

EN  
E-003558/2021  
Answer given by Ms McGuinness  
on behalf of the European Commission  
(25.10.2021)

The monitoring and enforcement of EU data protection rules fall under the competence of national data protection authorities (DPAs) and courts. The DPAs confirmed in 2018 that there had been no occasions where they ‘had to prohibit the processing and transfer of personal data to the United States (US) under the Foreign Account Tax Compliance Act (FATCA) regime’<sup>1</sup>. The European Data Protection Board (EDPB) invited Member States to assess international agreements concluded before the entry into force of the General Data Protection Regulation<sup>2</sup>, to determine whether further alignment with EU law is needed<sup>3</sup>. The Commission is in regular contact with Member States and the EDPB on this aspect.

The Commission is also in regular contact with the US authorities on FATCA. Concrete improvements in the situation of so-called ‘Accidental Americans’ have already been achieved. However, some legal uncertainties for EU financial institutions applying FATCA rules still persist, creating a risk of sanctions for the banks and a risk of closure of accounts of consumers unable to provide some information. This remains a source of concern for the Commission.

The Payment Accounts Directive<sup>4</sup> (PAD) grants consumers legally resident in the Union the right of access to a payment account with basic features. The application of FATCA is, however, not *per se* a breach of PAD, which does not set rules about the documentation to be presented by the consumer opening a payment account. Article 15 of PAD prohibits discrimination based on nationality, place of residence or on any other grounds referred to in Article 21 of the Charter of Fundamental Rights of the EU. Member States should ensure access to payment accounts with basic features irrespective of the consumers’ financial circumstances, such as their employment status, level of income, credit history or personal bankruptcy.

---

<sup>1</sup> Letter of the Article 29 Working Party of 8 February 2018: [https://ec.europa.eu/newsroom/article29/item-detail.cfm?item\\_id=614217](https://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=614217)

<sup>2</sup> <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

<sup>3</sup> See [https://edpb.europa.eu/our-work-tools/our-documents/other-guidance/statement-042021-international-agreements-including\\_en](https://edpb.europa.eu/our-work-tools/our-documents/other-guidance/statement-042021-international-agreements-including_en)

<sup>4</sup> Directive 2014/92/EU- <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0092>