

Our Ref: FN/5999/60052.1

Your Ref: Case 2025-06-C

Ms Anu Talus - Chair  
European Data Protection Board (EDPB)

London | Cambridge | Oxford | Hong Kong | Singapore

Cc: EU Petitioners

3 July 2025

Dear Ms Talus

**FATCA/CRS | Your Decision in Access to Documents Request Case 2025-06-C**

I am writing following your decision dated 2 July 2025 in relation to our [Access to Documents Request](#).

**1. An opportunity for dialogue**

Your decision is the first communication that the EU FATCA Petitioners have received from you since you were appointed Chair of the EDPB in May 2023. It is an opportunity for dialogue that should not be missed.

The EU FATCA's petitioners' positive contribution to the debate on the GDPR implications of systems of automatic exchange of information has been recognised by the European Parliament in its latest [study](#) in this area.

Indeed, it was thanks to the [first petition](#) in 2016 that the European Parliament held a plenary debate on this issue, which led to a [formal resolution](#) on 5 July 2018.

The EU Petitioners' [frustration](#) with your predecessor stems from the lack of any meaningful action from the EDPB. Where its predecessor had [led on FATCA](#) as well as [the CRS](#), the EDPB stood [accused of inaction](#).

The EU Petitioners welcome the opportunity for a direct dialogue with the EDPB Chair and hope that this will be the beginning of a collaborative phase in this [long-standing saga](#). They also welcome your invitation for further disclosure. At the same time, they harbour some concerns about the existing disclosure, for the reasons mentioned below.

**2. Further disclosures – your offer**

While we can agree to disagree on whether the scope of the original AtD request was too wide, the EU FATCA petitioners welcome your offer of additional disclosures, and I look forward to discussing this with you in due course.

Now for the grim part.

**3. The "three little pigs" approach to GDPR enforcement**

We all know the fable about three pigs who build their houses of different materials, and what happens to the first two pigs' houses which are made of straw and sticks respectively. Only the house made of bricks built by the third pig cannot be blown down by the Big Bad Wolf.

As regards the GDPR edifice, your letter sets out the gold standard: "**I want to underline the importance of the task of the EDPB to ensure the consistent application of the GDPR**".

The EU Petitioners would therefore have expected the disclosed document to provide some information about a debate showing reflection (and introspection) following the very [public criticism](#) from the European Parliament of a "[Kafkaesque](#)" approach<sup>1</sup> and "the insufficient level of enforcement of the GDPR", the "absence of meaningful decisions and corrective measures and the "lack of prioritisation and overall scrutiny despite the significant CJEU case law developments over the past five years".

Alas, what the disclosures show is a lot of **straw and sticks**. No bricks.

The minutes of the EDPB's International Transfers Subgroup (**ITS**) shows the following activity:

- A "presentation" and "a short discussion" about the interpretation of Art. 96 GDPR concerning pre-existing agreements (6 January 2021 minutes = doc. 1);
- A "presentation on the issues and proposed actions that could be taken" (25 Jun 2020 minutes = doc. 20);
- An "overview" of the topic following a "request from a lawyer asking the EDPB to take a position and provide advice on FATCA and the CRS" (3 Nov 2020 minutes = doc. 2);
- Various "updates" and "summaries" relating to ongoing litigation in Belgium, Luxembourg and France (17 Jan 2024 minutes = doc. 4; 6 Feb 2024 Minutes = doc. 5; 6 Mar 2024 minutes = doc. 6; Mar 2024 minutes = doc. 9; 11 Apr 2023 = doc. 12); See also the minutes of the separate Financial Matters Sub-Group (**FMESG**) dated 22 Nov 2022 (= doc. 29).

All **huffing and puffing**, but no real action about the very important task of the EDPB to ensure the consistent application of the GDPR.

There are also glimpses of real concern, accompanied by some immediate backpadding.

- On 9 November 2021, the Belgian data protection authority "informed the ITS of its intention to request an Opinion from the EDPB on the compliance of FATCA with EDPB Guidelines 02/2020, requesting volunteers as lead or co-rapporteurs" (= doc. 11). There is no evidence of anyone volunteering, and no evidence of any work whatsoever on an opinion;
- On 4 October 2023, the ITS discussed the idea of "whether to reconvene the FATCA drafting team who previously worked on replies to correspondence received". However, Members wondered whether "the drafting team should reconvene at this time when ongoing litigation in different legal jurisdictions is assessing these legal questions" (= doc. 7). There is no evidence of any drafting team ever having being reconstituted.
- On 9 February 2021, the International Transfers Sub-Group discussed the EDPB's draft guidelines to Art. 96 GDPR (concerning pre-existing agreements), whereby the minutes show attempts by members to avoid

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<sup>1</sup> See [here](#), and forward to 12:16:05

any direct reference to FATCA and the CRS ("■■■■ suggested that the draft statement refer to data protection law in general, and questioned the relevance of specifically highlighting automatic exchange of information in a general statement". Better hide the troublesome tree in a big forest to avoid people spotting it... (= doc. 3).

- On 28 November 2023, the minutes of the Financial Matters Sub-Group FMESG) show that "following an information on the discussion that had taken place within the ITS, it had been decided not to consult the plenary EDPB as discussed at the meeting on 21 September 2023" (= doc. 16). This notwithstanding the involvement of the Commission and the Council in discussions over this topic and notwithstanding the FMESG's "data protection concerns in relation to FATCA" (see minutes dated 3 Mar 2022 = doc. 26; and 3 May 2023 = doc. 32).

What emerges is a picture defined by **a lack of any real action**, beyond "discussions", "presentations" and "updates", which confirms the criticism contained in the European Parliament's formal resolution ("absence of meaningful decisions", "lack of prioritisation despite the significant CJEU case law developments"). The **apparent lack of involvement of the plenary** is baffling, given the long-standing nature of this dossier, the number of judicial pronouncements, the direct criticism from the European Parliament, the work of the EDPB's predecessor and the involvement of the Commission/Council.

**Worse**, the minutes show **positive attempts to bury the issue**.

#### 4. **The elephant in the room**

For years now, the EU petitioners have tried to engage the EDPB in a meaningful discussion about the GDPR implications of systems of automatic exchange of information. Our correspondence, which is available [online](#), contains over 100 letters and several invitations to the EDPB to engage its powers under Art. 70 GDPR (e.g. on [11 Oct 2023](#), [2 July 2024](#) and [30 Jan 2025](#)).

[Art. 70](#) GDPR confers several meaningful powers on the EDPB to ensure the consistent application of the GDPR throughout the EU, including the power to advise the Commission and issue opinions, as also requested by the Belgian data protection authority.

And yet, the only response EU FATCA petitioners received was a [terse email](#) sent on 2 July 2024 by the EDPB Secretariat about the "limited scope" of the EDPB's powers.

The fact that the Belgian data protection authority mentioned an opinion shows clearly that the EU Petitioners have not been barking at the wrong tree.

And yet, there is no indication in the minutes disclosed in relation to any discussion concerning the concerns raised by the EU petitioners. This is odd, as the minutes show a flurry of activity in the months following receipt of the letter from Sophie in 't Veld MEP, which led to your [formal response](#) dated 25 September 2023 (discussed [here](#)).

5. **Next steps**

I look forward to hearing from you in relation to your offer of further access to documents requests. More importantly, I look forward to starting an active engagement between EU petitioners and the EDPB on the real issues first raised in 2016 and never resolved. It is time to stop ignoring EU Petitioners as if they did not exist. They are very much at the centre of the debate in the EU.

Best regards,

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Partner

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