



Mairead McGuinness

*Commissioner of the European Commission
Financial services, financial stability
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Didier Reynders

*Commissioner of the European Commission
Justice*

Brussels, 23 February 2022
Ares (2022) 6351740

Dear Ms Montserrat,

Dear Chair, Dear Dolors,

Thank you for your letters dated 11 October 2021, in which you requested our assistance in finding a solution to the problems arising from the requirement to implement the Foreign Account Tax Compliance Act (FATCA) under bilateral agreements concluded between the United States and EU Member States. We are aware that FATCA has been a recurrent topic on the agenda of the Committee on Petitions. The Commission services are always present at the PETI meetings when this issue is on the agenda in order to inform the petitioners and PETI members about progress in the file.

We are fully determined to ensure that the rights of bi-national citizens affected by FATCA agreements and their access to financial products and services are fully safeguarded. Under the Payment Accounts Directive (PAD), EU residents must have access to a payment account with basic features. DG FISMA has opened a constructive dialogue with the European Banking Federation in order to ensure that financial institutions in the EU do not unduly close, or refuse to open, accounts of citizens with EU-US nationality on grounds related to FATCA.

We are fully aware that aside from the difficulty in obtaining a US social security number (SSN) or a US international tax identification number (TIN), citizens also face difficulties in relinquishing their US nationality, especially under current circumstances where physical meetings in US embassies abroad are more difficult in light of Covid restrictions in place. In our regular contacts with the US administration, in particular in the EU-US Regulatory Financial Services Forum, these various aspects are systematically discussed. We have obtained some improvements and concessions from the US authorities, although we are not fully satisfied and discussions will continue. At the same time, it is important to recognise that a significant limitation lies in the fact that the Commission is not a party to the various bilateral agreements signed between Member States and the United States.

Ms. Dolors Montserrat
The Chair Committee on Petitions
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As regards the petitions received by PETI and transferred to the Commission, our services investigate these diligently and regularly report to the Committee on progress made. The more recent petitions relating to alleged restrictions on the provision of financial services to the petitioners were also thoroughly examined by our services. These concern in particular the Packaged Retail Investment and Insurance-Based Products Regulation (PRIIPS) and the Commission's NextGenerationEU bonds. PRIIPS aims at ensuring that investors are provided with essential information on the risks and features of different investment products. Permitting investment products in the EU that do not meet the necessary requirements, as requested by some petitioners, would undermine its very purpose. As regards the alleged discrimination in the NextGenerationEU debt programme, preventing "accidental Americans" from buying bonds, it is important to bear in mind that these bonds are not offered to retail investors in the EU, US or any other jurisdiction. Clarifications on this matter are on their way to your Committee and should hopefully reach you soon.

As regards the data protection aspects of this file, the Commission services are engaging with the national data protection authorities (DPAs), within the framework of the European Data Protection Board (EDPB). The DPAs have the primary responsibility of enforcing compliance with data protection rules and on advising national governments on legal measures relating to the protection of personal data. They are, therefore, well placed to assess the compatibility of data protection rules with FATCA agreements. This is particularly the case in a context where the legal situation varies from one Member State to another, as the bilateral agreements are complemented by other international commitments, elements of national law and administrative practices that impact the way these agreements are applied.

In 2018, the DPAs concluded that there had been "no occasions [...] where a national DPA [...] had to prohibit the processing and transfer of personal data to the US under the FATCA regime"¹. Since then, the EDPB issued a statement² on 13 April 2021 in which it invited the Member States to assess and, where necessary, review their international agreements that involve international transfers of personal data, such as those relating for example to the automatic exchange of personal data for tax purposes which were concluded prior to the GDPR, to determine whether further alignment with current Union legislation and case law on data protection, as well as EDPB guidance might be needed.³ The DPAs have indicated that they are ready to assist the Member States in this exercise and it seems that some have already initiated discussions with the relevant Ministries⁴. We also understand that investigations into the data protection aspects of these agreements are currently ongoing at national level in different Member States. We will continue to closely follow developments in this regard, notably the possibility of developing a common position within the EDPB. In parallel, the Commission services are in contact with the Member States on this issue.

¹ Letter of the Article 29 Working Party to the collective of European "accidental Americans" of 8 February 2018, available at <https://ec.europa.eu/newsroom/article29/items/614217/en>.

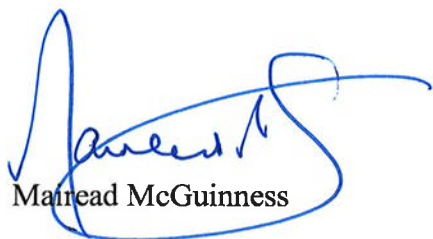
² Available at https://edpb.europa.eu/system/files/2021-04/edpb_statement042021_international_agreements_including_transfers_en.pdf.

³ EDPB statement 04/2021 on international agreements including transfers of 13 April 2021, available at https://edpb.europa.eu/system/files/2021-04/edpb_statement042021_international_agreements_including_transfers_en.pdf. See also EDPB statement 01/2019 on the US Foreign Account Tax Compliance Act (FATCA), available at https://edpb.europa.eu/sites/default/files/files/file1/edpb-2019-02-12-25-fatca_statement_en.pdf.


⁴ See also the letter from the EDPB to MEP Sophie in't Veld of 7 July 2021, available at https://edpb.europa.eu/system/files/2021-07/edpb_letter_out2021-0119_intveld_igas.pdf.

Please be assured that we attach the utmost importance to this file, and will continue to ensure that our services inform your Committee of any progress made.

Yours sincerely,



Mairead McGuinness



Didier Reynders