Culture of Secrecy: Document Request Battle Reveals EU Data Protection Crisis

by Filippo Noseda

Filippo Noseda

Filippo Noseda is a partner at Mishcon de Reya and a visiting professor at King's College London. He represents several clients before the courts and data protection authorities in the United Kingdom and the European Union in relation to the Foreign Account Tax Compliance Act, the common reporting standard, and beneficial ownership registers.

In this article, Noseda argues that his recent battle to access internal EU documents is an indirect admission of the data protection crisis at the heart of automatic exchange of information.

'Privacy for Me, Transparency for Thee'

In 2018 a group of investigative journalists sought to access internal EU documents relating to the expenses of members of the European Parliament. The initiative stemmed from various expense scandals, including in the United Kingdom, where the reports of U.K. Parliament members building moats and duck houses in their gardens at taxpayers' cost caused a public outcry.[1]

The European Parliament resisted the request for disclosure before the EU's General Court *and won*. Like ordinary citizens, mused the EU's court, MEPs have a fundamental right to privacy. It was incumbent on the investigative journalists to show that their request was *necessary* to achieve their objective. The court felt that the request for access to MEPs' expenses was disproportionate and sent the claimants packing.[2]

To be fair, following the disclosures made by Edward Snowden,[3] the European Parliament and MEPs pushed through a new data protection regime, stating that the new General Data Protection Regulation (GDPR) would "give citizens back control over their data" and create a "high level of data protection fit for the digital age."[4]

In a parallel universe (and in 2018), MEPs enthusiastically endorsed a new EU directive that for a few years provided access to central registers of beneficial ownership (BORs) to the public at large.[5] As readers of *Tax Notes* will know, that provision was declared illegal by the EU Court of Justice on November 22, 2022.[6] Undeterred, MEPs swiftly passed a new EU directive that provides free and general access to central registers to vast sectors of society, including journalists and

[1] *See* "The Duck House, the Moat and the Toaster: A Decade of Dodgy Expense Claims," *Belfast Telegraph*, Mar. 22, 2019.

[2] *Maria Psara and Others v. European Parliament*, joined cases T-639/15 through T-666/15 and T-94/16 (2018). See also General Court of the EU release, "The General Court Confirms the Parliament's Refusal to Grant Access to Documents Relating to MEPs' Subsistence Allowances, Travel Expenses and Parliamentary Assistance Allowances" (Sept. 25, 2018).

[3] See BBC, "Edward Snowden: Timeline," BBC News (Aug. 20, 2013).

[4] European Parliament release, "Data Protection Reform: Parliament Approves New Rules Fit for the Digital Era" (Apr. 4, 2014).

[5] Directive (EU) 843/2018 of the European Parliament and of the Council of May 30, 2018, amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (5AMLD).

[6] *WM and Sovim SA v. Luxembourg Business Registers*, joined cases C-37/20 and C-601/20 (2022).

nongovernmental organizations, among others.[7] Under the new directive, applicants who are refused access to the registers may appeal to the courts, while registrars are prevented from notifying beneficial owners that their data has been accessed.

Regarding bank accounts, in 2014 the EU implemented the common reporting standard (CRS) developed by the OECD.[8] This followed hot on the heels of the extension of the U.S. Foreign Account Tax Compliance Act (FATCA) throughout the EU through bilateral governmental agreements, completing the jigsaw of automatic exchange of information (AEOI).

The picture that emerges is of EU institutions very concerned with the protection of their own data and less concerned with the data protection of ordinary citizens. That the various measures (BORs and AEOI) affect ordinary citizens is a fact. Though they were designed to fight criminals, their broad scope affects anyone who owns a company within the EU or has a bank account in a different EU member state or in any other of the 100-plus jurisdictions that have adopted the CRS,[9] and even includes anyone who happens to have been born in the United States and has a local bank account in the country where they now live. According to the OECD, in 2022 information was exchanged on 123 million bank accounts worth €12 trillion;[10] as there are around 33 million enterprises in the EU, employing 163 million people,[11] it stands to reason that the new EU BOR rules will also affect tens of millions of compliant citizens. This is in addition to the hordes of ordinary citizens who are affected by public registers in the United Kingdom,[12] which remain public to this day. In contrast, the United States government scrapped the FinCEN register for U.S. companies.

What Previous Disclosures Have Shown

In 2013 a Dutch MEP (Sophie in 't Veld) filed a request to access internal EU documents showing the discussion concerning the data protection implications of FATCA.[13] Following a lengthy battle of attrition (which required the intervention of the EU ombudsman), in 2016 the European Commission released a trove of internal documents, which I have reviewed. They clearly show how (a) the European Commission had "worrying concerns"[14] about the compatibility of FATCA with the predecessor of the GDPR; (b) EU services had concluded that the United States had lower data protection standards (which was an impediment to the transfer of information, because the EU rules only allow a transfer of information of data collected in the EU to a foreign country if there is an appropriate level of data protection in the receiving country); and (c) the European Commission was intent on negotiating a "more proportionate and more workable" solution with the United States.[15]

The cache of documents is particularly revealing because it contains correspondence from the European Banking Federation, the British Bankers Association, and the Institute for

[7] Directive (EU) 2024/1640 of the European Parliament and of the Council of May 31, 2024, on the mechanisms to be put in place by member states for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 (6AMLD).

[8] Council Directive 2014/107/EU of Dec. 9, 2014, amending Directive 2011/16/EU regarding mandatory AEOI in the field of taxation (DAC2).

[9] See the OECD's list of participating jurisdictions and its separate list of commitments (now archived, but available on the Nigerian tax authorities' portal).

[10] *See* OECD, "Tax Transparency and International Cooperation."

[11] Eurostat, "Micro & Small Businesses Make Up 99 Percent of Enterprises in the EU" (Oct. 25, 2024); and Eurostat, "Large Businesses Make Up Only 0.2 Percent of EU Enterprises" (Dec. 5, 2024).

[12] The United Kingdom was the first country to introduce a public BOR in 2016, known as the Register of Persons with Significant Control. It was also the first country to introduce extraterritorial public BORs, which require foreign entities that hold residential property in the United Kingdom to list their ultimate beneficial owner in a public register of overseas entities. For a discussion of the U.K. rules, see Filippo Noseda, "Too Much Information: When the UK Gets It Wrong — Constitutional Fallout of Wrong Policy Decisions in the UK for the Crown Dependencies," 21 *Jersey & Guernsey L. Rev.* 182 (2017); Noseda, "Too Much Information: Why Did the UK Get It Wrong?" 25 *Jersey & Guernsey L. Rev.* 63 (2021); and Noseda, "Dieu and Whose Droit? Relationship With the UK: Lessons From the *Sovim* Judgment," 27 *Jersey & Guernsey L. Rev.* 252 (2023).

[13] Case 1398/2013/ANA (opened Aug. 13, 2013; decided Mar. 31, 2016). *See* European Ombudsman, "Decision in Case 1398/2013/ANA on the European Commission's refusal to give access to documents relating to the US Foreign Account Tax Compliance Act ('FATCA')."

[14] Email from the Commission (June 29, 2011), reproduced in the letter from Noseda to the European Commission, Annex 1 (Nov. 16, 2019).

[15] For a chronology based on the internal EU documents, see Mishcon de Reya, "FATCA Correspondence," particularly the letter from Noseda to the EU (Sept. 27, 2021). *See also* the timeline in Noseda, "Lack of Appropriate Safeguards (Art. 25 Directive 95/46/EC & Art. 46 GDPR)" (Feb. 10, 2025).

International Bankers, all of whom raised concerns about the proportionality and broader compatibility of FATCA with EU data protection rules, echoing concerns raised by the American Bankers Association[16] and the U.S. Independent Community Bankers Association[17] when the Biden administration attempted to introduce a domestic FATCA in 2021. That attempt was swiftly abandoned,[18] meaning that the IRS has access to foreign bank accounts but not domestic ones, which raises interesting questions.

In relation to BORs, a separate access-to-documents request I filed led to the disclosure of internal EU documents clearly showing that the European Parliament pushed through the adoption of the EU's 5th Anti-Money-Laundering Directive against the advice of the European Commission (which described public registers as "unacceptable")[19] and despite the views of several EU member states that raised concerns with the Council of the European Union (which represents the governments of EU member states) about the disproportionate nature of the measure.

More recently, I was able to wrestle an internal EU document that shows the Council was aware that there is no statutory definition of "journalist" or "civil society" in EU law, raising concerns about the reach of the new access rules under the EU's 6th Anti-Money Laundering Directive.

If the Shoe Fits

These disclosures are important. They echo and confirm the conclusions reached by independent data protection experts. In turn, this shows a *deep awareness* by EU institutions that *things are not as they are made to appear and that they are not right*.

The internal documents confirm that the EU *knew* that it was introducing rules that went against the grain of basic data protection principles.

In relation to FATCA, independent concerns were raised as early as 2012 by an EU working party of national data protection authorities that was created under article 29 of the data protection directive 95/46/EC (WP29). In its opinion dated June 21, 2012, the WP29 stated:[20]

> FATCA is not the best way to achieve its goal. More selective, less broad measures should be considered in order to respect the privacy of law-abiding citizens.

The commission *knew. Oh yes, it knew! It knew very well that there was trouble in town*. And not just in relation to FATCA, but also the CRS because it was told the same thing *by every single EU data protection expert*, notably the WP29, the European Data Protection Supervisor, and the commission's own group of experts on automatic exchange of financial information:

- "The WP29 expresses its *deep concern* about the proposal . . . which in the view of the WP29 could be considered disproportionate."[21]
- "On many aspects, [the CRS] may be compared with the Data Retention Directive which has recently been declared *illegal* by the CJEU."[22]
- "The collection and exchange of tax-relevant information should have been made *conditional* on the effective risk of tax evasion."[23]

More Recent Evidence: Same Story

The lack of appropriate safeguards for transfers of data from the EU to the United States was confirmed in 2020 in a seminal judgment of the EU Court of Justice in the *Schrems II* case.[24] This judgment is directly relevant to FATCA.

[16] Discussed in letter from Noseda to the EU (Dec. 13, 2021).

[17] Discussed in letter from Noseda to the EU (Dec. 14, 2021).

[18] *See* Pete Schroeder, "Democrats Scrap Bank Reporting Requirement From U.S. Spending Package," Reuters, Oct. 28, 2021.

[19] European Commission, "Note to the Members of the GRI," SI(2017) 96 (Mar. 17, 2017) (on file with the author). For a discussion, see Noseda, "EU Documents Reveal Conflict Over Public Registers and Automatic Exchange of Information," *Tax Notes Int'l*, Aug. 1, 2022, p. 561.

[20] Article 29 Data Protection Working Party letter to the European Commission and the OECD (June 21, 2012).

[21] WP29's letter to the EU and the OECD (Dec. 14, 2016) (referring to previous opinions).

[22] European Commission, "First Report of the Commission AEFI Expert Group on the Implementation of Directive 2014/107/EU for Automatic Exchange of Financial Account Information" (Mar. 2015).

[23] European Data Protection Supervisor, Opinion 2/2015 on the EU-Switzerland agreement on the automatic exchange of tax information (July 8, 2015).

[24] *Data Protection Commissioner v. Facebook Ireland Limited and Maximillian Schrems*, C-311/18 (2020).

More generally, the Court has issued a string of judgments confirming that restrictions upon individuals' fundamental rights need to adhere to the principle of proportionality and strict necessity.[25]

We then have a 43-page study from the European Parliament[26] that concludes, "FATCA restrictions appear to be neither proportionate, nor necessary."

Dulcis in fundo, we now have *not one, but two* decisions from the Belgian data protection authority on the incompatibility of FATCA with the GDPR. The first, a 73-page decision,[27] was appealed by the Belgian government on procedural grounds and has now been reconfirmed in a 96-page decision issued on April 24, 2025.[28] According to the 2023 decision (at paragraph 261):

> The persons concerned [accidental Americans] can be described as "vulnerable persons" if an imbalance in their relationship with the defendant and even more so with the IRS can be identified. This imbalance results not only from the fact that the transfer is imposed on the persons concerned without their being able to oppose it, but above all from the complexity of the legal framework, including the existence of possible means of appeal for the exercise of their rights.

Round 2: The EU Prevents Further Disclosures

Following a yearslong refusal by EU institutions to deal with the AEOI data protection crises documented by my correspondence with the EU,[29] on February 10, alongside the EU FATCA petitioners, I issued an Access to Documents (AtD) request to the European Council based on the Access to Documents Regulation,[30] asking for disclosure of all internal EU documents discussing the data protection implications of AEOI, beyond any documents previously disclosed to MEP Sophie in 't Veld.[31]

The European Council provided a heavily redacted disclosure — so redacted in fact, that most documents were almost useless.[32] This was reminiscent of a previous disclosure with copious use of black ink to redact documents beyond recognition.[33] In one case, the council removed all but one page from a 46-page document.

Under the AtD Regulation, EU institutions have a right to withhold disclosure of documents, subject to an overriding public interest exception. Perversely, the AtD regulation contains two grounds when the exception to disclosure is absolute; that is, the EU institutions are allowed to withhold disclosure regardless of any overriding interest to disclose. These absolute exceptions are if:

- the disclosure would undermine the protection of international relations (article 4(1)(a), third indent); or
- the disclosure could harm the fight against tax fraud and adversely affect the protection of the public interest as regards the financial, monetary, and economic policy of the EU and its member states (article 4(1)(a), fourth indent).

Conveniently, the Council of the EU invoked those exceptions, shutting down the debate. Also,

[25] See *Digital Rights Ireland Ltd. v. Minister for Communications, Marine and Natural Resources and Others, and Kärntner Landesregierung and Others*, joined cases C-293/12 and C-594/12 (2014); *Maximillian Schrems v. Data Protection Commissioner*, C-362/14 (2015); *Tele2 Sverige AB and Watson*, joined cases C-203/15 and C-698/15 (2016); *EU-Canada Advance Passenger Name Record (PNR) Agreement*, Opinion 1/2015 (2017); *Privacy International*, C-623/17 (2020); *Spacenet*, C-793/19 (2022); *Sovim v. LBR*, joined cases C-37/20 and C-601/20 (2022); *see also MEP Expenses*, T-639/15 (2018), para. 88; and the European Court of Human Rights' case *L.B. v. Hungary*, Application No. 36345/16 (Mar. 9, 2023).

[26] Carlo Garbarino, "FATCA Legislation and Its Application at International and EU Level," PETI Study PE 604.967 (May 2018).

[27] Litigation Chamber of the Data Protection Authority, "Complaint Concerning the Transfer by the Federal Public Service (FPS) Finance of Personal Data to the US Tax Authorities Under the FATCA Agreement," DOS-2021-00068 (May 24, 2023).

[28] For a discussion of the latest Belgian decision, see Noseda, "Summary of Decision 79/2025 of April 24, 2025" (Apr. 27, 2025); and letter from Noseda to the EU (Apr. 27, 2025).

[29] *See* de Reya, "FATCA Correspondence," *supra* note 15.

[30] Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of May 30, 2001, regarding public access to European Parliament, council, and commission documents.

[31] See Noseda, "AtD request" (Feb. 10, 2025), together with a timeline (*see* letter from Noseda, *supra* note 15). The AtD request was integrated to reflect fast-paced events in a series of letters to the EU on Feb. 18, 2025 (Elon Musk's request for IRS data); Feb. 26, 2025, and Mar. 5, 2025 (overriding public interest to disclosure); Mar. 12, 2025 (President Trump's comments on the EU); Mar. 19, 2025 (Trump's attack on judiciary); and Apr. 10, 2025 (acting IRS commissioner's resignation over data protection concerns).

[32] Council of the EU decision dated May 12, 2025 (Ref. SGS 24/004664) (on file with the author), in response to my AtD request dated February 10, 2025.

[33] For an example, see letter from Noseda to the EU (Jan. 31, 2025).

the council argued that there was an overriding interest in the protection of ongoing decision-making processes (article 4(3) of the AtD Regulation) on the basis that:

> The extreme political sensitivity of the field of taxation means that Council members need to be able to have frank exchanges of views, particularly on the most contentious issues. Therefore, the Council submits that, in order to allow for an effective political decision-making in this sensitive area, it is of particular importance to ensure workable preparatory discussions of the Council Working Party involved.

Politics over fundamental rights, then.

Discussion

According to its constitution, the EU is based on the rule of law and the protection of individuals' fundamental rights.[34]

There cannot be any meaningful rule of law without accountability. The right to an effective remedy is one of the principles enshrined in the EU Charter of Fundamental Rights.[35]

On paper, the commission adheres to the principle of the rule of law,[36] which should extend to the principle of accountability.

The problem with the *actual workings* of the EU is that the European Commission and the Council of the EU are *not elected* by ordinary citizens. These institutions are imbued by *bureaucratic and political instincts* rather than a democratic ethos. It is a well-documented fact that the commission is inclined to prevent any attempt to scrutinize its activity.

- In relation to FATCA, the evidence suggests that two commissioners might have misled the European Parliament[37] regarding the existence of negotiations with the United States and the existence of data protection concerns during a formal debate on FATCA that culminated with a strongly worded resolution from the European Parliament.
- On several occasions, the commission and the Council of the EU refused to disclose information to campaigners, including to MEP Sophie in 't Veld[38] and an Irish professor regarding the rule of law in Poland.[39] Both cases were brought before the EU Court of Justice. In both cases, the Court reiterated the importance of the Access to Documents Regulation for a proper functioning of the EU.
- And yet, in a recent row over the procurement of COVID-19 vaccines, the commission refused to disclose WhatsApp messages between its president (Ursula von der Leyen) and the CEO of Pfizer, only to be strongly reprimanded by the Court.[40]

In essence, it all boils down to this. The AEOI's lack of compatibility with EU data protection rules and fundamental rights is an *open secret*. It has been analyzed at length by all EU experts, the European Parliament, and the Belgian data protection authority. We also have the *Schrems II* judgment on the lack of appropriate safeguards in the United States and a consolidated body of case law under the GDPR reaffirming the primacy of data protection and the principles of proportionality and strict necessity.

The documents requested are likely to bring to light *additional evidence* that all EU institutions are aware of the situation, raising important questions for the rule of law.

By hiding behind absolute exceptions to prevent the disclosure of these documents, EU institutions make a mockery of the rule of law and show disdain for the activity of campaigners,

[34] See art. 2 of the treaty of the EU: "The Union is founded on the values of respect of . . . the rule of law and respect for human rights."

[35] See art. 47 of the charter: "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article."

[36] In the words of the European Commission's rule of law framework, the rule of law is "one of the founding principles. . . one of the main values on which the [EU] is based."

[37] *See* letters from Noseda to Commissioners Vera Juróva and Bruno Gentiloni (Jan. 17, 2022). *See also* letter from Noseda to the EU and the U.K.'s Information Commissioner's Office (May 14, 2020).

[38] *Council v. In 't Veld*, C-350/12 P (2014).

[39] *Pech v. Commission*, T-485/24 (2025).

[40] *Stevi and The New York Times v. Commission*, T-36/23 (2025).

including the EU FATCA petitioners,[41] who for almost a decade now have been trying to invoke the enforcement of their fundamental rights under the EU Charter and the GDPR. Their efforts were recognized in a 2022 study[42] from the European Parliament. In the words of a U.K. MEP during a public hearing on FATCA that took place November 12, 2019:[43]

> I have to say that, sometimes, this whole debate about FATCA can feel a bit Kafkaesque. The burden falls on every point on the shoulders of the individuals to find their way through the maze of the legal framework and the different laws, whether it's data protection or banking laws, or intergovernmental agreements, to find their way through the whole myriad. And at every point, they are told "you have the option for redress." But *[turning to the representatives of the Commission and the European Data Protection Board]* it is *you* who have a lot of resources and capacity for the individual to actually be able to defend their rights — and it doesn't feel that this question is addressed at all in this discussion. [Emphasis added.]

This is similar to the point made in the 2023 Belgian ruling about citizens being vulnerable against public authorities and foreign government departments.

While citizens may tolerate incompetence and even maladministration,[44] in politics hypocrisy tends to be viewed as a cardinal sin. By invoking data protection for its own members and demanding transparency at all costs in relation to AEOI and BORs, the European Parliament is setting a dangerous precedent.

Wake-Up Call: Lives May Be at Risk!

Nobody should evade tax. However, the disproportionate scope of AEOI is not an academic topic. Independent research shows growing concerns for abuses of compliance rules by government, including a report from the Royal United Services Society, the United Kingdom's oldest defense and security think tank, which in a report published in October 2024 warned:

> Increasingly, universal standards of the [OECD's] Financial Action Task Force (FATF) for preventing money laundering and terrorism financing are misused by some states to suppress and control threats and to pursue other domestic political interests. Common targets include pro-democracy and pro-accountability advocates, investigative journalists, human rights lawyers, watchdogs and political opposition figures.[45]

Similar concerns were raised in a report published two months later by Follow the Money, an outfit of Dutch investigative journalists:

> Dozens of governments have been found to abuse anti-money laundering rules to stifle civil society and silence critics, especially in countries with poor human rights records. Addressing the issue is a challenge due to the lack of oversight, standards on data sharing and a legal grey area.[46]

Concerns regarding the human rights implications of transferring data to authoritarian countries have also been voiced by parliamentarians, including a motion brought by a group of 47 German MPs[47] and several written questions filed by British MPs.[48] The summary of the German motion reads as follows:

[41] For a list of EU FATCA petitions, see letter from Noseda to the EU (July 13, 2021). On May 14, 2022, the EU FATCA petitioners issued a joint statement decrying the lack of progress.

[42] Carlo Garbarino, "FATCA Legislation and Its Application at International and EU Level — an Update," PE 734.765 (Sept. 2022).

[43] *See* European Parliament "PETI Committee meeting" at 12:16:05.

[44] Regarding FATCA, the EU ombudsman found on two occasions that the EDPB was guilty of maladministration in relation to its handling of Access to Documents requests, as discussed in a letter from Noseda to the EDPB dated March 31, 2023.

[45] Royal United Services Society, "Charting Authoritarian Abuses of FATF Standards" (Oct. 18, 2024).

[46] Follow the Money, "Countries Abuse Anti-Money Laundering Rules" (Dec. 17, 2024).

[47] "Respect for Human Rights in the Automatic Exchange of Information on Financial Accounts," Drucksache 19/18232 (Feb. 26, 2020). The reply from the German government is full of platitudes and failed to address the points raised by the parliamentarians.

[48] These are discussed in letter from Noseda to concerned British MPs (June 26, 2023).

> Extension of AEOI to new countries [will be permitted] only with the prior consent of Parliament and if compliance with data security, data protection and human rights is guaranteed; five-yearly audits of all countries; stronger control mechanisms to ensure compliance with OECD due diligence obligations, in particular to prevent the misuse of sensitive data in autocratically governed countries against dissidents; [an] increase in staffing of audit teams; operation of the necessary IT infrastructure only by companies with a duty of care; [and] notification of victims of AEOI data theft.

Separately, the Dutch nongovernmental organization PrivacyFirst wrote a letter to Dutch MPs urging them not to adopt new rules that are designed to replace public registers because they remain disproportionate.[49] It should not escape the readers' attention that AEOI and BORs vastly increase the attack surface available to criminals, making it easier than ever to commit identity theft, including from tax authorities.

And in addition to making that data available to steal,[50] it desensitizes people to giving away their data and weakens their sense of having data protection rights at all. The existence of these disproportionate regimes makes ordinary citizens more likely to fall for phishing attempts of criminals impersonating banks and tax authorities, as a recent scandal in South Africa shows.[51]

On June 20, the U.K. parliamentary Treasury Committee reprimanded HM Revenue & Customs for delaying its announcement of a security breach that affected around 100,000 taxpayers. In its letter, the Chair of the Treasury Committee told HMRC that it was "unacceptable" that it was never deemed necessary to inform parliament about this issue.[52] The committee only learned about the leak when a notification was published on the HMRC website June 4, 2025. The letter stated:

> I am alarmed that it was never deemed necessary to inform Parliament about an issue which affected such a vast number of taxpayers and led to the loss of £47 million of public money. To discover this information during a session from press reports and without adequate time for the Committee to review the information in detail is unacceptable. I seek your reassurance that this was an accidental oversight rather than a deliberate action.[53]

It is time for not only governments but also civil society, professional organizations, and journalists to have a serious, balanced debate on the risks of disproportionate transparency measures, as well as the need to properly vet recipients of sensitive personal data, instead of relying on the OECD's "Global Brotherhood of States," which, as we know from recent geopolitical tensions, is a naive assessment at best and possibly dangerous for people who live in corrupt or autocratic countries. It was the former U.K. prime minister, the father of public BORs who, in an unguarded comment to the late Queen Elizabeth II, referred to "fantastically corrupt countries,"[54] including a signatory of the CRS.[55]

[49] "Privacy First Asks House of Representatives Not to Agree to Public UBO Register," Privacy First (Sept. 20, 2024).

[50] See, e.g., letters from Noseda to the OECD (Apr. 26, 2020 and Apr. 29, 2020), as well as letter from Noseda to the European Commission (July 26, 2023). As part of "Jenny's case" (*Jennifer Webster v. HM Revenue & Customs*, [2024] EWHC 530 (KB)) we have been maintaining a 200-plus pages long hacking and data breaches list. For prior analysis, see Noseda, "The FATCA Wars: Technical Knockout. Game, Set, Rematch?" *Tax Notes Int'l*, July 22, 2024, p. 497; and Robert Goulder, "The FATCA Wars: Who's Funding Jenny's Case?" *Tax Notes Int'l*, Apr. 1, 2024, p. 157.

[51] On August 15, 2024, the South African Office of the Tax Ombud obtained approval to conduct a review of possible systemic issues related to the alleged failures of the local tax authority in assisting taxpayers with eFiling profile hijacking. The outcome of the survey was presented May 28, 2025. According to news reports, the Tax Ombud pointed at the possible involvement of insiders. See Dieketseng Maleke, "Point of view: understanding the impact of eFiling fraud on South African taxpayers," IOL News (May 31, 2025).

[52] Letter from Meg Hillier, MP Chair of the Treasury Committee to John-Paul Marks, Chief Executive, HMRC (June 10, 2025). See also letter from Noseda to Richard Neal and Emma Bate of the Information Commissioner's Office (June 12, 2025).

[53] Hillier letter, *supra* note 52.

[54] BBC News, "David Cameron Calls Nigeria and Afghanistan 'Fantastically Corrupt Countries,'" YouTube video (May 10, 2016).

[55] Nigeria signed up to the CRS framework in 2017 and implemented the CRS in 2019; see OECD, "Peer Review Report on the Exchange of Information on Request NIGERIA 2023 (Second Round)," at para. 344 (2023). *See also* OECD, "Nigeria AEOI Webinar Financial Institutions' Obligations Under CRS" (Aug. 5, 2020).

A comparison of the OECD's list of CRS participating jurisdictions[56] against the "Corruption Perception Index" published by Transparency International[57] (a big supporter of the CRS) shows that the juxtaposition is problematic. Also, simply reviewing the daily news headlines shows that many of the jurisdictions on the list have been described as autocratic, undemocratic, constitutionally at risk, in a state of war, close to a state of war, or affected by systemic criminality.

In a geopolitically unstable world, the EU's culture of secrecy is unlikely to be an asset in the serious challenges faced by the bloc over the next few years and decades. It also encourages criminal behavior by enabling the dissemination of law-abiding citizens' sensitive personal data across borders without any debate, let alone any notification obligations or safeguards.

Trust, Taxpayer Rights, and Human Dignity

This was the topic of a recent discussion organised by the U.S. Center for Taxpayer Rights during its 10th International Conference in Washington D.C. on June 4-6, which I attended.[58] Representatives from the International Bureau of Fiscal Documentation, the IMF, and Harvard University, as well as international academics, tax judges, taxpayer advocates, psychologists, and practitioners focused on the fundamental principles underlying tax administration, including the promotion of trust and human rights, which are based on the inherent dignity of human beings and address the specific circumstances of taxpayers. Specifically considering whether taxpayers will perceive a tax system as more fair and responsive instead of being viewed as abusive and arbitrary or even weaponised against taxpayers by authoritarian forces in governments. This topic is widely debated in emerging countries as well as the United States as a result of the dynamics unleashed by the most recent presidential election.

Experts observed that broken promises, the lack of transparency in government, and the lack of the right to participate in rule-making may lead to a loss of trust in the tax system.

The approach of the EU in responding to my access to documents request shows all the hallmarks of the problems identified at the recent conference. The following is from the reply of the Council of the EU:

> The extreme political sensitivity of the field of taxation means that Council members need to be able to have frank exchanges of views, particularly on the most contentious issues. Therefore, the Council submits that, in order to allow for an effective political decision-making in this sensitive area, it is of particular importance to ensure workable preparatory discussions of the Council Working Party involved.
>
> In addition, should these documents be released, interested stakeholders may attempt to influence or exert pressure on the policy choices to be made by the Council in this process.
>
> This is all the more so, since disclosure would reveal preliminary reflections on sensitive issues pertaining, for instance, to the impact of the envisaged measures on tax revenues and businesses, or exploratory views on the compatibility with the EU framework. Disclosure of such information presents a serious risk of increasing external interference and

[56] Albania, Anguilla, Andorra, Antigua and Barbuda, Argentina, Aruba, Australia, Austria, *Azerbaijan*, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, *Brunei*, *Bulgaria*, Canada, Cayman Islands, Chile, *China*, Colombia, Cook Islands, Costa Rica, Croatia, Curacao, Cyprus, Czech Republic, Denmark, Dominica, *Ecuador*, Estonia, Faroe Islands, Finland, France, *Georgia*, Germany, Gibraltar, Ghana, Greece, Greenland, Grenada, Guernsey, *Hong Kong (China)*, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Jordan, *Kazakhstan*, Korea, *Kuwait*, Latvia, *Lebanon*, Liechtenstein, Lithuania, Luxembourg, Macau (China), Malaysia, Maldives, Malta, Marshall Islands, *Mexico*, Mauritius, Monaco, Montenegro, Montserrat, Nauru, Netherlands, New Zealand, *Nigeria*, Niue, Norway, *Oman*, Panama, *Pakistan*, Peru, *Poland*, Portugal, *Qatar*, *Romania*, *Russia* (since suspended by many jurisdictions) San Marino, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, *Saudi Arabia*, Seychelles, *Singapore*, Sint Maarten, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, *Thailand*, *Turkey*, *Turks and Caicos Islands*, *United Arab Emirates*, United Kingdom, Uruguay, Vanuatu (see OECD's list of commitments in "Nigeria AEOI Webinar," *supra* note 55).

[57] Transparency International, "Corruption Perception Index" (2024).

[58] Center for Taxpayer Rights, "Trust, Taxpayer Rights, & the Rule of Law" (June 4-6, 2025).

> pressure to the detriment of the effectiveness of the decision-making process.[59]

The conscious decision to exclude EU FATCA petitioners from the debate on the "most contentious issues," notably the compatibility of AEOI with the EU framework is the emanation of a top-down approach to taxpayers' rights, in which affected citizens and data protection campaigners are viewed with suspicion. This approach borders paranoia and is ill-fitted in a democracy in which the EU's top court has already established consistent principles that unelected bureaucrats view as contentious because they don't fit their biased view of the world. There is a deep resistence to criticism, even when it comes from their own experts. The image that emerges is of an aloof bureacracy in Brussels, dominated by a siege mentality, concerned solely with the transparency of taxpayers while resisting transparency for their own actions.

While political commentators point out at the rift between the EU and the U.S. government, I see a lot of similarities. The EU Council's decision to exclude EU petitioners from the debate about the effect of AEOI on their rights is a sad spectacle. I can only hope that the EU will change its stance and open a dialogue with the EU FATCA petitioners and concerned data protection campaigners. ■

[59] See Council of the EU decision, *supra* note 32.