

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

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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 process 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 ACTA. 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.

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Introduction

The purpose of this paper is to explore the conditions for effective opposition in the EU multi-level polity. 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 political opposition which considers the role of contestation by organised groups within civil society. In this regard, research on social movements has undergone two major developments over the past two decades. The emergence of transnational movements and organisations has been seen as an adaptational response to the rising power of global governance and international institutions, or, in Europe, the continuous institutionalisation of the EU as genuine new polity (Kriesi and Rucht 1999; della Porta and Caiani 2009). At the same time, as Hutter (2014) notes, this research has become somewhat movement-centric in that scholars have been more interested in the organisational forms and dilemmas of movements themselves, leaving connections with institutionalised politics in the background.

This paper is an attempt to bridge this gap. The concept of opposition is particularly suited to this because it targets impacts on decision-making and policy outcomes. At the same time, opposition is more specific than interest representation, which mostly refers to the degree and modalities of involvement of certain actors rather than their ability to impact decision making. The purpose of our twofold conceptualisation is to show how the extra-parliamentary and parliamentary components of opposition are interdependent with regard to their capacity to shape decision-making. Specialists of EU politics have stressed that the EU is a political system geared towards consensus in the centre in which dissenting voices are left at the margins of the decision making

process (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, which are often involved in contentious politics at the national level. While the success of opposition to EU policies seems rare, the question of under which scope conditions such opposition can emerge and be effective remains: under which circumstances can opposition contribute to reverse or shape decision-making? Building on the political opportunity structure framework, our argument is that opposition is most likely to succeed through a connection between parliamentary and extra-parliamentary mobilisation at the European level. More specifically, when it is involved in decision-making, the European Parliament (EP) provides crucial opportunities (in terms of access, allies and discourse) to contentious groups. The role of MEPs is relevant both in the microcosm of organised civil society in Brussels, and in terms of linkages with national arenas. More so than in national political systems, in Europe it is in the interests of parliamentarians and activists to cooperate if they want to succeed. While MEPs who oppose a policy initiative can use contention within civil society as leverage for achieving - necessarily ad hoc - broad opposition within the assembly, NGOs 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. Besides the involvement of the EP, another scope condition for the connection to happen is therefore the level of politicisation and resonance within the public sphere, which facilitates the influence of allied parliamentarians and activists.

This argument is substantiated by a two-fold strategy relying on a single case study and enlargement to further cases offering crucial comparative insights. First, the paper draws on documentary and field research conducted by both authors in 2012 and 2013, including a series of 16 interviews with political actors and activists involved

in the debate, to show how the connection between extra-parliamentary opposition led to the rejection of the Anti-Counterfeiting Agreement (ACTA) in July 2012. 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 to 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. Beyond the single case study, the paper will also illustrate the main argument with references 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 as far as EP involvement is concerned. On the one hand, the Services directive and the Port directive show a similar connection between opposition outside and inside the parliamentary realm. On the other, the latest financial crisis offers a contrasting case where, against the background of intergovernmental management of the crisis, no such connection was forged as the EP was largely marginalised. Rather, where it reached the institutionalised political arena, protest led to the rise of new anti-establishment parties at the national level such as Podemos and Syriza, which failed to shape policy responses to the crisis.

The first section of the paper 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 ratification by the EU. 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.

1. The possibility of opposition in the EU: an institutionalist approach

1.1 The EP as a key player of opposition

The opportunity structure allowing 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 has been the result of both the Parliament's activism and the larger political context of integration. The struggle for more competences 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 introduction of the direct election of its members in 1979. Later, in the 1990s, the strengthening of parliamentarism at the EU level was considered as a strategy to tackle the perceived democratic deficit of the EU by decision makers (Costa and Magnette 2003; Rittberger 2005). Every treaty reform has granted more powers to the EP since the introduction of the co-decision procedure with the Treaty of Maastricht in 1992. The procedure made the Parliament the co-legislator of the Union on an equal footing with the Council of Ministers and all successive treaties have continuously extended the number of policy areas where decisions are made on the basis of co-decision. The entry into force of the Lisbon treaty in 2009 marks the latest climax of the EP's rise. It makes co-decision the 'ordinary legislative procedure' of the EU and enhances the EP's role in policy domains previously considered as the Member States governments' turf. 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 have to pass through the

'consent procedure', which gives the EP the right to allow or reject such international treaties, as in the case of ACTA.

Given that citizens are often out of reach and disinterested in the policy issues discussed in Brussels, 'organised civil society' has been used as a proxy for popular legitimation. All in all, members of the EP have developed a strong habitus (to borrow Pierre Bourdieu's concept) of institutional self-assertion. This means that, more often than not, the assembly adopts a confrontational position towards proposals from the Commission and/or the position of the majority of governments within the Council. Inter-institutional confrontations are shaped by the logic 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 becomes particularly acute when new competences are at stake. As stated in a note published by the EP's 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). In that sense, it was 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.

Compared with national parliaments, the peculiarity of the EP lies in the absence of any formal majority and opposition among its members. Rather, ad hoc majorities form on every legislative issue discussed. This fundamental feature 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 (see e.g. Author 1), that is contrasted conceptions of the appropriate role of the State and the Market. Finally, the inter-institutional dynamics described above often imply that the rapporteur of a particular proposal seeks to garner a broad majority in order 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'.

1.2 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 aspects of civil society campaigning. Political opportunity approaches are used to explain the actions of social movements, seen as rational choices taken on the basis of perceived options shaped by political contexts. The more open a polity is to the claims of movements, for example, the less protest there is likely to be, while more unreceptive contexts (though stopping short of the most brutal repression) will see more. In order to avoid too vague a version of the approach (for an overview of critique see Meyer 2004) it is important to specify key contexts carefully: in this case the EP, with some

consideration of other relevant institutions. The Parliament provides two central opportunities for extra-parliamentary contentious groups: access to allies within the realm of institutionalised politics, and opportunities for mobilising people and increasing the resonance of an issue in the political sphere at large. These two opportunities are mutually reinforcing: the stronger the resonance and mobilisation of a campaign, the more access is likely, and more access in turn reinforces mobilisation and resonance.

Within a political opportunity approach the EP is described as an attractive target for those seeking to influence EU policy. Not only is its power greater than that of many national parliaments (Greenwood 2011), it is also resource poor and thus open to receiving information from outside actors. Yet as an elected assembly, it is also a potential target for more unconventional, grassroots-oriented strategies that play on the perceived duties of MEPs to represent the wishes of their voters. Building on the previous discussion, the EP's features as a key opposition player can be described in terms of political opportunity. Beginning with intra-institutional factors, because no single political grouping has ever formed an absolute majority in the Parliament and ideology plays a smaller role compared to many national settings, it can be expected that campaigning groups will play down ideological aspects of their claims, seeking instead to deploy arguments attractive to MEPs from a range of different political groupings that will allow an ad hoc coalition to form around their issue of interest. Layered over ideological differences are geographical cleavages, which also provide various opportunities. For the purposes of groups outside the EP, 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 follow an electoral logic and vote in the manner that will gain them the most support from citizens (Burstein 1999). Campaigning groups are thus likely to work to organise and extend expressions of public opinion including protest in order to then draw the attention of relevant MEPs to evidence of mobilisation, thus encouraging their response in line

with this vote-seeking logic. Geography may also be relevant where a particular policy will affect some member states more than others. Here again groups can be expected to seek to convince MEPs of a relevant nationality to act in line with this vote-seeking logic. In this view, public opinion is key to unlocking opportunities for campaigning groups: MEPs must be convinced that the public is on the side of the campaigning groups, and that it would be to their advantage to be seen to support their claims.

The inter-institutional balance concerns the role of the EP as a whole within the balance of the EU's 'institutional triangle' of Commission, Parliament and Council. In line with the logic whereby institutions seek to reinforce and expand their power, the EP can be seen as keen to acquire powers vis-a-vis the other European institutions (as suggested by the discussion above) as well as to exercise those it holds or has newly acquired. In terms of political opportunity, it is expected that the likelihood that groups will focus on the EP will increase not only with the actual power of the EP over a given issue, but also with the extent to which other institutions within the institutional triangle are seen to be closed. Opportunities for encouraging the EP to act in line with a logic of demonstrating its power within the institutional triangle can also be argued to increase where other EU institutions are seen as divided - this allows the EP to portray itself as a strong and decisive actor (and thus worthy of further powers) where others have failed. In addition, other supranational 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 (see the discussions on ACTA and the Services directive below).

In terms of the strategies predicted in line with this political opportunity structure of the EP, these cleavages give some clear ideas. As noted, in a more general sense the EP provides both institutional channels of access but also invites more

unconventional forms of action. Groups exploiting institutional channels are likely to avoid allying themselves too closely or publicly with any one political grouping, playing down traditionally ideological elements of their argumentation. This strategy allows the duplication of material used to target the Commission, which similarly demands a step back from ideology and a language of expertise. Where groups draw on national membership, they are likely to mobilise these in order to play the geography card at the European level. New technologies may be helpful here (e-mail campaigns and petitions are often seen). More unconventional strategies including protest may also be used in this vein, and overall in an effort to convince MEPs that public opinion has been piqued - by acting from the 'bottom up' campaigning groups seek to exploit the re-election concerns of parliamentarians. These strategies are also the most logical to appeal to the Council of Ministers and European Council where very little institutional access is available at the European level.

In a nutshell, the connection between extra-parliamentary and parliamentary opposition to policies initiated by the Commission and Council in the EU relies on a mutual self-interested strategy by the EP and campaigning groups. On the one hand, MEPs seek to draw their power and legitimacy from the idea that they represent voters and voice the concerns of 'organised civil society'. On the other hand, contentious groups and organisations seek to gain access to decision-making and resonance for their claims. Combining these views illustrates how campaigning groups act regarding decision-making procedures where the importance of the EP is perceived as high. We thus argue on the basis of the discussions outlined above that the EP is an attractive institutional ally for campaigning groups where it is seen as a powerful actor - as is often the case in co-decision procedures and where it has a newly acquired power as in the ACTA case. Building alliances with (parts of) this institution in situations where it has more often than not pitted itself against other EU institutions of a different view (and indeed formed alliances with parts of other EU

institutions less accessible to civil society groups that support it, see Servent and Trauner 2014) makes sense and is one way in which campaigning groups hope to and on occasion have wielded influence over EU decisions. We now move on to illustrate this with reference to the campaign against ACTA.

2. How ACTA was defeated

Opposition to ACTA first emerged with regard to transparency between the European Commission and the EP. In 2008, Wikileaks had released documents authored by the US government, bringing evidence that information about ongoing negotiations had been made available to private lobbies representing the 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. For campaigning groups, a focus on the EP made sense both for inter-institutional reasons - the Commission was seen as hostile to discussions, and the Council composed of governments that had for the most part signed ACTA¹ - and because its new power gave it a say in the ACTA process. Thus, in early 2010 an informal alliance was struck between campaigning groups and members of the Greens-EFA political group. The ranks of this group had recently been swelled by two new Swedish Pirate Party members, an event which coincided with the appointment of an advisor on Internet policy, a seasoned activist with previous experience of political campaigning who was quick to set up a wiki on ACTA issues after a decision had been taken by the Greens-EFA internet core group². Existing links between these MEPs and campaigning groups including La Quadrature du Net (QdN, European Digital Rights (Edri), Access Now, and the Foundation for a Free Information

¹ Interview with representative of Foundation for a Free Information Infrastructure (FFII), by telephone May 2013.

² Interview with board member of the Swedish Pirate Party, Brussels, June 2013.

Infrastructure (FFII) were thus activated for ACTA and extended to interested MEPs, initially within the Greens-EFA and later to other groups.³

When ACTA was placed on the agenda of the EP, digital rights groups including QdN thus worked with the Greens-EFA group⁴ to raise awareness of the opacity surrounding the agreement⁵ and to convince other MEPs to sign a resolution to that effect (Author 2). It was thus the opacity of the negotiations that first brought about resentment among parliamentarians in the EP, 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 mission to present itself as a defender of citizens' interests. With regard to the latter, QdN brought local activists to the offices of MEPs to urge them to sign the resolution (thus also exploiting the geographical cleavage), and debates surrounding the question of the Commission's transparency over ACTA documents were framed by MEPs using the notions of transparency and democracy. At this stage, discussions on ACTA did not focus on its 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 the battle for asserting its new competence. The resolution demanding transparency and full access to all documents regarding ACTA was signed by a large majority of MEPs⁶.

Throughout 2010 and 2011, intra-institutional dynamics came into play as a dividing line emerged between the left-wing groups within the assembly (with the Greens-EFA in particular allied with digital rights groups) and their right-wing counterparts. In 2010,

³ Interview with MEP, Christian Engstrom, Brussels, June 2013.

⁴ Interview with representative of La Quadrature du Net, Paris, June 2013.

⁵ 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).

⁶ European Parliament resolution of 10 March 2010 on the transparency and state of play of the ACTA negotiations, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0058+0+DOC+XML+V0//EN>.

when the EP was to issue a resolution on the content of ACTA, opponents were in a minority within the assembly. 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. The latter stressed that ACTA was useful to fight counterfeiting and support a level playing field for producers, sustain employment, and promote the rule of law⁷. Yet when a second draft of the agreement was sent to the EP by the Commission inconsistencies fed suspicion that passages likely to fuel opposition among MEPs could have been removed⁸. 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 MEPs within left-wing political groups suspected that multinational companies had lobbied governments for the penalisation of individual practices on the Internet, and to oblige providers to act as agents of surveillance⁹.

Months later, in Winter 2011, a small group of Greens and Social Democrats in the EP began to organise their own informal discussions on ACTA¹⁰. They were soon joined by an increasing number of MEPs, including Polish members of the EPP. Beyond the left-right dividing line, the issue of digital rights brought about strong mobilisation in Central and Eastern Europe, likely inspired by widespread and widely covered protests against the Stop Online Piracy Act and the Protect Intellectual Property Act (SOPA and PIPA) in the United States. In the region, the Internet is regarded as a space for citizens' freedom which contrasts with the authoritarian Communist past. These protests, though in no way organised by the campaigning groups informally

⁷ European Parliament resolution of 24 November 2010 on the Anti-Counterfeiting Trade Agreement (ACTA), P7_TA(2010)0432.

⁸ Interview with a parliamentary assistant, Brussels, November 2012 (1).

⁹ 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.

¹⁰ Among whom Marc Tarabella (S&D, BE), Sandrine Béliet (Verts/ALE, FR), Bernd Lange (S&D, DE).

allied with the Greens-EFA, brought a host of new opportunities to build a wider ad hoc alliance against ACTA within the EP.

First, the protests saw a string of national politicians publically distance themselves from ACTA in early 2012. On 31 January 2012 the Slovenian ambassador to Japan (where ACTA was signed) stated that she had 'signed ACTA out of civic carelessness'¹¹. On 3 February Poland halted ratification due to 'insufficient consultations' prior to signing, while Bulgaria, the Czech Republic, Latvia, Lithuania, Germany, Slovakia and Slovenia now signalled that they had stopped ratification (or signature in the case of Germany) processes. On 17 February, the Polish prime minister announced that Poland would not ratify ACTA at all, while Germany stated that it would await the outcome of the EP's vote before taking a decision on signature. This gave campaigning groups two opportunities, since these events sent a clear message to the EP that their vote would count and give an opportunity to show its worth in an inter-institutional perspective against a split Council. First, groups with grassroots links in addition to their supranational activities, particularly QdN and indeed the Pirate Party, now worked with protesting groups. Protests later spread further to the west of the Union, with 120 cities involved in the Day of Action against ACTA on 9 June 2012.

Second, the protests indirectly created more specific opportunities to work within the EP by sparking political moves within the institution in a climate of increase media coverage. 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

¹¹ 'A New Question of Internet Freedom'. The New York Times, 05/02/2012. Available at http://www.nytimes.com/2012/02/06/technology/06iht-acta06.html?pagewanted=all&_r=0.

*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'*¹².

The protests and their aftermath had thus also opened up opportunities for campaigning groups to get their point across by increasing public awareness and opinion against ACTA, making the EP more susceptible to arguments designed to appeal to its desire to be seen as the champion of citizens' rights. Campaigning groups at this point were indeed lobbying strategically within the EP, with groups considered more 'expert' and less overtly political, such as Edri, now targeting more receptive members of the EPP, and more grassroots groups targeting still undecided members of the Social Democrat and Liberal groups according to the geographical cleavage. Their efforts were also assisted by national politics coming into play within the EP itself. For example, Sergei Stanishev, for former Prime Minister of Bulgaria and newly appointed President of the Party of European Socialists (PES), the campaign against ACTA enabled him to profile himself as an opponent to the Bulgarian President Plevneliev who supported the agreement. Stanishev worked to consolidate opposition to ACTA within the PES at a point in time where no major political group in the EP had officially taken a stance against it¹³. Meanwhile, Kader 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, members from the Labour Party declared that they were not bound by the position of the Europarty as their Finnish, Austrian and Danish colleagues, whose parties belonged to government coalitions which had signed the agreement, were. A number of members from Southern Europe (Italy, Spain, Portugal) were also in favour of an agreement which would strengthen sanctions against counterfeiting (notably with regard to the textile industry)¹⁴. David Martin and

¹² 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>.

¹³ Interview with Deputy Secretary General of the Party of European Socialists, Brussels, October 2012.

¹⁴ Interview with assistant of MEP Bernd Lange, Brussels, November 2012.

Bernd Lange, coordinator of the S&D Group for trade, therefore decided to organise a series of debates and consultations in order to strengthen the group's critical stance towards ACTA, creating new lobbying opportunities for the digital rights groups.

Both groups embraced opposition in April 2012 and support for the agreement progressively weakened even among the Conservatives. In the course of these few 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 a historical move given that the assembly has only rejected about a dozen pieces of legislation since its first direct election in 1979. The next section turns to evaluate our argument on the importance of the connection between parliamentary and extra-parliamentary opposition for campaigns seeking to influence the decisions of the EP.

3. Discussion and comparative perspectives

3.1 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 ministers. In contrast with the consent procedure, co-decision therefore 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 mobilisation campaign against the Services directive between 2004 and 2006 (Author 1, Author

2). The directive proposal by the EU Commission foresaw far-reaching liberalisation and deregulation of all services activities, including a number of public services. Moreover, the so-called country of origin principle allowed service providers to offer services in any EU country on the basis of the rules and regulations of the country in which the company established its headquarters. These provisions in particular 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 due to the activity of workers from the new member states of Central and Eastern Europe in the West. A broad left-wing coalition (including Greens, Communists, Social Democrats, unions and the alterglobalists of ATTAC) led a vocal campaign with a main framing opposing the defence of 'Social Europe' against the detrimental effects of the 'Neo-liberal EU' embodied by the Dutch Commissioner for the Internal market Frits Bolkestein. After 2 years of mobilisation, the Rapporteur on the proposal, the Social Democrat Evelyn Gebhardt, obtained 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 therefore be seen as a success of contestation through the connection between parliamentary and extra-parliamentary opposition.

Another comparable case explored by one of the authors in parallel to Bolkestein elsewhere is that of the Port directive. Broad opposition including popular protests by dock workers saw the EP reject this directive outright not once but twice, in late 2003 and again in 2006. The story here is comparable to ACTA, involving the construction of a coalition within the EP to reject the directive. The 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). The Port directive was also observed to involve the EP acting according to the logic of the inter-institutional balance discussed earlier. With the introduction of the second iteration of the

directive, the EP was particularly unimpressed that the Commission had not taken note of painstakingly negotiated compromises achieved in the ultimately rejected first version. Comparing Bolkestein and the Port case, the authors note that the 'importance of gaining the Parliament as an ally in campaigns involving legislation under the 'ordinary legislative procedure' thus seems clear' (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 both a lack of protest strategies and enough allies within the EP to overcome coalitions brokered by the industry counter-campaign (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 the effects of the crisis on the political opportunity structure of the EU is thus presented in the following section.

3.2 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 the institutions of the EU. This is so, we argue, because the financial crisis accounts for a different opportunity structure where the

EP has been widely marginalised thus precluding contentious claims to be channelled.

The financial crisis that began in earnest in the EU around 2008, affecting certain EU member states (such as Greece, Spain and Italy) with devastating force from about 2010, led to the implementation of an austerity agenda of cuts across the EU. Protests against this austerity agenda spread, adopting an innovative format inspired by movements in Iceland and across the Middle East (most prominently perhaps the occupation of Tahrir Square in Cairo) in the so-called 'Indignados' and Occupy movements. These mass protests, ostensibly against the austerity agenda, though more fundamentally concerned with democratic systems perceived to have allowed such a collapse in the first place (Kaldor, Selchow and Murray-Leach 2015; Ancelovici 2015) swept across Europe in 2011 before spreading to the US. The protests were characterised by the extensive use of social media in their organisation and diffusion, and by the occupations of public spaces in several member states of the EU. Within these camps, which often endured for several months, protesters exercised a 'prefigurative politics', organising themselves along the horizontal and open lines of the sort of democracy they wished to see practiced more widely in their countries (see for example Flesher Fominaya and Cox 2013; Kaldor, Selchow and Murray-Leach 2015)¹⁵.

These rather introspective movements (the lack of clear claims made by the protesters confounded much of the mainstream media), with their highly localised physical presence in terms of their location in defined areas within which they rejected formal systems and developed their own micro-direct democratic systems,

¹⁵ There were of course important differences in the forms and scope of different national protests, which Ancelovici explains through a consideration of specific member states political opportunity structures. Nevertheless, some preoccupation with representative democracy can be found to characterise these protests considered as a whole. In Italy, for example, similar messages to those emanating from the Occupy/Indignados camps were found in a range of protests including those against government corruption, personalised laws, and the privatisation of public services (author 2).

and often provided an array of local services, present some clear contrasts when we consider the last major protest wave in the EU (and beyond), the global justice movement (GJM). The GJM, in addition to its more global focus expressed through transnational protest and discussion gatherings at social forums, included in its network groups that engaged with the EU, including many of the groups (for example a range of trade unions and ATTAC) that were pivotal in the campaigns against the Bolkestein and Port directives discussed earlier. As seen, although these campaigns did involve protest and other contentious forms of dissent, they also relied on the advocacy work of well-rooted and expert groups based for the most part in the European capital of Brussels. 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 (often via heavy lobbying, see Crouch 2012, or via the creation of technical agencies including the European Central Bank, see e.g. Stiglitz 2012). 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 general shift from the GJM to camps in the EU can thus be read as a perceived closure of political opportunities at the EU level in the eyes of protesters (Author 2). It is also a perception with some concrete evidence in institutional changes at the EU level in the context of the crisis. Indeed, changes in the institutional setting of the EU are not very conducive for transnational opposition at the EU level. The obstacles to transnational opposition, and in particular popular mobilisation, have always been seen as substantial (Imig and Tarrow 2001; Marks and McAdam 2009). Nevertheless recent changes can be read as exacerbating these. The major decisions that led to the setup of financial instruments such as the European Financial Stability Facility

(EFSF), that is the bailouts for Greece and Ireland, were for example 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 reaction to the financial crisis has thus been overwhelmingly intergovernmental. This has been perpetuated in the setup of the new governance framework for macro-economic coordination, known as the European Semester. The European Commission is in charge of monitoring the economic and social situation in the member states and formulating country specific recommendations which are then endorsed by all governments gathered in the Council. These recommendations urge national governments to reduce their deficits and debt through policies such as the flexibilisation of labour markets, reform of pensions systems, and cuts in the provision of public services. The important point for our purposes here is that this process mainly involves national governments (including gathered in the Council) 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. Again, 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 and successive legislation will bring in the undesired changes in any case. Nevertheless this institutional closing of opportunities is more concrete, and one that we argue is understood by recent protesters precisely in this way and reflected in the return of protest to the local level. It is in this separation of EU advocacy and popular protest that we can find some potential explanation for the gap between the organised opposition to ACTA clustered around the EP and the protest groups – most likely acting in the wake of protests against SOPA and PIPA in the United States – that proved pivotal in the Parliament's rejection of the Agreement.

Conclusion

In this paper we have explored the case of opposition to the Anti-Counterfeiting Trade Agreement from within and without the European Parliament through a political process approach, using this case to reflect on the conditions for effective opposition in the EU multi-level polity. Such a reflection is important and relevant, first because there is no formal division between majority and opposition in the EP, necessitating a novel approach to political opposition that brings contestation from outside Parliaments into the equation and second because much of the current literature tends to consider opposition in the parliamentary arena and outside it in isolation. The pending negotiations on the Transatlantic Trade and Investment Partnership (TTIP) can be seen as yet another case showing the powerful relevance of reflecting on this twofold process of opposition in the EU.

The ACTA campaign saw a small core of opposition within the EP and a number of digital rights groups outside the EP work together in an attempt to build coalitions against the agreement within the EP, newly endowed with the power to withhold consent for the signature of international trade agreements. The outbreak of protests in Poland which spread across the Union opened the way for these groups to broker a change of position in other Parliamentary groupings that allowed a majority rejection of the Agreement. In terms of conditions for effective opposition via the EP, the ACTA case thus suggests the need for advocacy by organised groups both within and without the Parliament to construct majorities.

We then offered comparative insights notably drawing on our own previous work on the Bolkestein directive as well as the Port directive to provide some further evidence for these findings. The campaigns against these directives provide more examples where groups within and without the EP worked to construct effective majorities to amend or reject European legislation. In these cases too popular protest was critical

in building these majorities. In contrast, the opportunity structure which characterises the EU's policy response to the 2008 financial crisis can be described as intergovernmental as it marginalised the EP. This, we argue, has precluded the effective opposition as the Occupy and Indignados movements have remained fragmented in various local movements with a global flavour but have ultimately remained unheard by national governments gathered in the Council and European Council. This contrasts with the former claim that the slogan 'another Europe is possible'.

If opportunities to mount these kinds of effective campaigns are indeed 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 T. H. Marshall and C. Tilly, contention has been an important driver for the democratisation of political systems. 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, for example, whether the EP will be a satisfactory channel for the on-going protest against the TTIP. If contentious social movements were to 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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