

# Statement



## Statement 01/2019 on the US Foreign Account Tax Compliance Act (FATCA)

**The European Data Protection Board has adopted the following statement:**

This statement follows the Resolution passed by the European Parliament on 5 July 2018 on the adverse effects of the US Foreign Account Tax Compliance Act (FATCA) on EU citizens<sup>1</sup> and the requests made by the Association of Accidental Americans to the WP29 in this respect.

European Data Protection Authorities have long been attentive to the data protection issues raised by the automatic exchange of personal data for tax purposes. The Article 29 Working Party (WP29), which preceded the European Data Protection Board, has taken several actions in the past with regards to the automatic exchange of personal data for tax purposes and more specifically with regards to the US Foreign Account Tax Compliance Act (FATCA) in two letters published on 21 June 2012<sup>2</sup> and on 1 October 2012<sup>3</sup>. The WP29 also issued a statement on automatic inter-state exchanges of personal data for tax purposes (WP 230 - 4 February 2015) and guidelines for Member States on the criteria to ensure compliance with data protection requirements in the context of the automatic exchange of personal data for tax purposes (WP 234 - 16 December 2015). Finally, the WP29 addressed a letter to the Association of Accidental Americans (8 February 2018)<sup>4</sup> with regards to the scope of application of the FATCA legislation and relevant data protection issues.

With respect to the European Parliament resolution of 5 July 2018, the European Data Protection Board (EDPB) will pay due attention to the call made to it to review the existing data protection safeguards under the legislation authorising the transfer of personal data to the US IRS for the purposes of the US Foreign Account Tax Compliance Act. It however wishes to highlight that it has initiated work on the preparation of guidelines on some of the tools provided for by Article 46 of the GDPR. More specifically, the guidelines will provide information to interested stakeholders on the elaboration of transfer tools based on Articles 46 (2) (a) and 46 (3) (b) of the GDPR.

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<sup>1</sup> [European Parliament resolution of 5 July 2018 on the adverse effects of the US Foreign Account Tax Compliance Act \(FATCA\) on EU citizens and in particular ‘accidental Americans’](#)

<sup>2</sup> [Letter of the Chair of the ART 29 WP to the Director General of Taxation and Customs Union 21 June 2012](#)

<sup>3</sup> [Letter of the Chair of the ART 29 WP to the Director General of Taxation and Customs Union 01 October 2012](#)

<sup>4</sup> [Letter of the Chair of the ART 29 WP to collective of European “accidental Americans” 08 February 2018](#)

This guidance will include information on the minimum guarantees to be included in legally binding and enforceable instruments concluded between public authorities and bodies (46 (2) (a)) as well as for provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights (46 (3) (b)). It should be noted that legally binding instruments do not require specific authorisation from a supervisory authority whereas the provisions to be included in administrative arrangements are subject to such authorisation from the competent supervisory authority.

This set of guidelines, which should be adopted by the EDPB before the end of 2019, will be a useful tool also for the evaluation of intergovernmental agreements signed between Member States and the US government on FATCA to ensure their compliance with the GDPR.

For the European Data Protection Board

The Chair

(Andrea Jelinek)