



European Data Protection Board

Mrs Anna Talus

Chair

edpb@edpb.europa.eu

Paris, 20 September 2025

Subject: FATCA, tax data transfers and the need for an EDPB position

Dear Madam Chair,

It is not the first time that I draw your attention to the risks associated with the transfer of tax data to the United States under FATCA. Recent developments, however, show that the situation has reached a new stage, which, in my view, calls for coordinated action by the EDPB.

On 4 September 2025, Tax Notes published an interview¹ with Ms Kathleen Walters, former Chief Privacy Officer of the IRS. She explained that she resigned after being asked to transfer tax data to the Department of Homeland Security, pursuant to an Executive Order issued by President Trump. When the U.S. administration repurposes tax data collected by the IRS, including, potentially, FATCA-related data, it engages in conduct which, if assessed under Union law, would constitute a clear violation of the GDPR (purpose limitation, absence of effective safeguards). It is precisely the absence of such safeguards on the U.S. side that led the Belgian Data Protection Authority to hold that FATCA transfers of tax data are unlawful, alongside other breaches such as disproportionality and the failure to respect the principle of data minimisation. This episode illustrates the loss of control that occurs once data are transferred to the United States. As Ms Walters herself recalled:

“Once your data is out there, it’s gone. It’s not like if someone steals something from you and you can get it back, maybe. It’s gone and you don’t know where it is and what it’s being used for.”

Two recent cases in the United States further illustrate the risks to which data transferred under FATCA are exposed. In *Center for Taxpayer Rights v. IRS*², the court noted that the IRS had begun sharing information, including taxpayers’ addresses, with ICE under a new policy based on a Memorandum of Understanding³ signed in April 2025 between the IRS and ICE, and held that there was a strong likelihood this policy exceeded the statutory powers of the IRS. Likewise, a recent analysis published by the Congressional Research Service⁴ highlighted the legal doubts surrounding this agreement, in light of the requirements of U.S. tax confidentiality law (IRC § 6103).

¹ <https://www.taxnotes.com/tax-notes-live/tax-notes-talk/ex-irs-official-talks-tax-data-sharing-deal-agency-tenure/7szdf>

² <https://urlr.me/hC97nT>

³ <https://urlr.me/4Yffzj>

⁴ <https://urlr.me/NFPYKv>

These elements do not concern FATCA directly, but they underline a fundamental risk: once transferred to the United States, tax data, including FATCA data, may be exposed to non-tax repurposing and legal uncertainty, risks acknowledged even within U.S. institutions themselves. In the absence of effective and binding safeguards within the meaning of Articles 5 and 46 GDPR, such transfers cannot be regarded as compliant.

In addition, there is the case of *United States v. Eaton Corp*⁵, decided by the U.S. Court of Appeals for the Sixth Circuit on 8 August 2025. Eaton had refused to disclose certain documents by invoking the GDPR; U.S. courts rejected this argument, relying on Article 49 GDPR derogations (public interest, legal defense) and on a comity analysis that prioritised U.S. fiscal interests. Even though the dispute concerned only a limited production (47 pages), it reveals a major risk: U.S. courts have dismissed GDPR-based objections, even though the data at stake are of European origin and should therefore be subject to the GDPR. By relying instead on grounds such as public interest, legal defense and comity — which resemble the derogations provided under Article 49 GDPR — U.S. courts have effectively neutralised the protection that Union law requires. Yet the notion of “important public interest” under Article 49(1)(d) must be assessed under Union law, not in light of U.S. fiscal priorities.

This trend is particularly worrying in the context of FATCA, which involves systematic and large-scale transfers of tax data.

At the same time, within the Union, national data protection authorities have reached divergent conclusions regarding FATCA’s compatibility with the GDPR, even though the agreements concluded with the United States are materially identical. Thus, the Dutch Data Protection Authority (Autoriteit Persoonsgegevens) and the Luxembourg CNPD considered that FATCA implementation did not, as it stands, infringe the GDPR, whereas the Belgian DPA held that such transfers do violate the Regulation. This inconsistency undermines the uniform application of the GDPR and calls for clarification at European level.

I would also like to draw your attention to the hearing to be held before the Brussels Market Court on 22 October 2025, following the decision 79/2025⁶ of 24 April 2025 of the Belgian Data Protection Authority, which found that FATCA implementation in Belgium violated the GDPR (principles of purpose limitation, data minimisation, limitation of storage, transparency, obligation of information, and duty to carry out a Data Protection Impact Assessment), and ordered the Belgian tax authority to bring its transfers into compliance within one year. This hearing will be a crucial moment to assess FATCA’s conformity with the GDPR.

In order to ensure a coherent application of Union law, I would be grateful if the EDPB could:

- consider adopting a written position (functionally equivalent to an *amicus curiae* brief), setting out the Board’s reading of Articles 5, 24, 46 and 49 GDPR as applied to FATCA transfers;
- encourage the Brussels Market Court to refer a preliminary question to the Court of Justice of the European Union, so as to obtain a uniform and binding interpretation of the GDPR;
- where appropriate, reaffirm publicly that, in the absence of effective and enforceable safeguards on the U.S. side and given the risks identified, Article 49 derogations cannot legitimise recurring transfers, and that in the absence of appropriate safeguards under Article 46, such transfers must be suspended.

⁵ <https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/sixth-circuit-upholds-irs-summons-eaton-employee-records/7sx8k>

⁶ <https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n0-79-2025.pdf>

It seems to me essential that the EDPB recall that, while it may provide a common and coordinated reading of the GDPR, only the Court of Justice of the European Union has the competence to deliver a definitive and binding interpretation of its provisions. From this perspective, a preliminary reference appears indispensable to ensure the uniform interpretation of Union law in relation to FATCA. Within its remit, the EDPB could usefully encourage the Brussels Market Court to seize the CJEU, so as to obtain a binding clarification that guarantees consistent application of the GDPR and brings an end to the current divergences between national authorities.

Thank you for your attention to this request and for your commitment to defending the fundamental right to data protection.

Yours sincerely,

[Electronic signature]

Fabien Lehagre
President of the Association des Américains Accidentels

Copy to :

European Commission

Mrs Ana Gallego
Director General, DG JUST
Ana.GALLEG@ec.europa.eu

Mr Gerassimos THOMAS
Director General, DG TAXUD
Gerassimos.THOMAS@ec.europa.eu

Committee on Petitions (PETI) of the European Parliament

Mr Bogdan RZONCA
Chair EU PETI Commission
bogdan.rzonca@europarl.europa.eu

Belgian Data Protection Authority

Mr Koen Gorissen
Chairman
koen.gorissen@apd-gba.be

