

Resolution on the transparency and state of play of the Anti-Counterfeiting Trade Agreement ACTA negotiations

2010/2572(RSP) - 10/03/2010 - Text adopted by Parliament, single reading

Following the debate which took place during the sitting of 9 March 2010, the European Parliament adopted by 633 votes to 13 with 16 abstentions a resolution on the transparency and state of play of the Anti-Counterfeiting Trade Agreement ? ACTA negotiations

The resolution was tabled by the GUE/NGL, ECR, S&D, Greens/ALE, ALDE, and EPP groups.

It points out that since 1 December 2009, when the Lisbon Treaty entered into force, the Commission has had a legal obligation to inform Parliament immediately and fully at all stages of international negotiations. Parliament 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 regarding public access to documents.

To recall, the EU 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. In its report of 11 March 2009 Parliament called on the Commission immediately to make all documents related to the ongoing international negotiations on the ACTA publicly available. The Commission provided assurances in January 2010 as to its commitment to a reinforced association with Parliament, in particular on trade matters and other negotiations involving the consent procedure in the EU. However, according to documents leaked, the ACTA negotiations touch on, among other things, pending EU legislation regarding the enforcement of IPRs ([COD/2005/0127](#)) and the Telecoms Package and on existing EU legislation regarding e-commerce and data protection. Parliament considers that 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. Furthermore, any agreement reached by the EU 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. CJEU. Members feel that that privacy and data protection are core values of the EU which must be respected in all the policies and rules adopted by the EU.

Parliament 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 Treaty on the Functioning of the EU, and 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. It 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. Furthermore, it 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.

The resolution calls on the Commission and Council, as appropriate, to do the following:

- 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;
- 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;
- 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;
- continue the negotiations on ACTA and limit them to the existing European IPR enforcement system against counterfeiting. Further ACTA negotiations should include a larger number of developing and emerging countries, with a view to reaching a possible multilateral level of negotiation;
- 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*.

Members demand that no personal searches will be conducted at EU borders and they request 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.

Lastly, Parliament considers that the proposed agreement should not make it possible for any "three-strike" procedures to be imposed, in order to protect fundamental rights. 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.