

ROADMAP

Title of the initiative: **Anti-Counterfeiting Trade Agreement (ACTA) (proposal for a Council decision for authorising the signature of the agreement and proposal for a Council decision for concluding the agreement)**

Type of initiative (CWP/Catalogue/Comitology): Negotiations of International Agreement/CWP

Lead DG/contact person/details: DG TRADE-E.2,

Expected date of adoption of the initiative (month/year): by the end of 2010

Date of modification:

Version No:

Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative?

Intellectual property rights have been identified as one of the main EU competitive assets in a globalised economy. The misappropriation of intellectual property is an issue of major concern: the European Union, which traditionally invested in creativity, quality and innovation and receives considerable added-value for this effort, is particularly affected by poor rules on enforcement of intellectual property rights (IPRs) in third countries. One of the EU's main trade priorities today is to protect the intellectual property of its right-holders against infringements around the world and to ensure that these rights are effectively and adequately enforced.

The basic approach to address this problem was set out at the end of 2004, in the European Union's *Strategy for the Enforcement of Intellectual Property Rights in Third Countries* and later implemented in *Global Europe: Competing in the World*. The European Union is committed to establishing a strong level of protection for the intellectual property of its citizens and companies and to ensuring the effective and adequate enforcement of such rules against infringements such as piracy and counterfeiting in third countries.

The EU is looking to build a more robust framework for enforcement through its participation in the Anti-Counterfeiting Trade Agreement (ACTA), a proposal for a new pluri-lateral treaty to help in the fight against counterfeiting and piracy.

As part of this strategy, the goal of the ACTA negotiations (launched in 2008) is to provide an international framework that improves the enforcement of intellectual property right (IPR) laws, by improving international standards as to how to act against large-scale infringements of IPR, often conducted by criminal organisations.

(ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

In view of the need to improve the international standards on enforcement so as to fight effectively against counterfeiting and piracy, the European Union has substantially increased its work in the field of the intellectual property enforcement. It has created specific dialogues on intellectual property with some of the key trade partners, such as Russia, China, Ukraine; introduced the issue at the WTO/TRIPS Council; shifted technical assistance resources to enforcement; and established reinforced cooperation with like-minded countries such as US and Japan. In addition to the above, EU has concluded a free trade agreement with Korea, Peru and Colombia and is also currently negotiating free trade agreements with other third countries such as India, China, Central America, Ukraine, Singapore in which it has addressed, or plans to address, the issue of enforcement of intellectual property rights.

Other DGs, as well as EU Delegations in third countries, have an important and well defined role in terms of improving the enforcement of intellectual property rights in third countries. For example, DG TAXUD regulates the enforcement of IPR at the EU external borders, DG MARKT leads the negotiations on behalf of the European Union in various committees in World Intellectual Property Organisation (WIPO), DG AGRI is responsible for EU legislation concerning geographical indications and leads negotiations on these matters, and DG JLS has shared regulatory responsibilities when enforcement of IPRs is linked with law enforcement both within and outside the European Union.

ACTA aims to build on existing international rules in the area of intellectual property, in particular on the TRIPS Agreement. It is intended to address a number of enforcement issues where participating countries have identified that an international legal framework either does not exist, or needs to be strengthened.

What are the main problems identified?

Infringements of intellectual property rights have become increasingly common and are widespread phenomena bearing a considerable impact within the European Union and at international level. In 2008, according to the European Union Customs statistics, there was a sharp increase in the actual number of intellectual property rights infringing goods detained by the European Union customs authorities: 178 million articles were seized at the EU borders in 2008 compared to 79 million in 2007, of which about 20 million were potentially dangerous to the health and safety of consumers. In one year, fake toys seized increased by 139%, electrical equipment by 58%, medicines by 57% and personal care products by 42%.

Counterfeiting and piracy are transnational activities. The growth of this illegal trade spurred the most affected countries to agree to develop an instrument that will strengthen international cooperation in our individual and common efforts to confront this shared threat. ACTA will provide a framework for participating governments' efforts to more effectively combat the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

The main themes of the proposed agreement cover the following areas: a) cooperation among the ACTA parties to address the challenges of cross-border trade in counterfeit and pirated goods, b) establishing a set of enforcement best practices that are used by authorities, and c) a legal framework of enforcement measures.

Who is affected?

Counterfeit and pirated goods have negative economic and social impacts not only on governments and companies but also on the everyday life of citizens. Violations of IPRs lead to job losses and undermine sustainable economic development. Worse still, from the perspective of public and consumer safety, the appearance of counterfeit medicines and items such as spare parts of cars, busses and planes pose a threat that cannot be ignored. Furthermore, it is acknowledged that the cross border trade in counterfeit and pirate goods often involves organised criminal networks dealing with the manufacture, distribution and sale of these illegal goods.

Is EU action justified on grounds of subsidiarity? Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

The trade policy is an exclusive competence of the European Union and DG TRADE handles the external dimension (multilateral and bilateral) of the issue on the enforcement of IPR in third countries. It also represents the European Union at the WTO and notably at the TRIPS Council. It should be noted that the ACTA will be built on existing international rules and norms, specifically the TRIPS Agreement which contains provisions on the means of enforcing intellectual property rights that constitute minimum common standards applicable at international level. The magnitude and effects of IPR infringements are of such significance on a global scale that they require an improved international legal framework on the enforcement and therefore this objective can be better achieved by action by the European Union.

B. Objectives of EU initiative

What are the main policy objectives?

The objective is to provide an international framework that improves the enforcement of intellectual property right laws by improving international standards on how to act against large scale infringements of IPR which are often conducted by criminal organisations.

The ACTA initiative aims to establish international standards for enforcing intellectual property rights in order to fight more efficiently the growing problem of counterfeiting and piracy. In particular, the ACTA is intended to establish, among its signatories, agreed standards for the enforcement of intellectual property rights that address today's challenges by increasing international co-operation, strengthening the framework of practices that contribute to effective enforcement of intellectual property rights, and strengthening relevant enforcement measures. The intended focus is on counterfeiting and piracy activities that significantly affect commercial interests, rather than on the activities of ordinary citizens.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

No in terms of legislative initiatives. The ACTA agreement should only include provisions on civil, criminal and customs enforcement, on internet infringements as well as on procedural rules. These rules will be in line with the current level of harmonisation of IPR enforcement since the ACTA negotiations will reflect the European *acquis* in the area of the enforcement of intellectual property rights. The ACTA will be a valuable contribution to the current international standards as defined by the WTO/ TRIPS Agreement.

C. Options

What are the policy options? What legislative or 'soft law' instruments could be considered?

The ACTA itself should foresee "soft law" commitments about increased co-operation and co-ordination among enforcement authorities, technical assistance and partnerships with industry.

(iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

No, the ACTA negotiations will reflect the European *acquis* in the area of the enforcement of intellectual property rights.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

The concerned DGs such as MARKT, TAXUD, JLS, ENTR, SANCO, INFISO have been, from the very beginning, fully associated with the ACTA negotiations.

Explain how the options respect the proportionality principle

The ACTA agreement should include provisions on civil, criminal and customs enforcement, on internet infringements as well as on procedural rules. ACTA is only about enforcement of intellectual property rights. It will not include provisions modifying substantive intellectual property law, such as the creation of new rights or their scope of protection or their duration. However, it harmonises rules on how inventors can effectively enforce their rights in courts, at the borders or over the internet. These rules are considered to be the necessary measures in order to combat effectively the fight against the counterfeiting and piracy.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

ACTA will not go beyond existing EU acquis. There will therefore be no immediate effect in the EU as regards legislation. The expected changes are rather related to the situation in third countries. ACTA should serve as a model of best practices that should be considered by emerging countries which faced significant problems fighting counterfeiting and piracy. However, to what extent this will really happen is beyond our control. Having the "ACTA" model in place should create in third countries a safer IP environment attractive to foreign directive investment.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

NO

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

With respect to the simplification and the administrative burden, the options will have no significant impacts.

E. Planning of further impact assessment work

When will the impact assessment work start?

No impact assessment has been envisaged for the ACTA Agreement. The ACTA will be built on existing international rules and norms, specifically the TRIPS agreement which contains common standards applicable at international level and implemented in all Member States of the European Union. Furthermore, the ACTA Agreement will be in line with the current level of harmonisation of IPR enforcement since it will reflect the European *acquis* in the area of the enforcement of intellectual property rights.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

N/A

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

N/A

Which stakeholders & experts have been/will be consulted, how and at what stage?

The European Commission has organised three stakeholders conferences on ACTA (they took place on 23 June 2008, 21 April 2009 and 22 March 2010) and involved all stakeholders (citizens, industry, NGOs, etc).