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**Sent by email:**

Dr. Andrea Jelinek – EDPB Chair

Dolors Montserrat – Chair Parliament's Petition Committee (PETI)

Elizabeth Denham – UK's Information Commissioner

Bruno Gencarelli – Head of Unit, Data Flows, Commission

CC: Council of Europe (T-PD)

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Dear All

**FATCA**

I write further to our previous correspondence, which is available [online](#).

**1. 'People are free to expatriate' – Bruno Gentiloni, European Commissioner**

1.1 On [7 April 2020](#), Commissioner Gentiloni gave the following written reply to a parliamentary question on the data protection implications of FATCA:

*"We have seen improvements on the impact of FATCA on individuals and financial institutions, with additional guidance and information published on US administrations websites, and new 'relief procedures' for individuals who wish to relinquish their citizenship."*

1.2 He made the same point on [29 July 2019](#) in response to a letter from Sophie in 't Veld MEP:

*"The new 'relief procedures' adopted in 2019 by the US for individuals who wish to relinquish their citizenship are a significant step to favour the individuals who feel to be negatively affected by [FATCA]. They are one of the positive outcomes of [our] continuing dialogue."*

**2. One last data protection abuse – inclusion in IRS's public 'Name & Shame' lists**

2.1. Ever since [1996](#), the IRS has been publishing the names of any individual who relinquished their US citizenship on a quarterly basis under section 6039G of the US Internal Revenue Code. As the table on page 3 of this letter shows, over the years tens of thousands of individuals have been subject to this treatment.

2.2 The list published on 8 May 2020 contains [2907 names](#) and according the IRS's website it was [accessed 4,035](#) times. The latest list was published on the IRS's website yesterday, [6 August 2020](#), again listing thousands of names.

2.3 The lists are **publicly available**.

2.4 As section 6039G was [introduced in 1996](#), there can be no doubt whatsoever that the Commission knew about its existence when Commissioner Gentiloni wrote his letters on FATCA.

2.5 Since the introduction of FATCA, thousands of individuals who expatriated to put an end to the extraterritorial effects of FATCA and the many GDPR violations (for which see the [PETI study](#)) have seen their names published in this way (see the table on page 3 of this letter).

2.6 This is yet another example<sup>1</sup> of the lower level of data protection that exists in the US, which was at the heart of the CJEU's judgment in *Schrems 2* ([C-311/18](#)).

### 3. Requests

#### @ EDPB

It is now time for the EDPB to intervene directly in the data protection debate concerning FATCA. The EDPB is aware that national supervisory authorities have been constantly refusing to consider the compatibility of systems of automatic information exchange with the GDPR and the EU Charter of fundamental rights (see our letters dated [16 June 2020](#) and [19 June 2020](#)). We have been requesting the EDPB's intervention since [3 April 2020](#). Previously, we provided the EDPB with a detailed analysis of the data protection violations contained in one of the bilateral agreements signed under FATCA, on [6 March 2020](#). We have repeated our requests following the publication of the *Schrems 2* judgment on [16 July 2020](#) and on [31 July 2020](#) we notified the EDPB of the UK data protection authority's formal refusal to reconsider its decision in the light of the *Schrems 2* judgment.

#### @ European Parliament's Petition Committee (PETI)

Our research into the internal documents unearthed by Sophie in 't Veld MEP shows that the European Commission was actively engaged in negotiations with the US on FATCA and raised 'worrying' data protection concerns. Our correspondence on this issue discusses documents from the EU's department for Justice (DG-JUST) and the EU's taxation department (TAXUD). There is also a note addressed to then Commissioner Michel Barnier ahead of meetings that he had in Washington on FATCA (see our [April/May 2020 correspondence](#))

Lately, the Commission denied its involvement in the negotiations about FATCA and its knowledge of any data protection concerns, possibly misleading the European Parliament.

In the light of Commissioner Gentiloni's disingenuous statements to MEPs it is now time for the European Parliament to bring the European Commission to account.

#### @ The UK's Information Commissioner

Following the publication of the CJEU judgment in the *Schrems 2* case, we formally requested the UK's Information Commissioner to reconsider and lift her office's decision dated 29 May 2020 (discussed in our letter dated [19 June 2020](#)). On [31 July 2020](#) the ICO's Legal Department declined our request, notwithstanding that the ICO refused to consider the compatibility of UK FATCA with the fundamental rights to data protection and privacy enshrined in the EU Charter, in clear violation of *Schrems 2* (which is [binding on the UK](#)), thus raising serious questions about the ICO's independence (as detailed in our letter dated [31 July 2020](#) to the ICO's General Counsel).

Finally, I would request Mr Gencarelli to deal with our complaint under [Art. 258 TFEU](#).

Best regards,

**Filippo Noseda**  
Partner

<sup>1</sup> In 2017, in a case concerning FATCA, the US courts held that: 'there is no "legally protected interest" in maintaining the privacy of one's bank records from government access', see *Crawford, et al. v. U.S. Dep't of Treasury, et al.* No. 16-3539 (6th Cir. 2017), available [here](#)

**Number of expatriating individuals mentioned in the 'Name and Shame' list published by the IRS**

