

Franco Frattini
Vice-President of the European Commission

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Dear Mr Cavada

EU cooperation with US in the fight against terrorism is probably one of the closest and most successful areas in the whole spectrum of EU-US cooperation. We can build on a strong transatlantic relationship which should allow us to overcome differences in a constructive manner. My particular concern is that we find an appropriate balance between security measures and the protection of fundamental rights such as data privacy.

With this in mind, the JLS EU-US ministerial Troika established in November 2006 a high level Contact Group to discuss information sharing and protection of personal data for law enforcement purposes, as part of a wider reflection on how best to prevent and fight terrorism and serious trans-national crime. The Group's goal is to enable EU and US to work together by exchanging targeted information in the field of law enforcement while ensuring that the protection of personal data and privacy are guaranteed. Data protection experts from both sides meet to explore the principles applied in EU and US with a view to finding commonalities. The talks will be pursued on 9 May. As I have said previously at my meetings with LIBE, it is yet too early to predict what the outcome of the group's work will be – this needs to be determined following discussions.

As you know, the Passenger Name Records Agreement is in force until 31 July 2007. After adoption of the negotiation directives on 22 February, the Council Presidency and the Commission have engaged in negotiations with the US Department of Homeland Security. The aim of the Commission is to ensure, together with the Council Presidency, the timely conclusion of a long term agreement with the US to ensure legal certainty for travellers and air carriers. I am confident that this message will also be strongly conveyed by the European Parliament to Mr Chertoff, particularly as the negotiations have been complex so far.

The European Community's visa law is based on solidarity and reciprocity. It is our aim to have all EU Member States in the Visa Waiver Program. The Commission raises this issue at every relevant meeting with US representatives up to the highest level. Most recently President Barroso made the point again to President Bush at the EU-US Summit on 30 April. I raised it with Secretary Chertoff at the EU-US JLS ministerial on 5 April.

Mr Jean-Marie Cavada
European Parliament
IP-LIBE
1047 Brussels

Rue de la Loi 200 - B-1049 Brussels
Tel. +32 2 298 75 00 - Fax +32 2 298 85 95 - e-mail: franco.frattini@cec.eu.int

On 13 March the Senate adopted the final version of a bill ("Improving America's Security Act of 2007") which, in Section 501, covers the modernisation of the Visa Waiver Program. This bill needs now to be reconciled with the House bill which will probably take a few months more.

The Senate bill follows closely the lines set out by the Administration, notably the introduction of four new prerequisites: electronic travel authorisation, passenger information exchange, reporting lost and stolen passports and the repatriation of citizens or former citizens. However, it also added that the visa requirement could be waived for a country only once an exit control system is in place providing for checks on the departure of 97% of foreign nationals exiting through US airports. Homeland Security Secretary Chertoff explained the requirements to the EU side during the EU-US JLS Ministerial meeting on 5 April. He did not see any particular problems for EU Member States to fulfil the conditions regarding repatriation of aliens and reporting on lost and stolen passports. Regarding the electronic travel authorisation and the passenger information exchange the US is still developing its position. The Commission continues to follow the situation closely and I will give you more information once I have it.

Last I would like to refer to SWIFT. As a European company processing data in Europe SWIFT must comply with Belgian data protection law implementing the EU data protection rules. In this regard the Commission is aware of the fact that SWIFT has decided to take the necessary steps to make its data processing activities compliant with Belgian data protection law. In this regard, it has submitted a declaration of its processing activities to the Belgian data protection authority, which who is currently examining it. It has also decided to join the Safe Harbour Scheme, which would legitimate the transfer of personal data to its US mirror server. Banks using SWIFT have also to comply with national data protection laws and in this regard they have to provide their customers with the necessary information. Banks required. The Commission is also aware of the fact that banks are examining how to provide this information. In addition, the Commission together with the Presidency is working with SWIFT and the US Treasury to provide a clear framework for the transfer of SWIFT's commercial data to the US and its processing by the US Treasury for counter-terrorism purposes. Exploratory talks are ongoing with US Department of Treasury to secure assurances specifying the conditions of use of SWIFT data by the US Treasury for the purpose of fighting terrorism and to provide safeguards for the processing of data of EU citizens. The negotiations are going in the right direction and there is a possibility of a solution in the near future. The next meeting is planned for 11 May. Our aim is to make sure that SWIFT can continue to serve international financial markets while respecting EU customers' privacy and that the US government can continue to help us all by tracking terrorist financing.

I am looking forward to our meeting on 14 May and I hope this will facilitate your preparations.

A handwritten signature in dark ink, appearing to read "Josep Melnik". The signature is fluid and cursive, with a long horizontal stroke at the end.