



José Manuel Barroso
President
European Commission

Brussels, 29 February 2012

Re: Anti-Counterfeiting Trade Agreement (ACTA)

Dear Mr President,

We have learned through the media that the Commission intends to seek the opinion of the Court of Justice on the compatibility of the ACTA agreement with the Treaties.

While we welcome this decision, which our group has been calling for ever since the content of the draft agreement was known well enough for the request to be admissible, we do not accept the procedure chosen by the Commission to inform Parliament, nor the timing of the referral.

As you know, Article 218(10) requires that Parliament be *immediately and fully informed at all stages of a procedure* relating to the negotiation and conclusion of international agreements. A referral for opinion to the Court is undoubtedly a rather important event in such a procedure.

Moreover, the Framework Agreement, which establishes the modus operandi for good and loyal cooperation between our institutions is, as you know, quite explicit as regards the communication of important decisions by the Commission to Parliament, stating (para 13) that the *Commission shall not make public any significant initiative or decision before notifying Parliament thereof in writing*. We would ask you to do this, even if it now will be retrospective.

At this stage we do not even know whether ACTA has already been referred to the Court, nor do we have any information about the timetable foreseen. We demand an explanation for why the Commission, which has had full knowledge of ACTA, did not take this step at a much earlier stage, even before its request to Council to sign the agreement?

For months the Commission has ignored the concerns now raised by, among others, millions of citizens using their right to petition, the UN Special Rapporteur for Freedom of Opinion and Expression, the European Data Protection Supervisor, prominent European academics and several civil society groups.

Bearing in mind that the Council has just requested Parliament's consent on the agreement, on the basis of which it has started its own procedures, we also wonder about the precise timing of the Commission's referral. Coordination and communication are also to this end, as you know, key elements in the Framework Agreement.

We very much hope that the Commission will ask the Court to assess whether ACTA strikes the right balance between, on the one hand, intellectual property rights and, on the other, the right to private life, the right to the protection of personal data, freedom of expression and the freedom to receive or impart information, the right to protection of property and the freedom to conduct a business, both inside the Union and in external action and, more generally, with respect to the Union's obligations concerning support for democracy and the rule of law in international relations and compliance with Art. 208 TFEU on policy coherence for development.

The Commission should invite the Court to include in its assessment the elements of the acquis which implement and give substance to fundamental rights and basic freedoms of the Union.

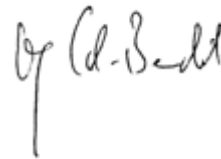
We will seek to ensure that the European Parliament uses its own powers to request the Court to assess the above-mentioned questions and the other outstanding economic and political issues raised by the agreement.

In the light of these elements, we will request your attendance at the next plenary session to debate your strategy on ACTA with the European Parliament.

Yours,



Rebecca Harms



Daniel Cohn-Bendit

Co-Presidents
Greens/EFA Group in the European Parliament