

EP 2014-19: Key Votes

Copyright Reform

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The 'Key Votes' series dissects some of the most salient European Parliament (EP) votes in 2014-19. It analyses relevant political and geographic cleavages and fleshes out French and German specificities. This issue reviews the EP vote of 26 March 2019 on the Directive on Copyright in the Digital Single Market, one of the most controversial pieces of legislation of the 2014-19 legislative term. After months of heated online and offline protests, the vote revealed multiple cleavages in the EP. The motion did not only split political groups like S&D and ALDE, it also showed that Northern European MEPs were more likely to vote against the Directive than Southern European MEPs. Main driver of these voting patterns was a cultural cleavage on questions regarding online freedom and protecting intellectual property online. A comparison of French and German MEPs shows a stark contrast in voting patterns, reflecting both domestic political circumstances and cultural differences.

1 How the Copyright Directive became so controversial

Ever since the controversies around file-sharing sites like Napster in the early 2000s and EU-wide [protests against ACTA](#) in 2012, copyright has been a European policy issues characterized by political conflict and emotional, at times fundamental debates. These debates often revolve not only around the rights of creators and right-holding companies, but regularly escalate into fundamental discussions about free speech, censorship, internet culture and the future proliferation of online content in general.

The latest round of copyright reform in the EU was no exception to this rule. Consensus on the principled necessity to update the old legislation on copyright from 2001 and adapt it to the technological and economic developments of the platform economy exists. One goal shared by many stakeholders is to end the fragmented regulatory landscape of national copyright legislation within the framework of the [Digital Single Market Strategy](#). However, the EU-wide overhaul of rules on the distribution of copyright-protected material kicked off by the Commission with its [proposal from September 2016](#) quickly turned into one of the most severe legislative battles of the 2014-19 term. The legislative process led to large protests in several European countries and revealed political, economic and cultural cleavages.

Key dates of the legislative process

- **14/09/2016:** European Commission issues first draft of the “Directive on Copyright in the Digital Single Market”.
- **25/05/2018:** The Council approves the directive, after making revisions and puts it back to the EP for final amendments.
- **20/06/2018:** The EP Committee on Legal Affairs puts their amendments to the EP plenary to be approved first before the final Trilogue negotiations with the Council.
- **05/07/2018:** MEPs vote not to proceed to the negotiation, but instead re-open the Directive for debate.
- **12/09/2018:** The EP approves a final revised position with 438 votes in favour and 226 against. Trilogue negotiations with the Council start.
- **13/02/2019:** Trilogue negotiations are complete. The final draft includes the controversial articles 11 and 13 (now articles 15 and 17). Widespread protests erupt online and offline in the following weeks.
- **23/03/2019:** More than [170,000 people demonstrate](#) against the controversial articles 11 and 13 across the EU. The largest protests take place in Germany.
- **26/03/2019:** The EP adopts the final draft without amendments; with a majority of 53% against 42% no-votes and 5% abstentions (see Figure 1).
- **15/04/2019:** Final vote on the directive in the Justice and Home Affairs Council.

The highly polarized discussions focused on Articles 11 and 13 of the directive (Articles 15 and 17 in the final text) in the months leading up to the final vote in the EP on 26 March 2019:

- **Article 11** describes the introduction of an ancillary copyright for press publishers. Such a right would force news aggregators like Google News to share part of their ad-driven revenue

with the right holders of the articles (i.e. publishers) listed on their sites if they use a small teaser from these articles.

- **Article 13** stipulates, among other things, the use of technical means in order to prevent copyrighted material from being illegally uploaded to platforms. Even though not specified in the directive, the only means available to date to carry out this task at scale are automated filtering systems. Such algorithmic filtering systems (“upload filters”) quickly became the focal point of the protests against the reform. The main fear of the protesters was that such systems are not able yet (and possible never will be) to automatically distinguish real breaches of copyright from cases where the use would not constitute a copyright infringement (for example for satirical content or memes) and have trouble to analyse the context of the use.

Critics of article 13 [fear](#) that such filters will lead to the widespread blocking of content and a suppression of online expression bordering on censorship. Online platforms trying to fulfil the demands of the directive in order to avoid high financial penalties as they can be held liable for uploaded content would have to resort to over-blocking for better or for worse. Proponents of such an approach on the other hand argued that the same rules for the protection of intellectual property must hold online as well as offline and dismissed fears of censorship or over-blocking [as overblown](#). This specific debate was in part driven by content producers that became activists on YouTube and other video streaming platforms and used their widespread popularity in order to raise awareness about the directive. Other online activists and actors jumped onto the debate. As one visible sign of protest, the German Wikipedia page [was shut down for 24 hours](#) on 21 March 2019.

The vote on 26 March thus has to be understood as a vote between the conflicting poles of economic and political as well as cultural interests within a rapidly changing media environment. **Economically**, the main conflict lines in these debates are between proponents of “old media” (publishing houses, record labels or artists associations) on the one hand, and “new media” institutions (social networks, news aggregators (like Google News), streaming websites and YouTube stars) on the other. Ever since digitalization made content non-rivalrous and easily reproducible and the internet made it sharable at almost zero costs, old models of IP-based revenue generation have come under pressure. New players are able to monetize content in different ways, for example by selling access to content (streaming) instead of the content itself or selling ads next to it (e.g. Google, Facebook).

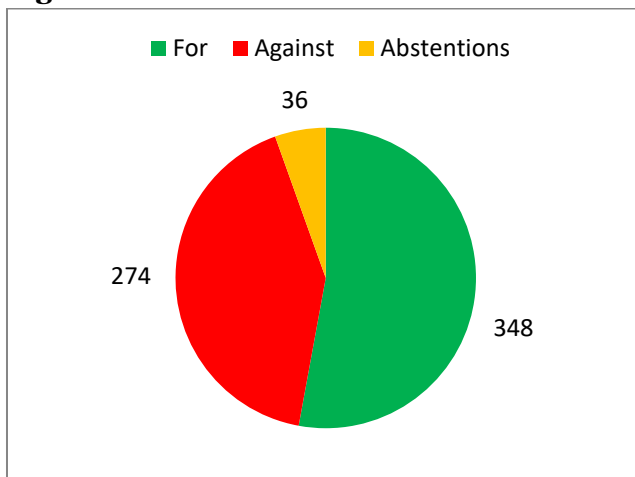
Politically and culturally, the directive pitted Europeans with a high affinity to online discourses for example on YouTube against proponents of a more traditional media system. These new cleavages evolve around issues such as the openness of online platforms, the acceptance of new forms of cultural digital expression or the power relation between old and new media actors and their right to monetize copyright-protected content. As the following analysis shows these conflict lines were partly mirrored in the EP vote.

2 Multiple cleavages

The [final draft](#) for the Copyright Directive was put forward by Rapporteur Axel Voss from the EPP group.¹ It was adopted by a majority of 53%, while 42% opposed it and 5% abstained (see figure 1). The majority was formed by parliamentarians of EPP, S&D, ALDE and ENF.

¹ For better readability, we use acronyms when referring to the EP’s political groups: European People’s Party (EPP), Progressive Alliance of Socialists and Democrats (S&D), European Conservatives

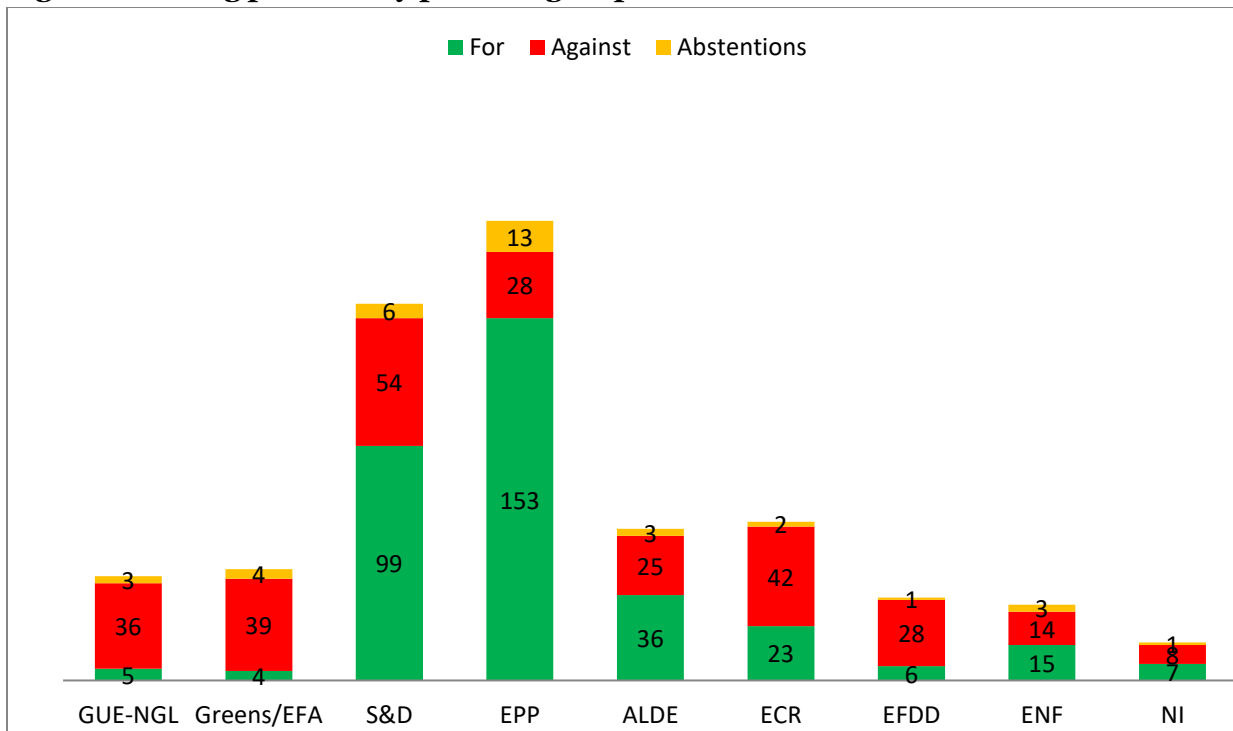
Figure 1: The outcome of the vote



Source: VoteWatch Europe (numbers exclude absent MEPs and no-votes)

A closer look at voting cohesion reveals even more interesting patterns (see Figure 2). Despite the official support by EPP, S&D, ALDE and ENF, which together have a comfortable majority in the EP, the actual majority was narrow due to the high number of rebels. More than one third of S&D and almost half of ALDE MEPs voted against the line of their political groups by rejecting the motion or abstaining. Compared to the first vote on the EP position in September 2018, a high number of S&D MEPs changed their mind and voted no. The highest party group cohesion was in the EPP group, which, however, still witnessed a substantial increase in no-votes compared to the September 2018 decision. Cohesion was also low on the right and far-right.

Figure 2: Voting patterns by political groups



Source: VoteWatch Europe (numbers exclude absent MEPs and no-votes)

and Reformists (ECR), Alliance of Liberals and Democrats in Europe (ALDE), European United Left – Nordic Green Left (GUE-NGL), Greens – European Free Alliance (Greens-EFA), Europe of Freedom and Direct Democracy (EFDD), Europe of Nations and Freedom (ENF), Non-Inscricts (NI).

Multiple cleavages and political disagreements related to the conflicts described in the previous section led to this result. The vote did not only display divides within political groups, but also within national parties as well as between member states. The vote led to a split between centrist parties (S&D, EPP and ALDE) and far-left / far-right as well as populist parties.

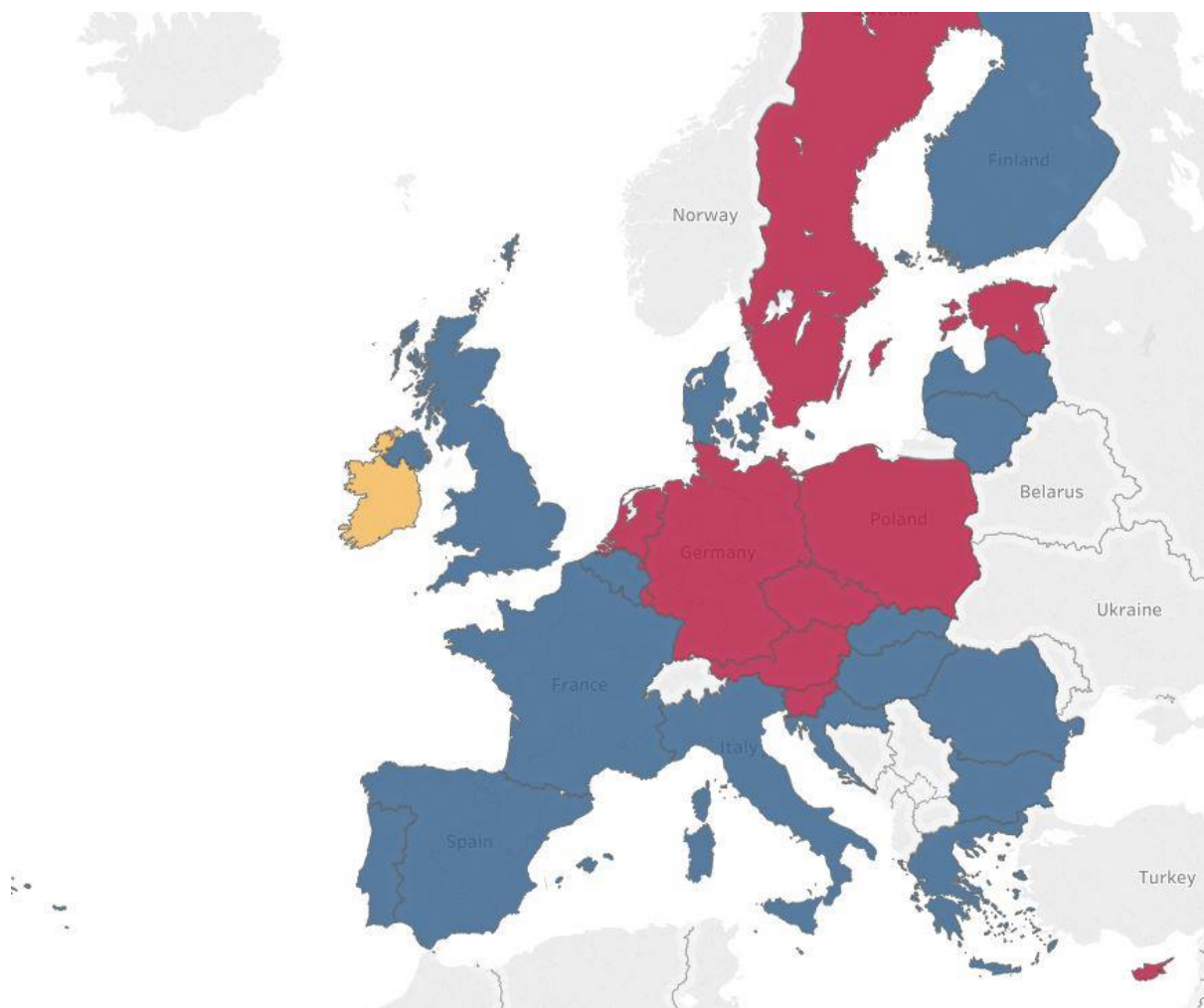
The divides that ran across party and national lines cannot easily be explained by a simple left/right or pro-market/anti-market logic or other traditional ideological cleavages. This is for example evidenced by the fact that ALDE, arguably the most pro-market and pro-competition political group in Parliament was split in half. The law was largely supported by the French left-wing parties, but not by the German Left Party (see also next section). The Italian Five Star Movement (EFDD) voted entirely against the directive citing internet freedom concerns, as did the Polish PiS (ECR) and Podemos (GUE/NGL). The French Rassemblement National (ENF) on the other hand voted in favour, while the rest of the ENF-delegates voted against it.

Two factors played a decisive role in these seemingly contradictory voting patterns. The first one is a **cultural or ethical cleavage** between the conflicting poles of fair and equal applicability of rules online as well as offline on the one side, and the openness of the internet on the other. It is debatable whether these two poles are mutually exclusive, but they certainly shaped the narratives and heated debate around the copyright reform. This cleavage also led to proponents and critics of the reform often talking past one another. While proponents of Article 13 highlighted the need for fair compensation for artists and content producers as well as a level playing field between right-holders and platforms, opponents stressed the importance of an open internet and freedom of expression online as a value in itself.

The second factor explaining the outcome is the effect of **national public spheres** on the debate as well as different cultural preferences across Europe. The vote revealed very different national discussions about the dilemmas and trade-offs of the reform in the run-up to the vote. Interestingly, these different national debates manifested themselves in a North-South divide. There were majorities in favour of the resolution in 18 EU member states (see figure 3 on the next page). MEPs from Northern and Central European countries mostly voted against the Directive. In the first vote of September 2018, only MEPs from three countries had voted in majority against the directive.

Many of the countries where the majority of MEPs switched, for example Germany, Austria and Luxembourg, had experienced especially [strong online and offline](#) protest against the controversial articles on “upload filters” and an ancillary copyright for press publishers. However, protests against the reform also erupted in Sweden, Poland or the Czech Republic. Public awareness of the reform was generally higher in countries with a history of copyright-related protests (for example Poland, which had experienced [strong protests against ACTA](#)), [strong Pirate parties](#) (Czech Republic) and in countries that tend to score higher on the [Digital Economy and Society Index](#) of the EU (like Sweden). The next section examines the role of different national public spheres further by putting a spotlight on France and Germany

Figure 3: A North-South divide in the vote for the Copyright Directive (countries with a majority of national MEPs voting “against” in red)

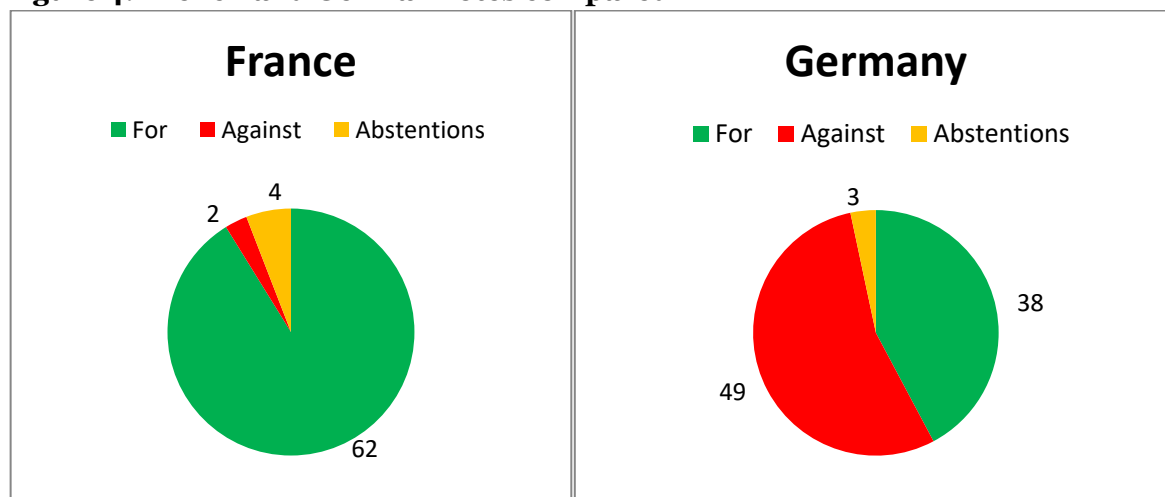


Source: VoteWatchEurope (numbers exclude absent MEPs and no-votes, countries with an even number of votes in yellow).

3 Zooming in on France and Germany

A closer look at France and Germany shows a very different vote result. Whereas the support for the directive was very high in France and more than 90 percent of MEPs voted in favour of it, a large majority of German MEPs rejected it. In Germany almost all MEPs from the SPD rebelled, leaving the CDU/CSU as the only party with a majority in favour of the reform (See Figure 4). In France on the other hand, a super-majority across the entire political spectrum supported the reform. The Front de Gauche for example voted 2-to-1 in favour, even though the GUE-NGL voted with a very large majority against the reform. How could the two largest European countries feature such different voting patterns, especially after both countries had voted yes in the Council?

Figure 4: French and German votes compared



Source: VoteWatch Europe (numbers exclude absent MEPs and no-votes)

Two factors likely played a role: 1). A complicated domestic political landscape in Germany after weeks of vocal online and offline protests against the reform. 2.) A strong French tradition of protecting right-holders in the framework of preserving national culture and a much more critical stance towards US-led “digital capitalism” and the dominance of large American online platforms in France.

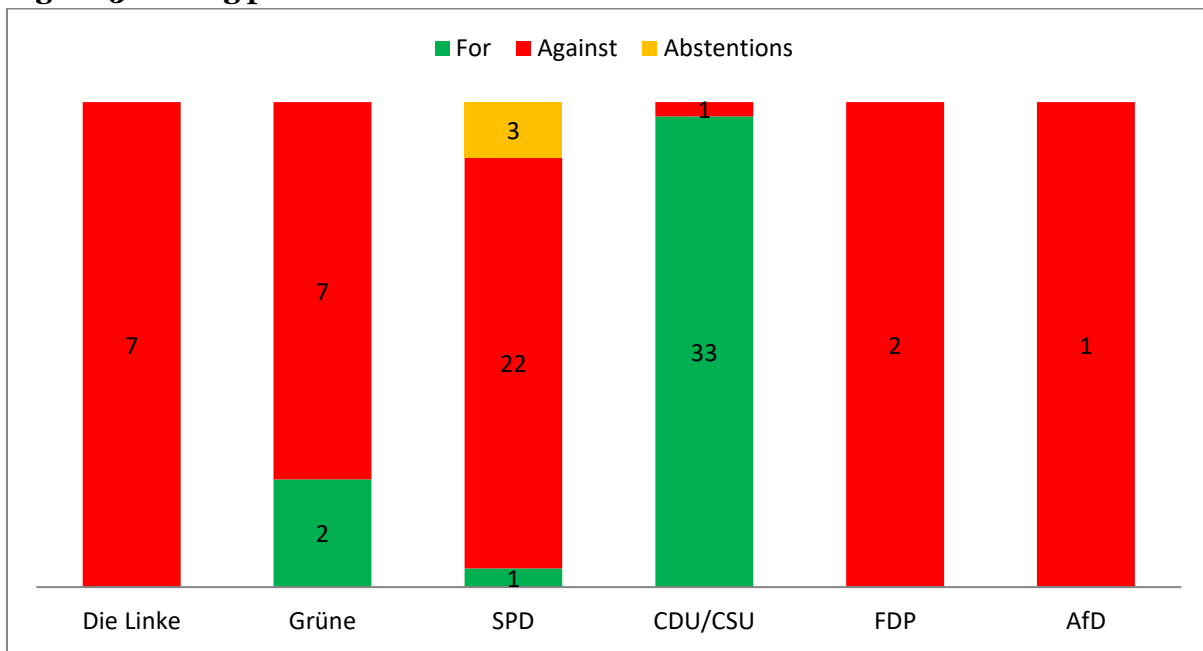
1). A complicated domestic political landscape in Germany

The German government has had an ambiguous relationship with the reform, especially with regard to its controversial Article 13 (“upload filters”) and certain exemptions of the ancillary copyright for start-ups. The [coalition agreement between CDU/CSU and SPD](#) explicitly ruled out the use of such filter systems in order to enforce the Copyright Directive due to strong opposition of the SPD to them. However, the support of the CDU/CSU to the reform was also not unequivocal. In a rare display of inter-party unity, internet experts from all three parties co-published a [joint communique](#) against such automatic filtering systems during the Trilogue following the first vote in September 2018.

Most German critiques shared a fear of curbing innovation and drowning out various forms of online culture and expression should strong filtering systems be implemented as a result of the reform. To the surprise of many observers the German government nonetheless decided to support the reform including Article 13 and without exemptions for start-ups in the Council. Domestically, this was interpreted as compromise between CDU and SPD within the arithmetic of the coalition agreement. At EU level, the German government was rumoured to have bargained French support for Nord Stream 2 for German support of the Copyright Directive without critical exemptions for example for start-ups, [according to German newspaper Frankfurter Allgemeine Zeitung](#).

As online and offline protest intensified in the run-up to the vote more and more German MEPs declared their opposition to the reform and Article 13. Almost all SPD MEPs eventually voted against it despite the German government’s (including the SPD) support for the reform in the Council and S&D’s recommendation to support the reform (see Figure 5 on the next page). Other German MEPs’ voting pattern is similar to that of their political groups, especially in the case of Left Party (GUE/NGL) and Green Party (EFA/The Greens).

Figure 5: Voting patterns – German MEPs

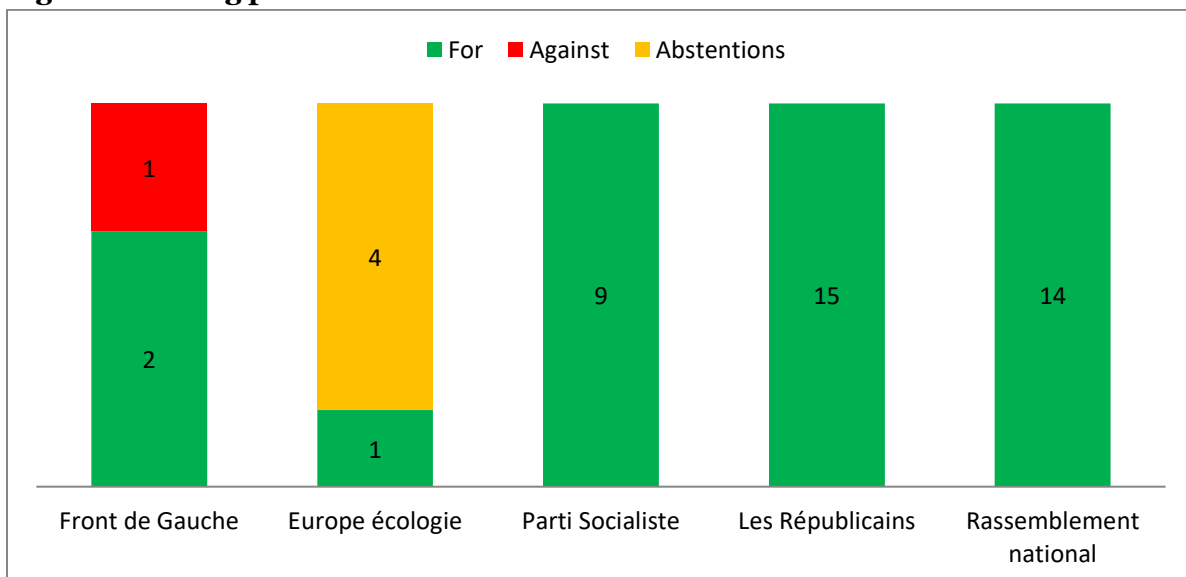


Source: VoteWatch Europe (selection of parties - numbers exclude absent MEPs and no-votes)

2.) A strong French tradition of protecting right-holders

France displayed a very different picture (see Figure 5). More than 90 percent of French MEPs voted in favour of the reform. Most interesting is the strong support of the far-right and far-left. As stated above most non-centrist European parties voted against the reform citing, for example, Free Speech concerns. One likely reason for these marked differences in voting behaviour from the rest of the political parties is the strong pro-copyright track record and [cross-party support for strict copyright](#) rules of France.

Figure 6: Voting patterns – French MEPs



Source: VoteWatch Europe (selection of parties - numbers exclude absent MEPs and no-votes)

There is for example [no freedom of panorama in France](#), which means that images of copyright-protected artworks (for example the light installations on the Eiffel Tower) are copyright-protected as well and photos of them may not be used commercially without permission. Copyright

is also strongly connected to the preservation of French national or European culture, which is taken very seriously by French parties across the board. Strong sentiments against American online companies, especially the GAFAs platforms, and a wish to strengthen the power of national publishers against these companies might also have played a role. There were almost no street protests against the reform in France and only very limited interest in it online.

4 Conclusion: More battlegrounds ahead

The heated debates and weeks of protests in several European countries surrounding the copyright reform are indicators of severe and emerging cultural cleavages that are markedly different from “traditional cleavages” in the political landscape of the EU. These new cleavages evolve around issues such as the openness of online platforms, the acceptance of new forms of cultural digital expression or the power relation between old and new media actors and their right to monetize copyright-protected content. Central and Northern European MEPs tend to be more opposed to measures that could force online platforms to filter content more strictly.

Copyright will not remain the only piece of European legislation where these new cleavages will become apparent. Two camps seem to be emerging: One camp that would like to subject the internet more and more to the logic of existing regulatory principles. This means, for example, regulating social networks in the same way as publishers or ride-sharing apps like taxi companies. The other camp is in favour of either keeping existing self-regulatory and co-regulatory principles or developing entirely new forms of regulation designed specifically to the demands of the networked economy.

The next battleground in this regard might be the [proposal for the directive on the removal of terrorist content](#). Early drafts of the directive have drawn criticism including fear of over-blocking and censorship, mirroring arguments of the copyright directive. In the next legislature, the EP is also likely to deal with other questions touching upon platform regulation, the liability of platform operators for uploaded content and debates around freedom of expression, disinformation and hate speech. They should be closely monitored in order to ascertain whether the cleavages uncovered by the copyright reform persist.

Last, but not least, the legislative process also revealed that European digital policy issues have a very high protest and mobilization potential across Europe owing, in large part, to an online public sphere, which didn't really exist just ten years ago. At the same time it showed that the EU is still far away from discussing crucial pieces of legislation in a truly European public sphere. Instead, the debate erupted explosively in some national public spheres (online as well as offline), and received virtually no attention in others.

Bild links: Guilhem Vellut, Hemicycle @ European Parliament @ European district @ Strasbourg, https://www.flickr.com/photos/o_0/31727425438/; Bild rechts: Kristina Alexanderson, Creative Commons – cc stickers, <https://www.flickr.com/photos/kalexanderson/7176605114/>

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