

Popular protest, EU activism and change: the case of ACTA

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Introduction

This paper analyses the campaign against the Anti-Counterfeiting Trade Agreement (ACTA), which ended in the European Parliament voting to withhold its consent for the agreement's ratification in July 2012. The groups campaigning against ACTA were worried about the agreement for a host of reasons. First, the agreement was concluded in secrecy and little was known about its content before Wikileaks diffused negotiating documents in May 2008, though expectations were low in the climate of the Stop Online Piracy (SOPA) and Protect Intellectual Property Acts (PIPA) in the US.¹ Indeed, when documents were leaked the agreement was interpreted as moving well beyond counterfeited goods. Worries were related to issues as diverse as the production and trading of generic medicines, democracy and due process (since the leaked documents of the secretly negotiated agreement contained references to the 'three strikes' process where internet access is removed after warnings, bypassing courts), freedom of speech due to the projected scenarios of internet service providers removing content through fear of prosecution and the stifling of innovation for similar reasons.² The campaign focused on the European Parliament with the entry into force of the Lisbon Treaty in 2009: the Treaty gave the Parliament the power to consent or otherwise to the signature of international trade agreements. Given the Commission's refusal to share documents with the Parliament early in the campaign and a resolution demanding transparency, the campaign seemed well underway. Interest waned however, and campaigning groups were despondent as the time of the vote came closer, resorting to demanding a ruling from the European Court of Justice on the compatibility of ACTA with the Charter of Fundamental Rights. This all changed with the outbreak of popular protests in January 2012 in Poland and Central and Eastern Europe more generally, spreading over the continent the following month and peaking in a Day of Action on 7 June 2012. These popular protests wakened media interest and thus parliamentary interest, allowing the politicisation of the ACTA issue and its eventual defeat. The paper adopts a political opportunity approach to analyse

¹ These Acts were seen as threats to freedom, particularly due to a clause that would allow courts to order ISPs to block access to sites. Prominent US-based websites including Wikipedia and Reddit blacked out their sites in protest on 18 January 2012 (a strategy previously invented by Italian Wikipedia in protest against *DDL Intercettazioni* (more popularly known as the *legge bavaglia* – gagging law) in Italy in October 2011).

² See, for example, What Makes ACTA So Controversial (and why MEPs should care) by AccessNow, European Digital Rights and the Trans Atlantic Consumer Dialogue. Available at <http://www.edri.org/files/ACTA/booklet/ACTAbookletEN.pdf> - last accessed 23/08/13.

the campaign, specifically adapted to the European Union and outlined in the following section. The campaign against ACTA is briefly described in a subsequent section, and discussed in light of political opportunity approaches in another. In a brief conclusion, the similarities of ACTA to other successful campaigns against EU policies are discussed.

Political opportunity and the European Union

A political opportunity approach is used here to interpret the anti-ACTA campaign, allowing the events of the campaign to be interpreted with due attention to facilitating and hindering factors in the wider context. Political opportunity approaches were developed to explain their actions as rational courses followed in the light of such perceived options, possibilities, and barriers present in political contexts. Different aspects of a political context are understood to contribute to how ‘open’ or ‘closed’ to movements a space is. Classifying some of these aspects allows scholars to make some sense of social movements’ actions and outcomes. It is however an approach that has been criticised for being ‘catch-all’ – too wide, with too many variables and too little consensus on its actual meaning or on what it may explain (for example (McAdam 1996; della Porta and Diani 2006; Koopmans 1999; Gamson and Meyer 1996; Meyer 2004). More seriously, it has also been justly criticised for its inattention to cultural aspects and discourse as important in explaining the mobilization and outcomes of social movements (see in particular Koopmans and Statham 1999). In line with that view, and because this analysis focuses on explaining the impact of the campaign rather than the reasons behind mobilization, public opinion is brought into the analysis here by drawing on Kolb’s variables seen as potentially affecting the outcomes of social movement campaigns: “1) political institutional structure; 2) partisanship of government; 3) elite conflict; 4) instability of political alignments; 5) public opinion; 6) the mass media; 7) the strength of counter-mobilization; and 8) windows for reform” (2007, p. 54).

However, the variables employed in political opportunity analyses have generally been developed with the national level in mind. Transferring variables wholesale to the EU level is inadvisable – the EU has no ‘partisan government’ nor a ‘mass media’ in the manner understood within nation states for example (Haug 2010). Adapting the approach is thus crucial (Lahusen 1999, p. 202; della Porta et al. 2009; Giugni et al 2010), and a variable political opportunity approach where interactions between different constellations of barriers and opportunities³ appears the best concept for the job (della Porta et al. 2009; Peterson 1997, Marks and McAdam 1996, Bieler 2005, della Porta and Caiani 2007; Lahusen 2004; Sikkink 2005). To build up an idea of political opportunity in the EU, I evaluate each of the variables described above for that specific arena. Among them, only political institutional structure may be drawn on for sketching the *fixed* opportunity *structure* of the EU (POS). The other variables relate to the identification of *dynamic* opportunities in specific cases. The results of considerations on the EU’s POS are summarised in the table below.

Table 1: A political opportunity structure of the European Union

³ This being particularly pertinent for the EU, given the importance of national and local as well as the transnational EU arena.

Institution	Structure	Political opportunities / threats
Commission	Open for consultation but: <ul style="list-style-type: none"> - Needs information and expertise; - Natural partners. 	Opportunities for lobbying, but implications for organisation and an orientation for information requirements may threaten capacity to protest. Natural partners may not hold power.
European Parliament	Receptive to civil society but multiple cleavages: <ul style="list-style-type: none"> - ideological; - sectoral; - geographical; - inter-institutional. 	Opportunities to lobby but with similar implications as Commission. Consensus institution means need to cultivate multiple contacts (also as result of other cleavages). More opportunities for unconventional actions due to representative character.
European Council / Council of Ministers	Closed to civil society at European level (works in secrecy)	Limited opportunities at European level for lobbying. High level meetings opportunity for protest events. Opportunities and threats to influence apply at national level following the 'reverse boomerang' idea.

The table lays out some ideas about the EU's POS by institution. To begin, the European Commission is responsible for drafting EU legislation, and thus often the main and first port of call for all groups seeking to influence EU policy (Greenwood 2011, p. 33). The Commission is also described in the literature as information-hungry and open, actively seeking the input of third groups (see for example Balme and Chabanet 2002, p. 24). The literature on social movements and the EU thus draws the conclusion that lobbying strategies are most likely in the EU from this understanding of the Commission (Marks and McAdam 1996; 1999).

Two caveats must be added however. First, as a result of its small size, the Commission requires information and expertise from the groups it consults (Balme and Chabanet 2008, p. 86). For social movement organisations, engaging with the Commission can therefore mean funnelling often scarce resources towards the production of expert information, an activity that also has implications on organisational structure in terms of institutionalisation (della Porta and Caiani 2007, p. 8). This is compounded by the fact that the Commission is a major source of funding for EU level groups. This funding is project-based however, implying commitments to carry out work tailored to meeting the institution's needs. Lobbying the Commission can thus distance EUSMOs from grassroots membership.

Second, it is misleading to think of the Commission as a unitary actor. Instead, the cultures and interests of each separate DG are often played off against one another in internal power struggles, and policy coordination between DGs has been judged to be low (Peterson 1997; Greenwood 2011). Following Ruzza's (2005) idea of the 'institutional activist', some actors are 'naturally' sympathetic to the ideas of a specific movement, and different groups will therefore tend to have strong relationships with officers from a particular DG. While this can be a boon where power over the policy issue in hand belongs with the DG best known to the group, those DGs that are closer to movement groups are not usually those with the most

influence within the Commission (Bieler 2005 p. 469). Opportunities to lobby the Commission thus carry consequences, and where a DG is not known to a group may not be possible at all.

Working to influence other institutions is therefore crucial. The European Parliament's attraction as a target for those seeking to influence EU policy is clear: it wields more power in terms of amending legislation than many national parliaments (Greenwood 2011). It can be targeted with information like the Commission, but is also an elected assembly, and thus a potential target for more unconventional, grassroots-oriented strategies. To think of the European Parliament in terms of political opportunity it is useful to focus on the different cleavages that criss-cross this body. Crespy (2013, pp. 395-6) describes three: ideological, geographical and inter-institutional. To this I add sectoral. Beginning with ideology, members of the European Parliament belong to political parties affiliated in turn (for the most part) to European political parties, meaning that the 'natural partner' argument made about the Commission may be echoed. However, no single party has ever formed an absolute majority in the European Parliament, meaning groups should logically seek positions to convince all political persuasions. The *sectoral* cleavage according to committee membership reinforces this logic: the lead committee report on a given policy is usually the best guide MEPs have when it comes to final votes in plenary session, and convincing members by virtue of committee membership is thus also important. Mutual interest in policy areas among members of a committee and movement groups may also contribute to a closer relationship that may overcome ideological cleavages.

Geographical cleavages also exist in the Parliament. Where an issue attracts a great deal of attention in one or a number of member states and public opinion takes a clear direction, members from those countries may follow an electoral logic and vote in the manner that will gain them the most support from citizens (Burstein 1999).⁴ Geography may also be relevant where a particular policy will affect some member states more than others. Public opinion is key here, and is discussed further ahead. Finally, the inter-institutional cleavage concerns the role of the Parliament as a whole within the balance of the EU's 'institutional triangle' of Commission, Parliament and Council. Since its beginnings as a consultative institution, the powers of the European Parliament have grown apace—with the adoption of what had been known as the co-decision procedure as the ordinary legislative procedure under the Treaty of Lisbon the Parliament is now a co-legislator in most areas of EU competence. The body has also for example increased its powers in terms of control over the Commission, the EU budget, and external trade agreements where the EU is a signatory. In line with the logic whereby institutions seek to reinforce and expand their power, the Parliament as a whole may therefore be keen to carve out its position as an equal of the other European institutions by exercising its powers, including those newly acquired as in the ACTA case explored here.

In terms of political opportunities and threats, the European Parliament thus presents another complicated picture for EUSMOs. As an elected body, the Parliament provides not only institutional channels of access but also invites more unconventional forms of action. Summits of European ministers are often targets for mass protests, and while the Parliament is not a magnet for protest on the scale of the

⁴ Public opinion will be discussed in more depth in relation to dynamic political opportunities below.

Council of Ministers or the European Council (Lahusen 2004), it has certainly attracted more unconventional actions such as letter writing and e-mail actions along with protests in a bid to show citizen concerns. As a target for lobbying, groups wishing to influence the Parliament must consider sectoral and ideological cleavages, and work to influence a wide range of members that may fall outside their 'natural' constituency. Providing timely information is again important in a resource-hungry environment. Where an issue provides a chance for the Parliament to stake its claim in the European-level power balance another important window of opportunity may also open up for EUSMOs.

Least open to actions by EU-level groups is the Council (intending both the Council of Ministers and the European Council). This body is to a great extent closed to any lobbying opportunities given its secrecy and, in the case of the Council of Ministers, the obligation to work on the basis of strict national mandates (Michalowitz 2004). Although some contact with rotating presidencies may be possible, the literature generally finds that groups who wish to influence this institution must move back to the national level, bringing national opportunity structures into play. Thus, when considering this institution in terms of political opportunity approaches, we must consider 27 different national scenarios as a reverse 'boomerang' strategy seems likely to be tried.⁵ The Council(s) do however represent the largest targets for mass protest in the EU structure. Protest events by the global justice movement at European Councils, for example, are well documented (see for example, della Porta et al 2006; della Porta and Caiani 2007). There are also annual marches at Council events organised by the European Trade Union Confederation. The Council within the political opportunity structure of the EU thus serves to underline the importance of groups' ability to mobilize national or grassroots members already highlighted.

In sum, the upshot of all of this is that multiple access points, as well as complex procedures and a relatively distinct separation of powers (Balme and Chabanet 2002, p. 44) place a heavy burden of knowledge and expertise on groups seeking to influence EU issues. Although the existence of multiple access points is certainly an advantage, the ability to exploit all of these is tempered by the requirement for knowledge and expertise about the system. And while this knowledge is an opportunity for more specialist, formally organised and resource-rich groups, it may be considered a disadvantage to more grassroots groups and networks. It seems that to run an effective EU campaign groups must be ready and able to attempt to exploit all opportunities presented by this multi-level institution, and all methods and points of access must be exhausted (e.g. Hellferich and Kolb 2001). The number of actors and access points in the EU also indicates the importance of consensus within the system, mirroring the need to convince actors of different DGs, ideological preference and national background highlighted above. Alliances between groups of different types would thus seem important for exploiting the EU's political opportunity structure, where groups with different strengths perform different roles within a division of labour.

Which groups do what and when is very much dictated by the interaction of opportunities and threats in this multi-level structure. For example, in cases where the

⁵ As opposed to Keck and Sikkink's (1998) boomerang model where groups use the international level to influence the national, where the Council is involved groups must go back to the grassroots in the member states should they wish to influence this body, thus 'reversing' the boomerang's trajectory.

Commission closes its doors to dialogue groups may well transfer energies to the Parliament and Councils, drawing on more protest-heavy repertoires than those used when the Commission involves groups in discussions. This is the case for ACTA, as will be shown, and also bears out in other cases (Parks 2008, Leiren and Parks 2014). This interaction is captured here with attention to *dynamic* opportunities and threats that are specific to campaigns. Dynamic political opportunities affect “the stability or instability of that broad set of elite alignments that typically undergird a polity” and “the presence or absence of elite allies” (McAdam 1996, p. 27). Drawing again on Kolb (2007) and the wider literature on political opportunity, the contexts of EU campaigns can be specified by considering: 1) elite allies and enemies; 2) intra-elite conflict; 3) proximity of elections; 4) public opinion; 5) presence and strength of counter-campaigns.⁶

Delving briefly into these, defining elite allies and enemies in the context of the EU means specifying which members of which institutions can be considered as for or against (or susceptible to being convinced of) the goals of a campaign. Closely linked to this, and indicated in the discussion so far, is the power held by elite allies and enemies. A relatively powerless enemy (for example one of the smaller political groupings in the European Parliament) will not have a great effect on political opportunities and threats, while a powerful one (for example a Commissioner) most likely will. The second variable, intra-elite conflict, is also linked to the definition of elite friends and foes and their power. Conflict between elites at the EU level is to a great extent unavoidable given the sheer number of actors and institutions in play. Specifying the effects of intra-elite conflict therefore has a great deal to do with procedural politics at this level: intra-elite conflict between institutions will have different effects according to the powers of institution in different procedures. In the ACTA case, the Parliament very recently acquired the power of consent over the signature of international trade agreements, making it an important player. These conflicts are often played out in the ‘shutting down’ of an institution to actors as described above, again the case here for the Commission. How elite powers and conflicts play out is clearly important to how groups act to try and influence EU policies.

The proximity of elections variable—although not in play in this case—is important for all of the EU institutions to different degrees. For members of the European Parliament, elections on the horizon can, following the logic detailed earlier, lead to increased responsiveness to citizens. The outcomes of European elections are also reflected in the subsequent selections of the Commission, and a change in the makeup of the Commission can signal opportunities or threats to different groups. Finally, elections in different member states may also translate into opportunities or threats for groups actively seeking to influence the Council.

Much more salient in this case, the next two variables describe political contexts that are less strictly linked to the EU institutions themselves. The first is public opinion, understood as how salient the EU (or, more rarely, a particular EU policy) is in national debates. In the EU, a construct which has no public sphere comparable to national realities, it is relatively rare for issues to attract the attention of the general

⁶ The political colour of the government is usually considered in this category for studies in national contexts. This does not apply to the EU, which has no government in the traditional sense.

public.⁷ Attention tends to be cyclical, following exceptional moments such as the negotiation of treaties, or more recently economic crisis debates (on the coincidence of such moments with EU protest see Uba and Uggla (2011)). Given this rarity, events that train the attention of citizens on the EU by penetrating national public spheres provide important opportunities to campaigns (see Olesen 2010), particularly since “...the recent popular politicisation of European politics through protests related to the referendums on the Constitutional Treaty and the ‘no’ votes in France and the Netherlands reveal that the long observed ‘public silence’ of these actors can no longer be interpreted as a sign of agreement (cf. Fossum and Trenz 2006: 73).” (Haug 2010). If this attention can be harnessed around the issue in hand then significant mobilization potential is won—and widespread mobilization is hard for the EU to ignore as previous cases such as the Services Directive and Ports Directive attest (Leiren and Parks 2014). Finally, the presence of a counter campaign presents a threat to EUSMO campaigns both on a discursive and a political level. Opposing groups at the EU level may have greater resources (of all kinds) and challenge the arguments of movement groups. However, counter campaigns may also serve as a rallying point, galvanizing EUSMO members into more concerted action (Meyer and Staggenborg 1996). Indeed, the importance of discourse and framing in campaigns to influence EU policy are highlighted in these variables. Although framing does not form a core part of the analysis in this paper, it is captured to some extent through consideration of these more discursive opportunities and threats.

The Campaign Against ACTA

The following is a brief, non-exhaustive account of the campaign against ACTA based on information from newspapers and other media outlets, campaigning groups’ websites, scholarly articles and data gathered in 13 semi-structured interviews with representatives of campaigning groups (both European and national), Members of the European Parliament and Parliamentary advisors. This will lead into a discussion of the campaign interpreted using those applicable aspects of the political opportunity approach outlined above.

Negotiations on the Anti-Counterfeiting Trade Agreement (ACTA) began in 2007 between the US, the countries of the EU (represented by the European Commission), Switzerland, Canada, Australia, New Zealand, Mexico, Singapore, Morocco, Japan, and South Korea, with a view to completing the agreement before the end of 2008 (and the Bush administration in the US). Hopes for a smooth adoption were first perturbed when the Wikileaks website published US government documents concerning ACTA in May 2008, pointing out in particular that industry had been passed copies of these documents while civil society groups had not. With information about the agreement now available, digital rights groups across the globe moved to analyse its content.⁸ The first focus of the nascent campaign against ACTA

⁷ Haug (2010) points out that conceiving of public spheres as dominated by the traditional mass media is to miss the importance of public spheres created directly by movements, within movements. However, recent work on Italian movements (traditionally a strongly pro-European country) shows that even here in recent years discussions of the EU are scarce (della Porta et al forthcoming).

⁸ Many of the fears expressed about the content of ACTA dismissed as false probably stem from this point – early negotiating documents contained references to the three strikes rule (where internet access is revoked after 3 warnings without recourse to courts) and other apparently worrying clauses that were not included in the final agreement. On ACTA’s compatibility with existing EU law see Matthews 2012.

was thus to gain legitimate access to documentation, and in September 2008 US digital rights groups Public Knowledge and Electronic Frontier Foundation launched a lawsuit⁹, while in the EU the Foundation for a Free Information Infrastructure (FFII) demanded documents from the EU Council of Ministers.¹⁰ With fears of laptops confiscated at airports and threats to the trade in generic medicines growing as a result of the leaked documents, which showed a wide-ranging text not limited to counterfeit goods, the European Parliament now entered the story.

With the entry into force of the Lisbon Treaty on 1 December 2009, the Parliament had acquired the power of consent (and thus a veto) over international trade agreements (Matthews 2012, pp.5-6). Denied access to the text of ACTA by the Commission, the Parliament opened a resolution demanding transparency in March 2010¹¹, and the text of ACTA was finally officially released in April 2011.¹² Within the Parliament, the Greens-European Free Alliance (Greens-EFA) political grouping—or more precisely the small cohort of Swedish Pirate Party members that had swelled its ranks, and the internet policy advisor appointed in the group—had been following ACTA closely since its inception.¹³ European social movement organisations now began to focus on the European Parliament as the “weak point” where ACTA might just be brought down.¹⁴ Controversy over the agreement continued to grow with all interested groups and indeed governments now able to analyse the text of the agreement. While specific notes about punishments such as removing internet access had now been removed from the text, worries persisted as a result of the agreement’s vague (and thus highly open to interpretation) language and the prospect of an authority being created to implement the text. In June 2010, clashes were reported between the rich countries negotiating the agreement and developing countries over the production and sale of generic medicines (in particular India, which made its first official statement on ACTA at a public workshop organised by the Greens-EFA group in May 2010). The European Data Protection Supervisor also issued an own-initiative opinion outlining “concerns that ACTA would have a negative effect on fundamental human freedoms and privacy, in particularly the right to information and educations, freedom of expression, right to accessible health care, right to privacy and protection of personal data, and right to due process” (Matthews 2012, p. 16). The scope of the agreement, as this opinion indicates, was thus wide and touched on a number of constituencies, from development NGOs to small, innovative start-up companies threatened with possibly crippling restrictions. It was this scope that worried other political groupings in the European Parliament, such as the

⁹ <http://www.infoworld.com/d/security-central/eff-public-knowledge-sue-us-govt-over-secret-ip-pact-955>, accessed 23 May 2014.

¹⁰ <http://press.ffii.org/Press%20releases/EU%20Council%20refuses%20to%20release%20secret%20ACTA%20documents>, accessed 23 May 2014.

¹¹ Written Declaration on the lack of a transparent process for the Anti-Counterfeiting Trade Agreement (ACTA) and potentially objectionable content, opened for signature 8 March 2010 and adopted in plenary 9 September 2010. Available at [http://www.euoparl.europa.eu/sides/getDoc.do?reference=P7_TA\(2010\)0317&language=EN](http://www.euoparl.europa.eu/sides/getDoc.do?reference=P7_TA(2010)0317&language=EN), accessed 23/05/14.

¹² The European Commission confirmed that only some MEPs had access to some negotiating documents, and that written information was shared confidentially or informally and orally – hence the call for transparency. Documents were in any case only shared after the entry into force of the Treaty of Lisbon. See European Commission - MEMO/12/99 13/02/2012, available at http://europa.eu/rapid/press-release_MEMO-12-99_en.htm, accessed 23/05/14.

¹³ Interview with policy advisor to Greens/EFA, by telephone, 17/05/13.

¹⁴ Interview with senior policy analyst at Access Now, Brussels, 28/06/13.

Socialist group. Counterfeiting is acknowledged as a problem by this group, but due to its scope ACTA was eventually judged to be the wrong instrument to right such problems.

By the time ACTA was signed pending ratification in October 2011 by a handful of negotiating states,¹⁵ European SMOs and their allies within the European Parliament were disheartened and failed to see how their campaign could end in success. The Parliament passed another resolution on ACTA in November 2010, stating that the now public text “reflects the main concerns expressed by Parliament over recent months, including on issues such as the observance of fundamental rights, privacy and data protection”.¹⁶ With campaigning groups unhopeful of challenging the agreement, actions at this point were limited to analysis and diffusion of information, with the Greens-EFA commissioning academic studies on the legalities of the agreement and demanding its referral to the European Court of Justice (ECJ) for an opinion on its compatibility with the European Charter of Fundamental Rights (enshrined in the Treaties), along with parliamentary questions and questions to the Commission. Indeed, many campaigning groups believed that a ruling from the ECJ was the only hope for challenging the agreement at this point. Other actions were all aimed at keeping the agreement on the agenda and some opposition alive before the Parliament’s vote on whether or not to consent to the agreement’s signature by the EU. On the more contentious side, La Quadrature du Net, described as a “bridge” between protest groups and European advocacy groups (Crespy 2013) in this case and which notably disagreed with seeking an ECJ ruling,¹⁷ did post a short and widely viewed video explaining the agreement on YouTube entitled ‘Say NO to ACTA’ in an effort to inform citizens about ACTA in October 2011.¹⁸

The tide changed in early 2012 however, as a rising protest wave beginning from Poland swept across the continent, particularly intense in the countries of Central and Eastern Europe. The number and scope of the protests is indicated in the maps below. The first protests began in Poland around 21 January 2012, while the Treaty was then signed by the EU and 22 member states (all bar Cyprus, Estonia, Germany, Netherlands and Slovakia, nevertheless expected to sign following the completion of domestic procedures) 5 days later on 26 January 2012. Exactly what triggered the protests is difficult to surmise (and beyond the scope of this research). The Polish organisation Panoptykon, instrumental in the Polish debate about internet rights, as well as others with knowledge of the field in Poland, saw them as spontaneous yet at the same time impossible without the analytical work done by the SMOs already active on the subject.¹⁹ Protests were organised via social media, particularly

¹⁵ The EU indicated its intention to sign at this point, signing the agreement (along with 22 member states) on 26 January 2012.

¹⁶ European Parliament resolution of 24 November 2010 on the Anti-Counterfeiting Trade Agreement (ACTA). Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0432+0+DOC+XML+V0//EN>, last accessed 23/08/2013.

¹⁷ Interview with representative of European Digital Rights, Brussels, 27/06/13.

¹⁸ Interview with Jérémie Zimmerman, La Quadrature du Net. Paris, 24/06/13. The video uploaded by laquadrature had been viewed 2250830 times as of 23/08/13, but is also available through other channels.

¹⁹ Anonymous interviewee, by telephone, 11/06/13; interview with representative of Panoptykon, by telephone, 10/7/13.

Facebook, and mushroomed.²⁰ Previous attempts to interfere with Internet rights in Poland, seen as a space where the people should be left alone by a government viewed as doing little to aid everyday life, the fact that there were school holidays, the high prices of software and other media, previous experiences with surveillance in the Soviet era²¹, as well as increased attention to EU issues in the context of the financial crisis may all be possible explanations here.²² Another factor in explaining the protests is the contemporary controversy surrounding the Stop Online Piracy Act (SOPA) and the Protect Intellectual Property Act (PIPA) in the United States – indeed, ‘blackouts’ of Wikipedia, Google and many other prominent websites had successfully taken place on 18 January 2012, leading to the effective shelving of the two acts. ACTA was described by many SMO and other websites as the ‘European version of SOPA and PIPA’.



Map of planned anti-ACTA protests in Poland posted 27 January 2012²³

²⁰ Interviewees were in agreement that the protests were not organised by formal groups but ‘spontaneously’ organised, mostly via Facebook, although the Pirate Party were cited as instrumental in protests in Germany. Much of the newspaper reporting of the protests attributed them to Anonymous since Guy Fawkes masks were often donned by protestors. Anonymous is however viewed as a label or identity adopted during protests when convenient rather than any kind of formal organising group in the traditional sense – indeed many interviewees saw the adoption of the Anonymous identity as damaging since many institutional actors view it as ‘terrorist’ or at least radical.

²¹ Matthews 2012, p.4.

²² Interview with representative of Panoptikon, by telephone, 10/7/13; interview with policy advisor to Greens/EFA, by telephone, 17/05/13.

²³ Source: http://greenvoicefrompoland.blogspot.co.uk/2012_01_01_archive.html dated 27 January 2012 - last accessed 21/08/2013.

Whatever caused the protests, a flurry of activity now ensued where quiet had reigned. On the same day the agreement was signed, 26 January 2012, the first European Parliament rapporteur assigned to the ACTA case, the French MEP Kader Arif, resigned, stating “I want to send a strong signal and alert the public opinion about this unacceptable situation. I will not take part in this masquerade”.²⁴ The British Labour Party MEP David Martin then took up the report. As the protest wave unfolded, a succession of events began to convince the SMOs that had long been active on the ACTA case of the hope of success. On 31 January 2012 the Slovenian ambassador to Japan (where ACTA was signed) stated that she had “signed ACTA out of civic carelessness”.²⁵ On 3 February Poland halted ratification due to “insufficient consultations” prior to signing, while Bulgaria, the Czech Republic, Latvia, Lithuania, Germany, Slovakia and Slovenia now signalled that they had stopped ratification (or signature in the case of Germany) processes. On 17 February, the Polish prime minister announced that Poland would not ratify ACTA at all, while Germany stated that it would await the outcome of the European Parliament’s vote before taking a decision on signature. This clearly showed that there was no longer consensus in the EU Council. Groups with more grassroots links now came to the fore, with both Panoptykon in Poland and La Quadrature du Net in France putting great energy into working with protesters.²⁶ Protests spread further to the West of the Union, with 120 cities involved in the Day of Action against ACTA on 9 June 2012, and particularly large numbers of protests in Germany where the Pirate Party and other groups were very active.²⁷



²⁴ ‘Acta goes too far, says MEP’. The Guardian, 1/02/2012. Available at <http://www.theguardian.com/technology/2012/feb/01/acta-goes-too-far-kader-arif> -last accessed 23/08/2013.

²⁵ ‘A New Question of Internet Freedom’. The New York Times, 05/02/2012. Available at http://www.nytimes.com/2012/02/06/technology/06iht-acta06.html?pagewanted=all&_r=0 – last accessed 28/08/2013.

²⁶ Interview with representative of Panoptykon, by telephone, 10/07/13, interview with Jérémie Zimmerman, La Quadrature du Net. Paris, 24/06/13.

²⁷ For an interesting account of how demonstrations were organised in Germany which also confirms conclusions here on the missing link between advocacy groups and grassroots at the beginning of the protest wave as well as the contributing factor of the SOPA and PIPA protests, see <https://digitalegesellschaft.de/2012/06/how-to-build-an-anti-acta-campaign/>, accessed 24 May 2014.

Map of planned anti-ACTA protests for 9 June 2012²⁸

The online petitions organisation Avaaz had also begun a petition against ACTA, signed by nearly 2.5 million people when presented to the European Parliament on 28 February 2012. At this point in the story the European Commission also appeared to move on the issue, referring ACTA to the European Court of Justice for the aforementioned opinion. With the politicisation of the issues surrounding the agreement, however, this move was no longer welcomed by groups actively campaigning against it, as it was now seen as a way of buying time to potentially delay the Parliament's vote while popular protest died down. In a similar move, Commissioner Kroes suggested that ACTA may not come into force in a public speech.²⁹ Each of the European Parliamentary committees charged with providing opinions on the agreement now passed their reports condemning ACTA, and finally the lead committee (international trade) also recommended withholding consent for ratification. On 4 July 2012 the Parliament rejected the treaty with 478 votes against, 39 in favour and 165 abstentions in its Strasbourg plenary session.

Discussion – Political Opportunity and the ACTA Campaign

How can the outcome of this campaign, that is the vote against ACTA in the European Parliament, be interpreted through a political opportunity approach? Earlier the European Commission was identified as often being the first port of call for campaigning groups (Greenwood 2011, p.33). In the ACTA case however the Commission was understood to be entirely closed to discussions given that negotiations were secret. The attitude of the Commission was nevertheless generally interpreted as being actively hostile to civil society rather than purely bound by the procedures surrounding international trade negotiations. Early stakeholder meetings were seen as cynical attempts by the DG responsible (Trade) to acquire legitimacy by claiming that civil society groups had been kept informed in their later dealings with the European Parliament, for example,³⁰ while the word 'arrogant' was common in descriptions of the institution's dealings with the Parliament. Actors within the Parliament itself also confirmed this view, as the following quote illustrates: "The Commission and some DGs have been used to just coming to Parliament and saying, 'This is what we're going to do. What do you think about it?' We've said what we've thought about it; they've patted us on the head and said, 'Thanks very much,' and gone off and more or less done what they were going to do anyway."³¹ Any opportunities from the provision of expertise to the Commission are therefore absent in this case, where the Commission was unambiguously understood by the campaigning groups as a *hostile elite*.

²⁸ Available at <http://falkvinge.net/2012/06/07/saturday-we-demand-our-freedom-of-speech-and-rejection-of-acta-we-can-win-this/>, accessed 23/05/14.

²⁹ Commissioner Kroes in a speech in Berlin, 2 May 2012, said "We are now likely to be in a world without SOPA and without ACTA". Speech available at http://europa.eu/rapid/press-release_SPEECH-12-326_en.htm?locale=en, accessed 23/05/2014.

³⁰ Interview with representative of European Digital Rights, Brussels, 27/06/13.

³¹ Interview with David Martin MEP, rapporteur on ACTA, by telephone, 20/06/13.

With the Commission closed and the passage of the Lisbon Treaty, the campaigning groups thus logically focused their work on the European Parliament. Before considering the opportunity structure wrought by the various cleavages within this institution however some discussion of insider and outsider campaigning is apt. In the ACTA campaign, in fact, one active component was the Greens-EFA political group within the European Parliament and, specifically, the Swedish Pirate Party members that had joined that group in 2009 along with a few interested Green MEPs. The entry of the Pirate members to the group coincided with the appointment of an advisor on internet policy, a seasoned internet activist with previous experience of political campaigning who was quick to set up a wiki on ACTA issues after a decision had been taken by the Greens-EFA internet core group.³² Pirate Party MEPs also saw themselves as part of the internet freedom movement more generally, and saw their insider efforts as part of a (not always intentionally orchestrated) movement push against ACTA.³³

This insider-outsider split may also ring true of the campaign organisations in and outside Brussels working against ACTA. Aside from the Pirate Party within the Greens-EFA inside the Parliament, only two other campaigning groups are actually based in Brussels: European Digital Rights (Edri) and AccessNow, the European branch of a New York based internet activist group (working in the same offices as Edri). These groups consciously see themselves as the “boring guys in the suits”³⁴ that play an important part in appealing to Parliamentarians in need of reliable information as well as of different political colours as we will see below. Other groups based outside Brussels also fall into this category but, with the exception of the Foundation for a Free Information Infrastructure (FFII) which also worked on analysis and information provision on a European level, these groups tended to work at national level. The Paris-based group La Quadrature du Net (QdN) is the exception, having combined more grassroots approaches and contacts with a European focus, bringing local activists to Strasbourg for example to collect signatures for the 2010 resolution on transparency.³⁵ This group in particular joined grassroots protests against ACTA with the European level in a “strategy of making a gateway between the two and converging energy between the two”³⁶, not only by circulating information, analysis and materials for protest events but by bringing a more confrontational style of activism to the Parliament itself, to the chagrin of some members.³⁷ This approach was a conscious one that allowed QdN to avoid institutionalisation while at the same time appreciating the need for and use of groups perceived as such within the loose coalition of groups against ACTA: “.I don't wear a necktie. So of course I don't know the codes. Well, I know them but I don't like to claim I know them. I prefer to play outside of them. For me, on some level it's reassuring that I won't fall in the trap of institutionalising and become part of the machine by being inside of it. (...) But I'm convinced that there is a need for – it's not a need – it is mandatory that we have this articulation between the inside game and the outside game.”

³² Interview with member of the board of the Swedish Pirate Party, Brussels, 27/06/13.

³³ Interview with Christian Engström MEP, Brussels, 26/06/13.

³⁴ Interview with representative of European Digital Rights, Brussels, 27/06/13.

³⁵ Interview with Jérémie Zimmerman of La Quadrature du Net. Paris, 24/06/13. On the QdN acting at multiple levels in the context of the campaign on the Telecoms Package see Breindl and Briatte (2013). On the QdN as a ‘bridge’ in the ACTA campaign see also Crespy (2013).

³⁶ Interview with Jérémie Zimmerman of La Quadrature du Net. Paris, 24/06/13.

³⁷ Interview with advisor to Bernd Lange MEP, Brussels, 28/06/13.

This insider-outsider coalition, not official but described as ‘open source’ in terms of each contributing according to their own will and skills³⁸, is key when considering how the campaigning groups worked with the different ideological, sectoral and geographical opportunities and barriers presented by both the Parliament and the Council in the campaign, as well as more dynamic situations such as the *volte face* needed when protests made a political push for the Parliament to reject ACTA possible. The insider-outsider coalition allowed those groups best placed to convince members of the Parliament from different ideological backgrounds, sectoral interests and countries to move in and work. The most insider group, the Greens-EFA, is thus generally well placed to influence the position of the left wing European United Left-Nordic Green Left (GUE-NGL) group given their close ideological positions and the fact that as small groups they often do not have the resources to devote to developing positions on all subjects.³⁹ The Pirate Party members within the Greens-EFA, meanwhile, felt better equipped to approach the right wing European People’s Party (EPP) than their Green colleagues, along with the more traditional advocacy groups based in Brussels. The Party of European Socialists (PES), as the party with the rapporteur, was according to interviewees interested in making a full and frank analysis of ACTA before taking a position which was eventually against⁴⁰, although those outside the group certainly saw protests as a factor in this as an ‘old’ party that could not afford to lose protesting youth,⁴¹ or indeed be seen as ignoring popular protest.⁴² The Liberals (ALDE) were also seen in this light – they could not afford to be seen as trailing the socialists on what was now seen as a civil liberties issue,⁴³ though more important here was likely the German government’s position that it would follow the European Parliament’s vote (following protests). Given the importance of German members for ALDE, MEPs were whipped into line. The presence of different types of groups in the campaign against ACTA thus gave the scope to find the best lever to convince different political parties. This was also true where work followed sectoral committee membership lines. The breadth of the agreement meant a host of organisations and arguments were available to influence MEPs according to the issues closest to their hearts: “...there were so many things wrong with this agreement, content and process included, that it was just about choosing which perspective you thought was more compelling to specific groups in the European parliament.”⁴⁴

The geographical element of influencing parliamentarians, as already shown in the comments on the ALDE group, reflects the boomerang argument made in the political opportunity approach. The protests that began in Poland in January 2012 and then spread across the continent until February, then again in June, opened the door for

³⁸ Interview with representative of the Foundation for a Free Information Infrastructure, via Skype, 27/05/13.

³⁹ Interview with Christian Engström MEP, Brussels, 26/06/13.

⁴⁰ Interview with David Martin MEP, rapporteur on ACTA, by telephone, 20/06/13, interview with advisor to Bernd Lange MEP, Brussels, 28/06/13.

⁴¹ Interview with representative of the Foundation for a Free Information Infrastructure, via Skype, 27/05/13.

⁴² Interview with Jérémie Zimmerman of La Quadrature du Net. Paris, 24/06/13.

⁴³ Interview with member of the board of the Swedish Pirate Party, Brussels, 27/06/13.

⁴⁴ Interview with senior policy analyst at Access Now, Brussels, 28/06/13.

those groups that had been working to analyse the agreement to move in and influence not only MEPs but national governments. This seems to have been the case in Germany, a country that had also seen good results for the Pirate Party in recent years and thus more sensitised to ‘online’ issues, and Poland especially. The Polish organisation Panoptykon had come to meet regularly with the government to discuss internet issues and had been assured that ACTA would not be signed. When the Polish government did the opposite, Panoptykon spread the word. Protests, including Ddos attacks on government websites⁴⁵ began, also perhaps inspired by the contemporary SOPA PIPA protests in the US. This situation led the government to backtrack and opened the door for organisations to begin working to influence the EPP group in the Parliament in Brussels which now had to consider its position in the light of the likely defection of its Polish members. The boomerang model of moving back to the national level in order to influence the Council thus also appears to play a part in European Parliament work, although not planned by the EU-level campaigners in this case.

Inter-institutional balances also seem to have played a role in the Parliament’s final rejection of ACTA. Several elements come together here. First was the Parliament’s new role within the process itself. The Commission had been negotiating ACTA in secret for some years, and DG Trade was not used to working with the Parliament or breaking that secrecy leaving the Parliament miffed at its ‘being kept out of the loop’.⁴⁶ This led to the first resolutions and the first stirrings of interest within the Parliament around a uniting issue – all members could rally around a plea for transparency. Though interest dwindled after access to the documents was secured, the protests then kindled the will to reflect public opinion at EU level among some members that had personally been pro-ACTA.⁴⁷ Whether this was due to re-election concerns, or rejection seemed less difficult given that splits in the Council were openly visible (since countries had declared their intention to not ratify already the weight of blame for rejection was arguable lifted⁴⁸) or more lofty sentiments is to some extent irrelevant – the outcome is the same, in the ACTA case as in others (Parks and Leiren 2014) popular protests do appear to have caused the Parliament to assert its power within the institutional triangle. It should be stressed however that inter-institutional power was never an overt argument in the ACTA campaign, and indeed the activism of the Parliament in itself was seen as very much on the wane by some interviewees.⁴⁹ In the presence of protests, however, the reaction is clear. The conclusions will discuss this emerging pattern in comparison with other cases in more detail.

The political opportunity approach discussed earlier also made reference to campaign-specific, dynamic opportunities. Elite allies and enemies have already been discussed: an ‘open source’ insider-outsider coalition was effectively used to convert the threat of a closed Commission into a galvanizing force to focus on the Parliament, where different constellations were tackled with the best suited groups. Elections and

⁴⁵ <http://www.bbc.com/news/technology-16686265>, accessed 24/05/14. These first took place on 23 January 2012, 5 days after the SOPA PIPA protest blackouts of Wikipedia and Reddit on 18 January.

⁴⁶ All interviews.

⁴⁷ Interview with Amelia Andersdotter MEP, Brussels, 27/06/13.

⁴⁸ Interview with representative of European Digital Rights, Brussels, 27/06/13.

⁴⁹ Interview with Christian Engström MEP, Brussels, 26/06/13, interview with representative of European Digital Rights, Brussels, 27/06/13.

counter-campaigns, on the other hand, were not seen as important factors by interviewees. All interviewees, however, highlighted the pivotal role of the popular protests that began in Poland, and protests have featured in all the analysis above. This is certainly the most important dynamic opportunity of the campaign related to public opinion. Interestingly, none of the groups interviewed claim any role in sparking the protests which are generally understood as genuinely spontaneous. The contemporary protests against SOPA and PIPA and the blackouts of popular websites drawing attention to legislation seen as threatening internet rights, combined with ACTA being framed as the European SOPA and PIPA, were cited by most as the first spark for popular protests. The opinion was generally that protests would not have been as large, nor petitions so widely signed, had the analysis and information of the groups who had been working on the issue for years had not been available. QdN's video on YouTube and pamphlets summarising arguments against ACTA played an important part in French protests for example, and Panoptikon sought to bring together protest groups and provide more information about ACTA, while AccessNow wrote a pamphlet on ACTA in 2001 that "no-one read"⁵⁰ but became popular in 2012, and worked to compile maps of protests taking place. The AccessNow petition also illustrates the effects of SOPA PIPA and the European protests well:

"So we had this petition going on (...) maybe fifteen thousand signatures. And then after the SOPA/PIPA protest, people all of a sudden discovered ACTA, and it was like SOPA and PIPA's big brother. And then there was an explosion on Twitter and, literally in the course of two days, our petition went from ten/fifteen thousand to around three hundred thousand. And it was just crazy. It was like Christmas came early. We had been trying to mobilise people, we'd been trying to get the media to talk about it, we'd been trying to get this topic on the agenda in the European parliament, and it just wasn't getting on there. And now we saw that once citizens started getting engaged, then the media gets engaged. And once the media gets engaged, then politicians start listening a little more."⁵¹

The chain is thus neatly summed up. Protests against ACTA inspired by the movement against SOPA and PIPA began, finding fuel in the information and analyses already prepared by campaigning groups. Media interest picked up and politicians thus became equally interested. This basic chain of events lies behind the politicisation and subsequent rejection of ACTA. The essential role of the 'quieter' organisations, themselves surprised by the outbreak of protests, is proved by the gap between the end of the protest wave in June 2012 and the vote in the European Parliament in July of the same year. Without these organizations keeping up pressure on the institution after popular dissent waned, they may not have had the desired effect.⁵²

Conclusions

⁵⁰ Interview with senior policy analyst at Access Now, Brussels, 28/06/13.

⁵¹ Interview with senior policy analyst at Access Now, Brussels, 28/06/13.

⁵² Interview with representative of European Digital Rights, Brussels, 27/06/13.

This paper has aimed to illustrate how a political opportunity approach adapted to the arena of the European Union can be used to explain the outcomes of the campaign against the Anti-Counterfeiting Trade Agreement, better known as ACTA. Summing up the findings, the main elements highlighted as important in exploiting opportunities and overcoming threats in the political context of the campaign were ‘open source’ insider-outsider coalitions and the presence of popular protests at the member state level.

The analysis presented seeks to establish a causal chain, linking one event to the next, in order to demonstrate the influence of an SMO campaign directed at a European issue in line with what George and Bennett dub the analytical narrative form of process-tracing. To strengthen that account, it is interesting to consider rival explanations. Can the European Parliament vote against ACTA be explained in another way, without reference to the campaign? One possibility here is that the Parliament voted against ACTA in the absence of a strong industry lobby convincing it to do otherwise, or that industry stopped lobbying because they knew ACTA to be essentially flawed and not worth defending.⁵³ Even if this is the case, however, the Parliament coming to act against ACTA runs contrary to logic. The Commission had been consistent in its advice to accept ACTA to both member states and the Parliament. The campaigning groups admitted that they were unhopeful of defeating ACTA in the Parliament before protests broke out in January 2012. Had the campaign not been aided by the protests, it seems unlikely the consensus in the Council would have been broken opening the way to a Parliamentary defeat. Removing the campaign and protests from the scenario does not appear to produce a convincing case that ACTA would nevertheless have been overturned.

This short exercise in the counter-factual also brings to the fore another interesting feature of the campaign – the gap between protesters on the ground and EU campaigning groups both in Brussels and the member states. All groups admitted their great surprise at the protests and the high turnout, and though they were quick to act to capitalise on the public outcry there were no claims of having engineered or sought to stir up such protests. Yet the importance of protest in EU campaigns, coupled with strong public opinion against the EU and expert advocacy in Brussels has been shown to be a winning formula before.

A previous campaign against the Services Directive (see Leiren and Parks 2014) in 2006 took place in the context of the debates on the Constitutional Treaty and the referenda in France and the Netherlands, and therefore in a situation of heightened attention to the EU. The ACTA case, taking place in the context of the financial crisis in the EU, can also be argued to check this box.⁵⁴ The Services Directive case also featured popular protests and coalitions of different types of insider and outsider organisations that were able to exploit opportunities and overcome threats. These coalitions were based around the umbrella organisations the European Trade Union Confederation (ETUC) and the Platform of European Social NGOs (Social Platform). ACTA also boasts a similar coalition, albeit a less formally organised one. Finally, all

⁵³ Interview with representative of European Digital Rights, Brussels, 27/06/13.

⁵⁴ Though heightened attention to issues of internet rights in the context of SOPA and PIPA were crucial to the protests here, I would argue that the clear EU element in those protests was aided by this climate of increased sensitivity to EU actions.

of the cases were characterised by a closed Commission which led groups to target the European Parliament and/or the national level with more grassroots strategies to raise public opinion around the issues in hand.

However, the protests seen in the Services case were organised through the EU to grassroots links of trade unions. The gap observed in the ACTA case may be more characteristic of social movement organising in Europe today: EU opportunities have closed down since the advent of the financial crisis, leaving grassroots groups to focus on local and national questions in the face of apparent unresponsiveness in Europe (della Porta and Parks forthcoming). Anecdotally, the protests in the ACTA campaign bear this out, focusing on national governments rather than Europe. Bridging the gap between these two types of SMO may then be more important than at first appears.

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