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MOTION FOR A RESOLUTION

further to Question for Oral Answer B7-0154/2010

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 Verts/ALE Group

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

The European Parliament,

- having regard to Article 218 TFEU,
 - having regard to its resolution of 9 February 2010 on a renewed Framework Agreement between the Parliament and the Commission for the next legislative term (B7-0091/2010),
 - 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 in first reading (COM(2008)0229 – C6-0184/2008 – 2008/0090(COD)),
 - having regard to its resolution of 18 December 2008 on the impact of counterfeiting on international trade (2008/2133(INI)),
 - having regard to the opinion of the European Data Protection Supervisor of 22 February 2010 on the current negotiations by the European Union of an Anti-Counterfeiting Trade Agreement (ACTA),
 - having regard to the Charter of Fundamental Rights of the European Union, and in particular Article 8 thereof,
 - having regard to 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 Rules 115(5) and 110(2) of its Rules of Procedure,
- A. whereas, according to Article 218.10 TFEU, the European Parliament must be immediately and fully informed at all stages of the procedure of negotiations on international agreements,
- B. whereas in 2008 the European Union and other OECD countries opened negotiations on a new plurilateral agreement designed to strengthen the enforcement of intellectual property rights (IPRs) and combat counterfeiting and piracy (Anti-Counterfeiting Trade Agreement - ACTA),

- 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 on 27 January 2010 the Commission 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 leaked documents, the ACTA negotiations touch, *inter alia*, 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 ‘Telecom Package’, and on 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 competition, undermine IPR limitations and personal data protection, restrict the free flow of information or unduly burden legitimate trade; whereas Parliament should be given a more central role in the fight against counterfeiting,
 - 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 set forth, in particular, in Directive 95/46/EC, in Directive 2002/58/EC and in the jurisprudence of the European Court of Human Rights and of the Court of Justice,
 - K. whereas, according to Article 21 TEU, 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. Expresses its utmost concern over the lack of a transparent process in the conduct of the ACTA negotiations, which contradicts the letter and the spirit of the TFEU;
 2. Is of the opinion that legitimate arguments for non-disclosure do not exist with regard to international negotiations on the enforcement of intellectual property rights or similar issues, which are legislative in character and have an impact on fundamental rights; maintains that the negotiating position of the EU or other negotiating parties is not circumscribed if information about the negotiations is available to the European

Parliament and the general public;

3. Regrets the calculated choice of the parties not to negotiate through well-established international bodies, such as the WIPO and WTO, which have established frameworks of public information and consultations;
4. Calls on the Commission to grant Parliament access to all primary texts relating to ACTA, in particular the ACTA negotiation mandate by the Council, the minutes of ACTA negotiation meetings, the draft chapters of ACTA, and the comments of ACTA participants on the draft chapters;
5. 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 negotiation procedure chosen;
6. Calls on the Commission to engage proactively with ACTA negotiation partners to cancel any previous formal or informal internal agreements on the confidential nature of the conduct of the negotiations and to inform Parliament about its initiatives in this regard in due course; expects the Commission to make proposals prior to the next negotiation round in New Zealand in April 2010 and to demand that the issue of transparency is put on the agenda of that meeting;
7. Reminds the Commission that if it does not provide Parliament with immediate and full information about the negotiations in accordance with Art. 218 TFEU before the next round of negotiations in April, Parliament will have no choice but to bring an action in accordance with Art. 263 TFEU for infringement of the Treaties to the Court of Justice of the European Union;
8. Calls on the Commission to conduct an impact assessment of the implementation of ACTA with regard to fundamental rights and data protection, ongoing EU efforts to harmonise IPR enforcement measures, e-commerce and the possible impact of ACTA on fundamental rights and the rule of law in third – especially developing – countries, prior to any EU agreement on a consolidated ACTA treaty text, and to consult with Parliament in a timely manner about the results of this assessment;
9. Welcomes affirmations by the Commission that any ACTA agreement will be limited to the enforcement of existing IPRs, with no prejudice for the development of substantive IP law in the European Union; makes any possible assent to the ACTA agreement conditional to the full respect of this affirmation;
10. Urges the Commission to ensure that the enforcement of ACTA provisions – especially those on copyright enforcement procedures in the digital environment – are fully in line with the letter and the spirit of the *acquis communautaire* and do not imply ‘self-regulatory’ measures being imposed by private companies outside the scope of democratic decision-making processes; considers that Internet service providers should not bear liability for the data they transmit or host through their services to an extent that

would imply prior surveillance or filtering of such data;

11. 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;
12. Points out that any measure aimed at strengthening powers for cross-border inspection and seizures of goods should not harm global access to legal, affordable and safe medicines;
13. Instructs its President to forward this resolution to the Commission, the Council and the governments and parliaments of countries participating in ACTA negotiations.