



Accidental Americans demand that the Autoriteit Persoonsgegevens suspend illegal transfers of personal data to the United States.

The Association of Accidental Americans (AAA) today filed a request for enforcement with the Dutch Data Protection Authority in the Netherlands, demanding an immediate halt to the automatic transfer of European citizens' personal data to the United States.

Under the U.S. Foreign Account Tax Compliant Act (FATCA) of 2010, financial institutions all over the world are required to send the U.S. administration the tax data of all customers considered to be «U.S. Persons». These include «Accidental Americans» or people with little or no links to the United States.

Most countries have signed bilateral intergovernmental agreements (IGAs) with the United States to implement the legislation. In most cases, those countries' tax authorities are in charge of transferring the data.

The transfers are massive and automatic. This means that the financial institutions and tax authorities of European Union (EU) member states are violating European and national legislation on the protection of personal data and privacy. The violation of these fundamental rights is particularly detrimental to Accidental Americans, who did not choose to be American citizens.

In April 2021, the European Data Protection Board asked member states, including the Netherlands to review their international agreements and revise them if necessary so that they comply with the GDPR.

Questioned by the AAA, the Autoriteit Persoonsgegevens clarified that « The review of the bilateral intergovernmental agreement concluded on 18 December 2013 between the USA and the Dutch Government concerning FATCA and its possible renegotiation with the USA is hence the primary responsibility of the responsible Ministries within the Dutch Government. Since this is an ongoing process, the Dutch Data Protection Authority awaits the outcomes of the efforts of the Dutch Government before deciding on any further actions. »

« It's therefore the duty of the personal data protection authority of the Netherlands to suspend the transfer at least until the FATCA agreement is revised. », says AAA president Fabien Lehagré. « It would be a big mistake to let the Dutch government make an illegal transfer. »

The AAA has already asked the European Commission to initiate an infringement procedure against France, since the country's highest administrative court, the Council of State, refused to recognize the illegality of these transfers.

The international law firm NautaDutilh is representing the AAA in its demand for Belgium and Luxembourg, and now also in the Netherlands to halt immediately the transfer of personal data to the United States. In Belgium, NautaDutilh filed a complaint for the Association of Accidental Americans of Belgium (AAAB) with the data protection authority, and a pre-complaint with the country's tax authorities. It filed a similar pre-complaint for the French AAA with the Luxembourg tax authorities.

If the authorities in either country refuses to halt these transfers, the associations will take the cases to court—the Council of State in Belgium, the Administrative Court in Luxembourg, the Administrative Court in the Netherlands. The likely outcome would be for these courts to present preliminary questions to the Court of Justice of the European Union.

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