

European Parliament resolution of 10 March 2010 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⁽¹⁾ ,
 - 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⁽²⁾ ([COM\(2008\)0229](#)),
 - having regard to its resolution of 18 December 2008 on the impact of counterfeiting on international trade⁽³⁾ ,
 - 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 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 Rule 115(5) of its Rules of Procedure,
- A. whereas in 2008 the European Union and other OECD 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 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 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",

D. whereas Council representatives have attended rounds of ACTA negotiations alongside 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 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 "Telecoms 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 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, notably as 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),

J. whereas the Lisbon Treaty has been in force since 1 December 2009,

K. whereas, as a result of the entry into force of the Lisbon Treaty, it will have to give its consent to the ACTA Treaty text prior to its entry into force in the EU,

L. whereas the Commission has committed itself to providing immediate and full information to Parliament at every stage of negotiations on international agreements,

1. Points out that since 1 December 2009 the Commission has had a legal obligation to inform Parliament immediately and fully at all stages of international negotiations;

2. Expresses its concern over the lack of a transparent process 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 base was established before the start of the ACTA negotiations and that parliamentary approval for the negotiating mandate was not sought;

3. Calls on the Commission and the Council to grant public and parliamentary access to ACTA negotiation texts and summaries, in accordance with the Treaty and with Regulation 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;

4. Calls on the Commission and the Council to engage proactively with ACTA negotiation partners to rule out any further negotiations which are confidential as a matter of course and to inform Parliament fully and in a timely manner about its initiatives in this regard; expects the Commission to make proposals prior to the next negotiation round in New Zealand in April 2010, to demand that the issue of transparency is put on the agenda of that meeting and to refer the outcome of the negotiation round to Parliament immediately following its conclusion;
5. Stresses that, unless Parliament is immediately and fully informed at all stages of the negotiations, it reserves its right to take suitable action, including bringing a case before the Court of Justice in order to safeguard its prerogatives;
6. Deplores the calculated choice of the parties not to negotiate through well-established international bodies, such as WIPO and WTO, which have established frameworks for public information and consultation;
7. 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, and e-commerce, prior to any EU agreement on a consolidated ACTA treaty text, and to consult with Parliament in a timely manner about the results of the assessment;
8. 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;
9. Calls on the Commission to continue the negotiations on ACTA and limit them to the existing European IPR enforcement system against counterfeiting; considers that further ACTA negotiations should include a larger number of developing and emerging countries, with a view to reaching a possible multilateral level of negotiation;
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 *acquis communautaire* ; demands that no personal searches will be conducted at 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;
11. Considers that in order to respect fundamental rights, such as the right to freedom of expression and the right to privacy, while fully observing the principle of subsidiarity, the proposed agreement should not make it possible for any so-called "three-strikes" procedures to be imposed, in full accordance with Parliament's decision on Article 1.1b in the (amending) Directive 2009/140/EC calling for the insertion of a new paragraph 3(a) in Article 1 of Directive 2002/21/EC on the matter of the "three strikes" policy; considers that any agreement must include the stipulation that the closing-off of an individual's Internet access shall be subject to prior examination by a court;
12. 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;

13. Points out that ACTA provisions, notably measures aimed at strengthening powers for cross-border inspection and seizure of goods, should not affect global access to legitimate, affordable and safe medicinal products – including innovative and generic products – on the pretext of combating counterfeiting;

14. 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.

(1) Texts adopted of that date, [P7 TA\(2010\)0009](#).

(2) Texts adopted of that date, [P6 TA\(2009\)0114](#).

(3) Texts adopted, [P6 TA\(2008\)0634](#).