

Institutional Power in the European Union

Why did the European Union reject ACTA?

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Abstract

The Anti-Counterfeiting Trade Agreement was a high-profile agreement between the major Western countries to fight counterfeit products. However, after months of protests in Europe, ACTA was rejected by the European Union. In this thesis, I use process tracing to uncover the causal path towards the rejection. With veto player theory and access point theory, I will answer the question why the European Union rejected ACTA. I find that there is a path of events that lead to the rejection of ACTA. The European Parliament wanted to expand its powers at the same time society interfered in the discussion about ACTA. The Commission wanted to keep all the cards to its chest in order to stay the key player in international negotiations. Those interests clashed, and the agreement was eventually rejected.

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Introduction

July 4, 2012 was a milestone for the European project. After years of complaints about the democratic deficit, the European Parliament executed its new power to block international trade agreements for the first time in history. The Anti-Counterfeiting Trade Agreement (ACTA) was blocked and thereby effectively stripped for every power it had. The result was that ACTA was blocked by the European Union. Why was it that the European Union in the end was against ACTA? And how became the Parliament as hostile as it was, while the Commission on the other hand was such a huge supporter of ACTA? The plurilateral agreement between eleven negotiating parties¹ was mainly contested for its content and its lack of transparency, but is this a reason for the European Union to block a carefully negotiated agreement?

The agreement was about Intellectual Property Rights (IPR) and the enforcement of those rights. Multiple (developed) countries wanted to protect their interests through the enforcement of IPR. There are institutions to achieve more IPR enforcement, like the World Intellectual Property Organization (WIPO) or by the World Trade Organization (WTO). One of the pillars of the last institution is the TRIPS, the Agreement on Trade Related Aspects of Intellectual Property Rights. Sell (2010) argues that the developed countries on purpose started ACTA to bypass the WIPO and WTO. By doing this, developing countries were not able to join the negotiations and were not able to influence the discussions surrounding ACTA directly. This can be seen in the debate, which is a lot about medicines for those developing countries.

In 2005, the first signs of an agreement on IPR enforcement arose. Japan proposed an anti-counterfeiting agreement, followed by the United States in 2006. The Swiss and the European Community followed, and those four actors announced the coming-up of an agreement on counterfeiting in October 2007 (Kaminski 2011: 4). More countries followed, all developed countries with maybe the exception of Morocco and Mexico. Developing countries like Brazil, India and China were not invited to participate in the process, while they do have an interest in IPR enforcement (Ermer 2010). The formal negotiations started in June 2008 with

¹ The negotiating parties were Australia, Canada, the European Union, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea, Switzerland and the United States.

the goal to finish the agreement in the same year. However, negotiations took almost three years to complete. The negotiations were characterized by the secrecy that surrounded the meetings and draft texts. No texts were released until March 2010, and this text was even leaked instead of made publicly by the negotiating parties. It took another month to release a text through official channels, and after the first leak and publication more and more texts were released, mainly through leaks. It may be clear that the negotiation process was not transparent at all, resulting in the situation that the European Parliament should give its consent to the agreement while not being able to influence the process.

On the eve of the plenary vote in the Parliament civil society stood up and protested fiercely against the ratification of ACTA. Citizens were afraid internet freedom would be limited by ACTA. The Parliament listened to the societal actors involved and rejected ACTA. Never before had the Parliament been able to do this, but with the new Lisbon Treaty signed in the middle of the negotiation process of ACTA, the Parliament had co-decision powers. The Parliament seemed to be keen to use the power and rejected the treaty.

In this thesis I will examine the mechanisms behind the rejection of ACTA. The process towards the plenary vote is interesting, because it becomes clear that a power struggle between the Commission and Parliament is underway. The Parliament had support of European citizens, while the Commission was supported by the copyright industry and national governments (Euractiv.com 2012). A new dynamic was introduced by the ratification of Lisbon. This resulted in a changed playing field for the politicians, the MEPs as well as for the Commissioners. The case of ACTA is even more interesting, because in first instance it was the planning to finish the negotiations before Lisbon became into working. Clearly, the negotiating parties failed and the Commission had to take the interests of the Parliament into account.

Little literature is written about ACTA yet, and especially the political process is underexposed. There are studies about the impact of ACTA on the global political IP rights (see inter alia: Mercurio 2012; McManis & Pelletier 2012; Rice 2012; Yu 2013). A study on ACTA by Matthews (2012) recommends several lessons for the European Union. First, there should have been more transparency in the negotiations (Matthews 2012: 31). Second, public opinion can be mobilized by framing IP rights as human rights. Third, even the final version lacked clarity about legal constructions (ibid.: 32). Fourth, the Parliament will hesitate to use its powers. Fifth, the Parliament will not necessarily wait until the ECJ has judged an agreement (ibid.: 33). Indeed, these are the direct causes of the rejection by the European Parlia-

ment. However, Matthews' article lacks a theoretical framework and is thus not fully completed. This also applies to other studies. The main focus of research is how harmful ACTA would be for the global IP rights regime. For example, Mercurio (2012) describes the effects ACTA would have had on international IP regimes like the World Intellectual Property Organization (WIPO). He argues that despite all academic opposition towards ACTA, the influence on national laws will be limited. It would have had much influence as part of an IP rights regime as a starting point for future negotiations. In sum, the literature is mainly about the –negative- consequences for developing countries or internet freedoms in the participating countries. There still is very little literature about the decision-making process, which gives me an opportunity to fill in this gap.

What was the decisive reason for the European Union to reject ACTA? This is an important question to answer in order to find a satisfying answer to my research question. Without the theoretical framework, literature and news articles seem to point to two options. The first option is that the Parliament wanted to exercise her new powers. In this scenario, it is about institutional self-interest. Because the Parliament suddenly had the power to reject trade agreements and had a good motive to do this, namely the people's worries about internet freedom, ACTA was rejected. In this scenario, the Parliament was frustrated because it was not enough involved in the negotiations. For example, the Parliament did not wait the judgment of the European Court of Justice about the legality of ACTA (European Parliament 2012). The Commission on the other hand wanted to exercise its power by pushing the ACTA through the Parliament, although there clearly was not enough support for it. In the second scenario, the European Union acted to represent the people's protests. This is underwritten by the statement of Martin Schulz, the president of the European Parliament: "*The decision to reject ACTA was not taken lightly. It followed an intensive, inclusive and transparent debate with civil society, business organizations, national parliaments and many other stakeholders.*" (Schulz 2012). In this second scenario, the Commission represents the interests of the industry, which contrasts the interests of society.

In this thesis, I will analyze the case of ACTA. This is an example of policy stability, or policy status quo, because there changes nothing in the policy of the European Union. In sum, there are two plausible explanations of policy stability in my case. First, veto player theory is about the behavior of institutions in the policy making process. Tsebelis (2002) tries to explain and predict the behavior by analyzing the veto players within the process. Second, there is the literature on the access points (Bouwen 2002). This literature is about the access inter-

est groups have to politicians. The more access points, the more influence. Veto player theory could do a good job in analyzing the positions of the institutions, but would fail to account for change in society. Access point theory could explain how politics is influenced from within society, but on the other hand could fail to explore how the internal politics of the European Union influence policy outcomes. This juxtaposition is interesting, and I will deepen it in the theoretical chapter.

In basis, it is about juxtaposing veto player theory and access point theory. A rational choice institutionalist thinks that institutions act out of self-interest. This assumption means that institutions want to preserve their own survival. Parliamentarians behave in a certain way, because they want to be re-elected (Hix et al. 1999). Because the Parliament seems to act out of their own interest, I will test the rational choice institutionalism of Tsebelis. Tsebelis uses veto player theory to explain certain policy outcomes (Tsebelis 2002). Veto player theory has a strong argument to explain and predict certain behavior of the Parliament. The central argument is that the more actors participate in a policy process and have a veto right, the more difficult it will be to come to a decision. By analyzing the positions of the veto players relative to the subject a decision has to be made, it is possible to predict the outcome of the process.

Access point theory, on the other hand, acknowledges the influence of societal actors in the policy process. In the case of ACTA, society protested fiercely against ACTA. But before the huge demonstrations, NGOs and the academic community were opposed against ACTA for a long time. They tried to influence in first instance the negotiating parties, but later when it became clear that the European Parliament could block it, they tried to lobby through influencing the MEPs. Obviously, they succeeded. Why was it that they succeeded? The European Union is always a battlefield of interests, and now the interests of the societal actors were stronger than the industry interests. However, it is not clear yet *why* this was suddenly the case in the ACTA process. By doing this research, we can learn about the institutional mechanisms that are in place in the European Union since the ratification of the Lisbon Treaty.

The rest of the thesis will be organized as follows: I will deduce hypotheses from these theories in order to find out the answer to the following question: Why did the European Union reject ACTA? There are of course multiple answers to this question; politics is never as simple as finding one variable that caused an event. I conduct a case study, in which I will ex-

ecute process tracing, according to Gerring's principles. In my Methodology chapter I will explain how I will do this in the thesis. My Empirical chapter gives a broad, though relevant, description of everything that has happened in the process towards the rejection. In the Analysis chapter, I will analyze in what extend the theoretical frameworks are applicable to the empirical chapter. This leads to a Conclusion, in which I will elaborate on the consequences that my findings have on theory.

Theory

I define the rejection of ACTA as a status quo, i.e. a case of policy stability. Policy stability is the situation in which there is a proposal to change policy, but this policy is not changed. In this theoretical chapter I will deduce hypotheses from veto player theory and access point theory, because both theories are able to explain policy stability. Both theories fall within newer approaches of studying the European Union. Newer approaches want to explain and predict certain policy outcomes in the European Union. The 'new institutionalism' is built around institutions. There are three institutionalisms: rational choice, historical and sociological institutionalism (Hall & Taylor 1996). Historical institutionalism assumes institutional power is a result of a path-dependent process. This means that the status of today's balance of power between institutions, and the state of the institutions is a result of historical events. Sociological institutionalism assumes norms and ideas are central in the explanation of policy processes in the European Union. Those norms and ideas constrain the institutional actors in their decision-making process. They limit the amount of choices, because policy is always needs to be appropriate and within the norm borders. The theoretical framework I use is based on the third institutionalism: rational choice. Veto player theory is a rational choice theory, because it assumes actors want to maximize their utility (Warntjen 2010). Access point theory falls within rational choice institutionalism as well, since interest groups that try to access the institutions weigh the costs and benefits of accessing institution (Kluever 2010: 180).

Veto players

Tsebelis (2001) uses policy stability as his starting point. With policy stability he means the change or preservation of the status quo in a certain policy field. It is not institutions, or ideology, or anything else he uses, because Tsebelis assumes the status quo is central in explaining and predicting certain decisions, and does it better than studying the direction of policy change. Tsebelis has three reasons to use this policy stability as starting point. First, policy stability affects other characteristics of the system, including institutional features. Second, in the literature it is a widely studied variable. Third, Tsebelis argues that policy stability says something about the effects and institutions, because the outcomes of policy processes are the result of the behavior of actors within institutions.

Tsebelis analyses the process prior to the policy outcome. There are several players that have to agree on a policy, they are called veto players. In my case the Commission, Council

(member states) and European Parliament are the veto players, they have to reach an agreement over ACTA to ratify the treaty. Those veto players are identified by party lines, partisan veto players, and by the constitution or law, namely institutional veto players. To agree on change in policies, thus a change in the status quo, veto players need to agree within a certain configuration of the political system. Tsebelis calls the set of outcomes of the process that can replace the status quo the winset of the status quo. Policy stability is then the consequence of little to no winset of the status quo. Several characteristics lead to policy stability; low winset, many veto players, significant ideological differences between veto players and internally cohesive veto players make it harder to change the status quo. All those characteristics have one common denominator: institutional self-interest. When an institution encounters a low winset, it will rationally choose not to agree to the proposal because it is not in its self-interest. This characteristic results in a more difficult process when there are more veto players, because every player has its own interests. Also, the ideologically differences and internally cohesive veto players are a result of rational choice, in every situation the institutional self-interest is more important than achieving certain policies.

Institutional veto-players

When over viewing the process around the rejection of ACTA, the main veto players are institutional veto players. Tsebelis (2001: 362) distinguishes four institutional players in the European Union: the Commission, Council, Parliament and the European Court of Justice. The first three institutions are legislative institutions, and form the legislative branch of the European Union. In analyzing the legislative process, Tsebelis turns to the final stages of the process because a rational actor would, in Tsebelis' view, choose the best option available and thus the option that makes him best off (ibid.: 376). He also acknowledges the fact that debates within veto player theory, as I have described above, come down to the same questions: who are the veto players, how do these players decide, who controls the agenda and how much?

The debate within the literature of veto players is also about the influence of the European Parliament relative to the Commission and Council. Thus, the focus is on institutional veto players within the European Union. Tsebelis and Garrett (1997) argue that the European Parliament has lost power to the Commission with the emergence of the co-decision procedure. The authors say that the Parliament has lost power under the Maastricht Treaty to the Commission, because there is less possibility to influence policy. The agenda setting power is the most influential way to change the status quo, because the agenda setter can choose between

different options to propose to the other veto players. Because the agenda setter will choose their own most preferred feasible option, it gives the agenda setter a certain amount of power. It is therefore important *which actor makes the final proposal*, and in the case of the rejection of ACTA this is the Commission (Scully 1997: 64). Tsebelis and Garrett then would say that in the case of ACTA, the Commission has the agenda setting power and is still the most powerful institution relative to the Council and Parliament. For my thesis the most important aspects of this discussion are the discussion about the mechanisms the authors describe, because those mechanisms have been changing since then, resulting in the shift from co-operation to co-decision for trade agreements since the ratification of Lisbon (De Gucht 2010: 3).

In the model Tsebelis uses, the Council and Commission have the most extreme position relative to the status quo, while the Parliament is near the status quo, i.e. policy stability. This would explain why the Parliament, being a veto player, has rejected the policy change. However, this does not actually explain the situation, it describes it. The explanation lies in the empirical evidence I will gather during my research. The status quo is determined by the institutional interests of the Parliament and Commission. Because the status quo had more value for the Parliament than for the Commission, it will not be changed. In the case study the features that are important for veto player theory will be the ones that indicate which position the institutions take. In the negotiations between the Parliament and the Commission, the last player has the agenda setting power. According to Tsebelis, this is an advantage in the negotiations. We will see if this is actually the case, and analyze the position of the Parliament as well.

Institutional veto players are empowered by the law with roles within the political system. Agenda-setters are the players that can propose certain policies to other veto players, and therefore have a power other veto players do not have. For example, the Commission (who negotiated on behalf of the European Union) proposed the final text of ACTA to the Council and the Parliament. This was a “take-it-or-leave-it”-proposal, which shows the agenda setting power of the Commission in my case. However, the agenda-setter needs to take into account the feelings of other veto players, because if their proposal is rejected, the status quo is preserved and there is no policy change, as happened with ACTA. Agenda-setters do have the advantage that they can choose what they want to propose to the other players and if feasible, they will choose their own most preferred policy over others. In sum, this is the theory I will use in the thesis.

The assumption of all veto player theory is that actors are rational and pursue their self-interest. To achieve this, they need to have influence in policy making. This can be seen in the discussion about the co-decision/cooperation procedure, because it is all about who has the most influence on policy outcomes. Veto player literature is about the analysis of the power balance within a policy body. The assumptions, and theoretical implications, lead to my first hypothesis:

H1: Policy stability is more probable, if institutions with veto power struggle for their self-interest.

Access points

In this paragraph I will deduce a hypothesis from a theoretical framework based on ‘access points’ theory. First, I will briefly give an overview of the relevant literature, and argue why it is relevant in the ACTA-case. The literature overview will result in a plausible hypothesis which I will test in the Analysis chapter.

Interest groups, i.e. the industrial and societal groups, have an interest in influencing policy outcomes. Those policy outcomes are results of a process in which different actors are involved. People take decisions on the basis of what they think is the best one, no matter what the motives are. Both industrial and societal groups have an ideal outcome in mind that they want to achieve.

Pivotal players

The European policy process is defined by pivotal players. Those players are the players that are decisive in the policy process. In every policy decision, the pivotal players are in the spotlights. In order to reach a wanted outcome, interest groups should lobby those players that have such a role in the process. Within Europe in the case of ACTA, the pivotal players are the Commission, the Council, and the Parliament (Steunenberg et al. 1999: 344). All those players are necessary to form a coalition to break the policy status quo.

Definition

In this thesis, I define access following Eising (2007: 331) as “(...) *the frequency of contacts between interest organizations and EU institutions.*” The access points’ literature focuses on the role of possible access points within a policy unity, in my case the European Union.

Bouwen (2002) focuses on access points because it is problematic to measure influence in a policy process. Rather, it is possible to oversee the access an actor has in the institutions that

play a role in the policy process. Bouwen (2002: 1b) emphasizes that access does not necessarily mean influence. However, it is necessary to gain access to political institutions to influence the process. If this is not gained, influence can never be executed in the first place. It is thus a necessary condition and therefore a good subject for research.

To gain access to a pivotal player, it is necessary to have a trading good. You will not be granted any access, and thus influence, if there is no incentive for the members of an institution to grant the access. The institutions want ‘access goods’ in exchange for access. Bouwen (2002: 370) gives a concise definition of access goods:

“Access goods are goods provided by private actors to the EU institutions in order to gain access. Each access good concerns a specific kind of information that is important in the EU decision-making process. The criticality of an access good for the functioning of an EU institution determines the degree of access that the institution will grant to the private interest representatives.” (Bouwen 2002: 370).

The Commission is considered to be the most supranational institution (Bouwen 2002: 379). It wants to expand its influence, and to do this supranational cooperation is needed. The Commission has multiple access points. There are dialogues, consultative bodies, expert groups and online consultations (Chalmers 2013). The Parliament *“provides a forum for discussions of political importance during the EU legislative process.”* (Bouwen 2002). The European Parliament is more viable for society, because the MEPs want to be re-elected in the next elections (Dür 2009: 6). There are supranational, but also nationalistic characteristics, meaning that the Parliament is less supranational in general. The Council is least supranational, but in the case of ACTA the Council was in favor of the agreement. Crombez (2002: 28) argues that interest groups will lobby a pivotal decision maker. The Commission already was a pivotal actor, because it sets the agenda for the European Union (Tsebelis 1997). The Parliament became a pivotal decision maker after the ratification of Lisbon, and therefore more interesting for societal actors.

Access goods are accepted by the institutions for two reasons. First, the European Union needs to overcome the democratic deficit. A popular complaint is that the citizens of the EU do not have enough influence in the policy process. For example, the Commission has little staff but takes the main important decisions within the European Union (Crombez 2002: 10). With information about the society through societal groups, the EU can overcome the deficit (Bouwen 2002; Crombez 2002). The second reason the EU needs the access goods is to gain

more information about the compliance of rules. Without information how to enforce new laws, it is unknown for the policy makers if it is even possible to enforce them. Bouwen calls this reason of less importance than the first one, but I give it attention because ACTA is about enforcement.

Encompassing information

Bouwen (2002: 369) distinguishes three kinds of information that is being provided by actors. Expert knowledge is technical information from the private sector to understand the market. European Encompassing Information is information about the needs and interests in the European internal market. Information about the needs and interests in the domestic internal market is called Domestic Encompassing Information. The second form of information, European Encompassing Information, is the most important sort for my thesis. Encompassing information gives the policy makers an idea about what the needs of the internal market are. I expand Bouwen's scope of encompassing interest from the internal market to the societal arena. Corporations will try to influence the pivotal actors with this kind of information, but societal actors will try to do the same.

How does the EU come to a decision? It is now clear how interest groups can influence the process, but the mechanisms behind this process are relevant as well. The European Union does not only function by following external influences. Internal processes are part of the policy outcome. When the literature focuses on the outcome, it is merely about positive outcomes. The assumption in this thesis, regarding access point literature is that: *if an actor has sufficient access points, he will have an advantage in putting forward her interests.*

Actors with an interest in a certain outcome, be it corporate actors or societal actors, will try to influence the pivotal institutions. Following Bouwen's (2002) logic, I would say not only information is given through those access points, but that this information is encompassing of nature. However, the directions of this encompassing information may point towards very different directions. When this happens, the European Union as a policy unity suddenly starts to choke. The directions of encompassing information are different, and the European Union loses the direction it wanted to go because the compass is confusing. As a result, policy stability is achieved, and the status quo is intact.

H2: Policy stability is more probable, if a policy body receives confusing encompassing information among from its internal actors.

Methodology, hypotheses, and operationalization

In this chapter I will explain how I test the hypotheses. I will perform a qualitative research, based on process tracing. I will be able to look *into* the black box of negotiations, instead of only noting the fact that ACTA was rejected. I will also gather enough knowledge to draw conclusions from a process tracing research about the outcome of this case: the rejection of ACTA by the European Union.

Process Tracing

Collier (2011:823) defines process tracing as “(...) *the systematic examination of diagnostic evidence selected and analyzed in the light of research questions and hypotheses posed by the investigator.*” It is exactly what I will do in my research, namely examining diagnostic evidence in the light of the research question. I will trail down the process of the first small public debates in November 2007, until the rejection of the ACTA in 2012 by the European Parliament. I will explain below which standards I will follow to uphold the quality of my research. I use Gerring (2009) as my guideline to perform a good qualitative research. This chapter will first elaborate on the characteristics of process tracing (chain of evidence, non-comparable observations and general assumptions about the world), followed by an explanation about single-outcome research, and I will conclude answering the question how I will distinguish the more important events from the lesser ones.

Characteristics of PT

The most ideal research for science to prove causality is an experimental design, but Gerring argues this is in most cases not feasible in case study research because there is no way to keep all variables constant except for one, which is important in an experiment. The *ceteris paribus* is violated, and therefore this means that “*case study research usually relies heavily on contextual evidence and deductive logic to reconstruct causality within a single case.*” (Gerring 2011:172). This is the case in my study as well, because there is no single possibility I would be able to keep all variables constant in time, and change another to see which variable exactly caused the rejection of the ACTA. Process tracing, according to Gerring, is collecting bits and pieces of evidence and connect them with each other to verify a single inference (ibid.:173). The evidence that is collected by the case study research is non-comparable, because different types of evidence are used in the case study to prove causality. A causal path will be sketched, and the evidence in this path looks like “ $X1 \rightarrow X2 \rightarrow X3 \rightarrow X4 \rightarrow Y$ ”, rather than $X1$ leads to Y (ibid.). Gerring compares process tracing with detective

work, in the sense that a detective too collects multiple pieces of evidence, mainly circumstantial evidence to solve a crime. The pieces of evidence are non-comparable too, “*they cannot be analyzed in a unified sample.*” (ibid.). However, all pieces of evidence are *relevant* to the central argument (ibid.:178). The analyst has to put all pieces together and fabricate a comprehensive, plausible article out of this.

“*Process-tracing observations are not different examples of the same thing; they are different things.*” (ibid.:179). Gerring means that every observation is a stand-alone piece of evidence. However, because they are different observations, different things, it can be unclear where one observation starts, and where another ends. Consequentially, there is no exact number of observations, it is indeterminate. Also, there is an infinite number of possible observations in a research. Gerring argues this is not a problem, because the number of observations does not directly relate to the quality of the study. This would mean that if a study was longer it would be better, which is clearly not true (ibid.:180). A study becomes better if the evidence is of higher quality, i.e. better sources lead to better research.

The last characteristic is that process tracing “*(...) leans heavily on general assumptions about the world, which may be highly theoretical (nomothetic “laws”) or pre-theoretical (common sense).*” (ibid.). The researcher must assume, in absence of a formal research design, things about the way the world works. Gerring means that the researcher has to collect observations and order them in a way it makes sense. In order to do this, he has to rely on his own common sense and a broad set of theoretical assumptions. However, I would like to add that the common sense might be difficult to write down, but the theoretical assumptions have to be described accurately to prevent any confusion about the way evidence is structured and interpreted. Gerring skips this point too easy by just assuming a researcher has background information that he uses to use the data as the researcher wishes to interpret. It is important to be as transparent as possible, and therefore the relevant background information should be written down. Also, to share the knowledge on background information is not only a matter of transparency, but also adds to the quality of the research and the completeness of it.

These characteristics lay the theoretical basis of process tracing in my study, but in the next paragraph I will explain how to use process tracing in a comprehensive manner in order to use all of this in practice. First, Gerring has a point that if a causal chain within a case exists, it should be possible to make a diagram of it (ibid.:182). It could be a messy ‘spaghetti’-diagram, but it will always make things more clear than only text because every step is pre-

cisely located within the case. What I mean that the reader must be able to see in a glimpse of the eye how observations are related. Furthermore, Gerring notes that the analyst is forced to “reconstruct a plausible account on the basis of what I have called *Counterfactual Comparison* (what would have happened if *XI* was different?” (ibid.). This means that for every variable in the model, the author should have thought about the consequences of the course of action. If an event did not happen, would the next one have happened? If this is not the case, we can say the variable is not necessary, but it can still be sufficient.

As I mentioned before, I will use process tracing in my research. I will follow Gerring's points of attention, and apply his characteristics. First of all, I am aware of the fact that the evidence I will collect will not always be a direct cause of the effect I am researching. This means I will collect contextual evidence, comparable with a detective who is looking for evidence of a crime. To solve the puzzle why the European Parliament rejected the ACTA, I will look to the most important events and analyze whether my hypotheses are applicable to those events.

Hypotheses

Having explained my motivations to perform a single-outcome process tracing research design, I will now discuss the consequences for my hypotheses. I will explain how I use the hypotheses and how the variables in it can be operationalized.

Veto player hypothesis

H1: Policy stability is more probable, if institutions with veto power struggle for their self-interest.

There are multiple elements in this hypothesis. First, we see that there are various institutions in the European Union that take part in the policy process. Those are the Commission, Parliament, Council and the European Court of Justice. Tsebelis identifies different kinds of veto players, namely partisan and institutional players. I assume that the Parliament, Commission, and Council are unitary actors, because I study the inter-institutional struggle. I will not research the discussions within the Parliament, Commission, or Council. Therefore, I treat the institutions as a whole.

The second element is the interest of various institutions. Veto player theory assumes institutions act rational and out of self-interest. This means their interest is selfish and can be identified by looking at the actions of institutions. The Commission is only busy saving their own

interests, which are maximizing their power. After Lisbon, they arguably lost some power in the area this thesis is about. The Parliament is able to block a treaty like ACTA since Lisbon, something that is new for the Commission. We should see the Commission being busy not telling the Parliament anything about the negotiations, because the Commission is afraid that the Parliament wants a say as well. Self-interest for the Parliament means that the Parliament also is busy maximizing its power, but does this by different means. The Parliament wants to participate in the negotiations, because this would mean a real expansion of its power. I will analyze the rhetoric used by the various players in the institutional conflict. Substantive debate will be separated from procedural ones. Substantive debate is about the content of the texts, while procedural debates focus on the role of the actors within the debate. The tone of the debate indicates how the actors view the debate: for community or in their own interest.

The third element, a collision of interests is when the interests of different actors are in conflict. The actors will struggle to maximize their own position in the outcome of the process. This is pretty clear in the ACTA case, and I will not dwell for too long on it. The Commission and Council wanted ACTA to succeed, while the Parliament did not.

The second and third element together forms the independent variable. I identify this variable by looking at the reactions of the actors during the process towards the rejection and in their reaction to the rejection. Because actors will most likely not refer directly to their own interests, I must identify language that might refer to the institutions' interests. If the actors emphasize their own interests instead of what they represent, the hypothesis can be accepted. Rhetorical action in the form of a debate over procedures is a good example of an attempt to expand institutional power. Substantive debate is about the substance itself instead of procedural discussions.

The hypothesis is formulated from the assumption that every actor is rational and has its own interests. In order to reach this conclusion, we should see that the Parliament defended its own procedural powers, and wanted to fight over them to expand their rights to influence the outcome of the policy debate. On the other hand, the Commission as a negotiator wanted the proposal to succeed because it would emphasize their role as a successful negotiator so they could point to this in the future, and establish its power. The Council as an actor did not reject ACTA in a plenary vote. In order to accept the hypothesis, these are all events that I need to notice in analyzing the empirical evidence.

Access points hypothesis

H2: Policy stability is more probable, if a policy body receives confusing encompassing information among from its internal actors.

This hypothesis also consists of some important elements. First, the number of access points is important for this hypothesis. In the case of ACTA, this number increases after Lisbon because the Parliament could also veto certain policy. The Parliament is more sensitive to societal actors, as I explained in the Theory, while the Commission is more influenced by the industry. The interests of industry and society were opposite, and the signals the European Union received conflicted. This automatically leads to the second element, the signals the European Union receives. I will identify those signals by analyzing the positions industry and society take in the public debate. When I have identified them, I will analyze how the different institutions within the European Union react to the signals. If they ignore them at all, or do not acknowledge them in their reactions towards and after the plenary vote, the hypothesis can safely be rejected. In order to accept this hypothesis, the different actors must emphasize that it hurts the people they represent, i.e. the industry or the people.

In the Empirical chapter, I will have to find some information given by the industry to the Commission that is confirmative for this part of the theory. Otherwise, the hypothesis I deduce is can be rejected, because if this kind of information is not given, the EU (or at least the Commission and/or Council) are not being motivated by this kind of information.

Data collection

The method I will use is process tracing, using the principles of Gerring. It is important to execute process tracing in a proper, systematically manner to deliver a plausible research. That is also why I have described the principles and framework as thorough as I have done. Gerring names three basic principles for the execution of process tracing: all evidence gathered is contextual; the observations are not alike, they cannot be compared; and process tracing leans heavily on general assumptions about the world that need to be operationalized. My research will be based on news briefs and news articles about the period between the start of the debate on ACTA and the rejection of ACTA by the European Parliament. All of the evidence I will gather to construct a complete overview of the process towards the rejection is contextual. It will provide the reader with actions and opinions of actors. The bits and pieces information I gather are non-comparable in the sense that there are no numbers that can be squared or summed up. The quality of my research will be determined by the quality of the

sources, and that is why I use websites that are known to be impartial to construct the events. My main source for the empirical research will be IP Watch, a famous, but also reliable website on Intellectual Property Rights. I will analyze all sources that are on this website, and I will complement those sources with sources from other website. All those sources will be analyzed and I will put them in a time table. With this method, I hope to make a plausible reconstruction of all events that are important for the rejection of ACTA by the European Union, and in the analysis I will infer causes from these events. In the end, science serves the purpose to explain the world and give causal inferences for important events.

Empirical Chapter

In this chapter I will describe the process from the first contact to the final blow to ACTA in the European Parliament. The chapter will be divided as follows: in November 2007, the first debate in Europe started, and this will be my starting point. The first phase ended when the international negotiations are finished: the substantive debate within Europe could begin. I will describe the inter-institutional struggle within Europe. The third phase started when the debate took a surprising turn: the Commission went to the European Court of Justice to delay the plenary vote in the Parliament.

The first phase: international negotiations on ACTA

2007-2008

In November 2007, the first signs of a debate surfaced in Europe. The Trade Commissioner argued that an anti-counterfeiting treaty like ACTA was needed to lower the risk of counterfeit medicines. *“It is not just about Gucci handbags in fake markets in Shanghai. It is a real life and death issue”*, Mandelson said (IP Watch 2007a). The European Alliance for Access to Safe Medicines was alongside him, adding that the problem was not just in Eastern Europe, but throughout Europe. These were the first public arguments that were heard in the process towards July 2012 in support of ACTA.

After these comments it was quiet until February 2008. The copyright industry then starts an offensive for stronger IP enforcement. This push for stronger enforcement included a call for the government to finalize ACTA as soon as possible. The American government said it was concerned by the danger that lied in the production of fake medicines, a theme that was repeatedly heard in the arguments by proponents of ACTA throughout the beginning years of ACTA (IP Watch 2007a).

The Business Action to Stop Counterfeiting and Piracy (BASCAP) saw a danger in lack of difficulty in which ideas and innovation were stolen. Therefore there was a need for a treaty that protects the business. According to Fourtou, the co-chair of BASCAP: *“security, social and economic issues associated with rampant theft is like cancer.”* (IP Watch 2008a). His colleague, Alan Drewsen of International Trademark Association vowed that whatever new administration in the Whitehouse in November, the industry keeps on pursuing ACTA on the same level. The pharmaceutical industry also started to concern itself with ACTA, with Fibig arguing that *“counterfeit pharmaceuticals are truly a global problem for which we need global solutions.”* (ibid.). The first opponents, in the form of IP Justice started to mix in the

discussion. They did not agree that only a few countries will negotiate over ACTA, because it would be those countries that decide the rules for a much broader audience, including developing countries and civil societies (ibid.).

The United States Trade Representative (USTR) wanted that more countries will join the agreement than the case is at the moment. The USTR hoped that law enforcement would be more effective when the treaty was joined by as many nations as possible. The first criticisms in Europe surfaced (ibid.). Jamie Love (KEI) demanded more transparency, since it had been five months since ACTA was announced and no text has yet been made public. Katz (EFF) said that ACTA is the wrong instrument to enforce the rules, because for example custom officials at airports are improperly responsible (IP Watch 2008b.).

The formal negotiations were expected to start in June, and the US strove to complete the agreement at the end of 2008. In the European Union a discussion commenced with the procedure of the negotiations at stake. The Commission said it had a complete mandate to negotiate, and that “*negotiations will involve the Commission, EU member states and especially the presidency.*” (IP Watch 2008c). The Parliament was not mentioned, and it had not been informed about the negotiations yet. Under the Lisbon Treaty the Parliament was strengthened, but was unclear yet if the Parliament had the right to vote on ACTA. The perspective was that Parliament will only be ‘consulted’ on ACTA (IP Watch 2008d).

The first official meeting took place in the beginning of July. A number of topics were discussed, including border measures and criminal sanctions. “*ACTA’s intention is to tackle the growing problem of large-scale counterfeiting which is a problem for every citizen*”, the head of the Institute for Policy Innovation said (IP Watch 2008e). The first meeting was a success according to the participants, but civil society groups that were left out of the negotiations were less optimistic. For example, Essential Action wrote in a statement to the USTR that “*commercially interested parties sometimes cast compulsory licensing for medicines (...) as patent theft or ‘piracy’, but no one can argue these practices bear any resemblance to counterfeiting*”(ibid.). A study commissioned and received by Parliament points to the lack of data on the effects of counterfeiting, thus doubting the need for a treaty like ACTA (IP Watch 2008e).

On July 1, the French presidency in the European Union began. France put ACTA high on the agenda. Meanwhile, the G8 had another meeting in which it the need to finish ACTA as soon as possible was emphasized, preferably before the end of 2008. In the Parliament, the

INTA was also working on ACTA. Caspary (EPP) supported the introduction of global penal law sanctions. There were some questions concerning human rights, but the Commission promised to take care of this. The Commission also argued that as long as the Lisbon Treaty had not been signed yet, the Parliament was only consulted on ACTA and that there was no co-decision procedure. There were some NGOs that started studying the possibility of harmonizing criminal sanctions under ACTA, because any criminal law harmonization had been blocked by member states so far (IP Watch 2008e).

The Commission issued a press release about the second ACTA negotiation round in May 2010. There was a steady progress, but a third round would be needed. The meeting focused on “*civil remedies for infringements of intellectual property rights, including the availability of preliminary measures, preservation of evidence, damages, and legal fees and costs*”. (IP Watch 2008f). There would be no draft text released so far, because it was too early in the negotiations to do this. The issue of graduated response had not been discussed yet, but this should be in line with the European law on this point. The Parliament Legal Committee called to have a look inside the negotiations, because different legislative project in the European Union made it very difficult to determine the effect of new IP enforcement measures. Plus, there were “*ever more calls to make use of control options enabled by internet technology*.” (ibid.). Lichtenberger of the Legal Committee demanded that all texts had to be presented to the Parliament, but there was no legal way to force Committee to disclose the documents. However, excluding the public would alienate the EU skeptics further. Critique also seemed to get louder in the US, where an industry official said that there will be changes in law because of ACTA. NGOs were worried about this, and some organizations had the idea that the consultations are highly selective, giving some businesses more influence than others (ibid.).

NGOs sued the US government over ACTA. “*ACTA could potentially change the way your computer is searched at the border or spark new invasive monitoring from your ISP*.” (IP Watch 2008g). This was one of the concerns that motivated NGOs to demand the release of ACTA texts. There were public consultations, but according to Public Knowledge it seemed that some sides knew more about the content of ACTA than others. The USTR reacted by saying that the office had worked hard to keep the public informed. The copyright industry thought that more discussion in WIPO was needed, but they are skeptical that anything would happen quickly because the organization was not effective enough to deal with issues swiftly (IP Watch 2008h).

The copyright industry argued the counterfeiting threat needed to be viewed similarly to the view terrorism is perceived: “*identify the foreign countries that pose the biggest threat first, then encourage them to enforce their anti-counterfeiting laws and interdict shipments of counterfeit goods before they reach the US.*” (IP Watch 2008i).

The third negotiation round was on December 15. Again, nothing was disclosed to the Parliament, frustrating its members. The Parliament passed a resolution to publish the ACTA text to the European citizens, but at the same time the Parliament underlined the dangers of piracy and counterfeiting. Toubon (EPP): “*(...) counterfeiting is a plague which has been underestimated in its dimension.*” (IP Watch 2008j). The Parliament was explicitly concerned with the links between piracy and organized crime. Toubon’s colleague Fjellner (EPP) however, was disappointed that the Parliament had to act on rumors and had no insight. “*The culture and rumors hurts us in the fight against piracy. We must ensure that tools don’t become worse than piracy itself.*” (ibid.). The majority in Parliament agrees with him, and accepts a resolution in which Parliament calls the Commission “*to take into account certain strong criticism of ACTA.*” (ibid.) The criticism meant here is inter alia about the intrusion of privacy and the criminalization of non-commercial copyright and trademark infringements. Within Parliament a debate was going on the scope of ACTA. The Green Party tabled a new resolution which won a majority. In the resolution Parliament asked the Commission not to deal with “*liability of intermediaries.*” (European Parliament 2008). The problem for Parliament at this point was that it did not have legal rights to co-decide over ACTA. The Lisbon Treaty had not been ratified yet, and Parliament “*needs it*” (Caspary) to allow Parliament to “*participate in the definition of the mandate and vote on any possible final ACTA document before it can be signed for Europe.*” (ibid.)

2009

The FFII continued their opposition against ACTA in 2009 by filing a complaint with the EU Ombudsman against the Council. The FFII argued that the Council obstructed public access to the text of ACTA. The FFII was with other organizations that worry ACTA may limit access to medicines, the internet, and harm the most innovative sectors of the economy by giving patent trolls free reign (IP Watch 2009a). The call for more transparency was followed by the Swedish government and the European Parliament. The latter adopted a new text that called for the Commission to “*immediately make all documents related to the ongoing international negotiations on the Anti-Counterfeiting Trade Agreement publicly available.*” (IP Watch 2009b). The Commission did not respond to the request.

In April 2009, the focus of the negotiations shifted to the part in which the criminal sanctions are agreed. The Commission did not have the competence to negotiate on behalf of the national governments about enforcement, because this is left on the national level. Later on, this issue became very problematic in the debate. In sum, the discussion until now was between societal actors and the Commission. The public interest groups and academics did not trust ACTA because they feared it would violate human rights. Moreover, the lack of transparency was of concern for the opponents. The supporters of ACTA emphasized that ACTA would not exceed national laws and that they try to be as transparent as possible. However, according to the skeptics, industry representatives are allowed to review the draft texts, while the opponents are not (IP Watch 2009c).

In the same month, the Commission was very clear about its position towards ACTA. It is *“committed to improve the legal framework for IP protection,”* Devigne said. ACTA is a tool to reach the goal, and will be an extension of TRIPS. The Commission reacted to the transparency issue that *“it is not that we want to hide something, we just don’t have anything to show.”* (IP Watch 2009d). Devigne also argued that the ACTA negotiations were even more transparent than normal trade negotiations: *“For this kind of negotiations, the Commission would normally only negotiate with member states.”* (ibid.)

The problem of the criminal sanctions was solved by giving the presidency the lead in the negotiations about criminal sanctions, therefore shifting this part of the negotiations to the member state that is president (ibid.).

The KEI again expressed its concerns over ACTA, by stating that the talks were expanding to other intellectual property rights areas, such as geographical indications (GIs). The EU started to negotiate a place for these GIs in ACTA, which holds that geographical names for products are patented, like Bordeaux or Champagne (IP Watch 2009e). The Swedish government called ACTA a well-balanced enforcement system. The Ministry of Justice also emphasized that the aim of the government is to listen to everyone (IP Watch 2009f). More opposition sounds came in October, when the OSI organized a panel that concluded that anti-counterfeiting initiatives targeted the access to legal medicines, while not addressing the fake ones (IP Watch 2009g). The panel was organized to take the conclusions in the negotiations and addressing the issue in the negotiations. Also in October it became clear that 42 insiders in the US had insight in the ACTA text, from which most were representatives of the industry (IP Watch 2009g).

A leak in November 2009 worried many internet freedom organizations. The internet chapter draft was made public and the content of the chapter concerned many societal organizations. The academic society raised concerns as well: “(...) *it provides firm confirmation that the treaty is not a counterfeiting trade, but a copyright treaty.*” (IP Watch 2009h). The supporters of ACTA did not react directly to these allegations (ibid.). However, the transparency issue was on the agenda for the next negotiation round. The lack of transparency also concerned the WIPO, where the director of WIPO said the organization was left in the dark about details on ACTA. The WIPO seemed to react to this by a more proactive stance by the developing countries (IP Watch 2009i).

Near the end of 2009, the debate shifted towards the harmonization of criminal law enforcement and how this should be implemented in ACTA. The Commission had an analysis leaked that argued that the lack of harmonization of criminal law conflicted with the much-wanted ‘gold standard’. This meant that the Commission wanted more harmonization, but on national level many experts warned that this was the competency of their national governments (IP Watch 2009j). A Commission expert said that “*under the Lisbon Treaty, the European Parliament would be kept informed of the negotiation process in a manner similar to the Council. Furthermore, the ACTA text would be approved both by the Parliament and the Council.*” (IP Watch 2010a). Karel de Gucht, Commissioner Designate for International Trade, said that “*if there is confidentiality, I will respect it and I have to respect it.*” (ibid.). The Commission pointed to the negotiation procedures about transparency. Meanwhile, Unilever said that ACTA should be seen as a ‘gold standard’ (IP Watch 2010a).

2010

In February 2010, another document about internet freedom was leaked. Geist again criticized the document, saying that it forced participating states to implement strict law that is at place in the United States. In March, the European Parliament voted in favor of a resolution demanding to be kept fully informed about the ACTA negotiations. The process was heavily criticized for being conducted out of the reach of international institutions as the WIPO and WTO (IP Watch 2010b). The resolution was accepted with 633 in favor, 13 against and 16 abstentions. The Parliament also “*reserved the rights to challenge the Commission at the European Court of Justice if its demands are not met.*” (European Parliament 2010). De Gucht reacted by stating that the Commission also wants the texts to be released, but that the procedures do not allow this. He got support for this statement from the UK Minister of Intellectual Property: “*The UK has long been in favor of greater transparency in the ACTA negotiations,*

so I am very pleased that EU has now agreed that the draft ACTA text should be placed in the public domain as soon as possible." (IP Watch 2010c).

The French civil rights organization La Quadrature du Net published in March a report that laws need to be changed in order to ratify ACTA. This is in contradiction with what the negotiating parties had promised. For example, the EU proposal says that "*When providers are acting in accordance with this paragraph 3 (...), the parties shall not impose a general monitoring requirement.*" (IP Watch 2010d). This resulted in a situation in which internet service providers (ISPs) must cooperate with the government voluntarily or involuntarily, which is against the EU *acquis*, according to La Quadrature (*ibid.*).

Early April, the Liberal Party Group called for a hearing by the Parliament over ACTA. In this hearing, professor Geist argued that ACTA is not what it says it is. According to the fierce opponent of ACTA, ACTA is not a trade agreement but an IP agreement that is not only about enforcement but also about creating new laws. For example, he calls the "three-strikes-out"-provision, which means that internet users can be cut off from the internet when they violate the law three times. Also in the hearing was Malcolm Hutty of the EuroISPA. He said that ISPs must be protected to protect the rights of their users. The Commission reacted to these comments, saying that the Commission "*would not go beyond the *acquis communautaire*.*" (IP Watch 2010e). Also, Devigne from the Commission rejected the criticism by Geist and said again that the EU will never accept an agreement that changes laws. The attending MEPs were on hand of Geist and Hutty. They wanted insights in the negotiations, because the substantive debate then could follow (*ibid.*). After this hearing, MEPs worked together to send a letter to the WIPO and the WTO, asking for technical assistance in the debate around ACTA. The signatories were members from the Greens/Free Alliance Party. However, the WTO refused to assist the Parliament because the WTO "*is in no position to provide authoritative comments on ACTA or its negotiating process.*" (IP Watch 2010f). Then, something remarkable happened: the draft text was released at April 21, 2010 after the New Zealand negotiation round. The Commission claimed that the EU was responsible for convincing the other negotiating parties to publish the draft (IP Watch 2010g). There was much media attention for the publishing of the draft text, but with the sudden openness by the negotiating parties, they seemed to have stolen the thunder from the societal and Parliamentary actors.

In July, the Parliament has access to a new draft text, but in a secret reading room. However, the Pirate Party was irritated that they could not share the information with the public (IP

Watch 2010h). The first moment the secret reading room was open for the MEPs, the text was leaked to La Quadrature (IP Watch 2010i). After this leak, civil society organizations warned the European Union on ACTA. Several groups worked together to write a concerned letter to De Gucht. The groups called for the Commission to be careful in resuming the negotiations (IP Watch 2010j). After the tenth negotiating round in Washington, DC, a draft text was published in August. This text is significantly changed relative to the last leaked text. For example, the liability of ISPs is out of the text. However, the criminal sanctions paragraph is still in the text. Opponents of ACTA seem to be somewhat optimistic. It is called “ACTA lite” by Hammerstein from the Trans-Atlantic Consumer Dialogue. Geist said it that the internet chapter is much better than earlier versions (IP Watch 2010k). In a plenary debate on ACTA, Parliamentarians warn the Commission that more change is needed before the Parliament will accept the ACTA text. Also in the debate was a reaction from the Commission by De Gucht, who said that ACTA had to follow the *acquis communautaire* or the EU will not sign the agreement (IP Watch 2010l). Proponents of ACTA did not respond directly to the changes, but Konteas from Business Europe stayed with his earlier statement that he *“supports a strong ACTA which effectively combats counterfeiting and piracy while helping to facilitate legitimate commerce – and this is the framework on which we will evaluate the agreement once it is made available.”* (ibid.).

The last negotiating round ended on October 1st, 2010 and was organized in Tokyo. The text that was agreed upon was released by the parties. Rights holder groups were happy with the text as they considered the text good enough to fight piracy, and societal groups also seemed to be happy with the changes in the internet chapter. Public Knowledge said that the changes in the internet chapter *“should be seen as a qualified victory for those who want to protect the digital rights of consumers around the world.”* (IP Watch 2010l). After this final round, there are still some difficulties to overcome, but the text is almost finished and the last discussion points will soon be resolved. In November 2010, the ‘final’ text is released (IP Watch 2010m). In December, the ‘final final’ text was released, and this marked the end of the international negotiations (IP Watch 2010n).

Second phase: inter-institutional bargaining

The international negotiations were thus finished in December 2010, and the next step for the European Union was the ratification of the Anti-Counterfeiting Trade Agreement. There was one hurdle in the way: the European Parliament. The Parliament has to agree to trade agree-

ments since Lisbon and therefore the Commission has to convince the Parliament. On the other hand, societal actors try to influence the Parliament to reject ACTA. I will describe the discussion on the EU level, in order to explain the context in which the Parliament came to a decision.

2011

The year 2011 started with more opposition against ACTA. A group of academics raised concerns about the promise that ACTA did not change any European law. Criminal law sanctions were in ACTA, but were beyond the *acquis*. Moreover, the group worries about the international trade in generic medicines because medicines could be seized under ACTA based just on ordinary infringements. A remarkable actor joined the criticisms, namely GlaxoSmithKline, a pharmaceutical company. The company however thought that ACTA did not go far enough: *“it did not like the minimis provision that allows countries to exclude counterfeits in non-commercial quantities, for example, counterfeits found in travelers’ luggage.”* (IP Watch 2011a).

In May, ACTA was opened up for ratification. On the European level, there still was no consensus however. A group of academics continued the intellectual resistance against ACTA (86). They published an opinion, in which the main argument was that ACTA did alter EU law. Therefore, it was not compatible with the *acquis*, in contrary to claims made by the Commission. An important topic was the criminal enforcement as it was described in ACTA. The published opinion saw no space for such enforcement in European law. They do recognize that the Parliament and the Commission both want higher enforcement standards, but ACTA is in their opinion the wrong instrument to reach higher standards because it eliminates safeguards that exist under TRIPS. Another major criticism is the vagueness by which ACTA is characterized. The terms are often open for interpretation, and the experts were afraid this will lead to the most advantageous interpretation by governments. In a reaction, the Foundation for a Free Information Infrastructure (FFII) pressured the Parliament Legal Affairs Committee to send ACTA to the European Court of Justice (IP Watch 2011b). The Commission also gave a reaction to the article by the legal experts. The Trade Commissioner recognized that although ACTA *“may not be entirely similar to the corresponding EU law, this does not imply that ACTA was incompatible with EU law.”* (IP Watch 2011c). Further, the Commissioner promised that the potentially broad interpretations would be interpreted as restrictive as possible.

Near the end of May, another ‘final’ text was published, but now the negotiating parties and other willing parties could sign ACTA (ibid.). Even the United Nations mixed in the debate. A report was published by the UN, Frank Larue criticizes the measures taken by governments to block users of the internet. The governments should “*refrain from restricting the flow of information on the internet, and the private sector should not be in charge of policing it.*” (IP Watch 2011d). La Quadrature saw the report as support for their fight against ACTA, because La Rue indirectly attacks the agreement by referring to the private sector as not eligible to police the society. Another blow for ACTA came when the Mexican Parliament urged the government to reject ACTA (IP Watch 2011e).

The Parliament requested a study to the effect of ACTA on European law, and if the agreement violated the *acquis*. The conclusion of the study is that “*for those European Parliamentarians for whom conformity with the EU acquis is sine qua non for granting consent, this study cannot recommend that they provide such consent to ACTA as it now stands.*” (IP Watch 2011f). However, the study also concluded that the cost of rejecting ACTA might be higher than accepting it in Parliament. In September, the Committee on International Trade (INTA) filed in a request for the Legal Service Committee to research possible juridical problems with the *acquis*. Within the committees the party groups fought over what questions should be answered. The European People’s Party wanted broad questions, while the Green Party proposed to ask more detailed questions about fundamental human rights. The Green Party also presented a study by the Washington College of Law that concluded that the behavior of the Commission was not in accordance with the resolutions and mandates of the Parliament. The EPP did not want to draw conclusions too quick, and Caspary (EPP) did not want to go to the ECJ right away. “*This would have been the atomic bomb approach, I think we should wait for the check from the Parliament’s Legal Services.*” (IP Watch 2011g). He continued saying that the Commission would have lied if the Legal Services conclude that ACTA is not in line with the *acquis* (ibid.).

2012

In 2011 the tone of the opposition seemed to change. When in first instance the opposition in Europe was focused on the seizures of generic medicines and the consequences for the third world, now the focus shifted towards the internet freedom of the citizens within the participating countries. The promises of the Commission that ACTA would be in line with European law and the *acquis* would not be violated came also under scrutiny. 2012 starts with the signing of ACTA by multiple European governments. This was an important step towards the

completion of ACTA, only ratification is needed. After the signing of ACTA by several governments and a delegation of the European Union, protests broke out. The opposition reacted with a petition, signed by 2.5 million European citizens that were afraid for their freedom. Thousands of citizens also started calling the MEPs in their offices to persuade them to oppose ACTA. *“Receiving a petition supported by more than 2 million people places an even bigger responsibility on us to listen to the European people and offer them a place to express their views to the European institutions”*, the chair of the Parliament Petitions Committee said (IP Watch 2012a).

The third phase: delay or reject?

Then, the Commission sent the ACTA to the European Court of Justice for a review. In the European Parliament, the co-presidents of the Green & European Free Alliance Group sent in a letter to the Commission President Barroso (IP Watch 2012a). They accused the Commission of not fully informing the Parliament about the Commission’s decision to send ACTA to the ECJ (IP Watch 2012b). Harms & Cohn-Bendit wrote in the letter that the rule is that the Commission informs the Parliament before a public announcement is made, but the Commission did not do that. In the letter was also the request to urge the ECJ to assess ACTA on the balance of IPR with *“private life, protection of personal data, freedom of expression, freedom to receive or impart information, protection of property and freedom to conduct a business.”* (ibid.).

The Commission from this point started to try to cool down the debate. In a public workshop, Trade Commissioner De Gucht accused the opposition of not being fair over ACTA: *“The intense debate and political engagement has been remarkable, but in all the discussion, one commodity has been in short supply: the truth.”* According to De Gucht, *“ACTA will not violate users’ rights, the agreement will not violate internet users’ rights, require a “three-strikes” approach to online infringement, mandate border searches of laptops, MP3 players and other devices, or impose restrictions on trade in generic medicines.”* (IP Watch 2012c). Therefore, the Commission requested the ECJ to form an opinion on ACTA, in order to make the debate reasonable again. In the same workshop, Professor Geist said that the harm exceeded the benefits of ACTA. The provisions were too vague, and the third party liability in ACTA was a huge shift in international law, according to Geist. Professors Kamperman Sanders and Shabalala did not find reasons to think that there would be a significant shift in EU law, however ACTA would lower the threshold for piracy and counterfeiting. Sanders did

not find anyone in the academic community who supported ACTA however, so it is safe to claim there is a lot of intellectual opposition. According to Pugatch of the University Haifa, generic medicines will not be affected by ACTA, something that was feared in the first years of the negotiations. The rapporteur for the Parliament on ACTA, David Martin, said that the workshop made his job of writing a report more difficult: “*The devil is in the lack of detail.*” (Ibid.). Martin also called for the Parliament to refer ACTA to the ECJ, a move that would delay the final plenary vote. Internet rights organization La Quadrature claimed that this would even delay the decision for one or two years, and wanted instead to vote as soon as possible (ibid.).

The debate did not cool down, as the Commission wished. Instead, INTA rejected the referral to the European Court of Justice by the Parliament. This meant that the Parliament is on schedule of voting in the beginning of June, preceded by a vote by the lead Committee INTA. A coalition of Health Action International, Oxfam, Médecins Sans Frontières and the Trans Atlantic Consumer Dialogue was worried that the delaying tactic of the Commission would have worked and ACTA was referred to the ECJ by the Parliament (IP Watch 2010d). It already seemed a lost battle for the Commission, but De Gucht denied this, claiming that it was premature to draw such conclusions. There are still some calls for more transparency from the Parliament. MEP In ‘t Veld asked for all documents from the negotiations, saying she had had a short insight in the documents when officials by mistake had highlighted certain graphs instead of blackening it, and that she wanted to see all of the documents (ibid.).

David Martin, the rapporteur for INTA, announced that he will recommend the rejection of ACTA. INTA is the lead Committee on ACTA, and this announcement was another signal that the Commission could not persuade the Parliament of the importance of ACTA (IP Watch 2012e). Martin filed in his recommendation, with the argument that “*while the problems ACTA seeks to address are real, the unintended consequences with regard to individual criminalization, the role of internet service providers, and the possible interruption of the transit of generic medicines are too grave.*” (ibid.). He called the Commission to make a new proposal to protect IP rights. A week later, on April 28, the Alliance of Liberals and Democrats for Europe Group joined the opposition that already consisted of the Green Party and Socialist & Democrats (IP Watch 2012f). A remarkable opponent joined the club, as the German Ministry advised developing countries not to join ACTA because there is no profit for developing countries when they signed ACTA. The German ministry reacted to the draft

opinion of the Development Committee in the Parliament, the only committee of the four advising committees that recommends adopting ACTA (IP Watch 2012g).

The 9th of June was a day of massive popular protests. On the evening of the protests, it became clear that all advising committees recommended the rejection of ACTA. The plenary meeting will be decisive for the future of ACTA, and with the protest day was meant to keep the pressure high on the Parliamentarians. All protests yet in Europe had their first result when the Swiss government delayed signing ACTA because of the concerns for human rights (IP Watch 2012h). On the 9th, there were protests in many cities in Europe. The 21th, INTA rejected ACTA in an official vote. De Gucht reacted, agreeing that the Commission should have taken the concerns of the Parliament into the negotiations. The vote then might have gone the other way. He also asked the Parliament to wait for the verdict of the ECJ (IP Watch 2012i).

The Commission seemed to be desperate in a last attempt to delay the plenary vote by the Parliament, as De Gucht again asked to wait for the ECJ on the 3rd of July, a day before the vote (IP Watch 2012j). Most Parliamentarians announced that they would vote against ACTA, making the Commission's most feared situation reality. The 4th, ACTA was rejected by the Parliament with 478 opposed, 39 in favor, and 165 abstentions. The European People's Party had requested a postponement of the vote, but the Parliament rejected this request with 420 against, 255 in favor and 9 abstentions (IP Watch 2012k).

Reactions

The rapporteur for the Parliament, Martin, declared ACTA dead. He said that the Australian Parliament could follow the example of the EP. Also, he emphasized that the margins by which ACTA was rejected were never seen before in the European Parliament (ibid.).

The Commission had not given up the struggle yet. Commissioner Šefčovič reacted to the rejection by saying that the Commission stands with its questions for the ECJ. The Commission would accept the verdict of the Court. Later, the Commission halted their request for juridical review by the ECJ, thereby killing ACTA (Baker 2012).

Rights holders, who supported ACTA, said that the Europe will be damaged by the rejection: *“ACTA is an important tool for promoting European jobs and intellectual property. Unfortunately the treaty got off on the wrong foot in the Parliament, and the real and significant merits of the treaty did not prevail,”* according to the Federation of European Publishers (IP

Watch 2012k). The director of the International Trademark Association, Alan C. Drewsen, hoped that ACTA could continue without the European Union (ibid.).

Societal groups were more content with the outcome of the vote, logically. La Quadrature announced that ACTA was killed for good, and that it was a victory for all citizens and societal organizations that had fought against ACTA. The FFII praised the vote as a “*major victory for civil society, Internet freedom, access to medicine and knowledge and innovative companies.*” (Wessels 2012).

Concluding notes

In this chapter, I have given a chronological description of the events as they unfolded. Important events are the ratification of Lisbon, the completion and signing of ACTA by several governments, followed by huge protests in Europe, the Commission sending the document to the high court, and the final rejection of ACTA by the Parliament. In the next chapter, I will evaluate my findings with the hypotheses.

Analysis

In this chapter, I will analyze the process that led to the rejection of ACTA. Important are the MEPs and the Commissioners, but also the NGOs and industry actors and their contact with the European institutions.

Key events

What are the most important events in the whole process? There are some turning points in the whole process. The start of the negotiations, and the mandate of the Commission are important of course, but I will focus on the process after the start. First, the ratification of Lisbon. The Parliament had no veto power before December 2009. After the ratification, it suddenly became possible to reject ACTA, and before December it was only possible to amend the treaty. Second, the resolutions that were accepted by the Parliament asking for more transparency were ignored by the Commission. The third significant event is the change in the nature of the arguments in the discussion. It is hard to point when it exactly changed, but it seems that it was around 2011. Fourth, the protests that followed after various governments had signed ACTA had an important effect on the process in the EU. Fifth, the rejection of ACTA by the Parliament was almost the end of ACTA. Sixth, the Commission dropped the request to a review of ACTA by the ECJ. Those are the key events in the path towards rejection by the European Union.

For the analysis, I will follow the division in three phases. For each phase, I will review the hypotheses and conclude if they can be refuted or accepted for that phase. In the final part of the analysis, a conclusion will be drawn on the theoretical framework.

First phase

H1: Policy stability is more probable, if institutions with veto power struggle for their self-interest.

For the first phase, it is important to consider the language of both the Commission and the Parliament, and how this relates to a potential power struggle within the European Union. Also, the behavior of the institutions is important. Do they ignore each other or do they recognize the demands of the other institution?

The interests of the institutions are not really at stake yet in the first phase. A large part of the first phase was when the Lisbon Treaty was not ratified yet, and it was unsure if it would ever be ratified. The Commission received a mandate for the negotiations on behalf of the European Union. This is a powerful position, because it makes the Commission the agenda-setter

in the process. Agenda-setters are important, because they can put the other actors on the spot. The main interest of the Commission was to finish the negotiations successful in order to establish its position as international negotiator. The Lisbon Treaty would change the balance of power and the Commission should be take the Parliaments wishes into account in order to let the European Union adopt ACTA.

The hypothesis is confirmed on several occasions. The mandate of the Commission made the Commission to stick to their newly received powers. The Commission was responsible for the negotiations, so the Parliament was not allowed to have an insight in the negotiations. The Parliament on the other hand always emphasized the lack of involvement, and wanted to have more to say in the negotiation process. The resolutions the Parliament adopted in the first phase were filled with demands for transparency. The Parliament argues that there could be no substantive debate without information; the Commission argued there was no information to hand over to the Parliament. After the texts were leaked and published, the Parliament kept on asking for more transparency while the information for a substantive debate thus was published. This is an argument in favor of the argument that institutions act out of self-interest. The Parliament had interest in involvement in the negotiations, not because of societal actors but because out of their own power-maximizing interest. The Commission wanted to hold the cards to its chest in order to keep the power it received by the mandate.

H2: Policy stability is more probable, if a policy body receives confusing encompassing information among from its internal actors.

In the first phase, this hypothesis would expect that a variety of actors tries to influence the Commission and Parliament by exploiting as many access points as possible. Especially in the first two years of the negotiations, the Parliament and Commission did not clash in a substantive debate. The Parliament mainly became angry over a lack of transparency, instead of the arguments societal actors give to the Parliament. Two concerns rose from society: the access of third-world countries to generic medicines and the internet freedom for users in Western countries. Both arguments are discussed in several resolutions and meetings, but it is always transparency that seemed to be the most important issue for the Parliament because it returned in every resolution and discussion. However, this should not be the most important issue according to the access point theory.

An access point had been added when Lisbon was ratified, because the Parliament was more involved in the final decision. The Parliament indeed started to engage more in the debate

with the Commission, as we would expect. As I explained above however, it does not seem if the Parliament did this on a more substantive basis. The Commission was already an access point, and we would expect it to be more viable to corporate actors. The empirical research confirms this idea, the Commission is on the same level as the industry, and it seemed that the industry had more insights in ACTA than society. It emphasizes the same arguments to create ACTA as the industry does, and defends ACTA to the bitter end, like the corporations. It is unfortunate that the corporations are not keen to be seen as a supporter of ACTA in public, and that they seemed to have turned to a lobby behind closed doors. My conclusion would be stronger if we could actually know the access of corporations to the Commission. The Commission was accessible by corporations, but in the first phase it is not very clear if the Parliament is affected by societal arguments.

In the first phase, the hypothesis of access points is weaker than the veto player hypothesis. From the last view, the struggle between the institutions is better explained, because the arguments the Commission and the Parliament gave are more focused on their own interest.

Second phase

H1: Policy stability is more probable, if institutions with veto power struggle for their self-interest.

After the negotiations were finished, the debate intensified. Veto player theory would expect this phase to be characterized by more actions and language that might point to self-interest. The Commission has to convince the Parliament it should ratify ACTA, after it finished the negotiations. If the Commission had succeeded, it had established its power. The ACTA text was published, so the substantive debate could begin. However, the Parliament still was mainly arguing how it was kept outside of the negotiations. Their new position under Lisbon was challenged, and the Parliament did not like that. The Council adopted ACTA quite sneaky, which fits in the framework because I expect the public to react critically, and this would damage the position of the Council. The interests of the veto players were thus quite diffused. The Commission wanted to finalize ACTA in order to establish its power position as representing party of the European Union, while the Parliament wanted to be involved in the negotiations in order to establish its position under Lisbon. Those interests are far apart, and confirm the hypothesis.

H2: Policy stability is more probable, if a policy body receives confusing encompassing information among from its internal actors.

The information that the Parliament publicly received, was in this period very one-sided. Society did not want to trade off their internet freedom with stronger IP enforcement. We see cooperation between various influential NGOs that wrote letters and organized demonstrations. They called the Parliament to listen to the people that had elected the Parliament. This is a clear example of exchanging encompassing information, and it points to rejecting ACTA. The Parliament however again mentioned the arguments given by society in the resolutions, but there was one other main argument that had replaced the transparency argument: the *acquis communautaire*. ACTA should be in line with European common law, or it should be rejected. It is the main argument in this phase, and replaces the transparency issue. Again, this is more procedural than substantial of nature and does not point to a societal influence.

The Commission received encompassing information in the negotiation phase, but from corporations. This was directly the opposite from the information the Parliament received, namely in favor of ACTA. In this phase, there were still various calls for more transparency about the negotiation phase by society and Parliament, but those calls were largely ignored by the Commission. I can conclude from this that the Commission was not accessible for society, and that there indeed were multiple access points with different input. Consequently, the Encompassing Information was different for the various institutions, and the hypothesis is confirmed.

Third phase

H1: Policy stability is more probable, if institutions with veto power struggle for their self-interest.

The hypothesis is confirmed by some events. The Commission had the text sent to the European Court of Justice, in order to meet the demands of the Parliament that ACTA was in line with the *acquis*. The Commission for the first time gave in to the demands, but seemed to be too late. The hypothesis is confirmed, when the Parliament did not wait for the high court to judge on ACTA, but rejected it before anything could happen. The Parliament was not interested in the validity of its own argument, and acted therefore out of self-interest in this phase. It was more interested in how it could punish the Commission for not listening to the Parliament. Procedures were violated in the eyes of the Parliament, and while the Commission in the end did what Parliament wanted, the Parliament was still angry because it was not informed early enough about this. The Commission was busy trying to save ACTA in a desperate move to the high court. If the Commission was genuinely interested if ACTA fit in the

European common law, I would expect the institution to make this move earlier in the process. Therefore, I conclude that both institutions act out of self-interest. However, the theory does not explain how those interests came into place and lacks therefore the power it pretends to have.

The first hypothesis is thus quite strong overall, because it expects the institutions to rationally make self-interested choices. This is about what happened in the process by all veto players.

H2: Policy stability is more probable, if a policy body receives confusing encompassing information among from its internal actors.

In the third phase, there are some crucial elements in the process for the second hypothesis. The Parliament received much information, through the media but also through protests. Those protests and petitions were a very strong signal, and the Parliament listened to the information. It might be the strongest form of encompassing information, because it is very direct. Citizens also called MEPs, which is even more direct. The Commission tried to delay ACTA, because it still thought that an instrument for enforcement was needed and that ACTA provided this instrument. It seemed that the Commission had encompassing information that insisted on the need of ACTA, while it already was clear that the agreement would be rejected. However, this hypothesis cannot explain the focus on procedural issues by the Parliament and Commission in their fight.

Theoretical implications

In my case study, I identify the following mechanism. The institutions were busy representing their self-interests. Since Lisbon, a veto player was added to the European Union that immediately could make an impact to show its power. The Parliament wanted to expand its power, and it was given the chance by the mass protests in Europe. It gave the Parliament a legitimacy that was unprecedented. However, the protesters had gain access to the Parliament with masses. The extra veto point in the European Union made it harder to overcome policy stability, but in combination with societal interference it was impossible. The rejection of ACTA was only possible because of the societal pressure in combination with the ratification of the Lisbon Treaty.

Veto player theory emphasizes the role of veto points, and the position of the institutions. Access point theory identifies ways to access institutions, and this access gives actors influence in the policy process. Both theories apart are not sufficient to explain why ACTA was

rejected. However, combined they produce a strong theory in the explanation. Institutional veto players need a motive to use their veto, because it might be too obvious and too viable for criticism when just using the veto for self-interests. An opportunity for the Parliament came up when the protests were organized. The Commission was too late to notice on time the new power balance within the European Union, and did not intervene in the interaction between Parliament and society. It was an interaction between society and Parliament that killed ACTA.

The theoretical implications I deduce from my research are best abstracted in a way that they complement each other. The veto player theory can explain the behavior of the institutions best, but does not explain how interests of the institutions are formed. With the access point framework, we can determine how those interests came into place. However, it does not always seem the case that the societal interests, or corporate interests, are taken into account. The main debate is procedural, and not substantive. Therefore, the theories are best in place when they complement each other.

Conclusion

Why did the European Union reject ACTA? With this research question in mind, I have analyzed the process from the beginning of the international negotiations until the European Parliament voted 'No' on July 4th, 2012. With a process tracing method, I tried to gather evidence of the ultimate cause of the rejection. I have applied two theories to the situation as it unfolded: veto player theory and access point theory.

The Anti-Counterfeiting Trade Agreement was highly contested throughout the process. However, in the first years the European Parliament was not as negative towards the future agreement as it was at the end. The European Union followed a certain path towards the rejection. The first key moment was the mandate the Commission received to negotiate on behalf of the European Union member states. Lisbon was not yet ratified, so the only institutional actor that had to agree with the result of negotiations was the Council. Lisbon changed the rules of the game, and the Parliament had to give its consent as well. The Parliament demanded more transparency and involvement in the negotiations. Civil society groups that feared that ACTA would harm human rights, started to protest on the internet. However, only incidentally Parliament was given insight in the texts, and mainly through leaks. The international negotiations ended, with an 'ACTA-lite' as result. Still, after several governments in Europe had signed the text, massive protests on the street erupted. The pressure on the European Union was high, when the Commission decided to bring ACTA to the European Court of Justice to let the high court decide if ACTA was in line with European law. This move was unprecedented, and in fact a move for which the Parliament had been calling for a long time. However, it was perceived by the Parliament and civil society groups as a move to delay the plenary vote. Therefore, the plenary vote still went through and ACTA was eventually rejected by a huge majority.

I have deducted two hypotheses from the literature. The first one is based on veto player literature: Because the interests of the institutional veto players in the European Union lied too far apart, policy stability was maintained. The second hypothesis was formulated with access point literature: Because the European Union received confusing encompassing information about ACTA from society and corporate actors, policy stability was maintained. I have analyzed the empirical evidence, in order to consider how plausible the hypotheses were. I found that the Parliament and Commission, but also the Council, all have their own interest. We see this in their actions that are inspired by maximizing their own power position. The first hypothesis is thus confirmed, because if the interests were in line with each other, there would

have been more results with regard to ACTA. The second hypothesis adds to the first, however it is less applicable to my case. The European Union received signals from the industry and from society. Those signals are access goods, as Bouwen (2002; 2004) describes them. However, because the signals were given to different institutions. The Parliament was added as a veto player, and is accessed better by society than the Commission. The Commission is traditionally better reached by the industry, and received different signals about ACTA than the Parliament. The human rights groups took care to give the Parliament input, and industry gave such input to the Commission. This made the European Union viable to a policy status quo. However, the evidence I found is not convincing enough to accept H2 and reject H1. H2 seems to complement H1, in the sense that the institutional self-interest, by which behavior can be predicted, is partly formed by the encompassing information the institutions receive.

Some practical implications come with this theoretical conclusion. The policy status quo was thus a consequence of power play. The Commission and Council lost the game, and the Parliament won as a result of their use of encompassing information. The status quo might have costs for Europe, because the EU now has to search for other instruments. This is for example done through TAFTA (Transatlantic Free Trade Area), which is called by civil society groups 'ACTA 2.0' because it has the same elements of IP rights as ACTA and it is also secretly negotiated (Wessels 2013). Again, the civil society groups emphasize the lack of transparency, but the Commission does not give in to these demands. Several civil society groups in Europe, like FFII and La Quadrature, warn for similarities with ACTA. The Parliament has given the Commission mandate to negotiate, but on the condition the Parliament is kept fully informed (European Parliament 2013). This time, the Commission let the INTA have a (secret) look in the negotiations (Masnick 2013). In the theoretical framework that combines veto player theory and access point theory, this would be the predicted behavior. The Commission is now giving the Parliament insight to involve it a bit more in the negotiations than in the ACTA negotiations. By doing this, it hopes to limit the signals the Parliament receives by making the Parliament part of the negotiations. However, if society will get momentum again, and society gives a lot of input through the access points, Parliament shall reject TTIP as it did with ACTA.

The TTIP case is very much like ACTA, and will in the future be a very interesting case to compare with my research. I expect the TTIP to unfold in a similar way to ACTA, because the Commission still plays the power game, instead of informing society. Further research is also recommended for ACTA, and the influence of the global context. ACTA was negotiated

outside the WIPO and WTO, and this had a certain impact. This impact is worth researching, because the global IP rights regime has much influence on for example third world countries that are mainly represented in the WIPO and WTO. The motives behind the international negotiations are thus an interesting topic for future research. Policy stability, or instability, is the core of political science. How policy develops and by which factors it is influenced, is always the result of a struggle. On a high level, low level, quiet or with massive protests, there is a struggle. Therefore, it is always interesting to see more future research on policy stability. Especially research that focuses on predicting behavior is important, because by forming theories that predict the future, we can explain the past.

My research has its limitations. The major limitation, in my opinion, is the use of literature on ACTA. Because there is not much literature on the process, I had to rely on internet sources to reconstruct the whole process. The literature that is written around ACTA, is most of the time about the question if ACTA is in line with European law. I have not conducted interviews, which might have given me a better view on the motives of Parliamentarians and Commissioners. My study offers a plausible basic explanation of the events that unfolded from the beginning to the rejection, and I have tried to describe, identify, and explain the most important events, arguments and decisions during the decision making process. However, this thesis is about the process within the European Union. As a consequence, I could not take into account all the arguments that are given throughout the process. Also, the global context has changed over the years. In first instance, the framing of IP rights is different than in later stadiums. The last limitation of this research is the lack of comparable cases. ACTA stands yet alone, because it is only short ago that the Lisbon Treaty was ratified. The Parliament was decisive in the decision-making process, but this is only since 2009. Therefore, there is no comparison to make. In the future, this will happen, like TTIP I described above. Only after TTIP is finished and analyzed, more generalizable theoretical arguments can be made, and only after that, my model can be tested.

There are also alternative explanations possible. The atmosphere surrounding IP rights changed over time. In the first years of the negotiation of ACTA, IP rights are considered more or less a technical issue. The issue was more and more politicized, which I did not take into account in my research. Because the issue was more politicized, more people started to interfere in the discussion, and this spread to society. The discussion shifted from medicines towards internet freedom, and suddenly society became very active in influencing the European Union. This is an interesting variable to study in further research. It is more focused on

frame theory, but could also partly explain how the process of ACTA ended up in a rejection by the Parliament.

ACTA was declared dead after the rejection by the European Union. Never before had so many citizens protested for their internet freedom. In first instance, the consequences seemed to be far-stretching. However, new agreements are already in the making. I have combined veto player theory and access point theory to give a plausible explanation of the rejection. Actors within the European Union, especially pivotal players, should realize that encompassing information given by society should be taken seriously. Society has access points to the Parliament, that used the encompassing information to strengthen their new power position within the European Union after the ratification of the Lisbon Treaty. The Parliament is elected by the people, and while it is accused to stand far away from society. However, when the right encompassing information reaches the Parliament, it will react and expand its own powers to represent the people better.

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