

Andrea Jelinek  
Chair of the European Data Protection Board

Brussels, 28 May 2021

Dear Ms Jelinek,

On 13 April, the EDPB issued its statement 04/2021 on international agreements including transfers.<sup>1</sup> In this statement, it deems that “*consideration should be given to the aim of bringing [international agreements involving the transfer of personal data to third countries or international organisations] in line with the General Data Protection Regulation (GDPR) and Law Enforcement Directive (LED) for data transfers where this is not yet the case,*” and “*invites the Member States to assess and, where necessary, review their international agreements that involve international transfers of personal data.*”

The intergovernmental agreements implementing the US Foreign Account Tax Compliance Act (FATCA), concluded between the Member States and the US prior to the entry into force of the GDPR and LED, fall clearly into this category of international data transfer agreements. Under these agreements, EU financial institutions are obliged to transfer sensitive personal data of many Accidental Americans, EU citizens who, by accident of birth, inherited US citizenship, but who maintain no ties to the US, to the US Internal Revenue Service (IRS) via their national governments.

Earlier, in January, the Commission stated that “*following further exchanges with stakeholders, [the national data protection authorities] are again looking into this issue [of transfer of personal data to the US under FATCA] at the level of the European Data Protection Board.*”<sup>2</sup>

Against this background, I have the following questions:

- Can the EDPB explain why it has only issued this statement including an “invitation” to the Member States “to assess and, where necessary, review their international agreements that involve international transfers of personal data”, and why it has not examined the most questionable international agreements, such as the intergovernmental agreements implementing FATCA?
- Does the EDPB follow up with national data protection authorities after it has issued statements? Will the EDPB recommend national data protection authorities to investigate the data protection aspects of the intergovernmental agreement between their Member State and US implementing FATCA?
- Can the EDPB clarify when it has discussed the transfer of personal data to the US under FATCA? What exactly has been “looked into”? What is the EDPB’s view on the consistency of these intergovernmental agreements with the GDPR?

Kind regards,

Sophie in ‘t Veld

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<sup>1</sup>

[https://edpb.europa.eu/sites/edpb/files/files/file1/edpb\\_statement042021\\_international\\_agreements\\_including\\_transfers\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_statement042021_international_agreements_including_transfers_en.pdf)

<sup>2</sup> [https://www.europarl.europa.eu/doceo/document/E-9-2020-005165-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2020-005165-ASW_EN.html)