with the group’s participants or seek the group’s advice on specific issues related to the REPowerEU objectives, within the remit of the missions of the EU Energy Platform.

## **4. MEMBERSHIP**

1. The Group shall be composed of up to 40 members. Members shall be companies (‘organisations’ within the meaning of Article 7 of the horizontal rules) operating in the energy markets in the European Union and the European Economic Area, Western Balkan countries and the three associated eastern partners (Moldova, Ukraine, and Georgia) willing to participate in and/or enable natural gas, LNG and/or, in the future, hydrogen demand aggregation and joint purchasing set up under the EU Energy Platform.

---

<sup>3</sup> The exchange of information will not cover proprietary, privileged or commercially-sensitive information

2. Members shall nominate their representatives and shall be responsible for ensuring that their representatives provide a high level of expertise. In particular, members' representatives shall be senior enough to speak on behalf of the members and have direct reporting links to the executive decision-making level and able to operate with its authority.
3. The Commission's Directorate-General for Energy ('DG ENER') may refuse the nomination by an organisation of a representative if it considers that nomination inappropriate in the light of the requirements specified in the call for applications. In such case, the organisation concerned shall be asked to appoint another representative.
4. Members, who, in the opinion of DG ENER, do not comply anymore with the conditions set out in Article 339 of the Treaty on the Functioning of the European Union, who are no longer capable of contributing effectively to the expert group's deliberations, or who resign, shall no longer be invited to participate in any meetings of the group and may be replaced for the remainder of their term of office.

## **5. SELECTION PROCESS**

1. The selection of the group's members shall be carried out via a public call for applications to be published in the Register of Commission expert groups and other similar entities ('the Register of expert groups').
2. In addition, the call for applications may be published through other means, including on the Commission's webpages. The call for applications shall clearly outline the selection criteria, including the required expertise and the interests to be represented in relation to the work to be performed. The minimum deadline for applications shall be four weeks.
3. Registration in the Transparency Register shall be required for organisations to be appointed.
4. The members of the group shall be appointed by the Director-General of DG ENER after approval by the Commissioner for Energy from applicants with competence in the areas referred to in point 3 and who have responded to the call for applications.
5. Members shall be appointed for two years. They shall remain in office until the end of their term of office or until replaced. Their term of office may be renewed.

## **6. CHAIR**

The group shall be chaired by a senior representative of DG ENER.

## **7. OPERATION**

1. The group shall act at the request of DG ENER in compliance with the horizontal rules.
2. Meetings of the group shall, in principle, be held on Commission premises or virtually, depending on the circumstances.

3. DG ENER shall provide secretarial services directly or via a contractor.
4. Commission officials from other departments with an interest in the proceedings, as well as members of the cabinet of the Executive Vice President for the European Green Deal and the Commissioner for Energy may also be invited to attend the meetings of the group and its sub-groups.
5. In agreement with DG ENER the group may, by simple majority of its members, decide that deliberations shall be public.
6. Minutes on the discussion on each point on the agenda and on the opinions delivered by the group shall be meaningful and complete. Minutes shall be drafted by the secretariat under the responsibility of the Chair.
7. As far as possible, the group shall adopt its opinions, recommendations or reports by consensus. In the event of a vote, the outcome of the vote shall be decided by simple majority of the members. Members who have voted against or abstained shall have the right to have a document summarising the reasons for their position annexed to the opinions, recommendations or reports.
8. The group shall meet regularly, in principle at least four times per year.

## **8. SUB-GROUPS**

1. DG ENER may set up sub-groups for the purpose of examining specific questions on the basis of terms of reference defined by DG ENER. Sub-groups shall operate in compliance with the horizontal rules and shall report to the Group. They shall be dissolved as soon as their mandate is fulfilled.
2. The members of sub-groups that are not members of the group shall be selected via a public call for applications, in compliance with point 5 and the horizontal rules.

## **9. INVITED EXPERTS**

1. DG ENER may invite experts with specific expertise with respect to a subject matter on the agenda to take part in the work of the group or sub-groups on an *ad hoc* basis.
2. Invited experts may include representatives of Member States, such as designated representatives from the EU Energy Platform or from the Presidency of the Council. In addition, other public entities, such as international organisations and third country authorities, including from candidate countries, Union bodies or EU agencies may participate as invited experts.

## **10. OBSERVERS**

1. Public entities other than Member States' authorities, such as international organisations and third country authorities, including from candidate countries, as well as industry associations may be granted an observer status, in compliance with the horizontal rules, by direct invitation.

2. Public entities and organisations appointed as observers shall nominate their representatives.
3. Observers' representatives may be invited by the Chair to take part in the discussions of the group and sub-groups and provide expertise. However, they shall not have voting rights and shall not participate in the formulation of recommendations or advice of the group or its sub-groups.

## **11. RULES OF PROCEDURE**

On a proposal by and in agreement with DG ENER, the group shall adopt its rules of procedure by simple majority of its members, on the basis of the standard rules of procedure for expert groups, in compliance with the horizontal rules<sup>4</sup>.

## **12. COMPETITION COMPLIANCE PROGRAMME**

The group will be set up and its activities carried out in full compliance with EU competition rules. With regards to the activities of the group, competition will in particular be safeguarded by reporting on meetings, discussions, information exchange and agreements reached and making these available to the Commission on request. The competition compliance programme set out in the Annex will be signed by all members and observers when joining the Group, who shall then abide by it.

## **13. PROFESSIONAL SECRECY AND HANDLING OF CLASSIFIED INFORMATION**

The members of the group and their representatives, as well as observers and invited experts, shall be subject to the obligation of professional secrecy, which by virtue of the Treaties and the rules implementing them applies to all members of the institutions and their staff, as well as to the Commission's rules on security regarding the protection of Union classified information, laid down in Commission Decisions (EU, Euratom) 2015/443<sup>5</sup> and 2015/444<sup>6</sup>. Should they fail to respect these obligations, the Commission may take all appropriate measures.

## **14. TRANSPARENCY**

1. The group and its sub-groups shall be registered in the Register of Commission expert groups and other similar entities ('the Register of expert groups').
2. As regards the group and sub-groups composition, the following data shall be published in the Register of expert groups:
  - (a) the name of member organisations; the interest represented shall be disclosed;

---

<sup>4</sup> See Article 17 of the horizontal rules.

<sup>5</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

<sup>6</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

(b) the name of other public entities, including the name of third countries' authorities, other Union bodies or agencies and international organisations;

(c) the name of observers.

3. All relevant documents, including the agendas, the minutes and the participants' submissions, shall be made available in the Register of expert groups, while abiding by the competition compliance programme set out in the Annex. In particular, DG ENER shall publish the agenda and other relevant background documents in due time ahead of the meeting, followed by timely publication of minutes. Exceptions to publication shall only be possible where it is deemed that disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>78</sup>.

## **15. MEETING EXPENSES**

Participants in the activities of the group and its sub-groups shall not be remunerated for the services they offer.

Travel and subsistence expenses incurred by participants in the activities of the group and its sub-groups shall not be reimbursed by the Commission.

Done in Brussels, on 5 September 2022

---

<sup>7</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

<sup>8</sup> These exceptions are intended to protect public security, military affairs, international relations, financial, monetary or economic policy, privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections/investigations/audits and the institution's decision-making process.

## **Annex - Guidelines for Competition Law Compliance within the EU Energy Platform Industry Advisory Group**

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

The EU Energy Platform Industry Advisory Group (“the Group”) is set up as an informal expert group pursuant to Article 4 of Commission Decision C(2016)3301 establishing horizontal rules on the creation and operation of Commission expert groups (‘the horizontal rules’).

### **Envisaged Actions**

The Group members and observers join force to reach the objectives of the group as outlined in the Terms of Reference<sup>9</sup>.

In view of those activities and the risk of both intentional and inadvertent competition law infringements that they may pose, the Group’s Terms of Reference provide that:

*“The Group will comply with all applicable laws and regulations, in particular EU and national competition rules. The Group will adopt a competition compliance programme and abide by it.”*

The **Group** has adopted the following guidelines and instructions to ensure that the Group members take particular care to ban any form of anti-competitive behaviour from their participation and activities in this Group and comply with EU competition law and relevant national competition laws (hereinafter the “competition laws”).<sup>10</sup>

---

<sup>9</sup> In accordance with the below outlined guidelines to ensure full compliance with competition law.

<sup>10</sup> 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](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”).

## 1. Competition risks in the Group

The members of the Group must always take into account that they may be exposed to certain competition law risks. Members of the Group declare themselves familiar with the following considerations:

- ✓ A single verbal or non-verbal exchange or a unilateral disclosure of commercially sensitive information can violate the competition laws;
- ✓ There is a risk that conversations between members at both formal and informal (including social) meetings could turn to commercially sensitive information being unlawfully exchanged;
- ✓ A court or competition authority may use competitor meetings in the context of the Group, together with other factors suggesting collusion, as evidence of a cartel or an anti-competitive agreement in the industry;
- ✓ Rules of the Group or its members on e.g. standard setting, if any, may be deemed to restrict competition;<sup>11</sup> 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 infringement prior to an investigation into the case (effectively reversing the burden of proof).<sup>12</sup>
- ✓ The involvement of the European Commission, notably in the context of the Group meetings, does not exonerate participants from the application of competition law.

## 2. Information exchanges to avoid

Members of the Group must not have formal or informal discussions, in particular with other members who are or may become competitors, relating to – but **not limited to** – the following prohibited subjects amounting, in the senses of competition law, to commercially sensitive information<sup>13</sup>:

- ✓ 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

---

<sup>11</sup> 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).

<sup>12</sup> 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).

<sup>13</sup> 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”).

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 Group 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;
- ✓ 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 Group.

### **4. Appropriate conduct at Group 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 Group meetings is essential. Group members should therefore, when attending Group 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 Group or with representatives of competitors the conversation turns to prohibited anti-competitive subjects, the members of the group 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 Group should, if they become aware of a competition law infringement or are uncertain whether particular conduct within the Group 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 Group 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 Group 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.