



**2018/2646(RSP)**

25.5.2018

# **AMENDMENTS**

## **1 - 19**

**Draft motion for a resolution**  
**Cecilia Wikström**  
(PE620.981v02-00)

Foreign Account Tax Compliance Act (FATCA)  
(2018/2646(RSP))



**Amendment 1**  
**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**  
**Citation 1 a (new)**

*Draft motion for a resolution*

*Amendment*

- *having regard to articles 8 and 14 of the European Convention of Human Rights*

Or. en

**Amendment 2**  
**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**  
**Recital B**

*Draft motion for a resolution*

*Amendment*

B. whereas since the entry into force of the FATCA and the related IGAs concluded between Member States and the US, EU financial institutions, under the threat of franchise destroying penalties in the US, have to disclose detailed information on accounts held by presumed “US persons” to the US **IRS**, via their national governments; whereas this could constitute a breach of EU data protection rules;

B. whereas since the entry into force of the FATCA and the related IGAs concluded between Member States and the US, EU financial institutions, under the threat of franchise destroying penalties in the US, **including a 30% withholding tax**, have to disclose detailed information on accounts held by presumed “US persons” to the US **Internal Revenue Service (IRS)**, via their national governments ;whereas this could constitute a breach of EU data protection rules **and fundamental rights**;

Or. en

**Amendment 3**  
**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**  
**Recital C**

*Draft motion for a resolution*

*Amendment*

C. whereas the *extraterritorial effects of FATCA and CBT have affected a large number of European citizens, in particular the so-called “accidental Americans” as well as dual European/US citizens and their non-US family members*; whereas *“accidental Americans” are foreign citizens, who by accident of birth inherited US citizenship, but who maintain no ties whatsoever to the US having never lived, worked or studied in the US, and who do not hold US social security numbers*;

C. whereas the *aim of the FATCA is to prevent tax evasion by US persons and* whereas *it requires foreign financial institutions to search for “US persons” by looking at a variety of indicators, such as birthplace in the United States, a US telephone number and indications of a power of attorney over the account to a person with a US address, against which the individual is required to prove not to be a US person*;

Or. en

#### **Amendment 4**

**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**

**Recital C a (new)**

*Draft motion for a resolution*

*Amendment*

*C a. whereas this use of indicators, enforced by FATCA, may result in arbitrary exposure and punishment of individuals who might in reality have no substantive ties to the US; whereas FATCA in practice includes a large group of individuals, such as dual European/US citizens and their non-US family members, and in particular the so-called “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*;

Or. en

#### **Amendment 5**

**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**

**Recital E**

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*Draft motion for a resolution*

E. whereas the lives and livelihood of thousands of EU citizens and their EU families are being very seriously affected by FATCA on a daily basis, as those falling within the definition of “US persons” have their saving accounts frozen, are denied access to all banking services including life insurance, pensions and mortgages; 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/mortgages);

*Amendment*

E. whereas the lives and livelihood of thousands of ***law-abiding*** EU citizens and their EU families are being very seriously affected by FATCA on a daily basis, as those falling within the definition of “US persons” have their saving accounts frozen, are denied access to all banking services including life insurance, pensions and mortgages ***due to the reluctance of financial institutions to follow the 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/mortgages);

Or. en

**Amendment 6**

**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**

**Recital E a (new)**

*Draft motion for a resolution*

*Amendment*

***E a. whereas Accidental Americans who do not want to be affected by FATCA are obliged to formally renounce their U.S.citizenship, which is a very cumbersome process for which a U.S. social security number or a U.S. international tax identification number are required, which inter alia most accidental Americans do not possess;***

Or. en

**Amendment 7**

**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**

**Recital E b (new)**

***E b.*** *whereas 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 this over to the American federal tax authority, the Internal Revenue Service (IRS); whereas the objective of this practice is to certify whether the user is a US citizen, and therefore to determine if the earnings through these platforms are subject to US tax reporting, in the context of FATCA; Whereas this practice is clearly not in line with EU data protection rules;*

Or. en

**Amendment 8**  
**Cecilia Wikström**

**Draft motion for a resolution**  
**Recital H**

*Draft motion for a resolution*

H. whereas the Parliament, in its resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect, took note of a significant lack of reciprocity between the US and the EU in the framework of the FATCA agreement;

*Amendment*

H. whereas the Parliament, in its resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect, took note of a significant lack of reciprocity between the US and the EU in the framework of the FATCA ***intergovernmental*** agreement;

Or. en

**Amendment 9**  
**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**  
**Recital I**

*Draft motion for a resolution*

I. whereas ***FATCA and*** the OECD

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*Amendment*

I. whereas ***multilateral and***

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Common Reporting Standard (CRS) on automatic exchange of tax information are essential tools to fight corruption, cross-border tax fraud and tax evasion;

*reciprocal Automatic Exchange of Information (AEOI) systems, such as the OECD Common Reporting Standard (CRS) on automatic exchange of tax information, are essential tools to fight corruption, cross-border tax fraud and tax evasion, while FATCA is unilateral and non-reciprocal;*

Or. en

## **Amendment 10**

**Cecilia Wikström, Sophia in 't Veld**

### **Draft motion for a resolution**

#### **Recital J**

##### *Draft motion for a resolution*

J. whereas the French Assemblée Nationale published a report in October 2016 following its bipartisan fact-finding mission to investigate the extraterritorial effects of certain US laws, including FATCA, recommending that the French Government either negotiate an amendment to its tax treaty with the US or request US legislators to amend US laws in order to allow French “accidental Americans” to exit the US system and their unwanted US citizenship on a no fees, no filings, no penalties basis; whereas a commission was recently set up to specifically look into the extraterritorial taxation of French “accidental Americans” by the US, and resolutions were tabled in November 2017 in both the Senate and the Assemblée Nationale on this particular issue;

##### *Amendment*

J. whereas the French Assemblée Nationale published a report in October 2016 following its bipartisan fact-finding mission to investigate the extraterritorial effects of certain US laws, including FATCA, recommending that the French Government either negotiate an amendment to its tax treaty with the US or request US legislators to amend US laws in order to allow French “accidental Americans” to exit the US system and their unwanted US citizenship on a no fees, no filings, no penalties basis; whereas a commission was recently set up to specifically look into the extraterritorial taxation of French “accidental Americans” by the US, and resolutions were tabled in November 2017 in both the Senate and the Assemblée Nationale on this particular issue; ***whereas on 15 May 2018, by a unanimous vote, the French Senate adopted a resolution, inviting the French government to immediately take measures to ensure that French accidental Americans’ right to a bank account is respected, that the discriminatory practices adopted by French banks in the wake of FATCA cease, and that an information campaign is immediately launched to inform French citizens living***

*in the US about the implications of US nationality and tax laws; whereas the resolution further requests that a strong diplomatic effort is taken to find a solution for French accidental Americans that would allow them to exit their unwanted US citizenship on a no fees, no filings and no penalties basis and that the US honours its promise of reciprocity pursuant to which France agreed to sign its IGA;*

Or. en

**Amendment 11**  
**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**  
**Recital K**

*Draft motion for a resolution*

K. whereas the United States and Eritrea are the two only countries in the world that adopt citizen-based taxation (CBT), and Eritrea has been condemned by the United Nations for its “diaspora tax”;

*Amendment*

K. whereas the United States and Eritrea are the two only countries in the world that adopt citizen-based taxation (CBT), and Eritrea has been condemned by the United Nations for its *efforts to enforce its* “diaspora tax”;

Or. en

**Amendment 12**  
**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**  
**Recital L**

*Draft motion for a resolution*

L. whereas the United States adopted in December 2017 a significant tax reform, which however did not abolish the citizen-based taxation principle for individuals;

*Amendment*

L. whereas the United States adopted in December 2017 a significant tax reform, which however did not abolish the citizen-based taxation principle for individuals, *but did introduce territory based taxation for US multinational corporations;*

Or. en



**Amendment 13**  
**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**  
**Paragraph -1 (new)**

*Draft motion for a resolution*

*Amendment*

***-1. Calls on Member States and the Commission to ensure that the fundamental rights of all Citizens, in particular the Accidental Americans, are ensured, especially the right to a private and family life, the right to privacy and the principle of non-discrimination, as laid down in the Charter of fundamental rights of the European Union and in the European Convention of Human Rights;***

Or. en

**Amendment 14**  
**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**  
**Paragraph 2**

*Draft motion for a resolution*

*Amendment*

2. Calls on the Commission to expedite its analysis of national transposition measures of the Payment Accounts Directive and include the situation of “accidental Americans” in its assessment, paying due attention to any discrimination against taxpayers legally residing in the EU and qualifying as “US persons” for the purpose of FATCA by financial institutions;

2. Calls on the Commission to expedite its analysis of national transposition measures of the Payment Accounts Directive and include the situation of “accidental Americans”, ***dual citizens and US citizens legally resident in the EU***, in its assessment, paying due attention to any discrimination against taxpayers legally residing in the EU and qualifying as “US persons” for the purpose of FATCA by financial institutions;

Or. en

**Amendment 15**  
**Peter Jahr**

**Draft motion for a resolution**  
**Paragraph 4**

*Draft motion for a resolution*

4. Urges the Commission to ***investigate without delay any infringement of EU data protection rules*** by Member States whose legislation authorizes the transfer of personal data to the US IRS for the purpose of FATCA, ***and start infringement procedures*** against Member States that fail to adequately enforce the EU data protection rules;

*Amendment*

4. ***Stresses the importance to provide an adequate level of protection for personal data transferred under FATCA to the U.S., in full compliance with national and European data protection law; calls on the Member States to review their IGAs and to amend them, if necessary, to align them with the rights and principles of the GDPR; Urges the Commission to monitor the compliance of Member States whose legislation authorizes the transfer of personal data to the US IRS for the purpose of FATCA with EU data protection rules and to take appropriate action*** against Member States that fail to adequately enforce the EU data protection rules;

Or. en

**Amendment 16**  
**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**  
**Paragraph 4**

*Draft motion for a resolution*

4. Urges the Commission to investigate without delay any infringement of EU data protection rules by Member States whose legislation authorizes the transfer of personal data to the US IRS for the purpose of FATCA, and start infringement procedures against Member States that fail to adequately enforce the EU data protection rules;

*Amendment*

4. Urges the Commission ***and the Working Party Article 29***, to investigate without delay any infringement of EU data protection rules by Member States whose legislation authorizes the transfer of personal data to the US IRS for the purpose of FATCA, and start infringement procedures against Member States that fail to adequately enforce the EU data protection rules;

Or. en

**Amendment 17**  
**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**  
**Paragraph 5**

*Draft motion for a resolution*

5. Calls on the Commission to do a full impact assessment of FATCA and the US extraterritorial practice of CBT on EU citizens, EU financial institutions and EU economies, taking into account ongoing efforts in France and other Member States, and explain if a serious discrepancy between EU citizens/residents in different EU Member States exists, especially as regards EU data protection rules and fundamental rights standards as a result of FATCA and “US indicia”;

*Amendment*

5. Calls on the Commission to do a full impact assessment of FATCA and the US extraterritorial practice of CBT on EU citizens, EU financial institutions and EU economies, taking into account ongoing efforts in France and other Member States, and explain if a serious discrepancy between EU citizens/residents in different EU Member States exists, especially as regards EU data protection rules and fundamental rights standards as a result of FATCA and “US indicia”; ***calls on the Commission to do a comprehensive assessment of the status of FATCA reciprocity, or lack thereof, across the EU, and compliance by the US with its obligations under the various IGAs signed with Member States;***

Or. en

**Amendment 18**  
**Cecilia Wikström, Sophia in 't Veld**

**Draft motion for a resolution**  
**Paragraph 6**

*Draft motion for a resolution*

6. Calls on the Commission to assess and, if necessary, take action to ensure that the EU fundamental rights and values enshrined in the Charter of fundamental rights, such as the right to privacy and the principle of non-discrimination, as well as the EU data protection rules, are respected in the context of FATCA and automatic exchange of tax information with the United States;

*Amendment*

6. Calls on the Commission to assess and, if necessary, take action to ensure that the EU fundamental rights and values enshrined in the Charter of fundamental ***rights and the European Convention of Human Rights***, such as the right to privacy and the principle of non-discrimination, as well as the EU data protection rules, are respected in the context of FATCA and automatic exchange of tax information with the United States;

## Amendment 19

Cecilia Wikström, Sophia in 't Veld

### Draft motion for a resolution

#### Paragraph 7

##### *Draft motion for a resolution*

7. Regrets the inherent lack of reciprocity of IGAs signed by Member States, especially in terms of the scope of information to be exchanged, which is larger for Member States than it is for the United States; Calls on *the* Member States *who signed a Model 1 (A or B) FATCA agreement with the US to consider collectively suspending* the application of their IGAs *until full reciprocal exchange of financial account information is provided by the United States*;

##### *Amendment*

7. Regrets the inherent lack of reciprocity of IGAs signed by Member States, especially in terms of the scope of information to be exchanged, which is larger for Member States than it is for the United States; Calls on *all* Member States *to collectively suspend* the application of their IGAs *(or the sharing of all information other than in respect of accounts held in the EU by US citizens resident in the US) until such time as the US agrees to a multilateral approach to AEOI by either repealing FATCA and joining CRS or renegotiating FATCA on an EU wide basis and with identical reciprocal sharing obligations on both sides of the Atlantic*;