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MOTION FOR A RESOLUTION

further to Question for Oral Answer B7-0020/2010

pursuant to Rule 115(5) of the Rules of Procedure

on transparency and the state of play of ACTA negotiations

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on behalf of the GUE/NGL Group

European Parliament resolution on transparency and the state of play of ACTA negotiations

The European Parliament,

- having regard to its resolution of 9 February 2010 on a revised Framework Agreement between the European Parliament and the Commission for the next legislative term¹,
 - having regard to its resolution of 11 March 2009 on public access to European Parliament, Council and Commission documents (recast), to be considered as Parliament's position at first reading²,
 - having regard to its resolution of 18 December 2008 on the impact of counterfeiting on international trade³,
 - having regard to the opinion of the European Data Protection Supervisor of 22 February 2010 on the current negotiations by the European Union on an Anti-Counterfeiting Trade Agreement (ACTA),
 - having regard to the Charter of Fundamental Rights of the European Union, and in particular its Article 8,
 - having regard to Directive 95/46/EC and Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector, as last amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009,
 - having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce),
 - having regard to Article 218 of the TFEU,
 - having regard to the question of 24 February 2010 to the Commission on transparency and the state of play of ACTA negotiations (O-0026/2010 – B7-0020/2010),
 - having regard to Rules 115(5) and 110(2) of its Rules of Procedure,
- A. whereas in 2008 the US, Japan, the EU and a few other countries opened negotiations on a new multilateral agreement designed to strengthen the enforcement of Intellectual Property Rights (IPRs) and combat counterfeiting and piracy (Anti-Counterfeiting Trade

¹ Texts adopted, P7_TA(2010)0009.

² Texts adopted, P6_TA(2009)0114.

³ Texts adopted, P6_TA(2008)0634.

Agreement - ACTA),

- B. having regard to the necessity to fight counterfeiting and to protect certain rights which, however, cannot take precedence over human rights and fundamental freedoms that are the keystone of our societies and of democracy; considering the various domains that the negotiators aim to cover in their agreements and the fact that they negotiate secretly,
- C. whereas, in its report of 11 March 2009, Parliament called on the Commission to 'immediately make all documents related to the ongoing international negotiations on the Anti-Counterfeiting Trade Agreement (ACTA) publicly available',
- D. whereas the Commission on 27 January 2010 made a commitment to a reinforced association with Parliament based on the terms of its resolution of 9 February 2010 on a renewed Framework Agreement with the Commission, demanding 'immediate and full information at every stage of negotiations on international agreements, in particular on trade matters and other negotiations involving the consent procedure, to give full effect to Article 218 TFEU',
- E. whereas the Commission, as guardian of the Treaties, is obliged to uphold the *acquis communautaire* when negotiating international agreements affecting legislation in the EU,
- F. whereas, according to documents leaked, the ACTA negotiations touch, among other considerations, on pending EU legislation regarding the enforcement of IPRs (COD/2005/0127, Criminal measures aimed at assuring the enforcement of intellectual property rights, (IPRED-II)) and the so-called 'Telecom Package', and do not respect the existing EU legislation regarding e-commerce and data protection,
- G. whereas the ongoing EU efforts to harmonise IPR enforcement measures should not be circumvented by trade negotiations which are outside the scope of the normal EU decision-making processes,
- H. whereas it is crucial to ensure that the development of IPR enforcement measures is accomplished in a manner that does not impede innovation or transfer of technology, undermine IPR limitations and personal data protection, restrict the free flow of information or unduly burden legitimate trade,
- I. whereas any agreement reached by the European Union on ACTA must comply with the legal obligations imposed on the EU with respect to privacy, freedom of expression and data protection law, as notably set forth in Directive 95/46/EC, in Directive 2002/58/EC and in the case law of the European Court of Human Rights and of the Court of Justice,
- J. whereas the EU's actions at international level should be guided by the principle of the universality and indivisibility of human rights and fundamental freedoms,
- 1. While supporting the strengthening of the fight against real counterfeiting, denounces the lack of transparency and democratic legitimacy of the ACTA negotiations and rejects the fact that ACTA is being negotiated in secrecy under the leadership of the US, Japan, the EU and a few other industrialised countries, and with no legal basis on the EU side, and opposes negotiations which express a new intent to increase the scope and the costs of the IPR in order to provide even more profits for corporate interests;

2. Condemns the procedure used, which is not democratic, and the behaviour of the Council and the Commission towards the European Parliament and the citizens of the European Union;
3. Rejects the calculated choice of the parties not to negotiate through the WIPO, which has established frameworks for public information and consultations;
4. Calls on the Commission to refrain from participating in any trade negotiations that are not inclusive, multilateral, subject to parliamentary and public scrutiny and with the appropriate involvement of the developing countries in negotiations that have an impact on their development;
5. Is of the opinion that no legitimate arguments for non-disclosure exist with regard to international negotiations on the enforcement of intellectual property rights or similar issues which are legislative in character and which have an impact on fundamental rights;
6. Requests that the Commission grant Parliament access to all primary texts relating to ACTA, in particular the ACTA negotiating mandate issued by the Council, the minutes of ACTA negotiation meetings, the draft chapters of ACTA and the comments of ACTA participants on the draft chapters;
7. Acknowledges that in addition to the clear legal obligation to inform Parliament, the ACTA documents should also be available to the general public in the EU and in the other countries participating in the negotiations; understands the wide public criticism of the secrecy of the ACTA negotiations as a clear signal of the political unsustainability of the negotiating procedure chosen;
8. Calls on the Commission to immediately denounce the informal and illegal internal agreements on the confidential nature of the conduct of the negotiations and calls on the Commission to inform Parliament in good time about its initiatives in this regard; expects the Commission to do so already prior to the next round of negotiations in New Zealand in April 2010 and to demand that the issue of transparency be put on the agenda of that meeting;
9. Calls on the Commission to respect fundamental rights and conduct an assessment of the impact of ACTA's implementation on those rights and data protection, on the ongoing EU efforts to harmonise IPR enforcement measures and on e-commerce, and its possible impact on human rights and the rule of law in third, especially developing countries, prior to any EU agreement to a consolidated ACTA treaty text, and to consult with Parliament in a timely manner about the results of this assessment;
10. Opposes any negotiation that that would limit the due legal process or in any way weaken the guarantees of fundamental rights as laid down in the European Convention on Human Rights;
11. Considers that any agreement must include the right to examination by a court before cutting someone off from accessing the Internet;
12. Considers that the prosecution of possible violations of copyright or patent law should lie

within the exclusive jurisdiction of state judicial authorities and that no such powers should be vested in administrative bodies or parties representing private interests;

13. Considers that any imposition or suggestion of criminal sanctions where civil measures are currently in place should not inhibit transfer of technology and economic innovation by increasing the costs and risks for producers and importers;
14. Insists that the right of privacy and data protection of digital communications should be respected and should not be subordinated to less fundamental rights;
15. Considers that any agreement to strengthen cross-border seizures and inspections of goods would cause prejudice to global access to legal and safe medicines, including generics;
16. Considers that any agreement to prohibit anti-circumvention technology should not limit freedom of expression and the right to a free press on a global scale and the right to information;
17. Takes note of the affirmation by the Commission that any ACTA agreement will be limited to the enforcement of existing IPRs, without prejudice to the development of substantive IP law in the European Union; makes any possible assent to the ACTA agreement conditional on full respect for this affirmation;
18. Opposes any measure that would include large-scale surveillance of Internet users and Internet communications and would include an obligation for Internet providers to adopt the 3 strikes disconnection policy with a graduated response; calls on the Commission to propose measures to fight counterfeiting which respect the right to privacy, confidentiality of mail and protection of personal data; recalls the necessity to respect and guarantee the neutrality of the Internet;
19. Urges the Commission to ensure that the enforcement of ACTA provisions - especially its provisions on copyright enforcement procedures in the digital environment - is fully in line with the letter and the spirit of the *acquis communautaire* and does not imply 'self-regulatory' measures being imposed by private companies outside the scope of democratic decision-making processes;
20. Emphasises that privacy and data protection are core values of the European Union, recognised in Article 8 ECHR and Articles 7 and 8 of the EU Charter of Fundamental Rights, which must be respected in all the policies and rules adopted by the EU pursuant to Article 16 of the TFEU;
21. Expresses its deepest concern about the fact that the EU has for years been negotiating international trade agreements with important trade partners, including numerous measures contrary to the principles of democracy; will use all means and procedures to compel due respect for them;
22. Instructs its President to forward this resolution to the Council, the Commission and the Governments and Parliaments of ACTA negotiating partners.