

## **The connection between parliamentary and extra-parliamentary opposition in the EU. From ACTA to the financial crisis.**

### **Abstract**

With no formal division between majority and opposition in the parliamentary arena, the European Union (EU) calls for an approach to political opposition which considers the role of civil society. This article explores the case of opposition to the Anti-Counterfeiting Trade Agreement (ACTA) within and without the European Parliament (EP) through a political opportunity approach, using the case to reflect on conditions for effective opposition in the EU. The ACTA campaign saw opposed actors within the EP and digital rights groups work together to build coalitions against the agreement. Protests then opened the way for these groups to broker a change of position among other actors, allowing a majority rejection. The ACTA case suggests the need for advocacy by organised groups both within and without the Parliament to construct majorities. Comparisons to similarly successful campaigns bolster this view, as do examples of less effective opposition.

**Keywords:** European Parliament, Anti-Counterfeiting Trade Agreement, parliamentary opposition, extra-parliamentary opposition, political opportunity, civil society

### **1. Introduction**

Since the foundational works of Sartori, Dahl and Shapiro, research on political opposition has not seen any major renewal, and largely remains confined to the notion of highly institutionalised forms of opposition in parliaments as closed arenas (Weinblum and Brack 2011). With no formal division between majority (or government) and opposition in the parliamentary arena, the European Union (EU) calls for a novel approach to opposition. In the EU, the Member states themselves are potential veto players, especially in politically sensitive policy areas such as fiscal and social policy or police cooperation. Yet, they are more likely to hamper initiatives from the Commission before the start of the legislative process, as in the recent debate on the revision of the Working Time Directive. Once legislative procedures begin, effective opposition from the Member states is heavily constrained by qualified majority voting and the difficult task of constituting a blocking minority in the Council of Ministers. All in all, the Council of Ministers remains characterized by a strong culture as well as practice of

consensus politics (Lewis, 2012), effectively constraining veto use and encouraging negotiations amounting to individual exit rather than opposition at a systemic level. As far the European Parliament (EP) is concerned, the body has only rejected a few pieces of legislation since 1979, exhibiting little inclination to head-on opposition. Against this background, we therefore propose considering the role of contestation by organised civil society groups as another potential source for political opposition in the EU. These groups have long been considered in the debate over the democratic deficit as potential conduits for citizens' opinions, not least by EU institutions themselves (e.g. Commission 2005). The literature on interest representation in the EU mostly refers to the degree and more conventional modalities of involvement of certain civil society actors, rather than their ability to impact decision making through more contentious actions outside the Brussels arena (Author 2 2015). To think about impact we therefore draw on research on social movements, which in the past two decades has paid increasing attention to the EU as a genuine new polity (Kriesi and Rucht 1999; della Porta and Caiani 2009). At the same time, we note with Hutter (2014) that this research has become somewhat movement-centric, occupied with the organisational forms and dilemmas of movements, leaving connections with institutionalised politics in the background.

This paper is an attempt to bridge this gap. The concept of opposition – as opposed to protest or contestation – is particularly suitable because it targets impacts on decision-making and policy outcomes. At the same time, opposition is more specific than interest representation, focusing on parliamentary and extra-parliamentary groups and the connections between them, and on a wide array of actions. In this regard, the concept of extra-parliamentary opposition encompasses movements of both left and right, and has also occasionally been used for comparative purposes in relation to opposition in Western Europe in the 1980s (Kolynski, 1987). We therefore see no analytical or normative obstacle to extending its use to contemporary EU politics. While successful opposition to EU policies seems rare, this paper asks: under what circumstances can extra-parliamentary opposition contribute to reverse or substantially shape the legislative process<sup>1</sup>? Adopting an institutionalist approach rooted in a political opportunity framework, an approach employed by scholars of social movements to

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<sup>1</sup> We see rejection or substantial amendment of legislation as indicators of effective opposition. Developing a full set of indicators for the latter is nevertheless beyond the scope of this paper.

allow a focus on policy impacts (Meyer 2004), we concentrate on these connections and discuss how civil society groups' actions combine with those of groups within institutions to create opposition and affect decision making. Our argument is that opposition is most likely to succeed through a connection between parliamentary and extra-parliamentary mobilisation at the European level. The purpose of our twofold conceptualisation is to show how extra-parliamentary and parliamentary components of opposition are interdependent with regard to their capacity to shape decision-making. Scholars of EU politics have stressed that the EU is a political system geared towards consensus in the centre, leaving dissenting voices at the margins of decision making (Magnette 2010, Author 1). Others have shown how the technocratic style of policy making in the EU has brought about the professionalisation and bureaucratisation of interest groups (Saurugger 2008; Maloney 2008), including organisations representing diffuse citizens' interests. More so than in national political systems, in the EU it is in the interests of both parliamentarians and activists to cooperate. While MEPs who oppose a policy initiative can use contention fostered by civil society as leverage for achieving - necessarily ad hoc - broad opposition within the assembly, civil society can gain direct access to decision making due to the role of the EP in the legislative process (through the ordinary legislative procedure or consent), and enhance the resonance of their claims.

This argument is substantiated by a two-fold strategy relying on a single case study and enlargement to further cases offering comparative insights. First, we use the unexpected rejection of the Anti-Counterfeiting Agreement (ACTA) in July 2012 to illustrate our argument about the effectiveness of opposition. Claiming that it would be a major impediment to the trade in generic medicines and lead to the criminalisation of file sharing on the Internet, opponents of ACTA convinced a majority of 478 against 39 (165 abstentions) to reject the international treaty, which had already been signed by the governments of 11 countries plus 22 EU Member states. We therefore see ACTA as an instance of successful linkage between parliamentary and extra-parliamentary opposition. The methodological impetus guiding this paper is one of theory building (Leiphardt 1971) – rather than testing – based on a “heuristic case” (George and Bennett 2004, p. 74). The unexpected rejection of ACTA has generated a number of case studies (among others Geist 2010; Yu 2011; McManis and Pelletier 2012; Matthews and Zikovska 2013; Dür and Mateo 2014; Losey 2014), including by the authors themselves

(Author 1 2013; Author 2 2015). The purpose of this paper is not therefore to provide a detailed study of the many aspects of the campaign against ACTA. Rather, we focus on how the connection between extra-parliamentary opposition contributed to the EP rejection. In doing so, we draw on our own field research in Brussels, including a series of interviews with key protagonists<sup>2</sup>, as well as in-depth research of the campaign online. While opposition to ACTA is not a typical case for decision making in the EU, it is not an isolated outlier either. Beyond this, the paper illustrates the main argument by referring to additional cases selected because they present a) a salient degree of public contestation outside of the parliamentary realm and b) a similar *or* contrasted opportunity structure in terms of EP involvement. The cases of the Services directive and the Port directive show a similar connection between opposition outside and inside the parliamentary realm. Opposition to the financial crisis offers a contrasting case where, against a background of intergovernmental management, no such connection was forged and the EP was largely marginalised. Rather, where it reached the institutionalised political arena, protest led to the rise of anti-establishment parties at the national level such as Podemos and Syriza (e.g. della Porta 2015).

The first section presents the institutionalist approach, stressing the types of opportunities offered by the EU political system for the expression of opposition. Section 2 shows how, in this framework, opposition to ACTA progressively formed and succeeded in preventing EU ratification. Section 3 brings comparative insights in by showing how other cases support our argument. We contrast similar opportunity structures under co-decision (with the Services and Port directives) with the intergovernmental setting that characterises the macro-economic coordination regime aiming to enforce fiscal discipline in the aftermath of the debt crisis.

## **2. Opposition in the EU: an institutionalist approach**

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<sup>2</sup> We conducted 18 interviews between 2012-2013 which focused on actors within the parliamentary and extra-parliamentary opposition to ACTA as well as those who helped make the junction between both. Our interviewees included 3 MEPs, 6 assistants, and 8 activists within civil society organisations, and one official of a European party confederation.

## 2.1 The EP and political conflict in the EU

The opportunity structure contributing to shape efficient opposition in the EU cannot be reduced to the notion of a parliamentary group (or coalition of groups) opposing a majority. This section explains the inter- and intra- institutional dynamics of opposition, that is opposition between the EP as a whole and other institutions, as well as opposition within the assembly itself.

The institutional rise of the EP is the result of both its activism and the larger political context of integration. The struggle for power is part of the EP's history of self-determination. Confined to a consultative role in the first European Treaties, its first victory was the direct election of its members in 1979. In the 1990s, strengthening parliamentarism at the EU level was considered a strategy to tackle the EU's perceived democratic deficit (Costa and Magnette 2003; Rittberger 2005). Every treaty reform since the 1992 introduction of the co-decision procedure with the Treaty of Maastricht has granted more powers to the EP. Co-decision made the Parliament co-legislator on an equal footing with the Council of Ministers, and all successive treaties have extended the number of policy areas where decisions are made on this basis. The entry into force of the Lisbon treaty in 2009 marks the latest extension of EP power, renaming co-decision the 'ordinary legislative procedure' of the EU and enhancing the EP's role in yet more policy domains. International trade agreements are a case in point. Article 218 requires the EP's approval for all agreements affecting policies where co-decision usually applies, in practice virtually every trade agreement. Thus, although the Council adopts trade agreements negotiated by the EU Commission, they must pass the consent procedure, which gives the EP the right to allow or reject such international treaties, as in the case of ACTA.

Members of the EP have developed a strong habitus (to borrow Pierre Bourdieu's concept) of institutional self-assertion and legitimation (Costa 2001). Inter-institutional confrontations are shaped by the logics of the co-decision or consent procedures, which stage a triangular dynamic between Commission, Council and Parliament. These inter-institutional dynamics of opposition between executive and legislative branches are not specific to the EU but can also be found, to various extents, in other federal systems such as Germany or the US. The desire

to profile itself as a powerful actor within the institutional constellation has been sharpest for the EP where new competences are at stake. As stated in a note published by the Directorate General for external policies 'The power of consent alone may, however, not be sufficient to rebalance powers between the EP and the Council. The potential for change lay, rather, in the ways in which Parliament would interpret and implement its new powers' (EP 2014, 6). This makes it clear that, since ACTA was the first treaty to be approved by the Parliament under the new Lisbon regime, institutional power relations were at stake.

In terms of intra-institutional dynamics, the peculiarity of the EP lies in the absence of any formal majority or opposition. Rather, ad hoc majorities form on legislative issues. This brings about complex patterns of deliberation. First, far from being absent at the supranational level, the classical left-right pattern has (arguably) increasingly shaped EU legislative politics (Hix and Roland 2006). On many issues, a left-wing bloc including the radical left (GUE), the Greens and the Social Democrats opposes the Conservatives, the Liberals and the Eurosceptics. In fact, the Liberals play a pivotal role in the centre, backing a more left-wing or right-wing majority. Nevertheless, the left-right cleavage is not so strong a structuring factor at the European level as it often is in national politics. In many respects, the EU can be described as a consociational polity where the claims of diverse groups or entities need to be taken into account (Papadopoulos and Magnette 2010). Thus, the left-right cleavage is often filtered by geographical cleavages (North-South, West-East), reflecting historical ties as well as different varieties of capitalism denoting contrasting conceptions of the roles of State and Market (see e.g. Author 1). Finally, these inter-institutional dynamics often lead rapporteurs on legislative dossiers to seek a broad majority to defend the EP's position. This implies that European parliamentary politics are strongly geared towards the centre as, far from systematically opposing each other, the main political groups often find themselves voting together in the same 'super majority'.

## **2.2 Parliamentarism as a key opportunity for contentious politics**

These considerations of the EP's intra- and inter-institutional cleavages and tensions form the basis of a political opportunity approach to explain the strategies adopted by extra-parliamentary opposition campaigns within civil society. Political opportunity is an approach used in the study of social movements to describe how the features of political institutions and other political events translate into opportunities or barriers for movements to act and impact decision-making (Meyer 2004). It demonstrates how movements are shaped and constrained by political contexts, and how they may – generally in combination with other actors and circumstances - affect particular decisions. Political opportunity approaches are thus best fitted for studies that seek to explain movements that seek to influence political decisions, as the emphasis on political context does not admit the roles of various other key cultural variables on movements and their impacts. The approach has been adapted to explain how movements and civil society groups act and may impact various international decisions, including those of the EU (e.g. della Porta and Caiani 2009, Marks and McAdam 2009, Princen and Kerremans 2008, Author 2 2015). The EP is the key institution of interest here given that our central argument explores the formation of opposition under procedures where the EP is central. The following discussion, based on Author 2 (2015), focuses on the opportunities that may be derived from the intra- and inter-institutional cleavages outlined above.

The EP is an attractive target for those seeking to influence EU policy. Compared to many national parliaments it has considerable power to shape EU decisions, and outside expertise is often welcome to MEPs as it is to the European Commission (Balme and Chabanet 2002). Importantly, as elected representatives MEPs may also see listening to citizens (or groups representing citizens) as their duty (ibid). Compared to the Commission, which is open to outside input but requires groups to present expert information, and the Council which remains mostly closed to outside groups at the EU level (though influencing national players in the Council is possible at local or national levels), the EP is the most open target for organised civil society at the European level (Author 2 2015).

Beginning with intra-institutional factors, because no single political grouping dominates in the EP and ideology plays a smaller role compared to many national settings, the resulting political opportunity is that less ideological arguments are more likely to succeed in this institution.

Groups may thus seek to deploy arguments that resonate with MEPs across the political spectrum, vary their strategies according to the perceived preferences of different political groups, or where possible divide labour among those groups more sympathetically received by the right, left or centre. Turning to geographical cleavages layered over ideological differences, where an issue attracts attention in one or a number of member states and public opinion takes a clear direction, MEPs from those countries may be more open to follow the preferences of citizens in a bid for re-election (Burstein 1999). This electoral logic, according to a political opportunity approach, underpins civil society efforts to rouse and communicate public opinion from different countries to corresponding MEPs. Resonance in public opinion is key to unlocking opportunities for civil society at the EP in this view.

The inter-institutional balance concerns the role of the EP as a whole within the balance of the EU's architecture. As discussed, the EP has historically acted in order to acquire and assert powers vis-a-vis the other European institutions. In terms of political opportunity, when there is reason to believe that the EP may act within this logic, civil society may be more likely to concentrate efforts there. This could be the case, as with ACTA, for a new power, but also where other institutions are understood to be hostile or closed to the voices that civil society professes to represent. A scenario with a similar outcome for civil society strategies is where other EU institutions are seen as internally divided. This allows the EP to portray itself as a strong and decisive actor (and thus worthy of further powers) where other institutions have failed. In addition, other EU institutions have on occasion explicitly called on the EP to lead (or deferred any decision until the EP has taken a stance) where deadlock has been reached or the institution in question wishes to take some political distance from the issue and be seen to allow a democratic institution to decide.

This view of political opportunities and the EP suggests strategies that civil society groups may see as likely to influence that institution's decisions. The EP offers an initial access point to allies for civil society in the shape of sympathetic MEPs easier to reach compared with other EU institutions. Here more so-called conventional strategies, such as meetings with MEPs, may be used. To increase the numbers of sympathetic MEPs, civil society groups must activate public opinion with resonant arguments. Here, more so-called unconventional strategies such



as protest may come in to play. As MEPs perceive that public opinion has been activated on a particular subject, they will be more likely to act within an electoral logic, particularly if civil society groups alongside allies within the EP have constructed arguments that appeal across ideological divides. Thus, the features of the EP in terms of political opportunity are mutually reinforcing: the stronger the resonance of arguments, the more public opinion will be roused and the more likely MEPs will take a decision designed to underline both the democratic character and strength of MEPs and the EP as an institution. Both conventional, behind-the-scenes strategies and public oppositional strategies will give the best chance of forging the necessary alliances for the EP's decisions to be influenced. This description also echoes work on transnational advocacy, which underlines the need for multi-level strategies at various territorial levels in order to achieve 'scale shift', where contentious politics (understood as episodic public actions addressing claims to governmental institutions) broaden to larger swathes of publics, thus provoking reactions from institutions (Tarrow and McAdam 2005). We add to this line of thinking an emphasis on the importance of considering how contentious politics combine with conventional advocacy work within institutions to produce effects on decisions. We now move on to illustrate this argument with reference to the campaign against ACTA.

### **3. How opposition inside and outside the parliamentary realm defeated ACTA**

#### **3.1 Extra-parliamentary opposition and the confrontation between the EP and the Commission**

Opposition to ACTA in the EP was first fuelled by the Commission's lack of transparency in its communications about negotiations. In 2008, Wikileaks had released documents authored by the US government showing that information about negotiations had been passed to lobbies representing industries active in the culture and property rights sectors, but not to associations representing public interests. These leaked documents saw the beginning of civil society campaigns against ACTA within a broader context of contention around Internet regulation fostered by campaigns against the Stop Online Piracy Act (SOPA) and Protect IP Act (PIPA) in the US. For campaigning groups, a focus on the EP made sense both for inter-institutional

reasons - the Commission was seen as hostile, and the Council composed of governments favourable to ACTA<sup>3</sup> - and because its new power (i.e. Article 218) gave it a say. Thus, in early 2010 an informal, pre-existing alliance was activated between campaigning groups including the Foundation for a Free Information Infrastructure (FFII), European Digital Rights (EDRi), Access Now (AN) and La Quadrature du Net (QdN), and members of the Greens-EFA political group, in particular from Sweden and Belgium<sup>4</sup>. Newly elected MEPs from the Swedish Pirate Party had recently joined the Greens-EFA, and a Pirate Party activist had been employed by the group as an advisor on Internet policy. A wiki on ACTA issues was quickly set up after a decision by the Greens-EFA Internet core group<sup>5</sup>.

When ACTA was placed on the agenda of the EP, digital rights groups including QdN thus worked with the Greens-EFA group<sup>6</sup> to raise awareness of the opacity surrounding the agreement<sup>7</sup> and to convince MEPs to sign a resolution denouncing the Commission's lack of openness. The transparency issue thus first raised resentment on ACTA among MEPs, placing the origins of the institution's opposition to ACTA both in an inter-institutional perspective and in line with the discussion above arguing the EP's tendency to seek to present itself as a defender of citizens' interests. With regard to the latter, QdN sought to play to this tendency by bringing local activists to the offices of MEPs to urge them to sign the resolution (thus also exploiting the geographical cleavage), and debates on the subject were framed by sympathetic MEPs using the notions of transparency and democracy. At this stage, discussions on ACTA did not focus on actual content, which allowed the coalition between digital rights groups and opposed groups within the EP to build a cohesive and widespread alliance to confront the EU Commission and fight to assert the EP's new competence. Faced with such opposition, Trade Commissioner Karel de Gucht stressed the importance of ACTA for the competitiveness of the EU, which exports many goods protected by intellectual property<sup>8</sup>. The resolution demanding

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<sup>3</sup> Interview with representative of FFII, by telephone May 2013.

<sup>4</sup> Interview with the assistant of a Belgian MEP, Brussels, September 2012.

<sup>5</sup> Interview with board member of the Swedish Pirate Party, Brussels, June 2013.

<sup>6</sup> Interview with representative of QdN, Paris, June 2013.

<sup>7</sup> In the first version of ACTA sent by the Commission to the EP, for example, many passages were redacted (interview with assistant of MEP Marc Tarabella, Brussels, November 2012).

<sup>8</sup> See speech in the plenary meeting of the European Parliament on 9 March 2010.

transparency and full access to all documents regarding ACTA was signed by a large majority of MEPs<sup>9</sup>.

### 3.2 Extra-parliamentary opposition and party dynamics within the EP

Following this moment of unity around transparency issues, debates on content saw a dividing line emerge between left-wing groups within the assembly (the Greens-EFA in particular allied with digital rights groups) and their right-wing counterparts in 2010 and 2011. In 2010, when the EP issued a resolution on the content of ACTA, opponents were in a minority. The resolution drafted by the opposition coalition was rejected, and the joint resolution of the European People's Party (EPP) and the European Conservatives and Reformists (ECR) adopted. It stressed that ACTA was useful to fight counterfeiting and support a level playing field for producers, sustain employment, and promote the rule of law<sup>10</sup>. Yet when the Commission sent a second draft of ACTA to the EP, inconsistencies fed suspicion that passages likely to fuel opposition had been removed<sup>11</sup>. While nobody opposed the fight against counterfeiting (although concerns remained for generic medicines), the inclusion of a chapter on digital products and the sharing of files protected by copyrights caused concern. A number of left-wing MEPs suspected that multinational companies had lobbied governments for the penalisation of individual practices on the Internet, and to oblige providers to act as surveillance agents<sup>12</sup>. In Winter 2011, a small group of Greens and Social Democrats in the EP began to organise their own informal discussions on ACTA<sup>13</sup>. They were soon joined by an increasing number of MEPs, including Polish members of the EPP.

Outside the EP, groups allied with those within the EP were becoming disheartened and considering legal avenues to challenge ACTA. QdN had in late 2011 released a widely viewed video summarising the threats of the agreement, but public and parliamentary interest was not

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<sup>9</sup> European Parliament resolution of 10 March 2010 on the transparency and state of play of the ACTA negotiations, P7\_TA(2010)0058.

<sup>10</sup> European Parliament resolution of 24 November 2010 on the Anti-Counterfeiting Trade Agreement (ACTA), P7\_TA(2010)0432.

<sup>11</sup> Interview with a parliamentary assistant, Brussels, November 2012.

<sup>12</sup> Some articles of the agreement referred to the possibility for providers to watch e-mail communication or the possibilities for national authorities to conduct controls for transport of illegal digital goods at borders.

<sup>13</sup> Among whom Marc Tarabella (S&D, BE), Sandrine Béliet (Verts/ALE, FR), Bernd Lange (S&D, DE).

widespread. Yet the problematic nature of ACTA was subsequently stressed by increasing public contention, feeding resonance with Brussels-based groups' grievances. ACTA triggered multi-level mobilisations by groups across Europe, forming a loose network rather than a coordinated coalition (Losey 2014). In early 2012, ACTA and digital rights were the focus of protests in Central and Eastern Europe days after well-known websites held a 'blackout' over SOPA and PIPA (Benkler et al 2015). In the region, the Internet is regarded as a space for citizens' freedom that contrasts with an authoritarian Communist past. These protests, though unconnected to the campaigning groups informally allied with the Greens-EFA, caused a scale shift that allowed increased resonance, in turn presenting opportunities for this coalition to build a wider ad hoc alliance against ACTA within the EP.

First, public statements were made distancing different countries from ACTA, including Poland where this followed a rebellion staged by MPs from the left-libertarian Palikot movement wearing Guy Fawkes masks (the symbol of Anonymous) during a parliamentary session. In early February, when mobilisation reached a climax of 10 to 20 000 people on the streets of Warsaw, the Polish prime minister announced that Poland would not ratify ACTA at all, while Germany stated that it would await the outcome of the EP's vote before taking a decision on signature. Bulgaria, the Czech Republic, Latvia, Lithuania, Slovakia and Slovenia also announced they had stopped ratification processes. These events sent a clear message to the EP that its vote could assert the institution's position against a split Council, a message that opposition groups in and outside the EP now worked to bring home. Groups with grassroots links in addition to their supranational activities, particularly QdN and indeed the Pirate Party, began to work with the protest groups in order to encourage the spread of mobilisation to the west of the Union. On 9 June, 120 cities were involved in a Day of Action against ACTA.

Second, the protests also sparked specific political moves within the EP in a climate of increased resonance and media coverage, creating further opportunities. Weeks after protests began, the EP's rapporteur for ACTA, Social Democrat French MEP Kader Arif, resigned. This move attracted some media coverage given the existing interest sparked by the protest wave and the accusations levelled by Arif, who stated

*‘As the Rapporteur on this agreement, I had to face unprecedented manoeuvres from the right of this Parliament which sought to impose an accelerated calendar aiming at passing ACTA as soon as possible before public opinion could be alerted thus depriving the Parliament from its right of expression and from the tools allowing it to voice citizens’ claims’<sup>14</sup>.*

The protests and their aftermath thus made MEPs more susceptible to opposition arguments in a climate of increasing public awareness and anti-ACTA sentiment appealing to the institution’s desire to be seen as a champion of citizens’ rights. Campaigning groups now lobbied strategically within the EP, with groups considered more expert and less overtly political, such as EDRI, targeting more receptive members of the EPP, and grassroots groups targeting undecided members of the Social Democrat and Liberal groups. The geographical characteristics of the EP also came into play as national politics were felt. For example, Sergei Stanishev, former Prime Minister of Bulgaria and newly appointed President of the Party of European Socialists (PES), used the campaign against ACTA to profile himself as an opponent of Bulgarian President Plevneliev who supported the agreement. Stanishev worked to consolidate opposition to ACTA within the PES at a point when no major political group in the EP had officially taken a stance against it<sup>15</sup>. Meanwhile, Arif’s successor, the British MEP David Martin, sought to consolidate opposition to ACTA within the Group of the Progressive Alliance of the Socialists and Democrats (S&D). During internal debates, British Labour Party members declared that they were not bound by the position of the Europarty like their Finnish, Austrian and Danish colleagues, whose parties belonged to government coalitions that had signed the agreement. A number of members from Southern Europe (Italy, Spain, Portugal) were also in favour of an agreement that would strengthen sanctions against counterfeiting (notably with regard to the textile industry)<sup>16</sup>. David Martin and Bernd Lange, coordinator of the S&D Group for trade, organised a series of debates and consultations in order to strengthen the group’s critical stance towards ACTA, creating new lobbying opportunities for digital rights groups.

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<sup>14</sup> Kader Arif, Press release, excerpt from Blog Mediapart, 12.02.2012. Available at:

<http://blogs.mediapart.fr/blog/jean-paul-baquiast/140212/les-manifestations-contre-le-traite-acta>.

<sup>15</sup> Interview with Deputy Secretary General of the Party of European Socialists, Brussels, October 2012.

<sup>16</sup> Interview with assistant of MEP Bernd Lange, Brussels, November 2012.

Both groups embraced opposition in April 2012 and support for ACTA progressively weakened even among Conservatives. In a few short months, civil society groups worked hard, exploiting various opportunities linked to the cleavages that characterise the EP, to forge an ad hoc coalition amongst MEPs to oppose ACTA. This led the EP to make an historical move given that the assembly has only rejected about a dozen pieces of legislation since its first direct election in 1979. While a wider story of ACTA and its fate can be told for each Member state as well as other signatory countries including all the rich complexities of actors and events that played a role, the focus here is specifically on explaining the EP's vote to withhold consent for the EU's signature. The next section bolsters our argument on the importance of the connection between parliamentary and extra-parliamentary opposition for campaigns seeking to influence the decisions of the EP by looking at other cases.

#### **4. Discussion and comparative perspectives**

In this section, we deal with cases exhibiting a similar opportunity structure allowing for connections between opposition forces inside and outside the parliamentary realm, namely cases where the EP takes a key position in the decision making process. Then, we turn to a contrasted case where the opportunity structure is unfavourable to effective opposition, that is where the EP is marginalised, offering no channel for alliances between various oppositional forces.

##### **4.1 Co-decision and successful campaigns**

While the consent procedure featured in the ACTA case is mainly used for international agreements, and hence less common, co-decision is the ordinary legislative procedure which places the EP on an equal footing as a legislator alongside the Council of the EU. Unlike the consent procedure, co-decision allows MEPs to shape legislation through amendments. This constitutes a major opportunity for groups outside the Parliament to contest certain aspects of proposed legislation.

One prominent case of successful opposition to a policy initiative is the campaign against the Services directive that took place between 2004 and 2006 (Author 1, Author 2). This proposal by the EU Commission foresaw far-reaching liberalisation and deregulation of all services, including a number of public services. The proposal's so-called country of origin principle would allow providers to offer services in any EU country on the basis of the rules and regulations of the country where the company established its headquarters. These provisions triggered fears among unions and left-wing politicians that the directive would foster the relocation of services companies as well as social, wage and regulatory dumping. A broad left-wing coalition (including Greens, Communists, Social Democrats, unions and the alterglobalists of ATTAC) led a vocal campaign opposing the defence of 'Social Europe' against the detrimental effects of the 'Neo-liberal EU' embodied by the Dutch internal market Commissioner Frits Bolkestein. After 2 years of mobilisation, the EP voted substantial modifications of the Commission's proposal, softening its impact on public services and its deregulation effects with regard to social standards. This contentious episode can be seen as a case of successful opposition through the connection of parliamentary and extra-parliamentary opposition.

Another comparable case is that of the Port directive, which the EP rejected outright not once but twice, in late 2003 and 2006. This case also involved the construction of a coalition within the EP. An opposition campaign was carried out by a broad and varied coalition comprising groups from sections of industry and trade unions, and involved popular protest, which 'created a critical mass to convince the MEPs to vote down the Port Directive' (Author 2) through publicly resonant arguments. The Port directive was also observed to involve the EP acting according to the logic of the inter-institutional balance discussed earlier. When the directive was reintroduced, the EP was unimpressed that the Commission had not taken note of painstakingly negotiated compromises achieved in the first, rejected version. Comparing the Bolkestein and Port cases, the 'importance of gaining the Parliament as an ally in campaigns involving legislation under the 'ordinary legislative procedure'' has been noted (author 2).

Studies of campaigns that have failed to leave a mark on EU policies also corroborate our argument about the importance of convergence between parliamentary and extra-parliamentary opposition. Bieler's study of the Coalition for Green and Social Procurement, for

example, concludes that an important reason for the ultimate failure of this campaign was an over-reliance on lobbying to the detriment of protest (2011, 177). Outside the realm of trade union campaigning, elements contributing to the shortcomings of a campaign by environmental and public health groups on the EU chemicals regulation (REACH) included a lack of both protest strategies and enough allies within the EP to overcome coalitions brokered by industry (author 2). A quantitative study on interest group influence in the EU analysing 69 legislative acts finds that citizen groups fomenting conflict alongside allies in EU institutions are more successful in terms of their impacts on EU legislation than business groups, providing more robust evidence for our argument (Dür, Bernhagen and Marshall 2013). However, most of the evidence dates from before the financial crisis. A consideration of this contrasting case, given the intergovernmental nature of the response to the crisis and the marginal position of the EP, is presented in the following section.

#### **4.2 Intergovernmental politics and fragmented protest**

The purpose of this final section is to provide a contrasted case where, although extra-parliamentary opposition to the policies of the EU has been significant, it has failed to impact decisions made by its institutions. This is so, we argue, because the financial crisis accounts for a different opportunity structure where the EP is marginalised, thus precluding its role as a channel for opposition.

The financial crisis that began in earnest in Europe around 2008 led to the implementation of an austerity agenda of cuts across the EU. The so-called 'Indignados' and Occupy protests against this austerity agenda and the flaws of the systems that allowed the crisis to occur swept across Europe in 2011 before spreading to the US (Ancelovici 2015). The protests were characterised, amongst other things, by the occupations of public spaces in several EU Member states. Within these camps, which often endured for several months, protesters exercised a 'prefigurative politics', organising themselves horizontally in the kinds of democratic practices they wished to see adopted in their countries (e.g. Kaldor, Selchow and Murray-Leach 2015).



These protests had strong local physical presences in terms of their location in defined areas within which they rejected formal systems and developed their own micro-direct democratic systems, and often provided an array of local services. They present some clear contrasts with the previous protest wave of the global justice movement (GJM). The GJM, in addition to its more global focus expressed through transnational protest and discussions at social forums, counted groups that engaged directly with the EU, including many of those that were pivotal in the campaigns against the Bolkestein and Port directives (for example a range of trade unions and ATTAC). These latter campaigns involved actions both in and outside the European institutions, and the EP in particular. This is a link that appears to be missing when we consider the wave of occupation movements: here protests were not only localised but protesters had no vision akin to the GJM's slogan of 'another Europe is possible'. 'Europe' in general was viewed as a space where politics and the market had become entwined to the extent that markets now dictated economic policy decisions in the political sphere. These decisions, it was felt, should instead be the product of democratic debate (for an extensive discussion, see della Porta 2015). Europe was thus rejected (or not even considered) as the conduit for any possible solution (Kaldor, Selchow and Murray-Leach 2015).

This shift can be seen as an indication of a perceived closure of political opportunities at the EU level that finds some corroboration in institutional changes at the EU level since the crisis. While obstacles to transnational opposition, and in particular popular mobilisation, have always been seen as substantial in the EU (Imig and Tarrow 2002; Marks and McAdam 2009), recent changes can be argued to exacerbate these. Major decisions that led, for example, to financial instruments such as the European Financial Stability Facility (EFSF), were taken for the most part in bilateral Franco-German summits. More generally, all the discussions that led to the reform of the European Monetary Union resulted from intergovernmental discussions. The important point for our purposes here is that the reaction to the financial crisis has been overwhelmingly intergovernmental, mainly involving national governments and the EU Commission. Hence, in contrast with the ordinary legislative procedure (formerly co-decision), the EP is marginalised and has little to no say in these processes. The opportunities provided by parliamentary politics are therefore no longer available to groups that want to contest policy decisions over socio-economic policies. This can be argued to be a situation that has essentially always existed in the EU – changes achieved in campaigns such as those

discussed here could be dismissed as cosmetic, since they do not affect the overall agenda of the EU. Nevertheless it does appear that this institutional closing of opportunities has been understood by recent protesters to have closed doors at the European level, contributing to a lack of transnational dimensions to anti-austerity protest. Reflecting on the ACTA case, this perception is a potential contributing factor in the gap between the opposition to ACTA clustered around the EP and the protest groups of early 2012 (for a fuller development of this argument, see author 2 2016).

## **5. Conclusion**

In this paper we explored the case of opposition to the Anti-Counterfeiting Trade Agreement within and without the EP through a political opportunity approach, using this case to reflect on conditions for effective opposition in the EU multi-level polity. We argue that the European political opportunity structure is most favourable to effective opposition when the EP occupies a central position, e.g. through consent or ordinary procedures. This allows for connections to be forged between political forces voicing opposition within the parliament, on one hand, and outside the realm of institutional politics, on the other, leading to impacts on the decision making process. The ACTA case suggests that MEPs and civil society have a mutual interest in working together. The EP provides direct access to decision making, while protest and activism outside of the parliament in turn serve to increase resonance in the public sphere thus convincing further parliamentarians, shaping political groups' positions and eventually building oppositional majorities.

This argument is further supported by comparative insights from similar cases including the Services directive and the Port directive. The campaigns against these directives provide more examples where groups within and without the EP worked to construct effective majorities to substantially amend or reject European legislation. In these cases too, opposition outside the EP including protest bolstered public opinion, allowing the construction of majorities within the assembly. In contrast, the EU's policy response to the 2008 financial crisis can be described as intergovernmental as it marginalised the EP, altering the configuration of political opportunities for socio-economic decisions. This may be a contributing factor in the relative

lack of transnational work in anti-austerity protests when compared with the previous global justice movement. While decisions on issues closely linked to an austerity agenda do not include a key role for the EP, the mechanisms allowing effective opposition that we describe in other cases cannot work.

Our argument has two types of implications. First, the alliance of parliamentary and extra-parliamentary civil society is arguably the most significant source of structured opposition in the framework of the routine functioning of EU politics. While individual member states can attempt to hamper policy initiatives, blocking minorities are hard to achieve under qualified majority voting in the Council. Yet, this form of opposition is likely to become more frequent and significant if the EU a) follows the path of intergovernmental politics and b) deals with questions of national interest, for example social policy, fiscal policy, migration issues, and police cooperation.

Second, if opportunities to mount this kind of effective opposition channelled through parliamentary politics are closing in the aftermath of the financial crisis, further research on EU integration and its institutional developments should perhaps reflect on possible remedies for bringing contentious voices back to the EU level. Historically, according to thinkers such as Marshall and Tilly, contention has been an important driver of democratisation. If the EU is to engage and involve its citizens – a political project that seems all the more urgent in light of the considerations made here – it must to some extent embrace the potential of contention. In this regard, it will be especially interesting to see (provided the negotiations go on) whether the EP will be a channel for the on-going protest against the TTIP. If contentious social movements turn their back on the idea that ‘Another Europe is possible’ this would leave only the far right articulating discontent as a return to the nation.

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