



EUROPEAN PARLIAMENT

2009 - 2014

---

*Session document*

---

8.3.2010

B7-0173/2010

## **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

**Niccolò Rinaldi, Sophia in 't Veld, Alexander Alvaro, Metin Kazak,  
Marielle De Sarnez, Michael Theurer**  
on behalf of the ALDE Group

**B7-0173/2010**

**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 term<sup>1</sup>,
  - 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 reading<sup>2</sup>,
  - having regard to its resolution of 18 December 2008 on the impact of counterfeiting on international trade<sup>3</sup>,
  - 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, 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,

---

<sup>1</sup> Texts adopted, P7\_TA(2010)0009.

<sup>2</sup> Texts adopted, P6\_TA(2009)0114.

<sup>3</sup> Texts adopted, P6\_TA(2008)0634.

- C. whereas, in accordance with Article 218(10) TFEU, Parliament must be immediately and fully informed at all stages of the procedure during negotiations on international agreements,
- D. whereas Council representatives have attended rounds of negotiations alongside Commission representatives,
- E. whereas the US Government has disclosed key provisions of the agreement to representatives of selected private undertakings,
- F. 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),
- G. 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',
- H. 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',
- I. whereas the Commission, as guardian of the Treaties, is obliged to uphold the *acquis communautaire* when negotiating international agreements affecting legislation in the EU,
- J. 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 the so-called 'Telecom Package', and on existing EU legislation regarding e-Commerce and data protection,
- K. 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,
- L. whereas it is crucial to ensure that the development of IPR enforcement measures is accomplished in a manner that does not impede innovation or fair competition and transfer of technology, 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,
- M. 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 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,

- N. whereas, in accordance with Article 21 of the Treaty on the European Union, 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. 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; is deeply concerned that no legal basis was established prior to the start of the negotiations;
  3. Takes the view that legitimate arguments for non-disclosure do not exist with regard to international negotiations on the enforcement of IPRs 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 made available to the European Parliament and the general public;
  4. Deplores the calculated choice of the parties not to negotiate through well-established international bodies, such as the WIPO and WTO, which have established frameworks for public information and consultation;
  5. Deplores the fact that so far only industrialised countries are taking part in the ACTA negotiations, and considers that those negotiations should be more inclusive, and multilateral rather than just plurilateral; calls on the Commission to include developing countries in all trade negotiations that may have an impact on them;
  6. 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;
  7. Insists that, in addition to the clear legal obligation to inform Parliament, the ACTA documents should also be made 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 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, to call for the issue of transparency to be put on the agenda for that meeting and to inform it of the

outcome of this round immediately after its conclusion;

9. Reminds the Commission that if it does not provide it with immediate and full information about the negotiations, in accordance with Article 218 TFEU, before the next round of negotiations in April, Parliament will have no choice but to bring an action for infringement of the Treaties before the Court of Justice of the European Union, in accordance with Article 263 TFEU;
10. 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, on e-Commerce, and of its possible impact on fundamental rights and the rule of law in third, especially developing, countries, prior to any EU agreement on a consolidated ACTA text, and to consult Parliament on the results of this assessment in due course;
11. Welcomes the Commission's statements to the effect 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 consent to the ACTA agreement conditional on full compliance with this statement;
12. Requests full clarification of any clauses that would allow for warrantless searches and confiscation of laptops, cell phones, iPods, MP3s and other information storage devices by border and customs authorities and an undertaking that no personal searches will be conducted at the EU's borders;
13. 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* and does not involve the imposition of 'self-regulatory' measures 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 entail prior surveillance or filtering of such data;
14. 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;
15. 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;
16. 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.