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Cc: EU FATCA Petitioners

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26 February 2025

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## FATCA and AEOI | Documents Access Request – Overriding Public Interest

I refer to our [Documents Access Request](#) (together with its [timeline](#) and our [clarifications](#)).

It is important that the EDPB understands the overriding public interest of the Access to Documents Request.

The EDPB abruptly departed from the approach of its [predecessor](#) (also [here](#)), and even [its own](#) previous approach of reminding of the need to ensure compliance of international transfers with basic GDPR principles.

The European Parliament's [updated study on FATCA](#) ( [➡](#) ) pays homage to EU FATCA campaigners and is testimony of the fact that, at some point, the EDPB started hiding behind national authorities, notwithstanding clear evidence of an [inconsistent approach](#) by national DPAs, as well as inconsistencies within the European Commission ([here](#), [here](#), and [here](#), as well as the [timeline](#)). As stated repeatedly in our previous correspondence, this directly engages the EDPB's duties under [Art. 70](#) GDPR.

At the same time, the EDPB obstinately refused to engage with EU FATCA petitioners and data protection campaigners.

As the EDPB was created as part of the GDPR's framework 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 Nosedà**  
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.

### THE EDPB APPROACH AND ACTIVISM

#### The EDPB approach

on the EU unilateral side, no legislative changes have been made: European Data Protection Board ("EDPB")<sup>2</sup> guidelines should have been adopted before the end of 2019, but have not released yet.

The EDPB issued statement 4/2021 on 13 April 2021<sup>3</sup> in which it recalled the principles enshrined in Article 96 of the GDPR and Article 61 of the Law Enforcement Directive ("LED")<sup>4</sup>.

As a matter of fact in making these indications in 2021 the EDPB initiated an approach of institutional deference to Member States and data protection national agencies. In its Statement 4/2021 the EDPB supported the role of national data protection authorities when it comes to the transfer of data outside of the EU.


#### 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 ("NLAA"), 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.



European Parliament