

## Anu Talus

Chair of the European Data Protection Board

Sophie in't Veld  
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Belgium

Brussels, 25 September 2023

*by e-mail only*

Ref: OUT2023-0074

### **Subject:**

Dear Ms in't Veld,

I wish to thank you for your letter of 6 April 2023, in which you raise questions on measures taken by the EDPB following the Ombudsman's recommendation of 29 March 2023 in case 201/2022/JK, as well as on the enforcement of the GDPR in relation to the transfers of personal data carried out on the basis of intergovernmental agreements (IGAs) implementing the US Foreign Account Tax Compliance Act (FATCA).

With regard to your first question in relation to the European Ombudsman ("EO")'s Recommendation of 29 March 2023 in case 201/2022/JK, the EDPB decided to follow such Recommendation and provided broadest possible access to the preparatory documents covered by the underlying complaint. The EDPB's detailed response sent to the EO on this matter on 28 June 2023 is available on our website<sup>1</sup>.

As regards your second and third questions on the role of the EDPB in the enforcement of data protection rules by national supervisory authorities (SAs) on FATCA, I would like to stress that the task of monitoring and, where necessary, enforcing compliance of IGAs with the GDPR concluded bilaterally between a Member State and the United States does not fall within the competence of the EDPB. In accordance with Articles 55 and 57(1)(a) GDPR, the enforcement of data protection law in respect of these IGAs is the sole responsibility of national SAs in their respective jurisdictions, for which the EDPB has no supranational powers.

While it is up to each SA to monitor the review of these IGAs and the EDPB is limited in the updates it can provide in order not to jeopardise actions taking place at national level, I would like to reassure

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<sup>1</sup> EDPB Response to the European Ombudsman's recommendation regarding case 201/2022/JK, available at [https://edpb.europa.eu/our-work-tools/our-documents/letters/edpb-response-european-ombudsmans-recommendation-regarding\\_en](https://edpb.europa.eu/our-work-tools/our-documents/letters/edpb-response-european-ombudsmans-recommendation-regarding_en).



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you that, as part of its tasks under Article 70 GDPR, the EDPB dedicates special attention to this matter. In particular, the EDPB (and previously WP29) has dealt on several occasions with the transfers of personal data based on the intergovernmental agreements of the Member States, including FATCA<sup>2</sup>. Building on these initiatives, and pursuant to Article 70(1)(u) GDPR, the EDPB also promotes regular exchanges between its members in order to share information and best practices on the actions taken by supervisory authorities at national level with regard to transfers of personal data on the basis of these IGAs.

Although the EDPB cannot provide you with more detailed information on the progress of the ongoing investigations at national level, I would like to assure you that a number of steps have been taken by several SAs to engage with a dialogue with their respective ministries, in some cases on the basis of the complaints they have received. Also, the Belgian supervisory authority recently adopted a decision prohibiting the transfer of tax data of a Belgian complainant to the United States, in which it found that the data processing carried out under the FATCA agreement does not comply with all the principles of the GDPR, including the rules on data transfers outside the EU<sup>3</sup>.

Yours sincerely,

Anu Talus

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<sup>2</sup> See Guidelines for Member States on the criteria to ensure compliance with data protection requirements in the context of the automatic exchange of personal data for tax purposes (<https://ec.europa.eu/newsroom/article29/items/640466>), and EDPB Statement 04/2021 on international agreements including transfers ([https://edpb.europa.eu/system/files/2021-04/edpb\\_statement042021\\_international\\_agreements\\_including\\_transfers\\_en.pdf](https://edpb.europa.eu/system/files/2021-04/edpb_statement042021_international_agreements_including_transfers_en.pdf));

<sup>3</sup> APD, Decision 61/2023 on the complaint relating to the transfer by the Federal Public Service Finance of personal data to the US tax authorities pursuant to the "FATCA" agreement, adopted on 24 May 2023. The decision is available at <https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-61-2023.pdf>. This decision makes specific reference to the EDPB Statement 04/2021.

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