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MOTION FOR A RESOLUTION

further to Question for Oral Answer B7-0020/2010 – O-0026/2010

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

on the transparency and state of play of the ACTA negotiations

Kader Arif, Gianluca Susta, Bernd Lange, David Martin
on behalf of the S&D Group

B7-0179/2010

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

The European Parliament,

- having regard to Articles 207 and 218 of the Treaty on the Functioning of the European Union (TFEU),
 - 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 regarding 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 European Data Protection Supervisor's Opinion 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 of 12 July 2002 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 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 the Lisbon Treaty has been in force since 1 December 2009,
- 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),

¹ Texts adopted, P7_TA(2010)0009.

² Texts adopted, P6_TA(2009)0114.

³ Texts adopted, P6_TA(2008)0634.

- C. whereas, as a result of the entry into force of the Lisbon Treaty, Parliament will have to give its consent to the ACTA Treaty text, prior to its entry into force in the European Union,
- D. 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',
- E. whereas on 27 January 2010 the Commission provided assurances as to its commitment to a reinforced association with Parliament, in line with Parliament's resolution of 9 February 2010 on a revised Framework Agreement with the Commission calling for '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 of the TFEU',
- F. whereas Council representatives have attended rounds of negotiations alongside Commission representatives,
- G. whereas the Commission, as guardian of the Treaties, is obliged to uphold the *acquis communautaire* when negotiating international agreements affecting legislation in the EU,
- H. whereas, according to documents leaked, the ACTA negotiations touch on, among other things, 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 on existing EU legislation regarding e-Commerce and data protection,
- I. whereas the ongoing EU efforts to harmonise IPR enforcement measures should not be circumvented by trade negotiations which are outside the scope of normal EU decision-making processes,
- J. 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,
- K. whereas any agreement reached by the European Union on ACTA must comply with the legal obligations imposed on the EU with respect to counterfeit and data protection law, as notably set out in Directive 95/46/EC, Directive 2002/58/EC and the case-law of the European Court of Human Rights and the Court of Justice of the European Union (CJEU),
1. Points out that since 1 December 2009 the Commission has had a legal obligation to immediately and fully inform Parliament at all stages of international negotiations;
 2. Expresses its utmost concern over the lack of a transparent process and democratic legitimacy in the conduct of the ACTA negotiations, a state of affairs at odds with the letter and spirit of the TFEU;

3. Calls on the Commission and the Council to grant it 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;
4. Calls on the Commission and the Council to engage proactively with the ACTA negotiation partners, urging them to cancel any previous formal or informal internal agreements on the confidential nature of the negotiations and to inform Parliament about their initiatives in this regard in good time and in full; expects the Commission to make proposals prior to the next negotiation round in New Zealand in April 2010 and to call for the issue of transparency to be put on the agenda for that meeting;
5. Stresses that, unless it is immediately and fully informed at all stages of the negotiations, it reserves the right to bring an action before the CJEU in order to safeguard its prerogatives;
6. Calls on the Commission to conduct an assessment of the impact of ACTA's implementation on fundamental rights and data protection, on the ongoing EU efforts to harmonise IPR enforcement measures and on e-Commerce prior to any EU agreement to a consolidated ACTA text, and to consult Parliament on the results of this assessment in due course;
7. Calls on the Commission and the Council to limit ACTA negotiations on the enforcement of existing IPRs, in order to ensure that the development of substantive IP law in the European Union is not prejudiced; makes any possible assent to the ACTA agreement conditional on the honouring of an undertaking to that effect;
8. Urges the Commission and the Council to ensure that the enforcement of ACTA provisions - especially those on copyright enforcement procedures in the digital environment - is fully in line with the letter and spirit of the *acquis communautaire*;
9. Emphasises that privacy and data protection are core values of the European Union, as recognised in Article 8 of the European Convention on Human Rights and in 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 TFEU;
10. Considers that the proposed agreement should not make it possible for private or administrative entities to impose the so-called three-strikes procedure or similar measures, in keeping with the need to safeguard fundamental rights, such as freedom of expression and the right to privacy, whilst fully respecting subsidiarity;
11. Points out that any measure aimed at strengthening powers to carry out cross-border inspections and seizures of goods should not harm global access to legal, affordable and safe medicines;
12. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the states party to the ACTA negotiations.