

Josep Borrell Fontelles
Presidenta

Mr José Manuel BARROSO
President of the European Commission
200, Rue de la Loi
B-1049 BRUSSELS

308456 09.06.2006

Dear President,

I am writing in connection with the 'Passenger Name Record' (PNR) Judgment ⁽¹⁾ which the Court of Justice handed down on 30 May 2006 and following upon our telephone conversation on the evening of 8 June.

As we are all aware the Court annulled Council Decision 2004/496/EC ⁽²⁾ and Commission Decision 2004/535/EC ⁽³⁾. The effects of Decision 2004/535 EC were preserved "until 30 September 2006, but not beyond the date upon which [the Agreement concluded by Decision 2004/496/EC] comes to an end".

At this juncture, it is paramount for our institutions to draw the right conclusions from this new and delicate situation by acting, jointly, in accordance with the principle of democracy and by striving for the highest possible level of protection of our citizens' fundamental rights and freedoms.

The Conference of Presidents noted at its meeting of 8 June 2006 that Vice-President Frattini will be heard by the Committee on Civil Liberties, Justice and Home Affairs on 12 June. A trialogue implying the Commission as well as the outgoing Austrian and the incoming Finnish presidencies might take place on 13 June. Moreover the Conference of Presidents will discuss the matter again with Committee Chairman Cavada on 14 June 2006.

¹ Joint Cases C-317/04 (Parliament vs. Council) and C-318/04 (Parliament vs. Commission)

² Council Decision 2004/496/EC of 17 May 2004 on the conclusion of an agreement between the European Community and the United States of America on the processing and transfer of PNR data by air carriers to the US Department of Homeland Security, Bureau of Customs and Border Protection

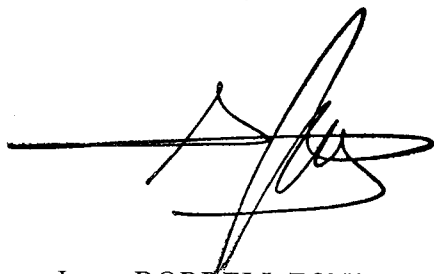
³ Commission Decision 2004/535/EC (of 14 May 2004) on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the United States Bureau of Customs and Border Protection

When the Conference of Presidents held its first brief exchange of views on the matter at its meeting of 8 June 2006 it reached the preliminary conclusions that, firstly, the Commission should be invited to avoid precipitate decisions and, secondly, Parliament should fully be kept involved in the process aiming at the replacement of the annulled decisions.

It is also of highest importance that all Institutions reach soon an agreement on the Framework decision on data protection in the third pillar. Parliament shall adopt next week in Strasbourg Mrs Roure's report⁽¹⁾ on this issue and we expect the Presidency of Council to commit itself to adopting rapidly this crucial piece of legislation as agreed at the end of 2005 when the data retention directive was negotiated.

I therefore formally invite the Commission in particular, on the basis of the principle of loyal cooperation between the institutions, as detailed in Points 8 to 12 of the Framework Agreement, not to take any definitive decision on formal Commission proposals and/or initiatives before the abovementioned round of consultations is concluded and to keep Parliament fully involved throughout the process.

Yours sincerely,

A handwritten signature in black ink, consisting of a horizontal line followed by a stylized, cursive signature.

Josep BORRELL FONTELLES

¹ Report A6-0192/2006 on the proposal for a Council framework decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (COM(2005)0475 – C6 0436/2005 – 2005/0202(CNS))