

EDPB Secretariat
Brussels

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FATCA | Disagreement over the scope of EDPB's powers

Thank you for your today's email, which I have reproduced here:

We already raised Art. 70 GDPR several times in the past and we disagree with your self-censoring approach.

1 Powers of the EDPB

Art. 70 GDPR provides that the EDPB "shall ensure the consistent application of this Regulation" and lists the various activities entrusted to the EDPB to ensure this ('monitor', 'advise', 'issue recommendations', 'issue opinions' and more generally 'ensure the correct application of this Regulation').

2 Inconsistent application of the GDPR

Our research shows very clearly that there is a lack of consistency in relation to the application of the GDPR in relation to FATCA, as evidenced by the positions by the DPAs in [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](#) positions over time, showing the lack of a consistent application of the GDPR in relation to FATCA.

Art. 70 GDPR is therefore clearly in play.

3 "Higher degree of protection under the GDPR"

The EDPB/GDPR were created "to ensure a high standard of protection everywhere in the EU and offering a higher degree of protection for individuals" (in the [words](#) of the EDPB [and](#) the EP).

4 EDPB's conduct in relation to the FATCA file baffling

The WP29 dealt with FATCA as early as 2012. Its [opinion](#) was clear (in particular paragraphs 7-9). How does the EDPB offer a higher degree of protection, when all the evidence indicates that the EDPB has repudiated the [approach of its predecessor](#) (before the GDPR came into effect, when data protection was weaker)?

Where in Art. 70 GDPR is it written that the EDPB should adopt a position of "[institutional deference](#)" towards national DPA? With FATCA, the EDPB sits silent alongside inconsistent national DPAs, watching the river flow by.

Could you please review the response contained in your email to address my comments about the scope of Art. 70 GDPR.

Filippo Nosedà
Partner



From: European Data Protection Board
Sent: 2 July 2024
To: Filippo Nosedà
Cc: EU-FATCA Petitioners
Subject: FATCA

Dear Mr Nosedà,

Thank you for your replies regarding our consultation for disclosure under Regulation (EC) No 1049/2001 on two documents.

With regard to your questions about the EDPB's work on FATCA, we respectfully remind you that [the EDPB's tasks are strictly limited to those specified in Article 70 of the GDPR](#). As a result, the EDPB does not have supervisory powers to require Member States to review the various IGAs implementing FATCA. This also applies to Statement 04/2021, which is not legally binding and for which the EDPB has no powers under the GDPR regarding its application or implementation.

Nevertheless, we would like to assure you that the EDPB pays particular attention to these matters and that your communications to the EDPB concerning FATCA are shared internally with our members.

Kind regards,
The EDPB Secretariat

