

# Resolution on the adverse effects of the US Foreign Account Tax Compliance Act (FATCA) on EU citizens and in particular 'accidental Americans'

2018/2646(RSP) - 05/07/2018 - Text adopted by Parliament, single reading

The European Parliament adopted by 470 votes to 43 with 26 abstentions a resolution tabled by the Committee on Petitions on the adverse effects of the US Foreign Account Tax Compliance Act (FATCA) on EU citizens and in particular accidental Americans. It noted that its Committee on Petitions was seized with a petition from a collective of European citizens raising concerns about the adverse effects of FATCA, its implementing intergovernmental agreements (IGAs) and the extraterritorial impact of citizenship-based taxation (CBT).

Members recalled that since the entry into force of FATCA and the related IGAs concluded between Member States and the US, EU financial institutions, under the threat of a 30 % withholding tax, now have to disclose detailed information on accounts held by presumed US persons to the US Internal Revenue Service (IRS). FATCA aims to prevent tax evasion by US persons and requires foreign financial institutions to search for US persons by looking at a variety of indicators, such as birthplace in the US, or a US telephone number. Parliament noted that this use of indicators, enforced by FATCA, might result in the arbitrary exposure and punishment of individuals who might, in reality, have no substantive ties to the US. This includes the accidental Americans who, by accident of birth, inherited US citizenship, but who maintain no ties to the US, having never lived, worked or studied in the US and who do not hold US social security numbers. Members referred to the fact that those persons falling within the definition of US persons have their savings accounts frozen and are denied access to all banking services, including life insurance, pensions and mortgages, due to the reluctance of financial institutions to follow costly FATCA reporting. In addition, their EU family members are seeing their personal data shared with the US and their access to EU banking services curtailed (e.g. joint accounts and/or mortgages).

Parliament noted that accidental Americans who do not want to be affected by FATCA are obliged to formally renounce their US citizenship, which is a very cumbersome process for which a US social security number or a US international tax identification number is required which, inter alia, most accidental Americans do not possess.

Under these circumstances, Parliament made the following points:

**Payments Accounts Directive:** recalling that Directive 2014/92/EU (Payment Accounts Directive) obliges Member States to ensure that credit institutions do not discriminate against consumers on the basis of their nationality or place of residence, Parliament called for the full and correct transposition of the Directive, and stressed the right for all EU citizens to have access to a payment account with basic features, irrespective of their nationality. The Commission was asked to:

- expedite its analysis of national transposition measures of the Payment Accounts Directive (the deadline for transposition was 18 September 2016) and to include in its assessment the situation of accidental Americans, dual citizens and US citizens legally resident in the EU, paying due attention to any discrimination by financial institutions against taxpayers legally residing in the EU and qualifying as US persons for the purpose of FATCA;
- initiate infringement procedures in the event of established breaches in the implementation of the Payment Accounts Directive, and to report back to Parliament and the Council.

**Data protection:** Parliament noted that American internet platforms such as AirBnB, Tripadvisor and Amazon are required to collect taxpayer information from all EU citizens who make use of these online services, and hand it over to the US federal tax authority, the IRS so that the latter might establish whether the user is a US citizen and, therefore, to determine if the earnings made through these platforms are subject, in the context of FATCA, to US tax reporting. It stated that this practice is clearly not in line with EU data protection rules. Stressing the need to provide an adequate level of protection for personal data transferred to the US under FATCA, Parliament called on the Commission to:

- conduct a full assessment of the impact of FATCA and the US extraterritorial practice of citizenship-based taxation on EU citizens, and to explain if a serious discrepancy exists between EU citizens and/or residents in different Member States, especially as regards EU data protection rules and fundamental rights standards as a result of FATCA and US indicia;
- conduct a comprehensive assessment of the status of FATCA reciprocity, or the lack thereof, across the EU, and compliance by the US with its obligations under the various IGAs signed with Member States ;
- investigate any infringement of EU data protection rules by Member States whose legislation authorises the transfer of personal data to the US IRS for the purposes of FATCA, and to initiate infringement procedures against Member States that fail to adequately enforce EU data protection rules;
- take action to ensure that the EU fundamental rights and values enshrined in the Charter of Fundamental Rights and the European Convention on Human Rights, such as the right to privacy and the principle of non-discrimination, as well as EU data protection rules, are respected in the context of FATCA and the automatic exchange of tax information with the US.

**IGAs:** Parliament regretted the inherent lack of reciprocity of IGAs signed by Member States, especially in terms of the scope of information to be exchanged, which is broader for Member States than it is for the US. It asked all Member States to collectively suspend the application of their IGAs until such time as the US agrees to a multilateral approach to the automatic exchange of information (AEOI), by either repealing FATCA and joining the OECD Common Reporting Standard (CRS) or renegotiating FATCA on an EU-wide basis and with identical reciprocal sharing obligations on both sides of the Atlantic.

Lastly, the resolution called on the Council to mandate the Commission to open negotiations with the US on an EU-US FATCA agreement, with a view to ensuring the full reciprocal exchange of information, upholding the fundamental principles of EU law, as well as the Payment Accounts Directive, and allowing EU accidental Americans to relinquish their unwanted US citizenship on a no-fees, no-filings, no-penalties basis.