

Basic information

2012/0127(NLE)

NLE - Non-legislative enactments
Decision

Procedure completed

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

Subject

1.20.09 Protection of privacy and data protection
2.60 Competition
6.20.03 Bilateral economic and trade agreements and relations
7.40.02 Judicial cooperation in civil and commercial matters
8.50.01 Implementation of EU law

Geographical area

Switzerland

Key players

European
Parliament

Committee responsible

ECON Economic and Monetary Affairs

Rapporteur

CUTAŞ George Sabin (S&D)

Appointed

11/09/2012

Shadow rapporteur

FERBER Markus (PPE)

TORVALDS Nils (ALDE)

LAMBERTS Philippe (Verts
/ALE)

EPPINK Derk Jan (ECR)

HÄNDEL Thomas (GUE
/NGL)

Committee for opinion

INTA International Trade

Rapporteur for opinion

MOREIRA Vital (S&D)

Appointed

20/06/2012

IMCO Internal Market and Consumer Protection

The committee decided not to give an opinion.

JURI Legal Affairs

The committee decided not to give an opinion.

LIBE Civil Liberties, Justice and Home Affairs

The committee decided not to give an opinion.

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|-------------------------------|------------------------------|---------------------|-------------|
| Council of the European Union | Council configuration | Meetings | Date |
| | General Affairs | 3341 | 2014-10-21 |
| European Commission | Commission DG | Commissioner | |
| | Competition | ALMUNIA Joaquín | |

| Key events | | | |
|------------|---|--|---------|
| Date | Event | Reference | Summary |
| 01/06/2012 | Preparatory document | COM(2012)0245  | Summary |
| 09/04/2013 | Legislative proposal published | 12418/2012 | Summary |
| 10/06/2013 | Committee referral announced in Parliament | | |
| 22/01/2014 | Vote in committee | | |
| 29/01/2014 | Committee report tabled for plenary, 1st reading/single reading | A7-0060/2014 | Summary |
| 04/02/2014 | Debate in Parliament |  | |
| 05/02/2014 | Decision by Parliament | T7-0078/2014 | Summary |
| 05/02/2014 | Results of vote in Parliament |  | |
| 21/10/2014 | Act adopted by Council after consultation of Parliament | | |
| 21/10/2014 | End of procedure in Parliament | | |
| 03/12/2014 | Final act published in Official Journal | | |

| Technical information | |
|-----------------------------------|---|
| Procedure reference | 2012/0127(NLE) |
| Procedure type | NLE - Non-legislative enactments |
| Procedure subtype | Consent by Parliament |
| Legislative instrument | Decision |
| Legal basis | Treaty on the Functioning of the European Union TFEU 218-p7 Treaty on the Functioning of the European Union TFEU 207-p4 Treaty on the Functioning of the European Union TFEU 218-p6a Treaty on the Functioning of the European Union TFEU 207-p3 |
| Other legal basis | Rules of Procedure EP 165 Treaty on the Functioning of the European Union TFEU 103-p1 Treaty on the Functioning of the European Union TFEU 352-p1sub1 |
| Stage reached in procedure | Procedure completed |
| Committee dossier | ECON/7/09721 |

Documentation gateway**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|----------------------|------------------------------|------------|-------------------------|
| Committee draft report | | PE522.967 | 11/11/2013 | |
| Committee opinion | INTA | PE521.671 | 17/12/2013 | |
| Committee report tabled for plenary, 1st reading/single reading | | A7-0060/2014 | 29/01/2014 | Summary |
| Text adopted by Parliament, 1st reading/single reading | | T7-0078/2014 | 05/02/2014 | Summary |

Council of the EU

| Document type | Reference | Date | Summary |
|------------------------------------|----------------------------|------------|-------------------------|
| Document attached to the procedure | 12513/2012 | 15/03/2013 | |
| Legislative proposal | 12418/2012 | 09/04/2013 | Summary |

European Commission

| Document type | Reference | Date | Summary |
|----------------------|--|------------|-------------------------|
| Preparatory document | COM(2012)0245  | 01/06/2012 | Summary |

National parliaments

| Document type | Parliament /Chamber | Reference | Date | Summary |
|---------------|-------------------------------|-------------------------------|------------|---------|
| Contribution | PT_PARLIAMENT | COM(2012)0245 | 30/07/2012 | |

Additional information

| Source | Document | Date |
|----------------------|-------------------------|------|
| National parliaments | IPEX | |
| European Commission | EUR-Lex | |
| European Commission | EUR-Lex | |

Final act

[Decision 2014/0866](#)
[OJ L 347 03.12.2014, p. 0001](#)

[Summary](#)

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

2012/0127(NLE) - 01/06/2012

PURPOSE: conclusion of an Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws.

PROPOSED ACT: Council Decision.

BACKGROUND: the European Union has concluded bilateral cooperation agreements in order to structure and facilitate the cooperation between the Commission and foreign competition authorities. There are four such agreements, with the US (1991), Canada (1999), Japan (2003) and South Korea (2009). All these agreements are so-called "first generation" agreements; they contain various instruments of cooperation in the area of competition policy but they **expressly exclude the exchange of protected or confidential information**.

Given that the EU and Switzerland are two very important economic partners, whose economies are deeply integrated, many anticompetitive practices have cross border effects on trade between the EU and Switzerland. Many cases dealt with by the Commission concern practices which involve Swiss firms and/or affect the Swiss market. Similarly, there is clear evidence showing that certain anticompetitive practices taking place in Switzerland, and especially cartels, also affect the EU markets.

The Swiss Competition Commission and the Commission have already cooperated in a certain number of cases outside the framework of a formal agreement. As in the case of "first generation" agreements, this cooperation is significantly limited by the fact that they cannot exchange confidential information.

On 26 November 2011, the Council authorised the Commission to negotiate this agreement with the Swiss Confederation. After ten rounds of negotiations, the negotiations were concluded on 7 December 2011.

IMPACT ASSESSMENT: no impact assessment has been made.

LEGAL BASIS: Article 207, paragraphs 3 and 4, first paragraphs, together with Article 218, paragraph 6, point a) v), and Article 218, paragraph 7, of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: 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**.

First, this agreement contains the provisions that are found in the cooperation agreements that have been concluded so far with the US, Canada, Japan and Korea. It 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.

Secondly, 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.

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.

Finally, 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.

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

2012/0127(NLE) - 01/06/2012 - Preparatory document

PURPOSE: conclusion of an Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws.

PROPOSED ACT: Council Decision.

BACKGROUND: the European Union has concluded bilateral cooperation agreements in order to structure and facilitate the cooperation between the Commission and foreign competition authorities. There are four such agreements, with the US (1991), Canada (1999), Japan (2003) and South Korea (2009). All these agreements are so-called "first generation" agreements; they contain various instruments of cooperation in the area of competition policy but they **expressly exclude the exchange of protected or confidential information**.

Given that the EU and Switzerland are two very important economic partners, whose economies are deeply integrated, many anticompetitive practices have cross border effects on trade between the EU and Switzerland. Many cases dealt with by the Commission concern practices which involve Swiss firms and/or affect the Swiss market. Similarly, there is clear evidence showing that certain anticompetitive practices taking place in Switzerland, and especially cartels, also affect the EU markets.

The Swiss Competition Commission and the Commission have already cooperated in a certain number of cases outside the framework of a formal agreement. As in the case of "first generation" agreements, this cooperation is significantly limited by the fact that they cannot exchange confidential information.

On 26 November 2011, the Council authorised the Commission to negotiate this agreement with the Swiss Confederation. After ten rounds of negotiations, the negotiations were concluded on 7 December 2011.

IMPACT ASSESSMENT: no impact assessment has been made.

LEGAL BASIS: Article 207, paragraphs 3 and 4, first paragraphs, together with Article 218, paragraph 6, point a) v), and Article 218, paragraph 7, of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: 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**.

First, this agreement contains the provisions that are found in the cooperation agreements that have been concluded so far with the US, Canada, Japan and Korea. It 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.

Secondly, 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.

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.

Finally, 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.

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

2012/0127(NLE) - 09/04/2013 - Legislative proposal

PURPOSE: conclude an Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the EU has concluded bilateral cooperation agreements in order to structure and facilitate the cooperation between the Commission and foreign competition authorities. These agreements contain various instruments of cooperation in the area of competition policy but **expressly exclude the exchange of protected or confidential information.**

The EU and Switzerland are two very important economic partners, whose economies are deeply integrated. As a result, many anti-competitive practices have cross border effects on trade between the EU and Switzerland. Many cases dealt with by the Commission concern practices which involve Swiss firms and/or affect the Swiss market. Similarly, there is clear evidence showing that certain anti-competitive practices taking place in Switzerland, and especially cartels, also affect the EU markets.

Consequently, on 26 November 2011, the Council authorised the Commission to negotiate this agreement with Switzerland to deal with this issue. In accordance with a Council Decision, the Agreement between the EU and Switzerland on the application of their competition laws was signed, subject to its conclusion.

It is now necessary to approve this Agreement on behalf of the European Union.

LEGAL BASIS: Articles 103 and 352, in conjunction with Article 218(6)(a)(v) of the treaty on the Functioning of the European Union (TFEU).

CONTENT: with this proposed Council 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.

The purpose of this Agreement is to contribute to the effective enforcement of the competition laws of each Party through cooperation and coordination, including the exchange of information, between the competition authorities of the Parties and to avoid or lessen the possibility of conflicts between the Parties in all matters concerning the application of the competition laws of each Party. In order to achieve the purpose of this Agreement, the competition authorities of the Parties may share views and exchange information related to the application of their respective competition laws. The competition authorities of the Parties may discuss any information, including information obtained by investigative process, as necessary to carry out the cooperation and coordination provided for under this Agreement.

In addition, the Agreement formalises the terms “positive and negative comity” in order to prevent conflict between competition authorities (in particular when penalties or corrective measures are being taken in the case of non-compliance of competition laws).

For details on the main provisions of the Agreement, please also refer to the summary of the Commission's initial legislative proposal dated 01/06/2012.

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

2012/0127(NLE) - 05/02/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative resolution on the draft Council decision on the conclusion of an Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws.

Parliament gave its consent to the conclusion of the Agreement.

A [resolution](#) on the EU cooperation agreements was adopted on the same day and outlined the European Parliament's position in this area.

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

2012/0127(NLE) - 29/01/2014 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by George Sabin CUTAŞ (S&D, RO) on the draft Council decision on the conclusion of an Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws.

Members recalled that in a world of globalised companies and global value chains, anticompetitive behaviour, such as abuse of dominant market position or cartels, also constitute non-tariff barriers to trade.

In this light, redoubled efforts to promote international cooperation to fight these anti-competitive practices are very important for the regulation of trade and foreign investment.

The committee recommended the European Parliament to give its consent to the conclusion of the Agreement.

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.