

A veto of the European Parliament against ACTA would be a way for MEPs to reassert themselves against member states.

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Recent months have seen protests across Europe against the Anti-Counterfeiting Trade Agreement (ACTA), which seeks to protect intellectual property. [Valentin Kreilinger](#) argues that the European Parliament now has an opportunity to take into account the views of Europe's citizens and veto the agreement, meaning that the agreement would have to be renegotiated.



At the end of March, the International Trade Committee of the European Parliament decided not to refer the Anti-Counterfeiting Trade Agreement (ACTA) to the Court of Justice, but to have the [plenary vote on the agreement as initially foreseen](#), probably in June 2012. ACTA's objective is to protect intellectual property against classical counterfeiting (clothing, pharmaceuticals) as well as digital counterfeiting (illegal downloads) on the basis of harmonized international norms. Contracting parties are Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea, the United States and the European Union.

[ACTA](#) was negotiated outside the World Trade Organization (traditionally the forum for these sorts of agreements) between 2007 and 2010. In early 2012, tens of thousands of people gathered in numerous European cities to protest against ACTA. Several Member States reacted by halting their national ratification procedures and the [European Commission asked the Court of Justice to issue an opinion](#). The European Parliament has veto power over the agreement and could prevent its entry-into-force.

The European Parliament can approve or not approve agreements like ACTA, it has a 'take it or leave it' option; International Agreements, for which co-decision or consent procedures apply to internal EU legislation, require the consent of the Parliament. According to the treaties, the Council:

shall adopt a decision concluding the agreement [...] after obtaining the consent of the European Parliament in the following cases [...] agreements covering a field to which the ordinary legislative procedure applies (Article 218(6) TFEU).

Consequently, post-Lisbon [a higher](#)

[number of International Agreements fall under the consent procedure.](#)

The Council decides by qualified majority or unanimous voting (as in the case of ACTA; see Article 207(4) TFEU for the provision concerning trade agreements). If an agreement is a 'mixed agreement' that covers competences at the national and European level, national parliaments must also ratify the agreement. Trade Commissioner [Karel De Gucht](#) [asked in 2010](#): 'Do we really need 27 additional national ratifications when the European Parliament can now exercise parliamentary scrutiny over these agreements?'



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In February 2010, the first version of the SWIFT agreement (Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program) was [rejected by the European Parliament](#). This vote – that took place two years ago – has three effects for ACTA:

- It makes the threat of a veto credible;
- It shows the main condition for a veto: the European Parliament must be hesitant for ideological reasons and prefer the status quo to the proposed International Agreement; and
- It proves that the European Parliament can obtain concessions when an agreement is renegotiated.

Whether a majority will actually withhold consent to ACTA depends on the position of the Liberals: If the Alliance of Liberals and Democrats for Europe (ALDE) votes with the centre-left, the agreement will probably fail. If ALDE votes with the centre-right, it will probably pass. Of course, there might also be significant defections from the political groups. Let us imagine a veto by the European Parliament: What would happen then? Can this multinational agreement be renegotiated? Each of the Contracting Parties has a couple of veto players; the European Union has about 55 (if we count two chambers of the national parliament per Member State and the European Parliament). One 'solution' might be to split the relatively uncontroversial part on classical counterfeiting into a separate agreement, but can any such agreement achieve its objectives, when countries like China are not Contracting Parties?

If ACTA has the objective to prevent counterfeiting across the world and across all sectors, it is difficult to understand why it was negotiated outside of the WTO and with only developed countries as contracting parties ([a couple of WTO members also expressed various concerns](#)). If the European Parliament wants to reassert itself against Member States that are increasingly acting in an intergovernmental way and not along the lines of the "Community method", this might be an occasion to demonstrate power. If the views of the citizens are taken into account in the EU, the anti-ACTA movement cannot be ignored. Three key reasons for the European Parliament not to approve the agreement, each a strong reason in and of itself.

In parallel with the legislative process, the European Parliament should engage in dialogue with national parliaments of EU member states and with other Contracting Parties – in order to prevent

being branded as the 'no' institution. Influence exercised in this way *before* the conclusion of agreements would help to avoid the situation of cases like SWIFT and ACTA in the future. The 2010 inter-institutional agreement between the Commission and the Parliament, which has been [contested by the Council](#), is not just a piece of paper! The Commission and the Council must recognise the powers of the European Parliament in day-to-day business.

This is now a case where the European Parliament faces a difficult choice: to harm the international 'actorness' of the EU, if it says no – or to harm the inter-institutional 'standing' of the Parliament in EU Foreign Policy making, if it bites the bullet. Both are long-term goals of the European Parliament, but veto power exists in order to be used.

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Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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