



9.3.2010

## **MOTION FOR A COMMON RESOLUTION**

pursuant to Rule 110 of the Rules of Procedure

### **on Transparency and State of Play of ACTA negotiations**

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Marielle DE SARNEZ and Michael THEURER on behalf of ALDE group

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Philip ALBRECHT, Franziska KELLER and Judith SARGENTINI on behalf  
of the Greens/EFA Group

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Helmut SCHOLZ on behalf of the GUE Group

v01-00

## Motion for a resolution on Transparency and State of Play of ACTA negotiations

*The European Parliament,*

- having regard to Articles 207 and 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 Parliaments 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 its Article 8,
  - having regard to Directive 2002/58/EC of European Parliament and 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 European Parliament and 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 Rule 110 of its Rules of Procedure,
- A. 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), and jointly agreed on a confidentiality clause,
- B. 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",
- C. whereas the Commission on 27 January 2010 assured its commitment to a reinforced association with Parliament in 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",

- D. whereas Council representatives have attended ACTA negotiation rounds alongside with Commission representatives,
  - 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 others, 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 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,
  - 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 and data protection law, as notably set forth 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,
  - J. whereas the Treaty of Lisbon is in force since 1 December 2009,
  - K. whereas as a result of the entry into force of the Lisbon Treaty, the Parliament will have to give its consent to the ACTA Treaty text, prior to its entry into force in the EU,
  - L. whereas the Commission committed itself to provide immediate and full information to the European Parliament at every stage of negotiations on international agreements,
1. Reminds that the Commission has since the 1 December 2009 the legal obligation to immediately and fully inform the European Parliament at all stages of international negotiations;
  2. Expresses its 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; is deeply concerned that no legal base has been established before the start of the ACTA negotiations and that no parliamentary approval has been asked for the mandate;

3. Calls on the Commission and Council to grant public and parliamentary access to ACTA negotiation texts and summaries in accordance with the Treaty and the Regulation 1049/2001 on Public Access to Documents;
4. Calls on the Commission and Council to pro-actively engage with ACTA partners to rule out any further negotiations of an a priori confidential nature and to timely and entirely inform Parliament about its initiatives in this regard; expects the Commission to make proposals already 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, and to refer to Parliament the outcome of this round immediately after its conclusion;
5. Stresses that, unless the Parliament is immediately and fully informed at all stages of the negotiations, Parliament reserves its right to take suitable action, including bringing a case before the Court of Justice in order to safeguard its prerogatives;
6. Calls on the Commission to conduct an impact assessment 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 treaty text, and to timely consult with Parliament about the results of this assessment;
7. 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;
8. Calls on the Commission to continue the negotiations on ACTA in order to improve the effectiveness of the IPR enforcement system against counterfeiting;
9. Urges the Commission to ensure that the enforcement of ACTA provisions - especially its provisions on copyright enforcement procedures in the digital environment - are fully in line with the *acquis communautaire*; demands that no personal search is undertaken at the EU borders and requests full clarification of any clauses that would allow for warrantless searches and confiscation of information storage devices, such as laptops, cell phones and MP3 players, by border and customs authorities;
10. Considers that in order to respect fundamental rights such as freedom of expression and the right to privacy, with full respect for subsidiarity, the proposed Agreement must refrain from imposing any so called "three strikes" procedures, in full respect of the decision of Parliament on article 1.1b in the (amending) Directive 2009/140/EC that calls to insert a new para 3 a to article 1 Directive 2002/21/EC on the matter of "three strikes"
11. Emphasizes 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. Instructs its President to forward this resolution to the Commission, the Council and the Governments and Parliaments of ACTA negotiation participants.