

Dear friends,

Due to unexpected traffic problems, I was not able to join you tonight to have a political discussion on the topic of the negotiations of the ACTA Treaty.¹ I therefore express my views in writing. Indeed, at the request of the Socialist group, the European Parliament is expected to adopt its third resolution or declaration on the topic.

1. The ACTA Treaty is a treaty to improve the enforcement by all parties (now 37 countries) of their legislation on intellectual property rights.

The negotiations started almost three years ago and ended late last week when the ACTA negotiators agreed on a package solution for the few outstanding issues that could not be addressed in their last meeting in Tokyo. This means that the text of the Agreement is now final. This final text is available since yesterday.

*2. My assessment is that **overall ACTA is a balanced and positive agreement**, that will bring improved international standards of Intellectual Property Rights enforcement.*

*It is **balanced** because it fully respects the rights of citizens and the concerns of important stakeholders such as consumers, internet providers and partners in developing countries. These are respected because the EU will not have to modify its legislation if and when it ratifies the ACTA Treaty. This is because the enforcement standards of our "Acquis communautaire" are higher than what we agreed in the ACTA Treaty.*

*It is also **positive** because it will help our European export businesses, of all sizes, to protect their inventions and intellectual property from violations - especially in the arts, culture, agriculture, industry and science sectors and so maintain their competitiveness and jobs at this critical time.*

I think more jobs and more exports are crucial to Europe and fully in line with our liberal views.

3. At the same time, the final text of ACTA addresses the concerns that were expressed in the Parliament's Resolution of 12 March 2010 as regards the EU "acquis", access to medicines and "3 strikes".

To the members of the ALDE group

¹ "ACTA" stands for "Anti-Counterfeiting Trade Agreement"

Let me address the 3 main issues I have come across recently:

***First: fundamental rights.** As you know from my political action over the last 30 years, I take any issue that could have a negative impact on fundamental rights very seriously. I committed before the European Parliament to address any concrete allegations that ACTA breaches EU fundamental rights, including the right to privacy and data protection legislation. So far, no one has produced specific evidence that the ACTA Treaty would violate civil liberties.*

***Secondly, access to medicines:** I fully understand and share the concerns of access to medicines in developing countries. This is why, we, the Commission, have made sure that, indeed, ACTA does not affect access to medicines.²*

Furthermore, the final version of ACTA leaves it optional for signatories to apply the civil remedies chapter to patents (« .. may.. »). In other words, this means de facto that ACTA would not oblige its signatories to apply any of its provisions on patents. This should allay the concerns of those who think that this civil enforcement chapter would negatively affect access to medicines.

***Thirdly, on Internet:** There were many rumours on the issue of "3 strikes" or other sanctions that would restrict access to internet. It is now clear to all that there is no language in ACTA that would oblige its signatories to apply any such sanctions.*

4. For the rest – yes – ACTA introduces some minimum rules as regards internet, which are still below what we apply in the EU. Here we face a basic choice:

- do we believe that internet should be some safe haven where everything is possible, where the law does **not** apply? I would be surprised to see the ALDE group side with these views; or*
- do we consider that internet users have both rights (freedom of expression) and obligations (respect the same law that applies to them in the physical world)?*

*5. A final point that I consider a EU success is the a **broad coverage** of intellectual property rights. Given the diversity of IPRs on which European operators rely to protect their inventions, we have fought for, and obtained, this wide coverage.*

*In particular, we managed to ensure that Europe's **geographical indications** (like Champagne, Scotch Whisky, Parma Ham, Porto or Rioja wines), will be treated equally. For those who think that we can reach a better deal, let me tell you that they are dreaming. I fought very hard with our American partners.*

² This is essentially because: (1) The text contains a reference to Doha Declaration on TRIPs and Public Health and article 7 & 8 TRIPs, which refer, inter alia, to the safeguarding of public health; and (2) patents are not covered by border controls, not even for goods in transit.

We cannot obtain a better treatment and the one we got is much better than the status quo.

6. The next steps will be the legal verification of the drafting, which will take place in the coming couple of weeks and will be concluded in a technical meeting at the end the month in Sydney.

After this, the proposed agreement will then be ready to be submitted to the participants' respective authorities to undertake relevant domestic processes of entry into force. In the EU, this means the signature by the Council, the submission for consent by the European Parliament and finally the ratification by Member States.

7. Let me stress that if the EU does not ratify the agreement, the EU will have to justify why, while championing the importance of IP enforcement in its domestic legislation and in key policy papers on innovation, competitiveness and job creation, it refuses to join the only international Treaty initiative since the 1994 TRIPS Agreement. This risks undermining our international credibility. It is also clear for me that without the EU, ACTA will quickly revert to the copyright and trademark treaty that other negotiating partners had in mind from the outset, thus leaving unprotected our geographical indications and our designs.

8. To conclude, my assessment is that it is not possible to obtain more from our negotiating partners by re-opening the negotiations, therefore these should be considered as finalised.

I will defend the text as it stands.

Once formally requested by the Council to give its assent, it will be up to the Parliament to judge the ACTA Treaty and decide whether it should bind the EU or not.

I look forward to discussing this topic with you before the vote in Strasbourg.



Karel De Gucht