



TEXTS ADOPTED

P8_TA(2018)0316

The adverse effects of the US Foreign Account Tax Compliance Act on EU citizens

European Parliament resolution of 5 July 2018 on the adverse effects of the US Foreign Account Tax Compliance Act (FATCA) on EU citizens and in particular ‘accidental Americans’ (2018/2646(RSP))

The European Parliament,

- having regard to Article 7, Article 8 and Article 21 of the Charter of Fundamental Rights of the European Union,
- having regard to Article 8 and Article 14 of the European Convention on Human Rights,
- having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)¹,
- having regard to Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features²,
- having regard to Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation³,
- having regard to the Council conclusions of 11 October 2016 on tax transparency,
- having regard to the Commission communication of 5 July 2016 on further measures to enhance transparency and the fight against tax evasion and avoidance (COM(2016)0451),
- having regard to its recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax

¹ OJ L 119, 4.5.2016, p. 1.

² OJ L 257, 28.8.2014, p. 214.

³ OJ L 359, 16.12.2014, p. 1.

evasion¹,

- having regard to its resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect²,
 - having regard to the OECD Common Reporting Standard (CRS), approved by the OECD Council on 15 July 2014,
 - having regard to the questions to the Commission and the Council on the adverse effect of FATCA on EU citizens and in particular ‘accidental Americans’ (O-000052/2018 – B8-0033/2018 and O-000053/2018 – B8-0032/2018),
 - having regard to Rules 128(5) and 123(2) of its Rules of Procedure,
- A. whereas 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);
- B. whereas, 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 franchise-destroying penalties in the US, including a 30 % withholding tax, now 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;
- C. whereas the aim of 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 US, 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 that he or she is not a ‘US person’;
- D. whereas this use of indicators, enforced by FATCA, may result in the arbitrary exposure and punishment of individuals who might, in reality, have no substantive ties to the US; whereas, in practice, FATCA involves a large group of individuals, such as dual EU-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;
- E. whereas the Commission has acknowledged that FATCA and the related IGAs have had the unintended effect of hindering access to financial services in the EU for US citizens and any person presenting indicia suggesting that he or she may be subject to FATCA (‘US person’);
- F. whereas the lives and livelihoods 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 savings accounts frozen and are denied access to all banking services, including life insurance, pensions and mortgages, due to

¹ Texts adopted, P8_TA(2017)0491.

² OJ C 101, 16.3.2018, p. 79.

the reluctance of financial institutions to follow costly FATCA reporting; whereas, 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);

- G. whereas ‘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;
- H. 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 it over to the US federal tax authority, the IRS; whereas the objective of this practice is to 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; whereas this practice is clearly not in line with EU data protection rules;
- I. whereas 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;
- J. whereas the deadline for Member States to transpose the Payment Accounts Directive was 18 September 2016;
- K. whereas, in its resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect, Parliament took note of a significant lack of reciprocity between the US and the EU in the framework of the FATCA agreement;
- L. whereas FATCA and the OECD Common Reporting Standard (CRS) on the automatic exchange of tax information are essential tools to fight corruption, cross-border tax fraud and tax evasion;
- M. whereas the French National Assembly 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 that US legislators amend US laws in order to allow French ‘accidental Americans’ to exit the US system and relinquish their unwanted US citizenship on a no-fees, no-filings, no-penalties basis; whereas a commission was recently set up specifically to 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 National Assembly on this particular issue; whereas on 15 May 2018 the French Senate adopted a resolution, by unanimous vote, inviting the government to take immediate measures to ensure that the right of French ‘accidental Americans’ 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 launched immediately to inform French citizens living in the US about the implications of US nationality and tax laws; whereas the resolution requests furthermore that a strong diplomatic effort be made to find a solution for French ‘accidental Americans’ that would allow them to relinquish their unwanted US citizenship on a no-fees, no-filings, no-penalties basis and that the US honour its promise of reciprocity pursuant to which France agreed to sign its IGA;

- N. whereas the US and Eritrea are the only two countries in the world that have adopted citizen-based taxation, and Eritrea has been condemned by the UN for its efforts to enforce its ‘diaspora tax’;
- O. whereas in 2017 the US adopted a significant tax reform, which did not, however, abolish the citizen-based taxation principle for individuals, but did introduce territory-based taxation for US multinational corporations;
1. Calls on the Member States and the Commission to ensure that the fundamental rights of all citizens, in particular those of ‘accidental Americans’, are guaranteed, 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 on Human Rights;
 2. Calls on the Member States to ensure the full and correct transposition of the Payment Accounts Directive, in particular Article 15 and Article 16 thereof, and to guarantee the right for all EU citizens to have access to a payment account with basic features, irrespective of their nationality;
 3. Calls on the Commission to expedite its analysis of national transposition measures of the Payment Accounts Directive 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;
 4. Urges the Commission to initiate without delay 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 on the measures taken to ensure the proper implementation of the said directive;
 5. Stresses the importance of providing an adequate level of protection for personal data transferred to the US under FATCA, in full compliance with national and EU data protection law; calls on the Member States to review their IGAs and to amend them, if necessary, in order to align them with the rights and principles of the GDPR; urges the Commission and the European Data Protection Board to investigate without delay 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;
 6. Calls on the Commission to conduct a full assessment of the impact 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 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’; calls on the Commission to 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;
 7. 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 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;

8. 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 broader for Member States than it is for the US; calls on all Member States to collectively suspend the application of their IGAs (or the sharing of all information other than that 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 the automatic exchange of information (AEOI), by either repealing FATCA and joining the CRS or renegotiating FATCA on an EU-wide basis and with identical reciprocal sharing obligations on both sides of the Atlantic;
9. Calls on the Commission and the Council to present a joint EU approach to FATCA in order to adequately protect the rights of European citizens (in particular ‘accidental Americans’) and improve equal reciprocity in the automatic exchange of information by the US;
10. Calls 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;
11. Instructs its President to forward this resolution to the Council and the Commission.