

Mr Fabien Lehagre
President of the Association des Américains Accidentels

Mr Vincent Wellens
NautaDutilh

Brussels, 4 November 2022

by e-mail only

Ref: OUT2022-0074

Dear Mr Lehagre and Mr Wellens,

Thank you for your letter of 13 April 2022 regarding the processing of personal data based on the obligations stemming from the intergovernmental agreements (IGAs) implementing the US Foreign Account Tax Compliance Act (FATCA) and your subsequent analysis on the interplay of the IGAs with the GDPR.

In your letter, you call upon the EDPB and EU supervisory authorities to take immediate action in respect of possible inconsistencies of IGAs with data protection principles set forth in the GDPR.

As already highlighted by the EDPB on other occasions, assessing the compatibility of the different IGAs implementing FATCA with the GDPR is not in the competence of the EDPB.

According to Article 70, paragraph 1 a) of the GDPR, the EDPB shall monitor and ensure the correct application of the GDPR in the cases provided for in Articles 64 and 65, without prejudice to the tasks of the EU supervisory authorities. The EDPB, as an independent European body, does not constitute a supranational institution, monitoring the work of the EU supervisory authorities in individual cases, which are subject to their territorial powers, and the EDPB has no competence to take decisions in their place.

Hence, it is up to the competent supervisory authorities to monitor and enforce, where necessary, the relevant GDPR provisions and to provide information upon request on their ongoing proceedings to the extent possible according to their national procedural law.

Further, the EDPB (preceded by its precursor the Article 29 Working Party) took position on the automatic exchanges of personal data for tax purposes including FATCA, on several occasions.

More recently, in the light of the task of ensuring a consistent application of the GDPR as provided for by Article 70 GDPR and considering the existence of data protection aspects common to the different Member States, the supervisory authorities engaged in a common effort to identify questions which could be addressed to their respective competent national authorities concerning the consistency of IGAs with GDPR principles (including accountability, purpose limitation, proportionality and rules on data transfers that you specifically mentioned in your letter).

In the hope of having reassured you on the continuous attention paid by the EDPB and the supervisory authorities on the interplay between the processing based on the obligations stemming from the IGAs implementing FATCA and the GDPR, I thank you again for your consideration regarding the data protection implications of the automatic exchanges of personal data for tax purposes and the activity of the EDPB on that matter.

Yours sincerely,



Andrea Jelinek