

European Ombudsman

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30 April 2026

Dear European Ombudsman

London | Cambridge | Oxford | Hong Kong | Singapore

Complaint 2193/2025/MIG (FATCA, etc.)

I am writing further to the complaint dated 3 August 2025 to report three recent developments that are relevant for the complaint.

EU Council's Working Documents admits conflicts with GDPR



It has been [reported](#) that the Spanish government submitted a working document to the European Council effectively admitting the conflict between FATCA and the CRS and the GDPR .

Spain has proposed clarifying that the scope of data exchanged for public interest reasons includes the transfer of tax information under the EU's data protection rules.

In an [April 23 working document](#) shared with member states in the EU Council Spain proposed using the current review of the GDPR to address a debate about whether large-scale transfers of personal data for tax reasons are compliant with the bloc's rules.

The Spanish document says that experience with the GDPR has shown [uncertainty about the legal basis](#) for international data transfers when there is no adequacy decision and the underlying agreements [lack the safeguards required under article 46 GDPR](#)

US State department orders diplomats to fight GDPR



Separately, [Reuters](#) reported that the US State Department has ordered US diplomats to fight foreign data protection initiatives, singling out the GDRP, criticising it as "burdensome"

US orders diplomats to fight data sovereignty initiatives

- Trump administration opposes foreign data sovereignty laws
- [Rubio's cable criticizes GDPR as burdensome](#)

The State Department cable signed by U.S. Secretary of State Marco Rubio and issued on 18 February 2026 Rubio's cable cited GDPR as [an example of a rule that imposed "unnecessarily burdensome data processing restrictions and cross-border data flow requirements."](#) The cable is the latest in a series of initiatives aimed at thwarting European regulation of the digital sphere.

Commission misleads European Parliament (again)

Finally, the European Commission provided yet another [answer](#) to a Parliamentary Question that conflicts with the evidence contained in documents disclosed by the previous Commission following a previous successful complaint to the EU Ombudsman.

The Commission's answer to the written question **denies** any competence/involvement of the EU in relation to FATCA:

"It must be recalled that FATCA Agreements are bilateral agreements concluded between each Member State of the EU and the US. As the EU is not a party to these agreements, the Commission is not entitled to discuss or negotiate amendments to them with the US."

However, [our research](#) into documents unearthed by former MEP Sophie in 't Veld following a stand-off with the European Commission that required a [decision](#) from the EU Ombudsman (1398/2013/ANA) show that the Commission considered that FATCA was [within](#) the EU competence and that bilateral agreements were merely a [temporary solution](#) while the EU negotiated an EU/US agreement that would address the "worrying" data protection concerns nurtured by the European Commission at the time. We put the result of our analysis to Commissioners [Gentiloni](#), [Jurova](#) and [Reynders](#) as well as the Commission Services ([Taxud](#), [DG Just](#), [FISMA](#) and [International Data Flows](#)) who refused to engage, leading to a stand-off with the Complainants, a [Joint Statement](#) from EU Petitioners as well as a decision of [maladministration](#) against the EDPB.

The developments discussed in this letter, notably:

- ❶ the EU Council's working document;
- ❷ the US's formal instructions to fight against GDPR and
- ❸ the Commission's misleading answers to the European Parliament)

are further evidence in support of the Complaint that:

- the Council's defence against the EU Petitioners' Access to Documents Request according to which a disclosure of documents would be "prejudicial to negotiations with the US" is spurious. There are no such negotiations, and if there are, they are fanciful; and
- the Council main purpose in resisting the Access to Documents request is to seeking to avoid transparency and accountability in relation to the data protection concerns raised by the Complainants for several years now, with the assistance of the Commission who appears to have misled the European Parliament on several occasions and who was [formally criticised](#) by the European Parliament for its lack of action in the area covered by the Complaint.

Best regards,

Filippo Noseda
Partner