



Note

Competition: questionnaires sent by the European Commission to Swiss companies

The European Commission regularly addresses requests for information on the implementation of competition law to companies located in Switzerland. Such requests may also be sent to a Swiss parent company via a subsidiary located in a Member State of the EU if the subsidiary is unable to provide the requested information.

Until 17 May 2013, some companies did not respond to requests for information from the European Commission until they had received authorisation from the Federal Department of Economic Affairs, Education and Research (EAER) due to Article 271 of the Swiss Criminal Code (SCC) (unlawful activities on behalf of a foreign state).

Since 17 May 2013, an exchange of notes between the Federal Council (via the Mission of Switzerland to the EU) and the European Commission addresses the issue of notification of acts of public authority in the area of competition policy¹.

An act of public authority is understood to be any decision involving the imposition of sanctions, requiring or prohibiting a conduct, or a decision requiring the submission of information on the part of the addressees. Notification of such acts cannot be given directly by the European Commission to companies located in Switzerland. They must be addressed to the Swiss Competition Commission (Comco), which then notifies the companies concerned. By means of this exchange of notes, the Federal Council authorises notification of these acts in Switzerland via the Competition Commission, within the meaning of Art. 271 SCC. Moreover, the European Commission may give direct notification of acts not relating to public authority to companies located in Switzerland. They are not subject to authorisation under Art. 271 SCC.

Therefore, if questionnaires from the European Commission are not mandatory for companies located in Switzerland, that is, if the companies are not penalised by the EU for failing to respond, they are not considered acts of public authority and responding to them does not require the authorisation of the EAER under Art. 271 SCC.

NB: This note does not exempt the Swiss companies concerned from their legal obligations (especially in terms of data protection).

¹ SR 0.251.268.11