José Manuel Barroso
President of the European Commission

Brussels, 19 -07- 2006
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Dear President,

Thank you for your letter of 9 June regarding the ruling of the European Court of Justice of 30 May on the transfer of Passenger Name Record to the United States of America.

This ruling underlines once more the need for a unique system of legal bases for these matters, by the 'communautarisation' of the so-called 3rd Pillar. Therefore I called upon member states and institutions at the plenary session of the European Parliament of 14 June and at the European Council meeting of 15 June to fully use the provisions of the actual Treaties in order to make progress in the areas of justice and security and fight more effectively terrorism and crime.

In the meanwhile we should seek to ensure the same degree of data protection under Title VI as in Community law. I fully share your call for a rapid adoption of the Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters. This proposal will complete the European data protection legal framework.

Following the request for annulment of the European Parliament, the Court has ruled that the Council Decision approving the conclusion of an agreement with the United States and the Commission's Adequacy Decision on the transfer of PNR to the United States are not falling under Community competence and should therefore be annulled.

Concerning the judgement, it is important that the Court did not question the data protection guarantees contained in the Commission Decision, as it did not question the substance of both instruments. To the contrary, the Court maintained provisionally in effect the adequacy decision for reasons of legal certainty, as well as protection of the persons concerned.

Vice President Frattini informed the LIBE Committee of the European Parliament on 12 June that it is our firm intention to respect this ruling. We have prepared two initiatives, one to terminate the current agreement with the United States and the second to ask the Council to open negotiations for a new agreement.

Mr Josep BORRELL FONTELLES
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Time is very tight, especially in the light of the loss of any legal effect of the Commission decision, to which the current agreement is totally linked. It is of the highest importance not to endanger public security whilst maintaining adequate data protection standards; therefore all efforts should be made to ensure that a new agreement would replace the current one in due time, i.e. by 30 September.

Should there be no new agreement in place by 1st of October, legal complaints could be addressed against air carriers flying from Europe to the United States, based on diverging national interpretations on the legality of the transfer of PNR data to the US, a confuse and potentially damaging situation for both the companies and the privacy of their clients.

The new agreement should include the same level of safeguards regarding the legal certainty for air carriers, the respect of human rights (notably the right to privacy) and the purposes for which the PNR data may be used.

We will keep the European Parliament fully informed throughout the adoption process of the new agreement.

The agreement on PNR with the United States, anyhow, needs to be reviewed before November 2007, as the current one was only concluded for a period of three and a half years. This allows for a two-step approach whereby the Commission will invite the Presidency conducting the negotiations on behalf of the European Union to keep the European Parliament constantly informed.

I hope I can count on your full support to comply with the ruling of the European Court of Justice within the imposed deadline.

Yours sincerely,

José Manuel BARROSO