

Ms Dolors Montserrat - Chair
European Parliament
Petitions Committee (PETI)

Mishcon de Reya
Africa House
70 Kingsway
London WC2B 6AH
DX 37954 Kingsway
T: +44 20 3321 7000
www.mishcon.com

Dear Ms Montserrat

London | Cambridge | Oxford | Hong Kong | Singapore

FATCA | Commission responses and US expert evidence – what now?

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I write further to our previous correspondence, which is available [online](#).

1. **Commission responses to EU FATCA petitions**

I have seen a copy of the recent [PETI report](#) summarising the European Commission's responses over the years to the various FATCA petitions that have been pending since 2016. These can be summarised as follows:

Whose problem? "FATCA and the related IGAs are a matter for EU Member States."

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Negative effects for EU citizens: "The Commission acknowledges that FATCA and the related IGAs appear to have the unintended effect of hindering access to financial services in the EU for American citizens and Accidental Americans. The Commission services are in frequent contact with Member States, the EU Presidency and the EDPB on this file, and continues to work with US authorities and other EU institutions and bodies in various fora on these issues."

Fundamental rights: "The Commission is closely following legal challenges in Belgium and other Member States where similar proceedings are taking place before DPAs and courts. To ensure coherence of the interpretation and application of the GDPR, it is important that the Commission is able to fully take their position into account. In this respect, the Commission is also closely following any follow-up discussions and/or actions at the level of the European Data Protection Board (EDPB)."

2. **Known evidence tell a different story**

Internal EU documents show that **1** the Commission believed that FATCA was [within the EU's area of competence](#) and that **2** the IGAs were a [temporary solution](#), which moreover was [coordinated by the Commission](#). Most importantly, **3** the Commission concluded following correspondence with the US Treasury that the US offered [lower data protection safeguards](#). This was several years before the two Schrems judgment and before [Art. 46 GDPR](#) introduced a statutory obligation to ensure appropriate safeguards before transferring personal data to third countries.

3. Additional US evidence nails it

Beyond the cleverly drafted responses aimed at deflecting accountability, the EU Commission [admits](#) that FATCA is a "long-standing issue" and more recent evidence confirms the picture in full:

3.1 **Lack of adequacy - US expert opinion**

I am aware that you received a detailed *Amicus Brief* from [Prof. Michael Hatfield](#), a US law professor who is expert in both US tax and data protection law, published on the topic of Privacy and Taxation and who considered whether the appropriate safeguards are available for FATCA data transferred from HMRC to the IRS under Art. 46 of the GDPR / UK GDPR read in light of *Schrems II*.

The answer is a resounding "no", which confirms the position reached by the Commission in December 2011 (see [here on page 4](#)) and confirmed more generally by the CJEU in 2015 and 2020 with the two Schrems judgments.

3.2 **Uselessness of FATCA data – IRS notice**

Proportionality, necessity and data minimisation are key principles on which the EU rules on fundamental rights and data protection ([Art 52 Charter](#) and [Art. 5.1\(c\) GDPR](#)).

Already, we have produced evidence that the IRS does not have the resources to look at FATCA data (in the [words of the IRS Commissioner](#)), and that the yield of FATCA in terms of additional taxes is abysmal, so that the IRS has "significantly departed from its original comprehensive FATCA roadmap" (in the [words of the US Treasury](#)).

The following [notice published by the IRS](#) a couple of days ago reinforces a picture of FATCA data being useless, and therefore not necessary, let alone proportionate.

<p>Federal Register / Vol. 89, No. 229 / Wednesday, November 27, 2024 / Notices</p>	
<p>DEPARTMENT OF THE TREASURY</p>	
<p>Internal Revenue Service</p> <p>Proposed Collection; Comment Request for Foreign Account Tax Compliance Act Collections</p> <p>AGENCY: Internal Revenue Service (IRS), Treasury.</p> <p>ACTION: Notice and request for comments.</p> <hr/> <p>SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995.</p>	<p>public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.</p> <p style="text-align: right;">Approved: November 21, 2024.</p>

4. **Where next?**

Politics (and US politics) should not play any role in the [long-standing issue](#) around the legality and proportionality of FATCA. However, in circumstances where a sitting US president [pardons his own son](#) and an incoming US president appoints an Ambassador to an EU Member State who himself benefited from a [presidential pardon](#), showing a degree of self-interest, it is disappointing that the EU cannot stand up for its own citizens who suffer from the effects of a disproportionate US law adopted 14 years ago and which was rolled out throughout the EU notwithstanding the concerns raised by the European Commission, the European Parliament and the predecessor of the puny EDPB.

In light of the additional evidence discussed in this letter, I do hope that the European Parliament's Petition Committee will continue its long-standing work to support the EU FATCA petitions.

It is telling that, in its responses, the European Commission chose not to mention the excellent [PETI study](#), as [updated](#) to reflect the CJEU's findings in the *Schrems II* case.

Best regards,

Filippo Nosedà
Partner

Direct Tel: +44 20 3321 7980

Email: filippo.nosedà@mishcon.com