

EUROPÄISCHES PARLAMENT



MITGLIED DES EUROPÄISCHEN PARLAMENTS

Brussels
European Parliament
February 03rd, 2012

Karel De Gucht
Member of the European Commission

Dear Commisioner De Gucht,

In your letter to the Members of the Committee on International Trade of the European Parliament of 26th January 2012 you considered it necessary to warn us MEPs of the wilful misinterpretation of the ACTA agreement by some parts of civil society and took the liberty to remind us of our democratic rights as legitimate representatives of people all over Europe, as well as of our duty to not jump precipitously to a conclusion when asked by citizens for our opinion on this matter.

With all due respect, we would like to express our irritation about your assumption that until now the Members of the European Parliament had not studied the ACTA agreement and hence could not have developed a considered opinion on its content. On basis of which mental exercise, do you think, did Parliament come to adopt both its resolutions on ACTA in March and November 2010?

Perhaps you are just being mild and you forgive Parliament for the concerns raised in its resolutions, which must have been based on misinformation or the successful attempt to deceive several hundred MEPs?

We also wonder about your concept of democracy if you consider it untoward that European citizens and organizations they have formed, exercise their right to bring their concerns to the attention of the representatives they elected and to be informed about the intended voting behaviour of Parliamentarians who, by the way, do not only represent people all over Europe, but in fact the population of the European Union as a whole.

Let us take this opportunity in return, to make you aware of the merits of the engagement of these parts of civil society, whose tireless and constant work has actually had a clear impact on the negotiations and the evolution of the negotiated text of the agreement. If your negotiators had not been forced to leave their back rooms in order to react to leaked documents with a changed PR strategy, they would most certainly have signed an even worse and more dangerous agreement. Public debate and criticism are important elements of democracy and lead to improvement if it is not suppressed.

In your letter you portray your critics as a poorly informed minority in civil society. Shall we read this as your judgement on the competence of, for example, the European Data Protection Supervisor who deplored that he was "not consulted by the European Commission on the content of an agreement which raises significant issues as regards individuals' fundamental rights, and in particular their rights to privacy and data protection." He warned that "*Whereas intellectual property is important to society and must be protected, it should not be placed above individuals' fundamental rights to privacy and data protection.*"

The EDPS looks at this agreement from the perspective of individual citizens. The negotiators of the agreement approached their work from the perspective of corporate rights holders, whose representatives were allowed to accompany the negotiations from the outset. This has resulted in an approach where all signatory states shall be obliged to adapt their legislation to an agreed mainstream of making internet providers responsible for content and activities of their clients. In the eyes of concerned citizens this represents the privatization of policing responsibilities. Among small entrepreneurs the fear is rising that large corporations could use such provisions against small competitors without having to prove an actual infringement of rights.

As parliamentarians we have to add questions addressing the procedural approach of this international agreement. Legislation, and criminal law in particular, should be written by legislators and not by the executive. Every paragraph of the proposed ACTA agreement must be subject to parliamentary scrutiny and to possible changes, and should not be dealt with as a package. Do you intend to apply this method of intergovernmentally agreed framework legislation in other policy sectors as well? And, by the way, since when is criminal law enforcement a competence of trade negotiators?

And what makes you think that an agreement of a handful of countries, excluding China and many other important trading partners, would serve the struggle against counterfeiting better than the WIPO? Could it be that ACTA is therefore intended for another purpose?

Commissioner De Gucht, as MEPs we question the value and the substance of the ACTA agreement. This is our responsibility and in fact your letter has made us even more determined. We are fully aware that the situation of rights holders - in particular of SMEs and individual ones - in a rapidly changing technical environment brings upon very complex questions. But the proposed ACTA agreement does not provide the proper answers.

Sincerely,

Helmut Scholz, MEP

Lothar Bisky, MEP

Gabriele Zimmer, MEP

Cornelia Ernst, MEP

Jürgen Klute, MEP

Thomas Händel, MEP