

Procedure file

Basic information	
NLE - Non-legislative enactments Decision	2012/0127(NLE) 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	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		11/09/2012
		S&D CUTA George Sabin	
		Shadow rapporteur	
		PPE FERBER Markus	
		ALDE TORVALDS Nils	
		Verts/ALE LAMBERTS Philippe	
	ECR EPPINK Derk Jan		
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs	The committee decided not to give an opinion.	
	IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
	INTA International Trade		20/06/2012
		S&D MOREIRA Vital	
	LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	General Affairs	3341	21/10/2014
European Commission	Commission DG	Commissioner	
	Competition	ALMUNIA Joaquín	

Key events			
01/06/2012	Preparatory document	COM(2012)0245	Summary
08/04/2013	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	Results of vote in Parliament		
05/02/2014	Decision by Parliament	T7-0078/2014	Summary
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 EU TFEU 207-p4; Treaty on the Functioning of the EU TFEU 218-p6a; Treaty on the Functioning of the EU TFEU 218-p7; Treaty on the Functioning of the EU TFEU 207-p3
Other legal basis	Rules of Procedure EP 159; Treaty on the Functioning of the EU TFEU 352-p1sub1; Treaty on the Functioning of the EU TFEU 103-p1
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/09721

Documentation gateway

Preparatory document		COM(2012)0245	01/06/2012	EC	Summary
Document attached to the procedure		12513/2012	15/03/2013	CSL	
Legislative proposal		12418/2012	09/04/2013	CSL	Summary
Committee draft report		PE522.967	11/11/2013	EP	
Committee opinion	INTA	PE521.671	17/12/2013	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0060/2014	29/01/2014	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0078/2014	05/02/2014	EP	Summary

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Decision 2014/866](#)
[OJ L 347 03.12.2014, p. 0001](#) Summary

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

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

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 Commissions initial legislative proposal dated 01/06/2012.

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

The Committee on Economic and Monetary Affairs adopted the report by George Sabin CUTA? (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

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 Parliaments position in this area.

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

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.