

EU/Australia, Canada, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and United States Anti-Counterfeiting Trade Agreement (ACTA)

2011/0167(NLE)

PURPOSE: to conclude an Anti-Counterfeiting Trade Agreement between the European Union and its Member States, Australia, Canada, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States of America.

PROPOSED ACT: Council Decision.

BACKGROUND: further to the adoption of the negotiating directives by the Council on 14 April 2008, negotiations were launched on 3 June 2008. The agreement was concluded on 15 November 2010 and the text was initialled on 25 November, after 11 rounds of negotiations.

The EU Member States were kept informed of the negotiations orally and in writing. The European Parliament has also been kept regularly informed on developments via its Committee on International Trade (INTA) and by Commissioner De Gucht in three plenary debates in 2010. On 24 November 2010, the European Parliament adopted a [Resolution supporting ACTA](#).

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASIS: Article 207 (4), 1st subparagraph, in conjunction with Article 218(6)(a)(v) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: ACTA aims to **establish a comprehensive international framework that will assist the EU in its efforts to effectively combat the infringement of intellectual property rights (IPR)**. This infringement undermines legitimate trade and the EU's competitiveness with the subsequent negative repercussions on growth and jobs.

ACTA includes:

- state-of-the-art provisions on the enforcement of IPR, including provisions on civil, criminal, border and digital environment enforcement measures,
- robust cooperation mechanisms among ACTA Parties to assist in their enforcement efforts,
- the establishment of best practices for effective IPR enforcement.

Although ACTA does not modify the EU acquis, because EU law is already considerably more advanced than the current international standards, it will introduce a new international standard, building upon the World Trade Organisation's TRIPS Agreement (adopted in 1994). Thus, it will provide benefits for EU exporting right holders operating in the global market who currently suffer systematic and widespread infringements of their copyrights, trademarks, patents, designs and geographical indications abroad.

At the same time, ACTA is a balanced agreement, because it fully respects the rights of citizens and the concerns of important stakeholders such as consumers, internet providers and partners in developing countries.

Competences: ACTA contains a number of provisions on criminal enforcement that fall within the scope of Article 83(2) TFEU. Those parts of the agreement, in distinction to those parts falling under Article 207, fall under the area of shared competences (Article 2(2) TFEU). Where a matter falls under shared competence either the European Union or Member States may legislate and **adopt legally binding acts**.

The Commission's position as regards ACTA and Article 83(2) TFEU is without prejudice to the position of the Commission on future exercise by the EU of the shared competences foreseen by Article 83(2) TFEU as regards other initiatives.

Conclusion and signature: regarding the signature and conclusion of ACTA, the Commission has opted not to propose that the European Union exercise its potential competence in the area of criminal enforcement pursuant to Article 83(2) TFEU. The Commission considers this appropriate because it has never been the intention, as regards the negotiation of ACTA to modify the EU acquis or to harmonise EU legislation as regards criminal enforcement of intellectual property rights. For this reason, the Commission proposes that ACTA be signed and concluded both by the EU and by all the Member States.

BUDGETARY IMPLICATION: this proposal has no implication for the EU budget.