

EDPB
National DPAs (via EDPB Secretariat)
Brussels

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

Cc: PETI, EU FATCA Petitioners

30 January 2025

London | Cambridge | Oxford | Hong Kong | Singapore

FATCA | Implications of yesterday's EGC judgment in Irish Facebook case

Yesterday, the [General Court of the EU ruled](#) in favour of the EDPB in the long-running saga concerning alleged data protection violations by Facebook, Instagram and WhatsApp, which put the EDPB and several national data protection authorities on a collision course with the Irish Data Protection Commissioner (**DPC**) (joined cases [T-70/23](#), [T-84/23](#) and [T-111/23](#)).

The EDPB defended its stance of interfering with the Irish investigation by way of a binding decision in the context of the "consistency mechanism" established under Art. 60(4) GDPR.

It is fascinating to see how the EDPB has taken an activist stance in relation to US Tech companies while [obstinately resisting](#) calls to engage its powers under Art. 70 GDPR in relation to the processing of personal data of EU citizens on behalf of the US government under FATCA. (*The EDPB shall ensure the consistent application of the GDPR*)

The EDPB's omission is even more fascinating in the light of the European Commission's [finding in 2011](#)¹ that the US had [lower standards](#) of data protection in the context of FATCA. That was 9 years before the CJEU confirmed the same in relation to EU-US data transfers more generally.

As regards art. 70 GDPR, there is clear evidence of an inconsistent application of the GDPR by national DPAs², directly engaging the EDPB's duties to intervene to ensure consistency.

The take-away conclusion is that of an inconsistent and [highly politicised EDPB](#), active when politically convenient (US Tech bashing), and [deferential/supine](#) when politically inconvenient (criticising the US government, a close political ally³).

The EDPB needs to consider carefully the reputational damage of appearing inconsistent and politically motivated, even to the point of [resisting calls](#) from the European Parliament and being found culpable of [maladministration](#). As for the US, the GDPR was introduced with the express aim to give EU citizens [back control](#) over their data as a direct reaction to [Edward Snowden's revelations](#) of US bulk processing of personal data.

Filippo Nosedà

Partner

¹ Ares(2015)459646_Annex5, discussed [here at p. 2](#)

² [Belgium](#), [France](#), [Germany](#), the [Netherlands](#) (see also [here](#)), [Slovenia](#), [Slovakia](#) and [Sweden](#). The Swedish position is particularly interesting, because the IMY first took [one position](#), and then the [opposite](#) one, showing the lack of consistency even within single EU Member States. The Commission, too, took [conflicting](#) over time, showing the lack of a consistent application of the GDPR in relation to FATCA.

³ In a [decision](#) dated 1 March 2019, the ICO expressly referred to the US being "one of our closest allies on the international stage" and fretted over the "prejudice" that a favourable decision would cause to the relations with the US.