



## ACTA before the European Parliament

# Background

**The Anti-Counterfeiting Trade Agreement (ACTA) was rejected by the European Parliament on 4 July 2012, by 478 votes to 39, with 165 abstentions. Parliament could not amend the ACTA, but only approve or reject it. Its rejection means that neither the EU nor its individual member states can join the agreement.**

Under EU Treaty articles 207 and 218, most international agreements need Parliament's consent to enter into force. Equally, all EU countries need to ratify them.

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# Background

## What were Parliament's options?

Parliament had previously asked the Commission to make ACTA documents public and enhance MEPs' role in negotiating the contents. Once the final version of ACTA was agreed, Parliament could not alter it, but only approve or block it.

In the event, Parliament declined to give its consent to ACTA, which means the entire EU stays out of the agreement.

Three other scenarios were possible:

1. Parliament could have given its consent. The Council would then have taken a decision to conclude the agreement. In this case all member states would still have had to ratify for the agreement to come into force.
2. Parliament could have refrained from replying. Legally, there was no deadline for a response.
3. Parliament could have referred ACTA to the European Court of Justice (ECJ). If it had done so, then the vote on Parliament's consent would have been postponed until the Court had delivered its opinion.

The European Commission announced on 22 February that it intended to refer ACTA to the ECJ, in order "to assess whether ACTA is incompatible - in any way - with the EU's fundamental rights and freedoms".

# Background

## What is ACTA?

The stated aim of the Anti-Counterfeiting Trade Agreement (ACTA) is to combat Intellectual Property Rights (IPRs) infringements, namely counterfeiting and piracy, by enhancing international cooperation and enforcement.

ACTA is intended to accelerate IPR enforcement, and make it more effective, so as to counter growth in counterfeiting and piracy. In 2005, the OECD estimated that international trade in counterfeit/pirated products amounts to USD 200 billion, excluding digital products.

ACTA was negotiated between the EU and its Member States, the US, Australia, Canada, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea and Switzerland. Once the agreement has entered in force, any member of the World Trade Organisation (WTO) may apply to join.

# Background

## What does ACTA say?

ACTA lays down an international legal framework for enforcing existing IPRs, targeting counterfeit goods and copyright infringements on the Internet. It lays down obligatory and voluntary enforcement measures to be adopted by countries that have joined the agreement. In this regard it can be compared to an EU directive — it has to be "transposed" into national/EU legislation. As far as the EU is concerned, ACTA is a mixed agreement — it contains different sets of provisions, which fall partly under EU exclusive competence and partly under shared EU/member state competence.

# Background

## How will ACTA come into force?

ACTA was signed on 1 October 2011 by Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea and the United States. They were joined on 26 January 2012 in Tokyo by representatives of 22 EU member states (Cyprus, Estonia, Slovakia, Germany and the Netherlands were “expected to do so on the completion of their respective domestic procedures”) and representatives of the EU as such. However, the signatures need to be followed by ratification for ACTA to enter into force.

Ratification by six parties to the negotiations is sufficient for the agreement to come into force. The EU is considered to be a single negotiating party.

# Background

## Steps to rejection

Parliament rejected ACTA on 4 July, which means that it is dead so far as the EU is concerned. In so doing, it followed its International Trade Committee, which recommended on 21 June, by 19 votes to 12 with no abstentions, that Parliament should indeed reject it.

Four other committees had also delivered opinions suggesting that ACTA should be rejected : the Industry, Research and Energy Committee (rapporteur Amelia Andersdotter, Greens, SE), the Legal Affairs Committee (rapporteur Evelyn Regner S&D, AT), the Civil Liberties, Justice and Home Affairs Committee (rapporteur Dimitrios Droutsas S&D, EL) and the Development Committee (rapporteur Eva Joly, Greens, FR).

On 19 June the Petitions Committee debated 5 petitions from citizens calling on MEPs to reject ACTA, one signed by over 2.8 million people from all over the world. The 5 petitions were kept open, meaning that citizens will continue to have a clear means to appeal if they feel that ACTA does not comply with EU law.

On 25 April 2012 David Martin, the MEP responsible for steering ACTA dossier through Parliament, presented his recommendation for the European Parliament to reject ACTA. He referred to concerns of unintended consequences of the ACTA, text specifically on individual criminalisation, the definition of "commercial scale", the role of internet service providers and possible interruptions in the supply of generic medicines.

"The intended benefits of this international agreement are far outweighed by the potential threats to civil liberties. Given the vagueness of certain aspects of the text and the uncertainty over its interpretation, the European Parliament cannot guarantee adequate protection for citizens' rights in the future under ACTA. Your rapporteur therefore recommends that the European Parliament declines to give consent to ACTA", he said.