

EU/Switzerland Agreement: cooperation on the application of their competition laws

2012/0127(NLE) - 21/10/2014 - Final act

PURPOSE: to conclude the Agreement between the European Union and Switzerland concerning cooperation on the application of their competition laws.

NON-LEGISLATIVE ACT: Council Decision 2014/866/EU on the conclusion of an Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws.

BACKGROUND: in accordance with Council Decision 2013/203/EU, the Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws was signed on 17 May 2013, subject to its conclusion.

The Agreement should be approved.

CONTENT: under this Decision, the agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws is hereby approved on behalf of the Union.

Purpose: this agreement between the EU and the Swiss Confederation concerning cooperation on the application of their competition laws will allow, under certain specific conditions, the Commission and the Swiss Competition Commission to exchange confidential information.

Cooperation: this agreement contains provisions on the notification of enforcement activities which significantly affect the important interest of the other party; provisions organising the practical cooperation between the Commission and the Swiss Competition Commission and provisions on negative and positive comity

Transmission of information: the agreement regulates the **discussion and transmission of information** between the Commission and the Swiss Competition Commission. It authorises the Commission and the Swiss Competition to discuss information obtained by investigative process. Furthermore, both authorities may under certain conditions transmit information already in their possession and obtained by investigative process to the other authority. They can only do so when they investigate the same or related conduct or transaction. The agreement provides that they cannot discuss or transmit information which was received under their respective leniency or settlement procedures, without the prior express agreement of the source. Nor can they exchange information if using such information would be prohibited under the procedural rights and privileges guaranteed under their respective laws. The decision to transmit information is always in the discretion of the transmitting authority; there is no obligation to do so.

The agreement lays down rules regarding the use of the information thus discussed or transmitted: the information obtained by investigative process which is discussed or transmitted under the agreement can only be used by the receiving authority for the enforcement of its competition rules to the same or related conduct or transaction, and for the purpose of the relevant request, when applicable. In addition, no information discussed or transmitted shall be used to impose any type of sanctions, whether custodial or not, on natural persons

Confidentiality: the agreement also contains provisions on the **protection of the information discussed or transmitted**. The Commission and the Swiss Competition Commission must keep this information confidential under their own rules. Both authorities shall also ensure the protection of personal data, under their respective laws on personal data.

Lastly, the agreement allows the **disclosure of information transmitted under the agreement in certain limited circumstances**, such as for the procedure of access to file, for court procedures, and to national competition authorities and the EFTA Surveillance Authority, when disclosure of important documents to these agencies is required for the adoption of a Commission decision.

ENTRY INTO FORCE: the Decision shall enter into force on 21.10.2014. The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.