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## **AEOI & GDPR | Access to Internal EU documents – Overriding Public Interest**

I refer to our [Access to Documents Request](#) (together with its [timeline](#)) and the follow-up correspondence from EU FATCA Petitioners with the Commission's Transparency Unit.

To date we have not received any acknowledgment from the Council, and the initial response from the Commission did not inspire confidence. It is therefore important that EU institutions have a clear understanding of the overriding public interest in the case in hand.

Internal EU documents show that the previous Commission concluded that (a) FATCA is [within](#) the remit of the EU; (b) the US does [not](#) have adequate data protection safeguards; and (c) bilateral IGAs were a '[temporary solution](#)', while raising '[worrying concerns](#)'.

Internal EU documents also suggest that current Commissioners might have [misled](#) Parliament (also [here](#)).

The European Parliament's [study on FATCA](#) ( [➡](#) ) pays homage to activists and confirms the Commission's change of approach.

As the GDPR was introduced to strengthen citizens' data protection rights following revelations of US surveillance, EU FATCA petitioners have an overriding public interest in full and unfettered access to documents.

Best regards,

**Filippo Noseda**  
Partner

## FATCA LEGISLATION AND ITS APPLICATION AT EU LEVEL



IN-DEPTH ANALYSIS September 2022

### INTRODUCTION

There are two main instances in which FATCA via IGAs conflicts with EU law: in the former situation FATCA Data are retained and transmitted by EU financial intermediaries and create an issue of procedural safeguards and data protection, while in the latter situation data are not acquired by EU financial intermediaries who refuse to provide services, and in this situation the FATCA impact may directly infringe on substantive rights of individuals such as Accidental Americans.

on the EU unilateral side, [no legislative changes](#) have been made

### THE APPROACH OF THE COMMISSION

In 2021 a series of Parliamentary questions was also initiated which evidenced [a strategy of the Commission which can be defined of "institutional forbearance"](#)<sup>13</sup>. The Commission espoused the EDPB approach of deferring to Member States and developed the strategy of "institutional forbearance"

### ACTIVISM AT EP AND PETI

[the European Parliament adopted the resolution of 5 July 2018 in which advised fundamental actions in relation to FATCA Data;](#)

[PETI continued to receive petitions;](#)

On 18 March, 2021 the Nederlandse Accidental Americans ("NLA"), filed a petition No. 0323/2021, calling for change in the way that the EU allows companies and governments to share the personal and financial data of Accidental Americans. This is the fourth petition currently before PETI, adding pressure to address critical aspects of FATCA and also highlighting data protection concerns as a result of the way FATCA obliges EU banks and financial institutions to report to the U.S. on the bank accounts of Accidental Americans.

In July 2021 another FATCA-related petition was filed by [an American resident in the Netherlands](#). In December 2021 the France-based Association of Accidental Americans filed a complaint against the U.S. against the U.S. State Department over the U.S.'s citizenship renunciation fee, on grounds that it violates the U.S. Constitution and international law.