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ACTA - State of Play

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

1st Exchange of Views with the Committee for International Trade of the European Parliament

Brussels, 29 February 2012

Professor Moreira, Honourable Members, Ladies and Gentlemen,

If you've been reading the newspapers or following the debate on the internet you may believe that the Anti-Counterfeiting Trade Agreement means the end of democracy, the censorship of the internet and the restriction of access to life-saving AIDS medicines in developing countries.

I too have been following this debate. And I have been listening very carefully to the citizens who have taken to the streets to express concern about ACTA. Many citizens, across many European countries.

Now some of you may say that a million people can't be wrong. But when it comes to this issue, I think it is our responsibility as politicians to clarify misunderstandings and not go along with the crowd.

We must seek to establish common facts so we can have a meaningful conversation with those who have genuine fears.

I say this because I know that the nightmare vision of this agreement presented by some is not founded in reality. So my message to the people of Europe today is simple: ACTA is not an attack on your liberties; it is a defence of your livelihoods.

This is not 1984; this is 2012. ACTA is not about 'Big Brother'. ACTA is about solving our economic problems in 2012 and beyond. And in 2012 we have real economic problems that we must take action to solve.

ACTA is part of the solution.

Because -

Europe's future depends on us redefining our role in a new world economy;

Creativity and innovation are our most valuable assets;

Intellectual property rights are the means by which we harness their value for the benefit of growth and jobs;

And those rights mean nothing if they are not enforced.

Let me give you an example: I'm sure many, if not most of you, will have some kind of smartphone in your pockets or on the table. Well... A Nokia smartphone that I might buy in Brussels will very likely have been produced in China. But that is far from the whole story. In fact, it is less than half the story. More than 50% of the product's value will have been created in Europe by designers and engineers. Nokia's ability to secure the economic benefits from that value depends directly on the security of its trademarks, its design rights and its patent rights. If the work of its creative professionals can simply be copied, the benefits are lost, their jobs are lost and many of the jobs of their colleagues across the company are lost also.

Knowing this, we have built up a comprehensive system to protect intellectual property in Europe. We have outlined the rights that can be protected and the means to enforce them. We have also chosen to safeguard the rights of citizens to free speech and data protection as well as of internet service providers and other intermediaries who deal with protected goods. The European Court of Justice is the ultimate guardian of these safeguards and it has confirmed some of them just this month in a landmark ruling on monitoring of internet traffic.

What the European Union is trying to do with its partners in ACTA is to extend the benefits of this system beyond our borders. ACTA represents a small - but significant – first step towards stamping out the global counterfeiting and piracy industry. The most conservative estimates of the size of that global industry put it at €200 billion a year – and that estimate excludes all online copying and any copying where the product is sold in the country where it was produced, including China.

ACTA is an enforcement treaty. That means it does not cover the details of what is legal and what is illegal but it does address procedures for ensuring that what is illegal can be redressed. It deals with civil, criminal and border enforcement, sets out some basic principles for internet enforcement, and encourages international cooperation between 38 countries.

Honourable Members, on your recommendation, one of the main achievements of the European Union in this negotiation has been to ensure that ACTA has been very closely modelled on the European system. It takes up key provisions of the IPR Enforcement Directive of 2004, the Regulation on customs action against counterfeiting of 2003, the Information Society Directive of 2001 and the E-Commerce Directive of 2000. These directives lay down the law on what can and cannot be done in terms of protection of intellectual property in Europe.

In practice, this means that Europe will not need to make any change to our current legislation in order to comply with ACTA.

That means there will be no change whatsoever to the current balance of rights and safeguards for European citizens. But, of course, their ideas will be better protected around the world – ACTA spreads our level of protection to a wider sphere. This sphere, it is to be hoped, will be the basis for further expansion as more countries join.

That, in a nutshell, is what ACTA will do. I believe it is reason enough to ratify the agreement *today*.

However, given the public debate on this issue, I know that I also need to say something about what ACTA will *not* do.

Despite what you have heard or read,

ACTA will not censor the internet. By that I mean that it will not require monitoring of people's e-mails, their blogs or their file-sharing activities.

ACTA will not oblige the inspection of individual laptops or MP3 players by customs officials.

And ACTA will not impose any restrictions on trade in generic medicines. Let us not forget that WTO law protects trade in generic medicines in response to public health problems.

I believe that by the end of your careful democratic deliberations, you will reach the same conclusions as I have. I believe this, because my conclusions are based on what is written down clearly in the text of the agreement.

There are many misapprehensions, and I'm sure we will discuss them here today and certainly more in detail at tomorrow's workshop. But let me go through just one example, which I think is representative of the type of confusion we have seen.

Much ink, virtual and physical, has been spilled on the issue of disclosure of internet users' data. It is frequently alleged that this will lead to surveillance of individuals by private companies.

But if we look closely at the agreement, the picture becomes very different.

ACTA states that countries signing up *may* give their intellectual property enforcement authorities the power to compel an internet service provider to disclose personal data on subscriber accounts to rights holders, if the account is suspected of being used for infringement.

To understand the provision, let's first imagine a scenario where it might actually be used, if one of the ACTA signatories chose to put this in their domestic legislation.

Let's say a particular website is alleged to be profiting from giving unauthorised access to a copyrighted episode of a television series. If such a provision was in the law of an ACTA signatory, it would mean that the producer of the series could make a request to the competent court. It would request that the company that is hosting the website disclose the identity of the individual who is allegedly making money from their unauthorised dissemination.

But, for any action to be taken against that person, the copyright holder would have to either pursue them through the court for civil damages or report their action to the authorities for criminal prosecution, as you or I would report a stolen wallet or purse. No legal action would be taken against the person concerned without due process under our existing law.

But we must understand something else: this provision of ACTA is not even legally binding. International treaties do take precedence over European and national law in our legal order. But when an international treaty indicates that the signatories "may" take a particular course of action it does not mean that they have to take that course of action. In this provision, ACTA changes nothing about our freedom to make policy. The treaty is simply pointing out what some of its signatories consider to be best practice.

For us it simply means that if Europe were to take the democratic decision to allow courts to compel internet service providers to release personal data on infringing accounts it would be free to do so. In fact, we did so 12 years ago, in the E-commerce Directive. You can find it in Article 15(2) and it has been implemented by the Member States in a balanced and proportional way.

The reason for this balance and proportion is that European legislation provides, as I have said, a series of safeguards to protect the rights of individuals and internet service providers in this area. Just this month, as I said, the European Court of Justice upheld one of these safeguards against online surveillance in a landmark ruling in the SABAM vs. Netlog case. The court stated simply that service providers like Netlog - or Facebook or Google - cannot be obliged to monitor information distributed over their networks by individuals in order to check for rights violations. The ruling should remind us that we are in safe hands with the European Court of Justice, a point I will come back to later.

But I would first like to say a word on something that is behind much of the concern about this agreement but not always openly expressed.

I think it's probably fair to say that everyone in this room knows someone who, without paying for it, has downloaded onto their computer a song, an album or an episode of a television series.

I cannot, in good conscience, condone that action. I know there are some people who see this differently, young people in particular. But for me there is no moral difference between taking something that is not yours in the physical world and doing so in the virtual world. Illegal file sharing means money that should have gone to some of the most creative people in our society does not. It is a disincentive to their work.

Maybe some of you in the back of your mind are worried that the people you know may be subject to fines or jail as a result of ACTA. But *today's law* is quite specific here. Because to steal even an apple remains a crime that can be reported to the police. However, to share a song without paying for it, while strictly speaking illegal, is not a criminal offence. Damages may be awarded by a judge but there is no possibility of punitive action unless the activity were to be carried out at a *commercial scale*. This is why today, for example, the people behind and profiting from sites such as 'Megaupload' now find themselves in the spotlight of the law – and *not* the tens of thousands of end-users worldwide. This is common sense!

That will not change under ACTA. So if this is one of the reasons that you are having doubts, perhaps in the back of your mind, let me be clear: ACTA will not criminalise anything that is not already a crime. Thousands of young people will *not* be hauled before the courts because of it.

Before finishing, let me address the claims that this agreement is undemocratic.

ACTA does not delegate any EU or national powers to a shadowy international committee that is not accountable. First of all, the members of the Committee are the representatives of governments, including all of the Member States. Second, any amendments proposed by one of the governments or the Commission would have to pass through the full ratification process under the EU treaties. That means that you and the Member States' parliaments would have full democratic participation in the decision to accept or reject it.

The process of negotiating this agreement has been democratic as well. Parliament has been fully informed of the process all throughout the negotiation – even more so, I feel, since I have taken up this office. From the very moment I have taken on the responsibility for this file, I have urged the negotiating parties to disclose the drafts and that is what has happened. We have had extensive and useful conversations on the subject and you, honourable members of Parliament, have had access to all documents necessary to fully scrutinise the Commission's work as a negotiator.

I have ensured that your priorities – which I share, incidentally - have been taken on board in the process.

Let me give you three examples:

First, the Commission fought hard and secured the public release of the full negotiating text in April 2010.

Second, we heard your concerns about fundamental rights and privacy and ensured that the text makes no changes to current European protections in this area. On the contrary, it contains numerous safeguards ensuring that these matters will remain fully submitted to European legislation, starting with the Charter of Fundamental Rights.

And third, we have made sure that trade in legal generic medicines is fully protected. Patents – which are how companies protect new pharmaceutical inventions – are excluded from the criminal enforcement and border enforcement parts of ACTA. They are included in the civil enforcement chapter, like in our law, but the provision is optional and not binding on the signatories. Furthermore, the agreement contains a special reference to the Doha Declaration on Public Health, which protects trade in generic medicines.

I think we can all be pleased with the result we have achieved together - *You* in your role of democratically elected "watchdogs" and the *Commission* and *Member States* carrying out the negotiations.

Honourable Members,

I welcome the huge public interest that ACTA has generated. It is healthy that such a broad range of people engage in a public debate. But I have been disappointed at times with the lack of factual accuracy in some of the claims.

It is particularly disappointing as those claims touch on the foundations of our liberal democracy – freedom of expression and the role of democratically elected institutions. It is even more disappointing that some have chosen to support internet freedoms by launching cyber attacks on the website of this democratically elected Parliament and its national counterparts.

We must place the highest priority on guarding ourselves against real dangers to our political freedoms.

I am a lawyer by training, a liberal-democrat by conviction and a lifelong advocate of human rights and individual liberties. As a fairly young MEP, I contributed to the Spinelli Report, and I drafted the first tentative catalogue of human rights at the European institutions' level. It formed the basis of the European Parliament's Declaration of Fundamental Rights and Freedoms of 1989, which in turn helped inspire the Lisbon Treaty's Charter of Fundamental Rights.

To negotiate an agreement that would fundamentally harm some of these rights would, for me, be very much out of character.

I stand by the text that the Commission has proposed, that the Council has unanimously decided to sign and that you are looking at now.

But I also understand that my word alone may not be good enough for some.

This is why I recommended to my fellow Commissioners, who accepted my proposal, that we put ACTA before the European Court of Justice.

The Court will provide much needed clarity on our key concerns – which regard the fundamental rights and freedoms of European citizens. Their ruling should help support a calm, reasoned, open and democratic discussion on ACTA – a discussion we sorely need to have.

Because we need to move forward on this issue.

It may seem to some of you that the economic benefits of ACTA do not merit all this fuss but we do need proper protection of intellectual property rights.

It is a key part of our overall strategy for having trade deliver growth and jobs for the people of Europe. We live in a competitive age. If we don't protect our economic future then no one else will.

Honourable Members,

I urge you to consider this agreement favourably and look forward to discussing the details of it with you.