



Council of the
European Union

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CH 64
AELE 83

DECLASSIFICATION

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dated: 26 November 2010

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Subject: Adoption of a Council decision authorizing the Commission to open negotiations for an agreement on co-operation in the area of competition policy between the European Union and the Swiss Confederation

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 26 November 2010

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ADDENDUM TO THE "I/A" ITEM NOTE

From : General Secretariat

To : Permanent Representatives Committee/Council

No. Cion prop. : 14472/10 AELE 54 CH 41 RC 6 RESTREINT UE

Subject : Adoption of a Council decision authorizing the Commission to open negotiations for an agreement on co-operation in the area of competition policy between the European Union and the Swiss Confederation

Delegations will find in the Annex the draft Council Decision on authorizing the Commission to open negotiations for an agreement on co-operation in the area of competition policy between the European Union and the Swiss Confederation.

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ANNEX

COUNCIL DECISION

authorizing the Commission to open negotiations for an agreement on co-operation in the area of competition policy between the European Union and the Swiss Confederation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the recommendation of the Commission,

HAS DECIDED AS FOLLOWS:

Sole Article

The European Commission is hereby authorized to open negotiations with the Swiss Confederation with a view to concluding a co-operation agreement regarding the application of their competition laws.

The Commission will conduct negotiations in consultation with the Working Party on Competition as Special Committee appointed by the Council to assist in this task and in accordance with the attached negotiating directives.

This Decision shall take effect on the day of its notification.

This Decision is addressed to the Commission.

Done at Brussels,

For the Council

The President

Negotiating directives

In negotiating an agreement with Switzerland on cooperation and exchange of information in competition investigations, the Commission will adhere to the following brief:

1. The purpose of the negotiations will be to conclude an agreement establishing co-operation and the exchange of information in competition investigations (i.e. on the EU side: Articles 101 and 102 TFEU, and Council Regulation N° 139/2004).
2. This agreement will include provisions on the mutual notification of enforcement activities which significantly affect the important interests of the other party.
3. This agreement will incorporate provisions organising the practical co-operation between the Commission and the Swiss Competition Commission, including the organisation of meetings between the heads of the authorities, as well as the co-ordination of their respective enforcement activities.
4. This agreement will further include provisions embodying the principles of negative and positive comity.
5. The agreement will authorize the Commission to transmit to Switzerland information covered by the rules on confidentiality as laid down in Reg. 1/2003¹ as well as the Merger Control Regulation 139/2004².

¹ 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; (OJ L 1, 04.01.2003, p.1-25).

² Council Regulation (EC) No 139/2004 of 20 January 2004 (OJ L 24, 29.01.2004, p. 1-22).

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6. The agreement will provide that a request for the exchange of information can only be made in instances when both authorities investigate the same or related transaction or same or related conduct. The Commission will only transmit evidence that is already in its possession, the Commission will not collect evidence specifically on behalf of Switzerland.
7. Information received under the Commission's leniency notice³ or settlement procedures⁴ shall not be transmitted without the prior express agreement of the source.
8. The agreement will provide that any collection and/or transmission of information, in so far as it consists of personal data as defined in EU law, shall comply with the relevant provisions of EU law on the protection of personal data.
9. The agreement will provide that information exchanged shall be used only for competition law purposes and for the purpose as described in the relevant request.
10. The agreement shall provide that information exchanged shall not be used in evidence to impose custodial sanctions on natural persons.
11. Each authority has discretion to determine whether it agrees to transmit information and which information it decides to transmit to the other authority.

³ Commission notice on immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).

⁴ Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ C 167, 2.7.2008, p. 1–6).

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12. The agreement will provide that in order to protect fundamental rights, and in particular the rights of defence, the transmitting authority has to verify that the information it sends can be used in conformity with its rules and the receiving authority has to ensure that the information received can be used in conformity with its rules.

13. The agreement will provide that the adequate confidentiality of the exchanged information must be guaranteed.

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