Mishcon de Reya
Africa House
70 Kingsway
London WC2B 6AH
DX 37954 Kingsway
T: +44 20 3321 7000
www.mishcon.com

London | Cambridge | Oxford | Hong Kong | Singapore

Our Ref: FXN/60052.1
Your Ref: 2193/2025/MIG

European Ombudsman
Ms Teresa Anjinho
1 avenue du Président Robert Schuman, CS 30403
F-67001 Strasbourg Cedex

11 September 2026

Dear European Ombudsman

FATCA, etc. | Complaint against the Council of the EU

I am writing in relation to the following:

1. 2025 refusal to release documents

This complaint relates to the Council of the EU's renewed refusal, on 11 September 2026, to give public access (either in part or as a whole[1]) to documents concerning the compatibility of the automatic exchange of tax information (**AEOI**) with EU data protection and data security rules (case 2193/2025/MIG; Council Ref. 25/0418 and 07/c/01/25).

At the time of the original refusal, your Office found that there was no maladministration on the part of the Council, based on the need to protect the public interest as regards international relations and the financial policy of the Member States[2].

2. Legal developments – *Jautiva* (C-798/24)

- As regards data security, on 3 September 2026 the Court of Justice of the EU (**CJEU**) reiterated the need for sufficient safeguards to protect data subjects effectively against the risk of abuse (*Jautiva*, C-798/24).
- The attacked measure (a Latvian register of shareholders of private companies) pursued various objectives, including preventing money laundering, which is the same objective pursued by AEOI (notably money laundering through tax evasion).
- As regards data protection, in *Jautiva*, the CJEU confirmed that national legislation that does not appear to be either necessary or proportionate in relation to the fight against tax evasion breaches the fundamental rights to data protection.
- As regards FATCA, the European Parliament reached a similar conclusion 8 years ago (PE 604.967-May 2018, at page 32).

> *"In conclusion, FATCA restrictions appear to be neither proportionate nor*

[1] in particular, the Council refused to disclose Document WK 15311/2023 RESTREINT UE/EU RESTRICTED (a Presidency steering note concerning the automatic exchange of tax information with third countries and its interaction with the GDPR).
[2] Decision dated 6 May 2026 (case 2193/2025/MIG).

> *necessary in so far as they fail to narrow down the reporting obligations to individuals suspected of tax evasion.*

— The essence of our complaint is that there is an **overriding interest** in the disclosure of internal EU documents that shed a light on the existing data protection and data security concerns of disproportionate AEOI measures.

— The latest CJEU judgment, handed down last on 3 September 2026 confirms that the enforcement of data protection rights overrides the public interest relating to the financial policy of EU member States, when that financial policy is pursued through disproportionate measures.

— Put it differently, the latest case law confirms that the proper enforcement of data protection represents an overriding public interest when it comes to the disclosure of internal EU documents that show that EU institutions have been harbouring concerns about the proportionality and necessity of AEOI, with additional concerns about the safety of the data processed.

3. **Factual developments – *a string of relevant cyber-attacks***

— The Council's letter of even date states that -

> arguments referring to “a string of cyber-attacks and data breaches against central registers introduced by EU Member States under EU rules, as well as a **cyberattack against the French tax system**” cannot be regarded as constituting new elements. The file at issue concerned the conditions under which Member States may automatically exchange tax information with third countries and the interaction of such exchanges with the GDPR; it did not concern the risk or prevention of cyberattacks against national tax infrastructures more generally

— This is a dangerous argument, and one that shows the EU Council's disregard for the safety of compliant taxpayers' data protection rights. French newspaper Le Monde confirms that the cyberattack against the French tax system (discussed in our letter dated 14 August 2026) is (a) very serious; and (b) the product of a hacker aged just 18 years old, showing the lack of sufficient safeguards in at least one EU Member States (France being a hopeless case, as discussed in our letter dated 5 August 2026, but not alone, as discussed in our attached letter dated 7 September 2026 following the cyber-attack against the State of Berlin):

Le Monde

French government embroiled in taxpayer data hack decried as country's 'most serious' ever

Opposition senators have also called for a parliamentary inquiry after the large-scale cyberattack on the Finance

The 18-year-old behind the hacking of French tax

A suspect was indicted on August 20 and placed in preventive detention in the investigation into the cyberattacks targeting the French public finance authority. He is already facing charges in several high-profile cases involving

— ();

— Of equal concerns are the warnings sounded by Christine Lagarde (the President of the European Central Bank) in an interview discussed in our letter dated 6 August 2026 (at page 3) and Andrew Bailey (the Chair of the Financial Stability Board) in his letter to the G20 of last week.

— These incidents and warnings show that we live in a state of emergency, where governments of EU Member States struggle to contain the fall-out of cyber-attacks, let alone prevent them[3].

— These developments are worrying for the EU FATCA Petitioners, none of whom has ever been accused of any wrongdoing, but who under disproportionate FATCA rules are continually exposed to disproportionate data protection and data security risks.

— The Council refused to release some documents in their entirety, and other are so heavily redacted to be unintelligible. Even if, as the Council states, those documents do not refer to data safety, the recent cyber-attacks, including against the French Tax System and a separate one against the French Finance Ministry [4] concerning 1.4m bank accounts indicate that data protection and data security go hand in hand. A measure that breaches data protection rights **and** exposes the affected data subject to data hacking risks is even more critical, increasing the need for transparency and accountability.

4. Attacked decision and request

For the reasons mentioned above, and following our request dated 21 August 2026 and the Council's reply of today (a copy of both of which is attached):

— the Council was wrong in rejecting our request to review its initial decision;

— the Council was wrong to refuse to treat our letter as a new request for the disclosure of documents;

— the Ombudsman should find that the Council committed maladministration, on the basis that the Council failed to consider relevant legal developments (*Jautiva*) and a string of cyber-attacks, including against the Tax System of a Member State, which taken together confirm the existence of an overriding interest in the full disclosure of documents that may provide information about EU institutions' existing concerns about the data protection and data security implications of AEOI, and their compatibility with fundamental rights.

Best regards,

Filippo Noseda
Partner

[3] Le Monde, "**French government apologizes for tax data hack, but struggles to contain fallout",** 19 August 2026 (accessible online here).
[4] Le Monde, ***"French taxpayers' data stolen in hack of Finance Ministry***"; 18 February 2026 (accessible online here and here).

Cc. Council of the EU, Transparency Unit; EU FATCA Petitioners