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COMMISSIONE GIURIDICA E PER IL MERCATO INTERNO
IL PRESIDENTE

~~D(2004)2099~~ 05.11.2004 202591

On. Pat COX
Presidente del Parlamento europeo
LOW T15003
Strasburgo

Signor Presidente,

in data di ieri ho ricevuto una lettera dall'On. Bogeerd-Quaak nella quale si richiedeva che la commissione giuridica e per il mercato interno valutasse la possibilità di modificare la propria raccomandazione relativa alla richiesta del Parlamento europeo di un parere della Corte di Giustizia in merito all'accordo con gli USA sulla trasmissione dei dati dei passeggeri (PNR).

Purtroppo a causa della mancanza di tempo, la commissione giuridica e per il mercato interno non è stata in grado di esaminare tale richiesta nel corso della riunione di ieri.

Ho quindi assicurato all' On. Bogeerd-Quaak che avrei trasmesso la sua lettera al Presidente del Parlamento per informazione e per ogni eventuale seguito che Lei ritenga appropriato.

Voglia gradire, Signor Presidente, i sensi della mia più alta considerazione.

Giuseppe GARGANI



Giuseppe Gargani
Chairman of the JURI committee
European Parliament
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Strasbourg, 4 May 2004

Dear Chairman,

Today the European Parliament rejected the urgency request from the Council on the draft agreement between the EU and USA on the transfer of passenger data. At the same time Parliament confirmed that it is waiting for the opinion of the Court of Justice on the compatibility of the Agreement with the Treaty, in accordance with the recommendation of your committee adopted on 7 April.

As rapporteur I am very disturbed by the fact that Council in its letter of reconsultation made it clear that it after 5 May intends to conclude the Agreement with or without the opinion of Parliament. If this is the case, Parliament's demand for an opinion of the Court of Justice will become "sans objet", which the Legal Services explained in its opinion of 7 April.

It must be ensured that the consistent position taken by Parliament on a number of occasions remain valid. To do so I believe that it is necessary to follow the suggestion made by the Court of Justice in a preceding case in 1994¹: According to the Court: "*Le fait que la Cour ne réponde pas à la demande d'avis ne remet pas en cause la protection juridictionnelle de l'institution ou de l'État membre ayant, avant la conclusion de l'accord, saisi la Cour, car, d'une part, l'article 228, paragraphe 6, ne vise pas, principalement, à protéger les intérêts et les droits de l'institution ou de l'État à l'origine de la saisine et, d'autre part, ces droits peuvent toujours être sauvegardés par le biais d'un recours en annulation contre la décision de conclusion, éventuellement assorti d'une demande en référé visant à l'édition de mesures provisoires*" (emphasis added)

This is exactly the strategy that the Legal Services and your rapporteur Mrs Wallis proposed at the JURI meeting of 7 April. However, at that occasion we preferred not to bring any actions against the other institutions but only raise the general point of the compatibility of the Agreement with the Treaty.

¹ *Avis de la Cour du 13 décembre 1995.*
Avis rendu en vertu de l'article 228, paragraphe 6, du traité CE.
GATT - OMC - Accord-cadre sur les bananes.
Avis 3/94.
Recueil de jurisprudence 1995 page I-04577

Therefore, the fact that Council and Commission have now decided to disregard the negative opinions of Parliament and are trying to prevent Parliament from obtaining the opinion of the Court of Justice oblige us to stand up in defense of our parliamentary prerogatives.

For these reasons, I urge you to formalise the strategy already agreed in the JURI committee of 7 April and to submit a formal recommendation to your committee this evening, in accordance with Rule 91 of the Rules of Procedure, to our President. This would allow us to bring an action against the Commission and/or the Council should they adopt any acts between the end of this plenary session and the constituent session as it was already suggested by the plenary in point 7 of its Resolution of 30 March.¹

Yours sincerely,

Johanna Boogerd Quaak
Vice-President of the LIBE committee

¹ P5_TA-PROV(2004)0245

7. In the meantime, reserves the right to appeal to the Court of Justice should the draft decision be adopted by the Commission; reminds the Commission of the requirement for cooperation between institutions which is laid down in Article 10 of the Treaty and calls upon it not to take, during the election period, any decision such as the one with which this resolution is concerned;