Mishcon de Reya

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EDPB

National DPAs (via EDPB Secretariat)

Brussels

Cc: PETI. EU FATCA Petitioners

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FATCA US Congress report on Financial Surveillance implications for Art. 46 GDPR

We write further to our correspondence on the disproportionate nature of FATCA, the lack of appropriate data protection safeguards for FATCA-related data transfers to the US and the serious data security risks acknowledged by various US government agencies, including the GAO and TIGTA, as well as the IRS.

As regards the lack of appropriate data protection safeguards (a key requirement for data transfers outside the EU under Art. 46 GDP) a report released by the Judiciary Committee of the US Congress on 6 December 2024 paints a bleak picture of financial data privacy in the US:



U.S. House of Representatives



December 6, 2024

FINANCIAL SURVEILLANCE IN THE UNITED STATES BANK SECRECY ACT USED TO SPY ON AMERICANS

The interim report reveals how federal law enforcement increasingly obtains virtually unchecked access to private financial data from financial institutions... The government's access to Americans' private data is widespread and virtually unchecked.

All Americans should be disturbed by how their financial data is collected, made accessible to, and searched by federal and state officials

The European Commission (class of 2010) had already reached the conclusion that the US has lower data protection standards during its negotiations with the US on FATCA (as summarised here). The same conclusion is contained in a letter of support filed by a US data privacy expert (Prof. Michael Hatfield of the University of Washington). Beyond FATCA, the same conclusion was reached by the CJEU in the two Schrems decisions, which have direct application. You

Now, we have express and direct confirmation from the US. What more do you want/need???

It's time for the EDPB to intervene and put an end to the inconsistent application of the GDPR in this area, as is its duty under Art. 70. At the very least, the EDPB should update its Statement 1/2019 on FATCA to reflect the recent publication of the EDPB Guidelines on Art. 49 GDPR to confirm that any transfer of EU data to the US under FATCA should only take place in the presence of sufficient data protection safeguards.

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