

## **Anu Talus**

## Chair of the European Data Protection Board

Mr Fabien Lehagre President of the Association des Américains Accidentels

> Mr Vincent Wellens NautaDutilh

Brussels, 30 November 2023

by e-mail only Ref: OUT2023-0085

Dear Mr Lehagre, Dear Mr Wellens,

Thank you for your letter of 13 April 2023, in which you articulate your concerns regarding transfers of personal data based on intergovernmental agreements (IGAs) implementing the US Foreign Account Tax Compliance Act (FATCA).

In your letter, you draw my attention to the different approaches adopted at national level on the compatibility of transfers carried out on the basis of these IGAs with the GDPR. In light of this, you request the EDPB to evaluate the assessment made by EU/EEA Member States of their FATCA agreements in relation to the GDPR. On this point, you refer specifically to the EDPB's invitation to Member States in its statement 4/2021¹ to assess and, where necessary, review their international agreements that involve international transfers of personal data.

In response to your concerns, allow me to emphasize that, according to the GDPR, the EDPB does not possess supervisory powers that enable it to compel Member States to review the various IGAs implementing FATCA in relation to the GDPR. In accordance with Articles 55 and 57(1)(a) of the GDPR, the application of data protection law in relation to IGAs implementing FATCA is the sole responsibility of national data protection authorities (DPAs) in their respective jurisdictions. The EDPB, whose competence to monitor and ensure the correct application of the GDPR is limited to the cases provided for in Articles 64 and 65, has no supranational powers in this respect.

Nonetheless, as part of its task under Article 70 GDPR, and building upon its previous positions (and its predecessor's, the WP29) concerning automatic exchanges of personal data for tax purposes,

<sup>&</sup>lt;sup>1</sup> EDPB Statement 04/2021, available at: <a href="https://edpb.europa.eu/our-work-tools/our-documents/statements/statements/statement-042021-international-agreements-including en.">https://edpb.europa.eu/our-work-tools/our-documents/statemen



including FATCA<sup>2</sup>, the EDPB is dedicated to foster regular information sharing and the exchange of best practices among its members regarding ongoing investigations. This collaborative approach aims to facilitate a consistent approach from the DPAs, as appropriate, on this matter.

In addition, you may have already noted the ongoing investigations being conducted by some national DPAs following AAA letters. While the EDPB is limited in the updates it can provide on these investigations in order not to compromise ongoing actions at national level, I would like to assure you that the Board, together with the national SAs that constitute it, are devoting particular attention to the interplay between the obligations arising from IGAs implementing FATCA and the GDPR.

Yours sincerely,

Anu Talus

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<sup>&</sup>lt;sup>2</sup> See 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 (<a href="https://ec.europa.eu/newsroom/article29/items/640466">https://ec.europa.eu/newsroom/article29/items/640466</a>), and EDPB Statement 04/2021 on international agreements including transfers (<a href="https://edpb.europa.eu/system/files/2021-04/edpb\_statement042021">https://edpb.europa.eu/system/files/2021-04/edpb\_statement042021</a> international agreements including transfers en.pdf);