



**COUNCIL OF
THE EUROPEAN UNION**

Strasbourg, 4 July 2012

12226/12

**PE 327
COMER 168
RELEX 639**

NOTE

from:	General Secretariat of the Council
to:	Delegations
Subject:	European Parliament plenary meeting of 3 July 2012 Anti-Counterfeiting Trade Agreement between the EU and its Member States, Australia, Canada, Japan, the Republic of Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the USA (ACTA)

During a debate with many blue cards that lasted almost three hours, the majority of political groups supported the rejection of ACTA, whereas the EPP and ECR groups advocated deferring the vote. However, a limited number of speakers from both sides expressed dissenting opinions.

The rapporteur, Mr. MARTIN, recalled the long and exhaustive consultation process he had had on the agreement and explained the reasons why he was recommending withholding consent to ACTA. He said that he was not criticising the objectives of ACTA but considered that substantive problems such as the policing of the Internet by service providers, the definition of "commercial scale" and disproportionate sanctions led him to recommend strongly that ACTA be rejected.

Commissioner DE GUCHT delivered the speech in Annex I calling for a deferral of the vote.

Mr. ZAHRADIL (ECR), speaking on behalf of DEVE, said that he was in a difficult position since personally he would favour deferring the vote but the majority in DEVE had decided otherwise.

For ITRE, Ms. ANDERDOTTER (Greens) said that the rejection of ACTA should be considered a victory for democracy, but questioned how trust in politicians could be linked with concern for citizens.

Ms. REGNER (S&D), speaking for JURI, stated that whereas the objectives of ACTA were sound, the agreement was lacking in clarity and transparency.

For LIBE, Mr. DROUTSAS (S&D) considered that rights holders were entitled to a high level of protection but this should not entail infringing fundamental freedoms. The rejection of ACTA would be the beginning of a new debate on IPR protection in the digital age.

Mr. FJELLNER, speaking for EPP, said that international cooperation was needed to defend EU interests against anti-competitive behaviour and considered that a vote before the opinion of the ECJ irresponsible behaviour. He also claimed that voting against ACTA would weaken the EU's position in international trade negotiations.

Mr. LANGE for S&D, said that the vote on ACTA was a political rather than a legal issue since the agreement was not the appropriate instrument to enforce IPR: most counterfeiting countries were not part of the agreement and simply transferring the rules of the analogue world to the digital one would not work .

Mr. RINALDI on behalf of ALDE recalled that the EP had asked the Commission to withhold signature of the agreement until a serious impact assessment had been carried out and a public consultation held . The Commission had not followed up this suggestion and public opinion and even economic operators had turned against it.

Mr. ALBRECHT, for the Greens, said that the Commission had ignored the EP, that the agreement left too much room for interpretation and that the sanctions were disproportionate.

Mr. KAMALL, for ECR, considered that the major concern, i.e. infringements of fundamental rights, would be addressed in the ECJ opinion. He recalled that in the past most political groups had favoured an ECJ consultation but were now eager to reject ACTA. Since the ECJ was a major driver of EU integration, he suggested deferring the vote and waiting for the opinion of this authoritative body.

For GUE, Mr. SCHOLZ said that ACTA was a threat to the digital world which had brought democracy to several countries; the EP had called many times for more transparency during the negotiations but this had not followed up by the Commission. He called for a new debate on digital property.

Mr. CYMANSKI, for EFD, referred to the massive public opposition to ACTA, involving many young people. He criticised the lack of public consultation which undermined the trust in European institutions.

Ms. LE PEN (NI) called ACTA a coercive instrument at the service of powerful private undertakings. She considered the opening of borders as a factor which reduced the EU's competitiveness.

In the subsequent debate, Members mainly repeated the arguments already put forward by the speakers on behalf of their political groups. Mr. CASPARY (EPP) claimed that many Members of other groups shared the EPP view that the vote should be deferred but were under group pressure. Mr. BATTEN (ECR) said that he was worried about the criminalisation of infringements. Ms. GALLO (EPP) called for a vote in favour of ACTA as a way of supporting the EU economy, saying that the power of the pressure groups should be ignored. Mr. SALVINI considered ACTA a waste of time since 95 % of counterfeiting would not be covered. Ms. SCHAAKE (ALDE) referred to the concerns of millions of people but said that the rejection of ACTA also required a responsibility for creating an appropriate legislative framework for the digital era. Together with others, Mr. GOERENS (ALDE) requested that the EP be involved from the start of any new negotiations. Ms. CASTEX (S&D) considered the rejection of ACTA to be a failure of the Commission's working methods. Likewise, Mr. SIWIEC (S&D) said that the rejection of ACTA was the result of negotiations behind closed doors and the fact that national governments were also now turning their backs on the agreement should be seen as a victory for democracy.

Commissioner DE GUCHT replied at length to the comments from Members. Since he had taken up the Agreement, he had been constantly in contact with the EP and had put pressure on the other negotiating partners to be more transparent. The most recent formal EP decision on ACTA (which was favourable) dated back to November 2010. The opinion of the ECJ could not have been requested earlier since the text had not been finalised. He also noted that the Greens had proposed seeking the opinion of the ECJ in the past. The reason why countries such as China and India were

not included in the agreement was that these countries were simply not interested. As regard sanctions he said that this chapter had been negotiated by Member States, only and not by the Commission. On the role of internet service providers, he informed the plenary that recent ECJ case- law prohibited the imposition of general monitoring measures. Equally, case- law required sufficient evidence to clarify the contested definition of "commercial scale"; nevertheless, the Commissioner admitted that for the public the concept may not be clear.

The rapporteur, Mr. MARTIN, concluded by voicing his concern at the fact that some considered listening to the lobbyist the right way forward, whereas listening to the citizens was considered to be populist. He stated that he favoured rewarding and protecting rights holders but ACTA was not the right instrument for achieving the best outcome.

The next day the plenary followed the recommendation of the rapporteur to decline to give its consent to conclusion of the agreement. 39 votes were in favour of consent, 478 votes were against and there were 165 abstentions.

CHECK AGAINST DELIVERY

– Madam President, honourable Members, tomorrow, you will have to make a choice. It is an important choice for at least two reasons. Firstly, because the debate over the Anti-Counterfeiting Trade Agreement has involved much discussion of its relationship with the fundamental rights and freedoms of European citizens. Secondly, because of the signal this vote will send to our trading partners and to the more than 120 million workers that work in Europe’s innovative, manufacturing and creative sectors. They are dependent for their livelihoods on the effective enforcement of intellectual property rights, in Europe and across the rest of the world.

The Commission has asked the European Court of Justice for its opinion on whether the Anti-Counterfeiting Trade Agreement is compatible with the treaties and, in particular, with our Charter of Fundamental Rights. We have done this because these questions are crucial for those who took to the streets over ACTA earlier this year. We share their view that these concerns must be addressed. That is why the ACTA agreement should be the subject of the most careful scrutiny and deliberation.

In this respect, I believe that it would have been preferable for Parliament to wait until we know what the Court thinks before voting. But that is not where we are today. Tomorrow you will only be able to choose to vote ‘yes’ or ‘no’ to the agreement. Let me then just say that my considered view, as a lifelong supporter of human rights and fundamental freedoms, is that there is nothing to fear in this agreement.

ACTA is not an attack on our liberties, it is a defence of our livelihoods. This is because we do not have to modify any part of our internal legislation, the so-called *acquis communautaire*. What is legal today in the European Union will remain legal once ACTA is ratified. And what is illegal today will still remain illegal with ACTA. Nothing changes in the eyes of the law. And since our freedoms are not threatened by our current laws, our freedoms will not be threatened by ACTA. This is also – I might add – the view of the European Parliament’s own Legal Service. I hope that you will bear these considerations in mind.

Economic consequences are the second reason the vote is important. We all agree that counterfeiting and piracy are a serious problem. They risk undermining one of Europe's most significant competitive advantages over other regions of the world, namely our knowledge-based and creative industries. ACTA is designed to extend the tools for enforcement of intellectual property rights that have been so successful in Europe – and which this Parliament has always supported – to other countries as well. No more. No less.

So, as you come to make your choice about how to vote tomorrow, you should also make no mistake: a vote against ACTA will be a setback for the protection of our intellectual property rights around the world. Neither are there any quick fixes for its rejection. Those who think that we can come back any time soon with a revised agreement or with a new treaty have been misled. What is true is that, if Parliament votes this treaty down, the Commission will continue to wait for the opinion of the Court and study it closely. Why? Because citizens have raised concerns over its potential impact on fundamental rights, because many of you have raised similar questions – so let us get some answers.

I consider it my obligation, my responsibility as European Commissioner – indeed the responsibility of us all – to ask for clarity from Europe's highest court. Furthermore, we will also look at how the debate on intellectual property rights evolves over the coming months. There are legitimate issues to be discussed and clarified about some rules on intellectual property rights in the digital environment. For instance, the definition of 'commercial scale' and what sharing information means in relation to the challenges one faces with respect to the protection of intellectual property.

I hope that these discussions will be able to happen in their proper context – which is in debates about the substantive law of the European Union, not about international enforcement.

Besides the European Parliament, the Commission would also discuss the outcome of the Court referral with other signatories of ACTA and would then consider further steps to take.

As Europeans, I believe that we all share profound respect for individual freedom. But I also know that freedom needs a framework. What we are doing both with ACTA and with European legislation is making sure that the framework strikes the right balance. It is a delicate task and we must proceed carefully.