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Cc: PETI, EU FATCA Petitioners

31 January 2025

London | Cambridge | Oxford | Hong Kong | Singapore

FATCA | EU engulfed by a culture of secrecy (also in relation to the CRS)

On 18 June 2024, a journalist working for [Tax Notes](#) – a leading publication that has given extensive coverage to the debate surrounding the **compatibility of AEOI-Systems (FATCA/CRS) with the GDPR** (see e.g. [here](#), [here](#) and [here](#)) – asked the Council of the EU to provide her with [access to documents](#) relating to the work of the High Level Working Party on Tax Questions. The request was motivated as follows: *"I would like to have access to the documents relating to the work on this issue of public interest, i.e. how to ensure the compatibility with the GDPR of exchanges of tax information with third countries"*.

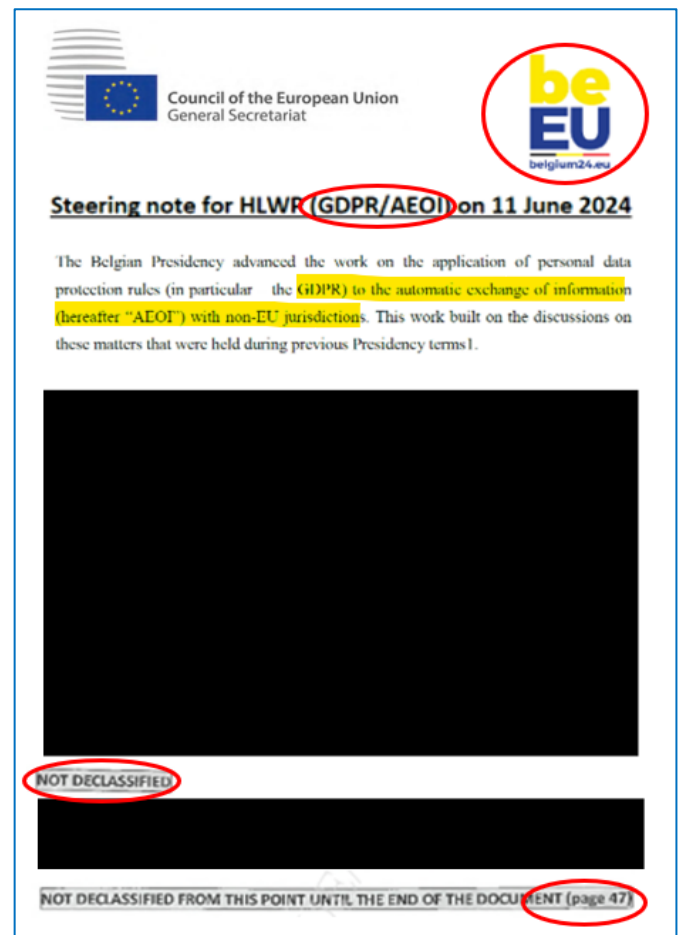
The European Council's [response](#) identified a number of [heavily redacted documents](#) (reproduced in the Annex), [denying further disclosure](#) on the basis that *"the Council has to strike a balance between the legitimate interest in transparency and the need to protect the decision-making process"*.

An approach to the GDPR based on secrecy is fascinating: the measures under discussion entail the disproportionate processing of the personal data of millions of compliant citizens, made worse by [insufficient safeguards](#). This has been recognised by the previous [European Commission](#), the [European Parliament](#), the [EU data protection working party](#) and the [AEFI Group of Experts](#) (see also [here](#)).

The perversity of the Council's approach ('transparency for them, secrecy for us') was highlighted by the European Court of Justice. In a decision concerning [public registers of beneficial ownership](#), the CJEU confirmed that: *"the principle of transparency (as it results from the EU Treaty) is given concrete expression primarily in the requirements of institutional and procedural transparency covering activities of a public nature and cannot, as such, justify the interference with the fundamental rights to privacy and data protection guaranteed by EU law"*. As regards access to EU documents, the principle of transparency was reinforced in two cases against the Commission that were brought by a [Dutch MEP](#) and an [Irish Professor](#).


And yet, in relation to AEOI, EU institutions continue to adopt a Guantanamo-style approach to the redaction of documents in circumstances where the previous European Commission [agreed](#) with the concerns raised by advocates and journalists working in the tax arena. It is [time for the EDPB to act](#).

Filippo Noseda
 Partner



Annex: heavily redacted documents

Here is the agenda – for the actual discussion, see the heavily redacted documents on the next few pages

 Council of the European Union

Brussels, 24 June 2024
(OR. en)

11287/24

FISC 140
ECOFIN 731

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	European Council
No. prev. doc.:	10594/24
Subject:	Ecofin report to the European Council on tax issues

Delegations will find attached the Ecofin report to the European Council on tax issues, which was approved by the Council (Economic and Financial Affairs) on 21 June 2024.

(...)


3) **Administrative cooperation in the field of taxation**

a) *Automatic exchange of tax-relevant information with non-EU jurisdictions*

55. The Belgian Presidency advanced the work on the application of personal data protection rules (in particular – the GDPR) to the automatic exchange of information (hereafter “AEOI”) with non-EU jurisdictions. This work built on the discussions on these matters that were held during previous Presidency terms³².

56. While these issues are within Member States’ competence, it is deemed useful at this stage to continue coordinated work in this area. It is therefore expected that these issues will be regularly looked into at the WPTQ, as necessary.

³² See doc. ST 10710/23, points 31-32, doc. ST 15506/22, points 46-48; doc. ST 9970/21, points 81-82 ; doc. ST 14651/21, points 50-59.

 Council of the European Union
General Secretariat

Brussels, 04 June 2024


WK 7854/2024 INIT

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WORKING DOCUMENT

From:	Presidency
To:	Delegations
Subject:	Annotated agenda for the WPTQ (High Level) on 11 June 2024

 WPTQ (High Level)
11 June 2024

Annotated agenda
for the Working Party on Tax Questions (High Level)
(11 June 2024, 10:00, CM 3156/24)

(...)

d) Exchange of information in the area of taxation
- Finalisation of work

Delegations will be invited to exchange views on the basis of the Presidency steering note (WK 7949/2; forthcoming), with the objective of concluding the current stage of work in this area.

e) FATCA
- Information from the Presidency

The Presidency will debrief delegations on its informal contacts with the US.

Brussels, 24 May 2024

DOCUMENT PARTIALLY
ACCESSIBLE TO THE PUBLIC
(30.07.2024)

WK 7474/2024 INIT

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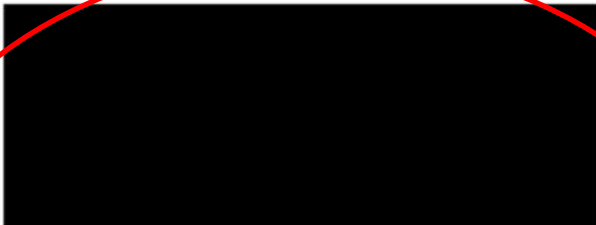
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MEETING DOCUMENT

From: Presidency
To: Delegations
Subject: Presidency steering note



Steering note - WK 7474/2024 INIT - 24 May 2024



C. WAY FORWARD

The Presidency wishes to conclude the work on the annex at the meeting on 31 May and will schedule this file for the 11 June meeting of the High Level WPTQ, in order to note the agreement reached between Member States on the collective use of the agreed minimum wording of this draft annex C.



Useless content

Brussels, 11 June 2024

DOCUMENT PARTIALLY
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PUBLIC (30.07.2024)

WK 8398/2024 INIT

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MEETING DOCUMENT

From: Presidency
To: Delegations
Subject: AEOI - revised text for the report - room document for HLWP on 11 June 2024



Room document for HLWP (GDPR/AEOI) on 11 June 2024

The Presidency suggests the following text is included in the ECOFIN report to the European Council on tax issues:



31 Administrative cooperation in the field of taxation


a) Automatic exchange of tax-relevant information with non-EU jurisdictions

55. The Belgian Presidency advanced the work on the application of personal data protection rules (in particular – the GDPR) to the automatic exchange of information (hereafter "AEOI") with non-EU jurisdictions. This work built on the discussions on these matters that were held during previous Presidency terms¹.



60. While these issues are within Member States' competence, it is deemed useful at this stage to continue coordinated work in this [redacted]. It is therefore expected that these issues will be regularly looked into at the WPTQ, as necessary."

¹ See doc. 16411/23, points 44-45; doc. 10730/23, points 31-32; doc. 1115506/22, points 40 to 48; doc. 9970/21, points 81 - 82; doc. 14651/21, points 40 - 49.

 Council of the European Union
General Secretariat

Brussels, 06 June 2024

**DOCUMENT PARTIALLY
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WK 7375/2024 REV 1

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WORKING DOCUMENT

From: Presidency
To: Delegations

Subject: Draft Ecofin report to the European Council on tax issues


1. Delegations will find attached a revised version of the biannual Ecofin report to the European Council on tax issues for which the aim is to reach agreement at the meeting of the Working Party on Tax Questions (High Level) on 11 June 2024. Changes to the INIT version are marked in **bold underlined** and strikethrough.

(...)

3) **Administrative cooperation in the field of taxation**

a) *Automatic exchange of tax-relevant information with non-EU jurisdictions*

55. [placeholder for outcome of discussions in the HLWP on the separate agenda item]

 Council of the European Union
General Secretariat

Brussels, 07 June 2024

**DOCUMENT PARTIALLY
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(30.07.2024)**

WK 7949/2024 INIT


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MEETING DOCUMENT

From: Presidency
To: Delegations

Subject: Presidency steering note


belgium24.eu

Steering note for HLWP (GDPR/AEOI) on 11 June 2024

[...]


3) **Administrative cooperation in the field of taxation**

a) *Automatic exchange of tax-relevant information with non-EU jurisdictions*

55. The Belgian Presidency advanced the work on the application of personal data protection rules (in particular the GDPR) to the automatic exchange of information (hereafter "AEOI") with non-EU jurisdictions. This work built on the discussions on these matters that were held during previous Presidency terms¹.

¹ See doc. 10710/23, points 31-32, doc. ST 15506/22, points 46 to 48; doc. 9970/21, points 81 - 82 ; doc. 14651/21, points 50 - 59.

Useless content

 Council of the European Union
General Secretariat

Brussels, 29 August 2024

WK 894/2024 EXT 1 DCL 1

LIMITE
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WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

DECLASSIFICATION

From:	Presidency
To:	Delegations
N° prev. doc.:	WK 15311/2023
Subject:	Presidency steering note

Delegations will find attached the declassified version of the above document. The content of this document is identical to the previous version.

 **EU**
beilum24.eu

Steering note WPTO 26 January 2024

NOT DECLASSIFIED

B. FISCAL CONTEXT OF THE INFORMATION EXCHANGED

From the outset, the key role played by AEOI, as a primary instrument to achieve the public interest goals pursued by tax policies, should be reiterated. The third country taxpayers involved, on which Member States send the relevant information to third countries, bear the legal obligation to comply with the domestic rules concerning tax filing and tax investigation. In light of that obligation, they themselves should in any case provide the information subject to AEOI to their tax authorities: this information serves the purpose of determining or confirming the presence (or absence) of tax obligations (debt) and the value thereof. Therefore, exchange of information aims at eliminating opportunities for non-taxation or reduced taxation through tax fraud, tax evasion or tax avoidance, as well as at ensuring the absence of double taxation.

In addition, AEOI-agreements with third countries serve the general public interest of EU Member States: taxpayers of EU Member States who are bank accountholders in third countries, also have the obligation of reporting their foreign assets and income to the tax authorities of their EU Member State of residence. The AEOI with third countries is the only way feasible for Member States' tax authorities to verify if taxpayers of EU Member States comply with those tax reporting obligations.

On the global level, it is therefore of paramount importance that as many jurisdictions as possible join this worldwide tax transparency framework, to ensure that reporting obligations cannot be circumvented and to close the loopholes for cross-border tax fraud, tax evasion and tax avoidance. The EU has always taken a proactive position in this cooperation, as cross-border tax fraud, tax evasion and tax avoidance are harmful to the internal market. In that respect, the general public interest that this AEOI with third countries serves, reaches far beyond the borders of the EU. To recall, the Council of the EU in its Conclusions on 27 November 2020 emphasized "that exchange of information between the competent authorities of Member States and between Member States and Third Countries is being conducted exclusively and necessarily for important reasons of public interest, such as curbing tax fraud, tax evasion and tax avoidance, that therefore due consideration should be given to further alignment between EU rules on administrative co-operation in the area of taxation and rules on personal data protection; and that the objective to protect personal data should not impede protection of public interests nor undermine the long-term efforts of the Council to ensure tax transparency."¹

¹ Council conclusions on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond, point 40 (doc. ST 13350/20).

NOT DECLASSIFIED UNTIL THE END OF THE DOCUMENT (page 12)

Useless content

 Council of the European Union
General Secretariat

Brussels, 29 August 2024

WK 3186/2024 EXT 1 DCL 1

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DECLASSIFICATION

From:	Presidency
To:	Delegations
N° prev. doc.:	WK 894/2024
Subject:	Presidency steering note

Delegations will find attached the declassified version of the above document. The content of this document is identical to the previous version.

RESTREINT UE/EU RESTRICTED

 Council of the European Union
General Secretariat

Brussels, 27 August 2024

WK 3186/2024 EXT 1

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MEETING DOCUMENT

From:	Presidency
To:	Delegations
N° prev. doc.:	WK 894/2024
Subject:	Presidency steering note

With a view of the WPTO meeting on 7 March 2024, delegations will find enclosed the Presidency steering note.

NOT DECLASSIFIED UNTIL THE END OF THE DOCUMENT (page 14)

Brussels, 29 August 2024

WK 5429/2024 EXT 1 DCL 1

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DECLASSIFICATION

From:	Presidency
To:	Delegations
N° prev. doc.:	WK 3186/2024
Subject:	Presidency steering note

Delegations will find attached the declassified version of the above document. The content of this document is identical to the previous version.

RESTREINT UE/EU RESTRICTED

Brussels, 27 August 2024

WK 5429/2024 EXT 1

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MEETING DOCUMENT

From:	Presidency
To:	Delegations
N° prev. doc.:	WK 3186/2024
Subject:	Presidency steering note

With a view of the WPTQ meeting on 22 April 2024, delegations will find enclosed the Presidency steering note

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RESTREINT UE/EU RESTRICTED

Brussels, 27 August 2024

WK 5429/2024 REV 1 EXT 1

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MEETING DOCUMENT

From:	Presidency
To:	Delegations
N° prev. doc.:	WK 3186/2024
Subject:	Presidency steering note

With a view of the WPTQ meeting on 22 April 2024, delegations will find enclosed the Presidency steering note.

NOT DECLASSIFIED

C. WAY FORWARD

In addition to the WPTQ meeting on 22 April, the Presidency intends to hold one additional WPTQ meeting on this matter, either at the end of May or beginning of June, so that work on this dossier can be concluded, as much as possible, in time for the June meeting of the High Level WPTQ, which would be invited to finish the work on both substance and process.

NOT DECLASSIFIED FROM THIS POINT UNTIL THE END OF THE DOCUMENT (page 47)

