



Everything you need to know about ACTA

Focus

The Parliament played a crucial role in deciding the fate the of Anti-Counterfeiting Trade Agreement (ACTA), which proved to be controversial from the start. On 4 July 2012, 478 MEPs voted against ACTA, 39 in favour, and 165 abstained, meaning the agreement will not enter into force in the EU.

ACTA aimed to more effectively enforce intellectual property rights on an international level. Many developed countries worry that their economies suffer great damage due to counterfeiting and piracy. However, opponents were concerned that ACTA would have favoured large companies' interests at the expense of citizens' rights.

The European Commission referred ACTA to the European Court of Justice in May for a ruling on the agreement and asked Parliament to wait for its conclusions. However, Parliament decided to press ahead with its own scrutiny of the agreement. Five committees came out against the agreement while the petition committee received a petition against ACTA signed by nearly three million people. Here you will find everything you need to know about ACTA and how the Parliament came to a decision as well as useful links to relevant documents.

European Parliament rejects ACTA

The Anti-Counterfeiting Trade Agreement (ACTA), was rejected by the European Parliament on 4 July 2012, and hence cannot become law in the EU. This was the first time that Parliament exercised its Lisbon Treaty power to reject an international trade agreement. 478 MEPs voted against ACTA, 39 in favour, and 165 abstained.

"I am very pleased that Parliament has followed my recommendation to reject ACTA" said rapporteur David Martin (S&D, UK), after the vote, reiterating his concerns that the treaty is too vague, open to misinterpretation and could therefore jeopardise citizens' liberties. However, he also stressed the need to find alternative ways to protect intellectual property in the EU, as the "raw material of the EU economy".

The EPP's key ACTA advocate, Christofer Fjellner (EPP, SE), asked before the vote that Parliament should delay its final vote until the European Court of Justice has ruled on whether ACTA is compatible with the EU treaties. However, when a majority of MEPs rejected this request, a substantial minority responded by abstaining in the vote on Parliament's consent.

While debating whether to give its consent to ACTA, Parliament experienced unprecedented direct lobbying by thousands of EU citizens who called on it to reject ACTA, in street demonstrations, e-mails to MEPs and calls to their offices. Parliament also received a petition, signed by 2.8 million citizens worldwide, urging it to reject the agreement.

ACTA was negotiated by the EU and its member states, the US, Australia, Canada, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea and Switzerland to improve the enforcement of anti-counterfeiting law internationally. Wednesday's vote means that neither the EU nor its individual member states can join the agreement.

Procedure: Consent

ACTA debate: MEPs disagree about the best way forward

Although most MEPs rejected ACTA on Wednesday 4 July, some of them believed it would have been better to postpone the vote. The Commission asked the European Court of Justice in May to check the agreement does not violate European legislation. Some MEPs argued it would be better to wait for the Court's ruling, while others said there was no need as they felt there were already sufficient grounds for a rejection. We asked two MEPs about their position on ACTA.

Amelia Andersdotter, a Swedish Pirate Party member of the Greens/European Free Alliance group in Parliament

It's fundamentally a bad idea to outsource the rule of law to private companies. If the state feels that duties must be put on private parties to ensure any rights granted by the government, surely it should feel obliged to regulate the private parties directly? This is a real and tangible risk to the freedom of expression, opinion and creativity. This is the first objection to ACTA and an important one too.

It seems counter-intuitive to have such a strong push for the criminalisation of infringements. The broad range of activities which would be covered by the criminal provisions of ACTA include activities which for a large part of the European population would be seen as perfectly reasonable and socially acceptable. Criminalisation is the punishment we use for activities that are deemed socially unacceptable.

The injunction scheme introduced is seen as harmful to trade in generic medicines, which in many cases do not infringe on any rights in either origin or destination market. When customs authorities get an overly broad mandate, it also increases the risk of wrongful seizures of imports into the Union. Since the ensuing court cases are very time consuming and financially burdensome for the accused party, it effectively does not matter if the accusation was made in error since the opportunity to defend one's innocence is too small.

I want a balanced European policy for entrepreneurship and civil liberties. This is why I reject ACTA.

Christofer Fjellner, a Swedish moderate member of the EPP group in Parliament

I'm convinced that we do need an international agreement to fight counterfeiting, piracy and other violations against intellectual property. This is of the utmost importance for European innovation and jobs. ACTA has been surrounded by controversy from the start, the closed process has been rightly criticised. The EU, the Parliament and myself were all at the fore of this. Because of this, we now have access to the most comprehensive documentation of any trade negotiation I've ever been involved in. Despite this, the agreement has faced continuous criticism and has also been the subject of many demonstrations both in member states and on the internet. Believe me, this is a very serious issue for me. I have worked long to protect freedom on the internet and will continue to do so. I would never vote yes to a proposal that in any way endangers the freedom we take for granted, nor would the EPP. This is why I believe it is so important that we await the ruling of the court. This way, we would have legal guarantees that ACTA is not in violation of any of the treaties or the basic human rights. We must also give the Commission the time to clarify and better define two key points: what is meant by commercial scale and criminal sanctions. If the Court's opinion is that ACTA is incompatible with the treaty, that would provide us with some very useful information too about what went wrong so it can be changed for future contracts. This is why we should give the Court the opportunity to decide whether ACTA is the way forward to achieve what we need.

David Martin on ACTA: law negotiated in secret is usually bad law

The controversial ACTA agreement was rejected by the Parliament on 4 July, meaning it will not enter into force in the EU. British Labour MEP David Martin, who was responsible for steering the text through Parliament, asked MEPs to turn it down in his recommendation. We spoke to him before the vote took place about ACTA, lessons to be learnt and possible next steps.

How do you interpret the international trade committee voting in favour of rejection?

When it comes to a vote between commercial interests and civil liberties, the Parliament will always come down on the side of civil liberties. There was no-one against the idea of the EU defending its intellectual property. The debate was whether ACTA was the right vehicle to do that and the clear conclusion of the vote is that it is not.

What lessons can we learn from ACTA when negotiating a new international treaty on intellectual property?

It should be as open as possible. Law negotiated and pushed through in secret is usually bad law. Also the Commission needs to keep Parliament fully informed of each round of negotiations on trade matters and listen to what we are saying on each subject. When the European Parliament found out that the three strikes rule was potentially being included, we made it very clear that this would be unacceptable and that was dropped from the negotiations.

Had we been involved earlier, they might also have thought of having separate agreements for physical goods and virtual goods. If they had done that, then the one on physical goods would have gone through the Parliament with virtually no comment. Nobody accepts fraudulent medicines or fake Gucci bags coming into the EU. But the freedom of the internet was a much more sensitive issue.

What would have been the benefits and disadvantages of Parliament waiting for the ruling from the European Court of Justice on ACTA?

If you are in favour of ACTA, then it is a very rational thing to do. But if you're against ACTA, there is no point waiting for the ruling, because no matter what the court says, your position doesn't change.

What do you think of trade commissioner Karel De Gucht's suggestion to send ACTA back to Parliament with clarifications once there is a court ruling on the agreement?

Karel De Gucht is also a very eminent lawyer, so I was a little bit puzzled by his comments. No assurances the Commission could give to the Parliament would change a legal text.

ACTA: five parliamentary committees came out against controversial agreement

Five parliamentary committees came out against ACTA. The legal affairs committee voted against a draft opinion recommending approval, while the industry committee and the civil liberties committees approved reports recommending rejection. On 4 June the development committee also voted in favour of rejecting ACTA. Finally, the international trade committee, which was leading on ACTA, recommended MEPs to reject the agreement.

Parliament

In order for ACTA to enter into force in the EU, it had to be approved by the Parliament and the Council as well as ratified by all member states.

MEPs voted on ACTA on 4 July 2012, based on a recommendation by the international trade committee. Although this committee was in charge of the dossier, it was given input by four other committees, namely the ones dedicated to legal affairs, civil liberties, industry and development.

British Social-Democrat David Martin, who was responsible for steering the agreement through Parliament, called on his fellow MEPs to reject the agreement in his report. The international trade committee approved the report on 21 June.

Commission position

The European Commission is calling for ACTA to be approved. On 10 May it referred the agreement to the European Court of Justice for a ruling on whether it is compatible with the EU's fundamental rights and freedoms. It also asked the Parliament to wait with voting on ACTA until there was a ruling.

About ACTA

ACTA is aimed at more effectively enforcing intellectual property rights on an international level. Many developed countries worry that their economies suffer great damage due to counterfeiting and piracy. However, opponents are concerned that it will favour large companies' interests at the expense of citizens' rights. They also deplore the secrecy of the negotiations.

ACTA: experts reveal how it could affect civil liberties and access to generic medicine

Does ACTA pose a threat to civil liberties and developing countries' access to generic medicine? Many people oppose the controversial anti-counterfeiting agreement because of concerns over these two issues. MEPs staged a special workshop on 1 March to grill experts about their insights into ACTA. Find out how they think the treaty would have affected civil liberties and access to generic medicine.

Civil rights

Dr Olivier Vrins, of Altius Lawyers, said ACTA states that its provisions should be transposed with respect to fundamental rights such as freedom of expression and freedom to have a fair trial. "Fundamental rights of European citizens are not in serious danger because of ACTA. The idea of proportionality is particularly important because it is applied as well by the European Court of Human Rights when balancing out various fundamental rights which might be in conflict, here the right on property on the one hand and on the other the right of protection of private life, freedom of speech and freedom of access to information. This preservation of fundamental rights means that not only that people would be able to say that certain acts do not infringe intellectual property, but parties must foresee certain exceptions and limits to intellectual property."

Rupert Schlegelmilch, of the European Commission's directorate-general for trade, said that the Commission took concerns over civil rights extremely seriously, but there was no real reason to be worried. "Intellectual property is property but it's not property only. Privacy and access to the net are just as important. We believe the treaty strikes a fair balance in that respect. ACTA does not impose a new standard. What will be imposed is what we have. Nothing new will be enforced. What is legal is legal, what is illegal is illegal. ACTA is just about making sure that people do something about it."

Generic medicine

Dr Meir Pugatch, of the University of Haifa, argued that ACTA would not have an impact on access to generic medicine, as the agreement does not cover patents. "I think that we already have the necessary safeguards today to ensure access to generic medicines, and therefore I don't think ACTA poses any serious concern, nor does it create a serious contribution to the issue. The problem is counterfeited medicines and substandard medicines. If you end up using counterfeited medicine or substandard medicine, it could seriously damage your health. Those who suffer the most from substandard medicines and counterfeited medicines are poor populations."

Commission representative Mr Schlegelmilch later added: "Developing countries will be able to continue to buy the generic medicines that they need just as before."

However, the British Social Democrat David Martin, who was responsible for steering ACTA through Parliament, said many questions still remained about how the treaty would have affected access to generic medicine. "What we don't know is how border agencies will be asked to define counterfeit medicine as opposed to generic medicine, especially when many of these medicines that arrive at the frontier are packaged and labelled similarly to the original medicine. How will this operate?"

Mr Martin said the workshop showed there was a need for more information, which is why it would have been good for the European Court of Justice to give a ruling on questions to be prepared by Parliament. "There is an English expression where we say the devil is in the detail. The problem with ACTA is that the devil is in the lack of details. We don't have enough information on many of the areas where in the end we will have to make a judgment on."

ACTA: MEPs want clarity before taking a decision

International Trade Committee MEPs from all political groups wanted to know more about how the Anti-Counterfeiting Trade Agreement (ACTA) would be enforced before advising Parliament as a whole on whether or not to approve it, it emerged from the committee's first debate on it in early 2012. David Martin (S&D, UK), who would later draft the committee's recommendation, asked the committee during this meeting to back his plan to refer ACTA to the European Court of Justice, for a ruling on questions to be prepared by Parliament.

Mr Martin suggested that while the Court of Justice referral is being prepared, the time set aside for Parliament's assent to ACTA should instead be used to prepare an interim report setting out questions to the European Commission and EU Member States on how it is to be enforced. He stressed that Parliament should prepare its own questions, rather than simply associating itself with the European Commission's parallel referral of ACTA to the court.

Examples could include questions about how border control agencies would be expected to deal with counterfeit imports, or whether internet service providers would have to enforce ACTA against users, and if so what legislation would require them to do so.

Protecting intellectual property rights

"We have critical interest in defending EU intellectual property and we need to act in this regard", said Mr Martin, stressing that "it is not the intentions of ACTA that raise concerns but its possible unintentional consequences. ACTA lacks detail. The main concern is how the text might be read".

For example, "There is no 'three strikes' rule in ACTA, but we do not know how internet service providers will interpret the tasks given to them and if they will feel that they have the duty to cut people off the internet".

"What I plan to do is bring about clarity on ACTA in the next year, to provide the facts for this Parliament to vote", Mr Martin declared, adding that in the coming weeks he planned to meet as many civil society representatives as possible to discuss citizens' concerns while drafting his interim report.

Not just a trade deal

The EPP group's shadow rapporteur on ACTA, Christofer Fjellner (SE) agreed that Parliament must now scrutinize the ACTA text in detail. "It's not the trade deal that changes citizens' everyday lives but the legislation that enforces it", he told Trade Commissioner Karel De Gucht, adding "I've heard from the Commission and Member States that there will not be a big change in legislation. I will not take your word for it. We need to scrutinize it".

Mr Martin's position was also welcomed also by Parliament's former rapporteur on ACTA, Kader Arif, who had resigned accusing Parliament of orchestrating a "masquerade" on the ACTA case. "Today I am very happy to see my colleagues thinking differently, Parliament's transparency, openness to public and the direction the ACTA case is taking in Parliament", he said.

Robert Sturdy (ECR, UK) backed the European Commission's decision to refer ACTA to the European Court of Justice.

ACTA lacks transparency

Mr Martin and other speakers objected to the "lack of transparency" in the ACTA negotiations to date and reiterated Parliament's many requests to be more closely involved, and not merely left with the option of accepting or rejecting the existing text.

French Green Yannick Jadot complained that "procedural excuses" had been used to avoid involving Parliament, and noted that MEPs had learned of the Commission decision to refer ACTA to the Court of Justice from the press. "I'm not sure that this is in line with our inter-institutional agreement with the Commission", he said.

Swedish Green Carl Schlyter complained that emerging economies were not involved in ACTA negotiations, noting that 95% of all counterfeiting takes place in countries that will not be affected by ACTA. He also observed that if the aim now was to spread ACTA via bilateral agreements with countries not yet party to it, this would not be a democratic way to influence other countries.

Helmut Scholz (GUE/NGL, DE), also noted that the countries where most piracy takes place are outside ACTA and insisted that it should be tackled through existing international structures instead. "Globalization raises different challenges and ACTA is the wrong way to handle things", he said.

Civil society protests

Several MEPs said the Commission must accept its share of responsibility for civil society protests against ACTA, since it had not kept people properly informed of the progress of negotiations. "The lack of transparency has created a lot of mistrust. This might be a lesson to the future. We need to change things", said Mr Fjellner.

Metin Kazak (ALDE, BG), said that in many Member States, these protests had prompted governments to "give up". "Both in the ACTA text and also in communication about it there are many cumbersome words and phrases - that something will perhaps happen or may happen. In such circumstances you have to expect citizens to be afraid from the possible consequences", he said.

Inese Vaidere (EPP, LV), said the Commission had done too little to explain ACTA's benefits, even though there was much to be explained, such as the definitions of terms "counterfeiting" or "commercial scale". "Now it may already be too late. I fear that we don't have much chance of reviving ACTA. The Commission has not done its job", she said.

Committee chair Vital Moreira (S&D, PT), defended ACTA on the grounds that intellectual property rights are vital to Europe's ability to innovate and compete. He was sure that properly interpreted, ACTA would not threaten fundamental freedoms.

No ACTA enforcement without Parliament's consent

Commissioner De Gucht replied that any substantive laws passed to enforce ACTA would be the responsibility of Parliament and Member States.

"ACTA cannot be changed into substantive law without Parliament's consent. You are also responsible for that" he said, suggesting that Parliament should pay more attention to Member States' laws that threaten fundamental freedoms.

"The so called 'three strikes' rule is effective in French law and that is a law that was passed to implement EU directives. On the contrary, ACTA explicitly states that you can not impose anything similar to three-strikes rule on the international level", he said.

Commissioner De Gucht reiterated his view that referring ACTA to the European Court of Justice would be the right decision, as "our responsibility as politicians is to establish the facts and not follow the crowd" and the "Court will provide much needed clarity on our concerns".

Parliament has received 2.4 million petition signatures against ACTA

The EP received a petition signed by more than 2.4 million internet users against the Anti-Counterfeiting Trade Agreement (ACTA). They fear that the agreement will pose a threat to a free and open internet. The petition was organised by Avaaz, an organisation which uses internet to campaign on various issues.

The petitions committee works to resolve infringements of citizens' rights through cooperation with local, regional and national authorities on the application of EU law on a range of issues. It is an investigative committee and has no legal power, but tries to find non-judicial remedies for citizens whose claims are substantiated. It can organise fact-finding visits and report to plenary.

ACTA is aimed at more effectively enforcing intellectual property rights on an international level. It has proved controversial because critics worry the agreement would favour the interests of large companies at the expense of citizens' rights and see its possible application in the online sphere as a threat to people's privacy and human rights.

As the Parliament rejected it on 4 July 2012, it cannot enter into force in the EU.

Text of the petition:

- "To all Members of the EU Parliament: As concerned global citizens, we call on you to stand for a free and open Internet and reject the ratification of the Anti-Counterfeiting Trade Agreement (ACTA), which would destroy it. The Internet is a crucial tool for people around the world to exchange ideas and promote democracy. We urge you to show true global leadership and protect our rights."

Vital Moreira on ACTA: "what was allowed will be allowed"

A week after ACTA was signed by 22 EU countries and EU representatives, we spoke to the chair of the Parliament's international trade committee, Vital Moreira, about the agreement. At this time it was not known yet how the Parliament would vote on it.

What is ACTA?

It's an agreement meant to enforce the means and mechanisms to protect intellectual property rights such as copyrights, patents, geographic indications, brands, industrial design rights - it is not aimed at redefining the scope of that protection. There is a World Trade Organisation (WTO) convention called TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) that the EU and all its member states have signed up to establishing the scope and content of those rights, which foresees enforcement rules.

ACTA simply involves an update of the means, mechanisms and remedies to protect intellectual property rights. That's also the purpose of the existing EU directive, comprising a minimum set of means to protect intellectual property rights. ACTA is a multilateral agreement between some developed economies including the EU, the US and Japan, but also less-developed economies such as Mexico and Morocco, aimed at reinforcing, between those states, the enforcement of intellectual property rights. It does not change the content, everything that was allowed continues to be allowed, everything that was forbidden keeps on being forbidden. It is about being more effective when it comes to infringements of intellectual property rights.

Why is it so controversial?

The sensitiveness of the issue concerns a small part of the agreement, regarding copyright on the internet, the download of music, literature, theatre and music shows, as well as other works protected by copyright. Many of the arguments used are not foreseen in ACTA. For example, download for private use was not forbidden and is not forbidden, what is forbidden is the infringement of copyright for commercial purposes.

Can the EP change the content of ACTA?

This is an international agreement and so the consent of the EP is necessary, but it cannot change the text of the agreement, it can only say "yes" or "no" to it. As this agreement has raised legal problems, the EP can ask the EU's Court of Justice to decide on its compatibility with EU law if a committee votes to do so. A political group or number of MEP's can also make that request. If it is referred to the Court, the parliamentary procedure will be suspended until the Court rules. Other committees will also have a say, including the Civil Liberties, Legal Affairs, Development and Industry committees.

What happens if the agreement is rejected?

If we say yes, the Council is authorised to conclude the agreement and make it binding between the EU and the other member countries. If we say no, the process is over and the treaty is dead. It can be renegotiated, but this one is dead. For a new agreement it would be necessary to start a new procedure, from the Commission proposal to the mandate of the Council, negotiations, signature, etc. In the past the Parliament said no to two agreements: SWIFT and the fisheries agreement with Morocco.

How can citizens express their opinion on the agreement?

The proposal for the text is already available on our website and an assessment on ACTA prepared for the parliament is also online.

Our debates are streamed and can be followed live online. On 1 March, there will be a workshop in which everyone can take part. Trade Commissioner Karel De Gucht will be there. Some of the political groups, particularly those against ACTA, are promoting debates on their websites. Citizens have already started flooding MEPs with hundreds if not thousands of emails. All the problems raised concerning the agreement will be debated, not only in the trade committee but also in plenary.

What you should know about ACTA

ACTA, a controversial agreement about counterfeiting and online copyright infringements, had been signed by about 30 countries when the Parliament rejected the agreement on 4 July 2012. But what is ACTA all about? What did it seek to achieve? Why did it provoke protests from groups across the world? How did the Parliament come to a decision? Find out more in this briefing.

What is ACTA about?

The Anti-Counterfeiting Trade Agreement (ACTA) was aimed at more effectively enforcing intellectual property rights on an international level. Many countries are worried that their economies suffer great damage due to counterfeiting and piracy. OECD estimated in 2005 that international trade in counterfeit and pirated products amounted to \$200 billion, excluding digital products.

What would have been covered by it?

Anything from counterfeit goods to copyright infringements on the internet.

Who takes part in ACTA?

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 is in force, any member of the World Trade Organisation can apply to join.

Why is it controversial?

Critics worry the agreement would favour the interests of large companies at the expense of citizens' rights and see its possible application in the online sphere as a threat to people's privacy and human rights. In addition the negotiations have been denounced for a perceived lack of transparency as civil society groups and developing countries have not been involved.

Which countries have already signed it?

In the EU it had been signed by all member states except Cyprus, Estonia, Slovakia, Germany and the Netherlands. Outside the EU it has already been signed by Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea and the US.

Why was the role of the European Parliament crucial?

ACTA could not enter into force in the EU unless the Parliament approved it. Since the Lisbon Treaty, the Parliament has the right to veto most of the international agreements concluded by the EU.

What options were available to the European Parliament?

The Parliament was not able to make any changes to it, being formally empowered to either approve or reject it.

The European Commission referred ACTA to the European Court of Justice in May for a ruling on the agreement. However, Parliament decided to continue its own scrutiny of the agreement rather than wait for the Court's conclusions.

How did the European Parliament come to a decision?

The European Parliament is committed to doing everything in the open and actively encourages people to engage in the process, consult its documents or follow the meetings, which are mainly broadcast live on its website.

The preparatory work was done by the parliamentary committees. The committee on international trade was in charge and as such came up with a recommendation for the Parliament to reject ACTA. British MEP David Martin, a member of the S&D group, was chosen by the committee to draft the position of the Parliament. However, there were four other committees which delivered their opinions on ACTA: the committee on industry, research and energy; the committee on legal affairs; the committee on civil liberties, justice and home affairs; and the committee on development. They spent several months talking to as many stakeholders and interested parties as possible in order to draw on their knowledge and expertise and come to an informed decision. All of their meetings were shown live on the

Parliament's website. Once the recommendation to MEPs was available, it was made publicly accessible. The Parliament voted on ACTA during the July plenary session, which people were able to follow live on the website.

What did the European Parliament said previously about ACTA?

There have been three resolutions to call on the Commission to make ACTA documents public and increase the Parliament's role in negotiating the content:

- a resolution on 11 March 2009 called on the Commission to "immediately make all documents related to the ongoing international negotiations on the ACTA publicly available"
- a resolution on 10 March 2010 rejected the secrecy around ACTA ("deplores the calculated choice of the parties not to negotiate through well-established international bodies, such as WIPO and WTO") ("expresses its concern over the lack of a transparent process in the conduct of the ACTA negotiations, a state of affairs at odds with the letter and spirit of the TFEU")
- a resolution on 24 November 2010 welcomes ACTA as a step in the right direction and calls on the Commission to confirm that it will have no impact on basic freedoms and existing legislation

What happens now that the European Parliament has rejected it?

ACTA will not enter into force in the EU. No agreement would be possible without the consent of the Parliament. However, if six countries outside the EU still ratify it then the agreement will enter into force there.