

EU cooperation agreements on competition policy enforcement – the way forward

European Parliament resolution of 5 February 2014 on EU cooperation agreements on competition policy enforcement – the way forward (2013/2921(RSP))

The European Parliament,

- having regard to the proposal for a 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 (COM(2012)0245),
 - having regard to the agreement of 17 May 2013 between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws (12418/2012),
 - having regard to the request for consent submitted by the Council in accordance with Articles 103 and 352, in conjunction with Article 218(6)(a)(v), of the Treaty on the Functioning of the European Union (C7-0146/2013),
 - having regard to the question for oral answer to the Commission on EU cooperation agreements on competition policy enforcement – the way forward (O-000022/2014 – B7-0105/2014),
 - having regard to Rules 115(5) and 110(2) of its Rules of Procedure,
1. Welcomes the proposed agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws (hereinafter ‘the agreement’); views in a very positive way such cooperation agreements aimed at the enforcement of competition rules in an increasingly globalised economic environment in which cartels operate across borders and mergers often implicate several jurisdictions;
 2. Believes that such an agreement with Switzerland is necessary, considering Switzerland’s strategic geographic location for the EU, the presence of many EU companies in Switzerland and vice versa, and the number of parallel investigations conducted by both jurisdictions in the recent past; believes, furthermore, that implementation of the agreement will be facilitated given the high degree of compatibility of EU and Swiss substantive competition rules; hopes that the prosecution of international cartels and punishment for cross-border offences of a serious nature will be more effective under this agreement; hopes, also, that duplication of the work of the competition authorities in taking decisions on similar cases, as well as the risk of diverging assessments in both jurisdictions, will be reduced; calls on the European Commission and the Swiss Competition Commission to remain strongly determined to fight cartels, given that they are detrimental to consumer welfare and innovation, and have a negative impact on the competitiveness of both economies;
 3. Regrets, however, that the agreement does not establish binding obligations as regards

cooperation and leaves a broad margin for discretion, in particular by virtue of the reference to ‘important interests’, which can be invoked by either party as a justification for not complying with a request made by the other party; calls on the Commission and the Swiss authorities to cooperate sincerely; calls also on EU national competition authorities and the Swiss Competition Commission to cooperate reciprocally;

4. Highlights the importance of ensuring that the procedural guarantees given to the parties in their respective legal systems are respected; calls for the establishment of safe mechanisms for the use and transmission of confidential information; calls on the Commission to ensure the attractiveness of leniency programmes and settlement procedures, taking into account the general principle governing the exchange of confidential information enshrined in this agreement; stresses, therefore, the importance of protecting documents relating to leniency applications or settlement procedures, in particular from potential future disclosure in the context of civil or criminal proceedings, in order to provide leniency applicants and parties to a settlement procedure with a guarantee that those documents will not be transmitted or used without their prior consent; emphasises that the protection of personal data and business secrecy must be fully guaranteed;
5. Notes that a coherent approach to appeals against final decisions in both jurisdictions would be desirable and calls on the European Commission and the Swiss Competition Commission to examine this potential area of further cooperation; notes, however, that allowing the parties to appeal against intermediate decisions, such as those on the exchange of information, would block investigations and could compromise the effectiveness of this agreement;
6. Calls on the Member States and their national competition authorities to cooperate fully with the Commission in order to ensure the effective implementation of this agreement; considers it essential to monitor carefully the implementation of this agreement in order to learn from the experience, and to test any potentially problematic issues; calls on the Commission, in this connection, to conduct such monitoring;
7. Notes, however, that the progress made as regards cooperation on the application of Swiss and EU competition laws should not conceal the urgent need for a comprehensive institutional agreement between Switzerland and the EU guaranteeing the uniform interpretation, monitoring and application of their bilateral agreements; calls on the Commission, in this connection, to rapidly conclude and submit to Parliament a comprehensive institutional agreement between Switzerland and the EU in order to ensure the effectiveness of this agreement;
8. Regards the main new provision introduced by this kind of ‘second-generation agreement’, i.e. the possibility for the Commission and the Swiss Competition Commission to exchange confidential information, as a positive step; believes that this agreement could be considered a model for future bilateral cooperation agreements in the area of competition enforcement where there is a high degree of similarity between the parties to the agreement as regards their substantive competition rules, investigative powers and applicable sanctions; is of the opinion that the EU should adopt a general framework establishing a minimum common and consistent basis for any future negotiations on competition enforcement cooperation, leaving to the Commission, however, a margin for manoeuvre to allow for more ambitious achievements on a

case-by-case basis; notes that this framework should include rules on secure channels for transmitting confidential information;

9. Calls on the Commission to actively promote competition enforcement cooperation at international level, mainly in multilateral fora such as the World Trade Organisation (WTO), the International Competition Network (ICN) and the Organisation for Economic Cooperation and Development (OECD); believes that this would be the most effective means of cooperation, as investigations often involve many jurisdictions in which bilateral agreements do not exist between all parties, or have different terms where they do exist; calls on the OECD and the ICN to develop tools to foster multilateral cooperation and to maintain up-to-date guidelines on best practices;
10. Notes that while multilateral cooperation is not fully operational the Council and the Commission should promote this type of bilateral agreement; encourages the Commission to explore the possibility of opening similar negotiations with the countries with whom a first-generation agreement already exists, as well as with other important international actors and emerging economies such as China or India, in the case where a sufficient degree of similarity between the parties to the agreement as regards their substantive competition rules, investigative powers and applicable sanctions is present; supports, with regard to China, stepping up cooperation further on the basis of the EU-China Memorandum of Understanding (MoU) on cooperation in the area of anti-monopoly law of 20 September 2012, and calls for the inclusion of this issue in the negotiations on the bilateral investment treaty so as to protect better the rights of EU companies; stresses that a strategy to achieve convergence in global antitrust enforcement should provide for the development of effective means to ensure that competition law in third countries is not used to disguise industrial policy objectives;
11. Welcomes, in this context, the MoU on cooperation on competition enforcement activities with India of 21 November 2013 and the ongoing negotiation of a second-generation bilateral agreement with Canada, as well as the negotiation of provisions on competition cooperation in the Free Trade Agreement (FTA) with Japan; stresses that while MoU or FTA provisions are a good first step as regards cooperation, it is essential to move towards a more sophisticated, binding type of cooperation in the long term, as international cartels and cases of infringement of competition rules are occurring more and more on a global scale;
12. Calls on the Commission and the Council to give greater priority to strengthening the competition policy section in FTAs;
13. Notes, however, that sufficient similarity between the competition law regimes involved is essential; notes also that it must be ensured that information transmitted by the EU cannot be used to impose custodial sanctions on natural persons, as long as this is the policy in place at EU level;
14. Calls on the Commission to regularly inform and update Parliament on all the types of activities in which it engages in the field of international cooperation, whether they be multilateral or bilateral initiatives of different kinds (formal agreements, MoUs, etc.), well in advance of the final outcome, with particular regard at present to the ongoing negotiations on the bilateral agreement with Canada; requests that these types of activities be included in the annual work programme presented by the Commissioner for Competition to Parliament and that the commissioner regularly inform the chair of the

responsible parliamentary committee by letter of the evolution of international cooperation on competition enforcement;

15. Calls on the Commission, in view of future negotiations on competition agreements, to provide more comprehensive and information on a more frequent basis to Parliament;
16. Instructs its President to forward this resolution to the Council, the Commission, the national competition authorities, the Swiss Competition Commission, the WTO, the OECD and the ICN.