Council of the European Union

Brussels, 1 April 2025
(OR. en)

7630/25

INF 51
API 27

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 07/c/01/25

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on Monday 10 February 2025, and its complements of 11 and 26 February 2025 (Annex 1);
- the reply from the General Secretariat of the Council dated 24 March 2025 (Annex 2);
- the confirmatory application dated 30 March 2025 and registered on 31 March 2025 (Annex 3).

ANNEX 1

[E-mail message sent to access@consilium.europa.eu on Monday 10 February, 15:27.]

From: **DELETED**

Sent: 10 February 2025 15:27

To: Access@consilium.europa.eu

Cc: **DELETED**

Subject: AEOI and GDPR | Access Request --- COMM

Dear Council of the EU

Please see attached.

Best regards,

DELETED

[redacted]

Our Ref: FN/5999/60052.1

access@consilium.europa.eu
General Secretariat of the Council
DG COMM - Transparency

sg-acc-doc@ec.europa.eu
Secretariat General of the European Commission
Unit C.1. Transparency and Access to Documents

[redacted]
DG for the Presidency of the European Parliament
Head of Unit - Transparency

10 February 2025

edpb-secretariat@edpb.europa.eu
EDPB Secretariat

Dear All

AEOI & GDPR | Access to Internal EU documents

EU institutions are aware of our work on the data protection implications of systems of automatic exchange of information (**AEOI**), which includes substantial correspondence with all EU institutions.

The purpose of this letter is to request full and unredacted access to certain EU documents under the TFEU[1] and the Access to Documents Regulation[2] based on an overriding public interest in disclosure.

I have included a table of contents for ease of reference.

Contents

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You will see that I have copied in several EU FATCA Petitioners, with whom I have discussed the content of this letter and who fully endorse the request for access to information contained in this letter.

[1] See Sovim v LBR (C-601/20), at [60]-[62]
[2] Regulation (EC) No 1049/2001of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

[redacted]

80011929.1

[redacted]

1. Subject matter and context of the access request

Broadly, AEOI includes ❶ **FATCA** (which provides for the automatic transfer of personal data to the US), and ❷ the **CRS** or Common Reporting Standard (which provides for the automatic transfer of personal data to 100+ countries), as transposed in the EU through ⓐ bilateral agreements or **IGAs** (in the case of FATCA) and ⓑ the second Directive on Administrative Cooperation or **DAC2** (in the case of the CRS)[3].

The data protection implications of FATCA have been criticised by the EU's Data Protection Working Party (**WP 29**), as well as the European parliament, which adopted a formal resolution that was highly critical of the current Commission, while also criticising the insouciance of the WP's successor (the EDPB). Our research into internal EU documents[4] shows that the former Commission (under Commissioner Algirdas Šemeta) raised 'worrying' concerns about the compatibility of FATCA with EU data protection laws, with the EU Commission services confirming the lower standards of data protection in the US[5] and suggesting an EU competence to deal with FATCA (see here at p. 2 and here), with bilateral IGAs being a temporary solution ahead of an EU-US agreement (see here at p. 2). In the US, a domestic version of FATCA was abandoned in 2021 following concerns about data privacy and data protection.

Similar concerns were raised in relation to the CRS/DAC2 by the WP29 in a strongly worded letter to the Commission and in Recommendation 2 of the group of experts on the implementation of the DAC2 appointed by the Commission (AEFI Group).

Notwithstanding these concerns:

❶ both FATCA and the CRS/DAC2 were hastily implemented in a politically charged environment. Commissioner Šemeta was succeeded by Pierre Moscovici, who had previously signed his country's IGA with the US;

❷ our research shows that Commissioner Věra Jourová might have misled the European Parliament on the existence of negotiations between the EU and the US during the debate that led to the adoption of the European Parliament's FATCA resolution, and that Commissioner Bruno Gentiloni might have misled MEPs on the previous Commission's data protection concerns about FATCA (*'no evidence'*)[6]. And yet, in 2021 the Commission acknowledged that FATCA and data protection represent a "long-standing issue"; and

❸ the EDPB, which one would assume as being fully conversant with access requests, was handed two maladministration decisions by the

[3] 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 taxation (**DAC2**).
[4] Our research is based on documents released to Sophie in 't Veld MEP. Some of the main document have been reproduced in the body of our letters here, here, here, and here.
[5] Ares(2015)459646_Annex5, reproduced here at p. 2.
[6] See also here.

[redacted]

EU Ombudsman in relation to FATCA[7] and has consistently refusing to engage its duties under the GDPR notwithstanding clear evidence of an inconsistent application of the GDPR throughout the EU.

Since the introduction of FATCA, official data released by US authorities in the last two years, including the Government Accountability Office (**GAO**), the US Treasury Inspector for General Tax Administration (**TIGTA**) and the Commissioner of the Internal Revenue Service (**IRS**), confirmed a lack of resources in respect of FATCA data which is not used, is subject to poor data security, with the IRS being affected by several incidents of data loss, hacking, lax access rules and outdated filing systems. This goes to the heart of basic GDPR principles ('necessity', 'lawfulness', 'data minimisation', 'integrity and confidentiality', 'accountability'). The shortcomings of FATCA and its negative implications for compliant taxpayers have also been raised during congressional hearings (see also here), with the US State Department directly linking FATCA to forced renunciations of citizenship as the ultimate sacrifice for the disproportionate effects of FATCA[8]. More recently, Donald Trump's firing of three representatives from Privacy and Civil Liberties Oversight Board (PCLOB) on 27 January 2025 has a direct impact on the adequacy system under Art. 46 GDPR (transfers to third countries subject to appropriate safeguards), in respect of which EU institutions already have an opinion from Prof. Michael Hatfield (discussed here at p. 2).

In relation to the CRS, additional concerns for the Human Rights implications of transferring personal data to third countries have been raised by 47 German MPs, as well as British MPs.

2. Documents and information requested

Our request relates to all documents considering:

(a) the compatibility of AEOI with EU and Member States data protection laws and fundamental rights;

(b) the data protection implications of AEOI, in particular with regards to the transfer of personal data to third countries (adequate safeguards, data security, etc.);

(c) the impact of CJEU case law on the above.

Our request extends to proposals, impact assessments, communications, trialogue documents, working party documents, legal opinions, position agendas and minutes of meetings held by the Commission, the Council, the European Parliament, the EDPB and the EDPS.

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[7] Case 201/2022/JK and Joint cases 509/2022/JK and 1698/2022/FA.

[8] "*After significant deliberation, taking into account…the not insignificant anecdotal evidence regarding the difficulties many U.S. nationals residing abroad are encountering at least in part because of FATCA, the Department has made a policy decision to [reduce the fee for] requesting a Certificate of Loss of Nationality of the United States (CLN), from $2,350 to $450.*"

[redacted]

Excluded from our request are documents that have already been released in 2015 to Sophie in 't Veld MEP following her successful complaint before the EU Ombudsman[9]; and documents released since then to any EU FATCA Petitioners. However, documents since released in a redacted form (beyond mere redactions aimed at protecting the personal data of officials (such as names and email addresses) are covered by this request[10].

3. Overriding public interest for disclosure

Art. 4 of the Access to Documents Regulation provides several exceptions to the disclosure of information. However, such exceptions do not apply where there is an overriding public interest in disclosure.

The case law from the GCEU and the CJEU[11] has consistently confirmed:

(a) the overriding objective of the Access to Documents Regulation, notably the transparency of the work carried out by EU institutions and their accountability to the public; and that, accordingly
(b) the exceptions contained in Art. 4 must be applied restrictively.

In relation to AEOI, EU institutions have repeatedly sought to frustrate access to information, through outright refusals or disclosures so heavily redacted to make them useless.

In the case in hand, there is an overriding public interest in the disclosure of the documents relating to the data protection implications of AEOI due to:

1. the fundamental nature of the rights to privacy and data protection;

2. the evidence of an inconsistent approach by the European Commission throughout the years, with possible instances of misleading statements from current commissioners to suppress the concerns raised by Commission services and previous commissioners;

3. the strength of the concerns raised by previous Commissioners according to documents released to an MEP in 2015 and the European Parliament in relation to FATCA (some of the documents released to Sophie in 't Veld MEP are reproduced here, here, here, and here);

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[9] Decision in case 1398/2013/ANA on the European Commission's refusal to give access to documents relating to the US Foreign Account Tax Compliance Act ('FATCA').
[10] See e.g. this request from Elodie Lamer (a journalist) in respect of the work carried out under the Belgian Presidency, which led to a heavily redacted disclosure, so heavily redacted to be useless (see here at pp. 2-7). The same applies to the various requests from Nicholas Lee, one of the EU Petitioners (Petition 0394/2021). All documents identified as a result of those requests which have been disclosed in a redacted form are covered by this Access Request.
[11] *Pech v Council* (C-408/21 and T-252/19); *De Capitani v European Parliament* (T-540/15); and *In 't Veld v Commission* (C-350/12 and T-529/09). The implications of the In t' Veld case were discussed by the General Secretariat of the Council in an Information Note (11788/14). However, the Pech case suggests that EU institutions might have failed to pay heed to case law.

[redacted]

4. the evidence of a politically charged debate in relation to the GDPR implications of AEOI, which following a steady stream of CJEU judgments in the area of data protection [12] should represent a quintessentially legal issue affecting fundamental rights, with current EU institutions consistently ignoring the advice of EU data protection services (WP29, AEFI Group), CJEU judgments as well as the findings of previous Commissioners;

5. the introduction of the GDPR since then, coupled with a string of CJEU judgments relating to the transfer of data to third countries, including *Schrems I*, *Schrems II*, and the *EU/Canada case*, which confirm the concerns raised by the Commission under the leadership of Algirdas Šemeta.

   The impact of *Schrems II* for data transfers to the US was highlighted in a report published by the European Parliament [13] which concluded *inter alia* that *"US federal or state privacy law is likely to provide 'essentially equivalent' protection compared to the EU GDPR in the foreseeable future. Indeed, there are serious and in practice insurmountable US constitutional and institutional as well as practical/political obstacles to the adoption of such laws"* . The recent actions by US president Donald Trump are a point in case; and yet, EU institutions continue to stick their institutional heads in the sand when it comes to the GDPR consequences of massive systems of bulk collection, processing and transfer of sensitive personal data.

6. the "long standing nature" of the issue, coupled with evidence of an endless institutional 'ping pong'[14] aimed at frustrating any progress in this area;

7. the obstinate refusal, by EU institutions, notably the European Commission, the Council and the EDPB, to actively engage with data protection advocates and EU petitioners, as evidenced in our substantive correspondence (see e.g. here, here, here). It took the European Commission over 4 years to acknowledge formal complaints in this area, and previous requests for information have been met by a barrage of institutional obstructionism that required the involvement of the EU Ombudsman at every turn and has been described as 'Kafkaesque' by MEPs during a public hearing[15] , with the European

[12] E.g. *Digital Rights Ireland Ltd*, (C-293/12); *Maximillian Schrems v Data Protection Commissioner* (C-362/14); *Tele2 Sverige AB et Watson*, (C-203/15 and C-698/15); EU/Canada PNR Agreement (Opinion 1/15); *Privacy International*, (C-623/17); *Spacenet* (C-793/19); *Facebook Ireland Ltd and Others v Gegevensbeschermingsautoriteit* (C-645/19); *Valsts ieņēmumu dienests - Processing of personal data for tax purposes* (C-175/20); *Mousse* (C-394/23); and *Bindl v European Commission* (T-354/220. See also *L.B. v Hungary* (ECtHR, 36345/16); Luxembourg Court of Appeal (Arrêt N° 67/20) and Belgian DPA (Decision 61/2023).
[13] "Exchanges of Personal Data After the Schrems II Judgment" (PE 694.678)
[14] Referred to euphemistically as 'institutional forbearance' / 'institutional deference' in a recent study published by the European Parliament in September 2022 (PE 734.765), following a groundbreaking study published shortly after the introduction of the GDPR (PE 604.967).
[15] See here, and forward to 12:16:05

[redacted]

Parliament formally 'deploring' the behaviour of the Commission and openly criticising the 'absence of meaningful corrective measures' by the EDPB in a formal resolution issued almost four years ago, without any change of approach since then, notwithstanding a formal decision by the Belgian DPA in 2024 in relation to FATCA.

8. a finding of maladministration against the EDPB, raising fresh concerns about its role in enforcing the GDPR;

9. the lack of any actual and specific prejudice in international relations between the EU and the US in respect of FATCA, given the wealth of information already in the public domain in relation to (a) the scope and extent of previous negotiations between the US and the EU (which, viewed objectively, have not achieved anything, as otherwise the issue would not be 'long standing'); (b) the impact assessment carried out by US agencies (GAO, TIGTA, IRS, US State Department)[16]; (c) the existence of congressional criticism concerning the disproportionate effects of FATCA; and (d) direct evidence that the US abandoned a domestic version of FATCA due to data protection and data security concerns.

10. the lack of any actual and specific prejudice in international relations with EU Member States and other third countries in respect of the CRS, which could trump the public interest to disclosure. In a formal decision issued on 3 July 2020 in relation to a specific data protection complaint, the OECD Secretary-General held that the OECD does not owe any data protection obligations under AEOI. Coupled with the OECD's refusal to the WP29's offer of an "*active dialogue with the OECD competent bodies, in a joint effort to identify methods to pursue the legitimate aim of fighting tax evasion through efficient mechanisms that do not expose individuals' rights to disproportionate interference*", this approach shows the lack of any vested interest in protecting individuals' fundamental rights under EU law. The word 'data protection' was not mentioned once in the OECD's recent report to the G20, nor the latest peer review published in November 2023. In the absence of any real progress to speak for, the mere existence of endless discussions cannot be used to deny full access to documents to ensure public scrutiny and accountability of the work carried out by EU institutions to uphold EU fundamental rights.

Please let me know if you have any question in relation to this access request.

Best regards,

[redacted]

[16] See page 3 above.

[E-mail message sent to access@consilium.europa.eu on Tuesday 11 February, 16:46.]

From: DELETED

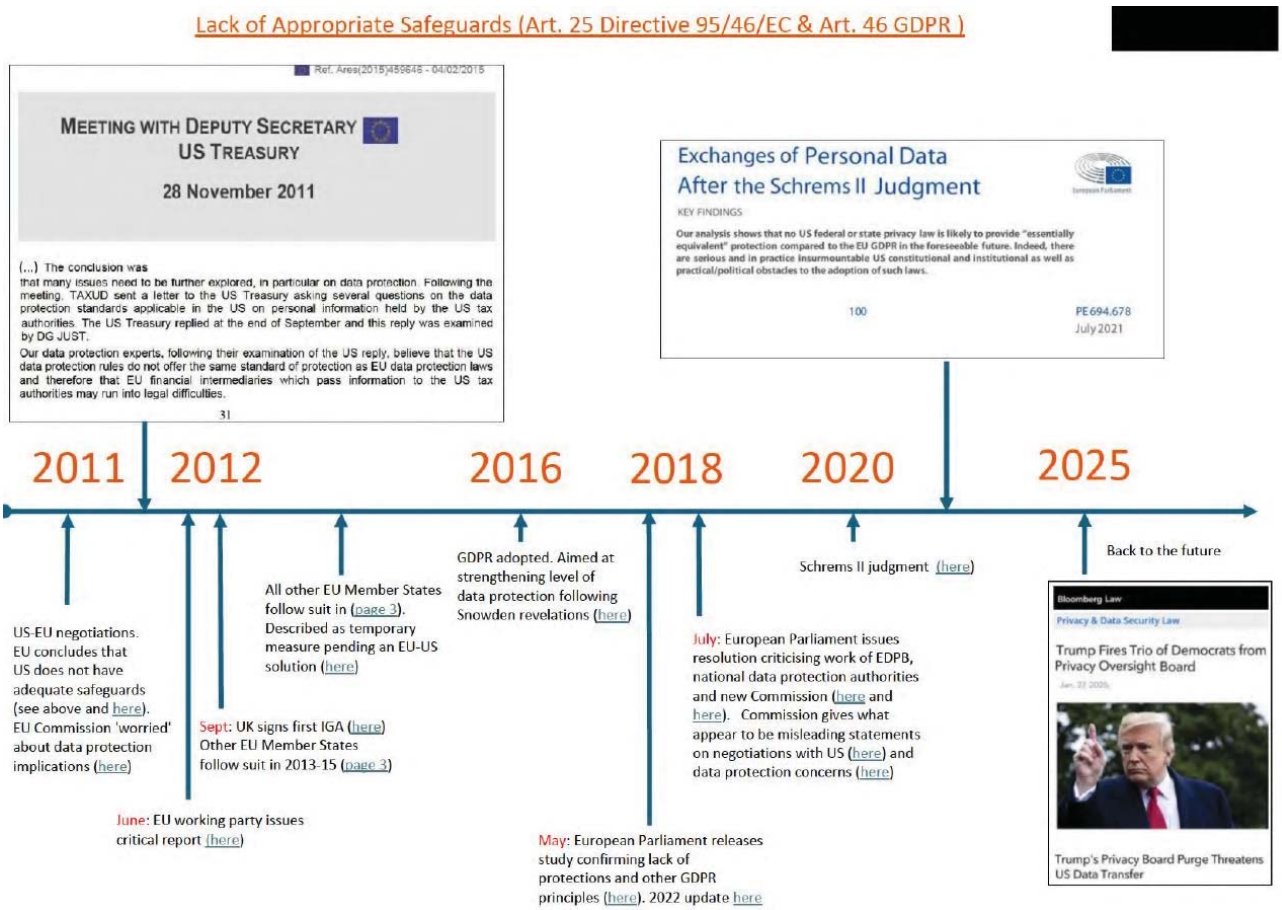
Sent: mardi 11 février 2025 16:46
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Cc: **DELETED**
Subject: AEOI and GDPR | Access Request & Timeline --- COMM (2)

Dear Council's Transparency Unit

See attached timeline which complements our yesterday's Access Request capturing events from 2011 to date in respect of FATCA.

Best regards,

DELETED



[E-mail message sent to access@consilium.europa.eu on Wednesday 26 February, 13:17.]

From: **DELETED**
Sent: mercredi 26 février 2025 13:17
To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>
Cc: **DELETED**
Subject: AEOI and GDPR | AtD --- Overriding Public Interest --- Consilium

Dear Council's Transparency Unit

I refer to our Access to Document Request (together with the timeline) and EU Petitioners' follow-up messages to the Commission.

A recent conversation with EU FATCA Petitioners (copied in) has reminded me of the importance of their work at EU level and the homage paid to them by the European Parliament.

I therefore attach a short supplement that I hope will focus your attention on the overriding public interest to full disclosure, and the fact that this will not go away until petitioners receive an exhaustive response to concerns raised for almost a decade now.

Best regards,

DELETED

[redacted]

Our Ref: FN/5999/60052.1

access@consilium.europa.eu
General Secretariat of the Council
DG COMM - Transparency

sg-acc-doc@ec.europa.eu
Secretariat General of the European Commission
Unit C.1. Transparency and Access to Documents

26 February 2025

AEOI & GDPR | Access to Internal EU documents – Overriding Public Interest

I refer to our Access to Documents Request (together with its timeline) and the follow-up correspondence from EU FATCA Petitioners with the Commission's Transparency Unit.

To date we have not received any acknowledgment from the Council, and the initial response from the Commission did not inspire confidence. It is therefore important that EU institutions have a clear understanding of the overriding public interest in the case in hand.

Internal EU documents show that the previous Commission concluded that (a) FATCA is within the remit of the EU; (b) the US does not have adequate data protection safeguards; and (c) bilateral IGAs were a 'temporary solution', while raising 'worrying concerns'.

Internal EU documents also suggest that current Commissioners might have misled Parliament (also here).

The European Parliament's study on FATCA (➡) pays homage to activists and confirms the Commission's change of approach.

As the GDPR was introduced to strengthen citizens' data protection rights following revelations of US surveillance, EU FATCA petitioners have an overriding public interest in full and unfettered access to documents.

Best regards,

[redacted]

FATCA LEGISLATION AND ITS APPLICATION AT EU LEVEL

IN-DEPTH ANALYSIS September 2022

INTRODUCTION

There are two main instances in which FATCA via IGAs conflicts with EU law: in the former situation FATCA Data are retained and transmitted by EU financial intermediaries and create an issue of procedural safeguards and data protection, while in the latter situation data are not acquired by EU financial intermediaries who refuse to provide services, and in this situation the FATCA impact may directly infringe on substantive rights of individuals such as Accidental Americans.

on the EU unilateral side, no legislative changes have been made

THE APPROACH OF THE COMMISSION

In 2021 a series of Parliamentary questions was also initiated which evidenced a strategy of the Commission which can be defined of "institutional forbearance"[1]. The Commission espoused the EDPB approach of deferring to Member States and developed the strategy of "institutional forbearance"

ACTIVISM AT EP AND PETI

the European Parliament adopted the resolution of 5 July 2018 in which advised fundamental actions in relation to FATCA Data;

PETI continued to receive petitions:

On 18 March, 2021 the Nederlandse Accidental Americans ("NLAA"), filed a petition No. 0033/2021, calling for change in the way that the EU allows companies and governments to share the personal and financial data of Accidental Americans. This is the fourth petition currently before PETI, adding pressure to address critical aspects of FATCA and also highlighting data protection concerns as a result of the way FATCA obliges EU banks and financial institutions to report to the U.S. on the bank accounts of Accidental Americans.

In July 2021 another FATCA-related petition was filed by an American resident in the Netherlands. In December 2021 the France-based Association of Accidental Americans filed a complaint against the U.S. against the U.S. State Department over the U.S.'s citizenship renunciation fee, on grounds that it violates the U.S. Constitution and International law.

80075333.1 [redacted]

Council of the European Union
General Secretariat
Directorate-General Communication and Information - COMM
Directorate Information and Outreach
Information Services Unit / Transparency
Head of Unit

Brussels, 24 March 2025

DELETED
Email: **DELETED**

Ref. 25/0418

Request made on: 10.02.2025
Deadline extension: 03.03.2025

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.[1]

The General Secretariat of the Council has identified documents 13729/12, 18031/13, 16975/14, 16975/1/14 REV 1, 16975/1/14 REV 1 COR 1, 15655/16, a GSC internal note of 7 October 2015 on the judgment of the Court in Case C-362/14, 7074/23, 7180/23, 11287/24, 14403/24, 15364/24, WK 6400/2021, WK 4084/2023, WK 4085/2023, WK 4378/2023, WK 4831/2023, WK 5753/2023, WK 4902/2023, WK 7418/2023, WK 7474/2024, WK 15311/2023 RESTREINT UE/EU RESTRICTED, WK 7776/2024 and WK 7949/2024 as falling within the scope of your access request.

Documents **18031/13**, **16975/14 INIT**, **16975/14 REV 1**, **16975/14 REV 1 COR 1**, **15655/16**, **7180/23**, **7074/23**, **11287/24**, **14403/24** and **15364/24**, are already publicly available on the Council's Public Register.

[1] The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

As regards documents **WK 4084/2023, WK 4085/2023** and **WK 4378/2023,** we refer you to the Council's reply to your confirmatory application 13/c/01/23, dated 10 July 2023, which remains valid as far as the exceptions on the protection of the public interest as regards international relations and the financial, monetary or economic policy of the European Union or a Member State are concerned (Article 4(1)(a), third and fourth indents, of Regulation (EC) No 1049/2001).

Please find attached documents **13729/12**, **WK 6400/2021, WK 7776/2024** and the **GSC Internal note dated 7 October 2015.**

You will also find attached partially accessible versions of documents**, WK 7474/2024** and **WK 7949/2024**.[2] However, I regret to inform you that further access to these documents, as well as any access to documents **WK 4831/2023, WK 4902/2023, WK 5753/2023, WK 7418/2023** and **WK 15311/2023 RESTREINT UE/EU RESTRICTED,** cannot be given for the reasons set out below.

Document WK 7474/2024 of 24 May 2024 contains a Presidency steering note on the application of Chapter V of the GDPR in the context of the automatic exchange of information (AEOI) with third countries.

Document WK 7949/2024 of 7 June 2024 contains another Presidency steering note on the same subject.

Document WK 4831/2023 of 13 April 2023 is a proposal by the Spanish delegation for an amendment to the Directive on Administrative Cooperation (DAC).

Document WK 4902/2023 of 14 April 2023 contains a Presidency steering note and compromise text for amendment of the DAC.

Document WK 5753/2023 of 3 May 2023 contains a presentation made by the Spanish delegation of a proposal to amend DAC.

Document WK 7418/2023 of 5 June 2023 contains a presentation by the Presidency on the interaction of the automatic exchange of tax information with third countries with the GDPR.

Document WK 15311/2023 RESTREINT UE/EU RESTRICTED of 17 November 2023 is a classified document. The classification RESTREINT UE/EU RESTRICTED is applied to information and material the unauthorised disclosure of which could be disadvantageous to the interests of the European Union or of one or more of its Member States. It contains a Presidency steering note concerning the automatic exchange of tax information with third countries and its interaction with the General Data Protection Regulation (GDPR).

[2] Article 4(6) of Regulation (EC) No 1049/2001.

All of these documents address the automatic exchange of relevant information (AEOI) for tax purposes with non-EU countries and territories in relation to the application of the EU rules on protection of personal data (in particular the GDPR).

They concern ongoing and future negotiations of international agreements on tax information exchanges between Member States and third countries. Any further disclosure of these documents would reveal the Union's internal views as well as negotiation strategy in relation to complex ongoing and future negotiations of international agreements on tax information exchanges. Disclosure of the requested documents would seriously undermine the Member States' negotiating position vis-à-vis third countries, since they contain information which is still under discussion within the Council on the approaches to be taken in the matter. It would also undermine the mutual trust between the parties involved, as third countries could doubt about the stability of the matters on which the Council's work has not yet been concluded and would therefore increase the risk of jeopardising the negotiating process.

These documents also address very sensitive tax policy issues that may significantly affect the location of business activities between the EU and non-EU jurisdictions. The issues at hand are economically important to many governments and citizens across the EU. Any further disclosure of the documents is likely to trigger unwarranted and undesirable behaviour by economic operators which would interfere with Member States' fiscal policy. The information contained in the requested documents could be used to hinder the international exchange of tax information and thus create obstacles in the fight against international tax fraud. Therefore, further disclosure of the requested documents at this stage could harm the fight against tax fraud and adversely affect the protection of the public interest as regards the financial and economic policy of the European Union and its Member States.

Finally, it should be noted that discussions within the Council on the application of the General Data Protection Regulation to the automatic exchange of tax information are ongoing.

These documents give details of progress made so far and identify the difficulties that still need to be addressed before the Council can reach a political agreement on this sensitive issue. Release to the public of the information contained in these documents would affect these discussions and diminish the chances of the Council reaching an agreement.

To sum up, any further disclosure of the first two documents and any disclosure of the rest of these documents would therefore undermine the protection of the public interests as regards international relations[3], the financial, monetary or economic policy of the EU and its Member States[4] and the Council's decision-making process[5].

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3 Article 4(1)(a), third indent of Regulation (EC) No 1049/2001.

4 Article 4(1)(a), fourth indent of Regulation (EC) No 1049/2001.

5 Article 4(3), first subparagraph of Regulation (EC) No 1049/2001.

Having examined the context in which these documents were drafted, on balance the General Secretariat of the Council could not identify any evidence suggesting an overriding public interest in their further disclosure as the exceptions apply to all parts of these documents that have not yet been disclosed.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may ask the Council to review this decision within 15 working days of receiving this reply. Should you see the need for such a review, you are invited to indicate the reasons thereof.

Yours sincerely,

Fernando FLORINDO

Enclosures: 6

ANNEX 3

[E-mail message sent to access@consilium.europa.eu on Sunday 30 March 2025, 22:06 and registered on Monday 31 March 2025]

From: **DELETED**

Sent: dimanche 30 mars 2025 22:06

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Cc: **DELETED**

Subject: Ref 25-0418 (AEOI & GDPR) | Confirmatory Application --- CONSILIUM

Dear Mr Florindo

AEOI & GDPR | Access to Documents
Your decision dated 24 March 2024
Confirmatory Application

[redacted]

Our Ref: FN/5999/60052.1

Your Ref: 25/0418

access@consilium.europa.eu
Council of the European Union
General Secretariat
Directorate-General Communication and Information
Fernando Florindo - Head of Unit
Directorate Information and Outreach Information
Services Unit/Transparency

30 March 2025

Dear Mr Florindo

AEOI & GDPR | Access to Documents Request –Confirmatory Application

I acknowledge receipt of your letter dated 24 March 2025 in response to our Access to Documents Request dated 10 February 2025 (as supplemented on 24 February 2025 and 26 February 2025 and) together with its timeline and chronology.

The purpose of this letter is to ask the Council to review your decision in accordance with Article 7(2) of Regulation (EC) No 1049/2001.

Table of contents

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[redacted]

[redacted]

1. **Heavily redacted documents**

1.1 Several documents identified have either been withheld or been redacted, some so starkly redacted to make their content and context impenetrable (see e.g. WK 7949/2024 and WK 4084/2023).

1.2 By this confirmatory application, we request full disclosure of the following documents:

WK 7949/2024 of 7 June 2024	Presidency steering note on Chapter V of the GDPR in the context of AEOI with third countries
WK 7474/2024 of 24 May 2024	Presidency steering note on Chapter V of the GDPR in the context of AEOI with third countries
Document WK 15311/2023 UE/EU RESTRICTED of 17 November 2023	Presidency steering note concerning the automatic exchange of tax information with third countries and its interaction with the General Data Protection Regulation (GDPR).
Document WK 7418/2023 of 5 June 2023	Presentation by the Presidency on the interaction of the automatic exchange of tax information with third countries with the GDPR
WK 4378/2023 of 3 May 2023 (*)	Presentation by Spanish delegation regarding a proposal for amendment of the directive on administrative cooperation in the field of taxation (DAC).
WK 5753/2023 of 3 May 2023	Presentation made by the Spanish delegation of a proposal to amend DAC.
WK 4902/2023 of 14 April 2023	Presidency steering note and compromise text for amendment of the DAC
WK 4831/2023 of 13 April 2023	Proposal by the Spanish delegation for an amendment to the Directive on Administrative Cooperation (DAC).
WK 4084/2023 of 24 March 2023 (*)	Presidency steering note on the interaction of the interaction on AEOI with third countries and the GDPR (State of Play)
WK 4085/2023 of 24 March 2023 (*)	Paper by the Spanish delegation to Delegations containing a proposal for amendment of the directive on

[redacted]

	administrative cooperation in the field of taxation (DAC).

2. **Old and new motivations to withhold disclosure ("Objections")**

2023

2.1 Back in 2023, your agency withheld the disclosure of the documents highlighted with an asterisk with the following reasons, which according to your letter dated 24 March 2025 "remain valid":

> *"Making these documents fully public, at this preliminary stage of the "ongoing work and discussions, could undermine the international relations of MS.*
>
> *As a preliminary remark, signing international agreements on the exchange of tax information falls within the **competence of the Member States**.*
>
> *The ongoing discussions cover a number of policy and legal considerations, which are also relevant in the context of the ongoing and future negotiations of international agreements on tax information exchanges by Member States (for example, the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of information reported by Digital Platforms or the MCAA for the automatic exchange of information on Crypto-Assets). Therefore, **disclosure** of these documents would **weaken the Member States negotiating position**, increase the risk of jeopardising the negotiating process as a whole and thereby undermine the protection of their international relations. Furthermore, non-EU countries could refrain from subscribing to international agreements on tax information exchanges: as a result of disclosure, doubts can arise about the stability of the matters and/or texts under negotiations (Working Party on Tax Questions and Council work has not been concluded yet).*
>
> *Disclosure would also undermine the protection of the **public interest as regards the financial, monetary or economic policy** of the Community or a Member State.*
>
> *Efficient flow of international data exchange for tax purposes, in line with the globally agreed standards, constitutes the **necessary instrument to fight tax fraud** in a globalised world. Therefore, also considering the arguments set out above, disclosure of these documents at this stage could harm the fight against tax fraud.*
>
> *current content of international agreements on the exchange of tax information or the ones that are being or are going to be negotiated by Member States, which may create difficulties for the signature of this kind of international agreements. Disclosure could also facilitate challenging the exchanges carried out under the international agreements that are currently in force. This would amount to **creating obstacles in the fight against international tax fraud,** given that the*

[redacted]

intended result of such efforts would be to hinder international exchanges of tax information. If these efforts are successful, the hindrances to the exchange of tax information that they would create could generate loopholes, cases of absence of information or grounds to obtain it, where the product of tax fraud could be hidden out of reach of the tax administrations of Member States. In a globalised world, any obstacle to the exchange of tax information amounts to an obstacle to the prosecution of tax fraud. Thus, non-disclosure of these documents is also based on the reasonable probability of the intent that the requested documents will be used with the intent to hamper international exchanges of tax information and thereby the fight against tax fraud, which would undermine the fiscal policy of Member States.

Disclosure would also undermine the institution's decision-making process.

Disclosure of these documents could lead to that ***non-EU countries could attempt influencing possible conclusions*** *of this work to the benefit of their interests (the results of which would require unanimous support by Member States). Delegations of Member States meeting in the Council or its preparatory bodies at this stage have to conduct the necessary analysis and release of any preliminary information may also have any of these described consequences. Regarding these particular documents or parts thereof, it must be underlined that a frank and open discussion between Member States is necessary, even more so if it is taken into account that it pertains to a domain as sensitive as taxation. If such documents are released officially, while that discussion is still taking place, Member States will be vulnerable to attempts to influence their position.*

Full disclosure of the documents would therefore seriously undermine the protection of the public interest as regards international relations, as regards the financial, monetary or economic policy of the Union or a Member State and as regards the Council's decision making process."

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2.2 In relation to the other documents mentioned in the table above (not marked with an asterisk), your agency motivates the lack of disclosure/full disclosure as follows:

They concern ***ongoing and future negotiations*** *of international agreements on tax information exchanges between Member States and third countries. Any further disclosure of these documents would reveal the Union's internal views as well as negotiation strategy in relation to complex ongoing and future negotiations of international agreements on tax information exchanges. Disclosure of the requested documents would seriously undermine the Member States' negotiating position vis-à-vis third countries, since they contain information which is still under discussion within the Council on the approaches to be taken in the matter. It would also undermine the mutual trust between the parties involved, as third countries could doubt about the stability of the matters on which the Council's work has not yet been concluded and*

[redacted]

would therefore increase the risk of jeopardising the negotiating process.

*These documents also address **very sensitive tax policy issues** that may significantly affect the location of business activities between the EU and non-EU jurisdictions. The issues at hand are economically important to many governments and citizens across the EU. Any further disclosure of the documents is likely to trigger unwarranted and undesirable behaviour by economic operators which would interfere with Member States' fiscal policy. The information contained in the requested documents could be used to hinder the international exchange of tax information and thus create obstacles in the fight against international tax fraud. Therefore, further disclosure of the requested documents at this stage could harm the fight against tax fraud and adversely affect the protection of the public interest as regards the financial and economic policy of the European Union and its Member States.*

*Finally, it should be noted that **discussions within the Council** on the application of the General Data Protection Regulation to the automatic exchange of tax information **are ongoing.***

These documents give details of progress made so far and identify the difficulties that still need to be addressed before the Council can reach a political agreement on this sensitive issue. Release to the public of the information contained in these documents would affect these discussions and diminish the chances of the Council reaching an agreement.

To sum up, any further disclosure of the first two documents and any disclosure of the rest of these documents would therefore undermine the protection of the public interests as regards international relations [Article 4(1)(a), third indent], the financial, monetary or economic policy of the EU and its Member States [Article 4(1)(a), fourth indent] and the Council's decision-making process [Article 4(3), first subparagraph of Regulation (EC) No 1049/2001].

3. **Objection #1 unfounded**

"Disclosure would seriously undermine the protection of the public interest as regards international relations, as regards the financial, monetary or economic policy of Member States"

3.1 Nobody should evade tax, and it is not in question that the fight against tax evasion represents a recognised public objective.

3.2 The question at the heart of our seven-year-long work to raise awareness over the data protection implications of AEOI[1] is whether the automatic bulk processing of sensitive personal and financial information is proportionate, i.e. strictly necessary to achieve the public objective pursued.

[1] AEOI includes DAC2, the CRS and FATCA.

[redacted]

3.3 The point was summarised succinctly by the European Parliament's study shortly after the GDPR came into effect - this was 9 years ago:

> *"Obviously, there is a tension between the right of taxpayers to the protection of the Data and the need of tax authorities to have access to data to enforce their tax provisions.*
>
> *It follows that to prove that the restrictions imposed are justified under the GDPR, such restrictions must respect the essence of the fundamental rights and freedoms; and such restrictions are a necessary and proportionate measure in a democratic society."*

3.4 The principle of proportionality is enshrined in Art. 52 of the EU Charter of fundamental rights and in its constant jurisprudence[2] the CJEU has confirmed the strict application of this principle.

Necessary instrument to fight tax fraud

3.5 Your letter states that AEOI is a "necessary instrument to fight tax fraud".

3.6 In relation to FATCA, the lack of necessity was identified by the WP29 in an opinion prepared at the behest of the European Commission[3] 13 years ago:

> *"FATCA must be mutually recognised as necessary from an EU perspective... A bulk transfer and the screening of all these data is not the best way to achieve such a goal. Therefore, more selective, less broad measures should be considered in order to respect the privacy of law-abiding citizens, particularly; an examination of alternative, less privacy-intrusive means must be carried out to demonstrate FATCA's necessity."*

3.7 The lack of necessity was also raised by the same EU's data protection working party in relation to the CRS 9 years ago in a letter to the European Commission and the OECD:

> *"The WP29 wishes to reiterate its strong concerns regarding the repercussions on fundamental rights of mechanisms entailing major data processing and exchange operations such as those envisaged by the CRS....*
>
> *It wishes to open an active dialogue with the competent OECD bodies and proposes to hold a high-level meeting between the WP29 and the OECD to foster a real cooperation, in a joint effort to identify methods to pursue the legitimate aim of fighting tax evasion through efficient mechanisms that do not expose individuals' rights to disproportionate interference."*

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[2] See footnote 12 of our Access Request.
[3] Internal EU documents previously released to a Dutch MEP show that FATCA was put on the agenda of the WP29 by the Commission, because of its own data protection concerns, see e.g. the communication dated 6 February 2012, which is reproduced on page 9 of our letter dated 9 April 2020.

[redacted]

3.8 Note the reference to the lack of an active dialogue with the OECD, which was tasked with developing the CRS, which was transposed within the EU through the DAC2.

3.9 For almost a decade now, EU Member States and EU institutions have flatly refused to engage with EU petitioners and data protection campaigners to find a satisfactory solution to the disproportionate nature of systems of automatic exchange of information entailing bulk transfers of sensitive information of millions of law-abiding citizens. The lack of dialogue at EU level was acknowledged in the European Parliament's updated study three years ago.

3.10 Back to the issue of proportionality and necessity, the study published by the European Parliament 7 years ago summarised the position as follows:

> *"Obviously, there is a tension between the right of taxpayers to the protection of the Data and the need of tax authorities to have access to data to enforce their tax provisions.*
>
> *It follows that to prove that the restrictions imposed are justified under the GDPR, such restrictions must respect the essence of the fundamental rights and freedoms; and such restrictions are a necessary and proportionate measure in a democratic society to safeguard a set of societal issues, including monetary, budgetary and taxation matters. So essentially the issue is whether FATCA restrictions are necessary and proportionate measures. In this respect there are certain critical indicators of the lack of these requirements in current FATCA practice. First, U.S. expatriates generally do not use the EU financial system to engage in offshore tax evasion. Second, FATCA does not request the indicia of unlawful behaviour of taxpayers, so that it raises compliance costs for persons for whom there is no evidence capable of suggesting that their conduct might have a link, even an indirect or remote, with tax evasion.*
>
> *In conclusion FATCA restrictions at the current stage appear to be neither proportionate, nor necessary in so far they fail to narrow down the reporting obligations to individuals suspected of tax evasion.*
>
> *Lacking specific evidence on a case-by case basis that U.S. expatriates are using the financial system to engage in offshore tax evasion, FATCA restrictions appear to go beyond what is strictly necessary to achieve the goal of fighting offshore tax evasion."*

3.11 The European Parliament's study then goes on to quote, approvingly the opinion issued by the EU's data protection working party at the behest of the European Commission 13 years ago.

3.12 The same point was made in respect of DAC by the group of experts appointed by the European Commission 7 years ago:

> *"On many aspects, DAC2 may be compared with the Data Retention Directive which has recently been declared illegal by the CJEU. DAC2 must respect the principle of proportionality according to which any*

[redacted]

data transfer is only allowed in case it is appropriate and not redundant. In its letter of 4 February 2015, the Article 29 Working Party considers that in order not to violate the proportionality principle, it is necessary to demonstrably prove the necessity of the foreseen processing and that the required data are the minimum necessary for attaining the stated purpose and thus avoid an indiscriminate, massive collection and transfer of the data.

A legal challenge might arise from the current version of DAC2 mainly because of the magnitude of the data to be collected and reported and the fact that it does not guarantee taxpayers a permanent access to their data and a mandatory notification in case of breach. DAC2 must respect the principle of sufficient cause, i.e. the verification of indicia for a non-compliant behaviour of taxpayers. In its current version, DAC2 might be challenged because it does not request the existence of such sufficient cause or indicia of unlawful behaviour."

3.13 The European Commission came to the same conclusion on 4 February 2011[4]:

> *"Lack of proportionality - FATCA was intended to recover tax from high net worth US individuals with significant offshore assets, but has lost sight of this and is now indiscriminately impacting all types of clients (US and non-US, high worth and low worth) with huge costs to those clients and foreign intermediaries and for very limited return"*[5]

3.14 TAXUD made the same point a year later, on 14 March 2012[6]

> *"Issues raised by FATCA and actions taken by the Commission: Its very broad scope may be disproportionate in that it involves also entities that present a very low risk of tax evasion"*

3.15 In this context it is noteworthy that, unlike FATCA, the CRS does not provide any thresholds, so that even the smallest accounts are subject to automatic exchange of information under the CRS/DAC2. In practice, most banks combine CRS and FATCA reporting without any thresholds.

3.16 In all the opinions referenced above, the focus is on law-abiding citizens, as they (rather than tax evaders) enjoy a fundamental right to privacy and data protection. According to the OECD, in 2022 the CRS affected 123 million accounts worldwide, worth €12 trillion. I am not aware of any current EU data, but in 2018 the European Commission confirmed that EU Member States exchanged information concerning a total of some 8.7 million accounts worth €2.9 trillion, whereby this did not yet include small accounts, which only became subject to exchange in 2019.

3.17 Even if your letters are imbued with a pervading sense of suspicion and a "guilty until proven innocent" sentiment in relation to the use of bank

[4] RK11027, partly reproduced on page 6 of our letter dated 13 April 2020.
[5] The limited return in the case of FATCA was set out in a report from the US Treasury discussed in our letter dated 13 April 2022.
[6] Document reproduced on page 3 of our letter dated 9 April 2020.

[redacted]

accounts, I am sure that you will stop short from suggesting that tens of millions of holders of bank accounts in the EU are tax evaders.

In conclusion, as regards Objection #1, it is not in doubt that AEOI aims to serve the public interest as regards the financial, monetary or economic policy of Member States, notably the collection of tax and the fight against tax evasion.

However, the overwhelming evidence is that AEOI measures (both FATCA and the CRS/DAC2) are disproportionate and therefore violate fundamental rights of millions of law-abiding citizens.

The overwhelming evidence is also that Member States, as well as EU Institutions, have turned a blind eye to a violation of the fundamental rights of millions of law-abiding citizens perpetrated on an industrial scale, notwithstanding the "long-standing" nature of the issue.

In the circumstances, our Access to Documents Request demonstrates an overriding public interest in disclosure.

4. **Objection #2 unfounded**

"Making these documents fully public, at this preliminary stage of the "ongoing work and discussions, could undermine the international relations of MS. As a preliminary remark, signing international agreements on the exchange of tax information falls within the competence of the Member States. The ongoing discussions cover a number of policy and legal considerations, which are also relevant in the context of the ongoing and future negotiations of international agreements on tax information exchanges by Member States (for example, the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of information reported by Digital Platforms or the MCAA for the automatic exchange of information on Crypto-Assets). Therefore, disclosure of these documents would weaken the Member States negotiating position"

4.1 Firstly, on the issue of competence, documents previously disclosed to a Dutch MEP 9 years ago (see also here) indicate very clearly that the Commission felt that the signing of FATCA fell within the EU competence.

4.2 Thus, on 9 February 2011, TAXUD/D2 wrote as follows[7]

> *"The fact that the EU has exercised its competence in the area of administrative cooperation by adopting the EUSD and the Mutual Assistance Directive is a strong argument to say that this field is now within the competence of the EU."*

[7] Ares(2015)530491, reproduced on page 2 of our letter dated 14 May 2020.

[redacted]

4.3 The chronology of direct EU involvement[8] shows the same picture and once the UK jumped the gun and signed the first bilateral agreement with the US (presumably to obtain a competitive advantage with its closest ally) on 12 September 2012 (less than two months after the negative opinion from the EU's data protection working party), the Commission stressed the "quick fix" and "temporary nature" of a "government-to-government solution, stressing that ultimately FATCA would require an EU-US agreement[9].

4.4 Indeed, this material shows an EU and Member States in disarray, responding in a scattergun approach to pressure exercised by the U.S. and unable to articulate a position that would reflect the concerns raised by the EU's data protection working party as early as 2012 (FATCA) and 2016 (CRS/DAC2), and confirmed by various opinions from TAXUD and the European Parliament in 2011, 2012, 2018 and 2022 (FATCA) and the AEFI Group of Experts appointed by the European Commission (DAC2).

4.5 In addition, the EU and Member States have been unable to articulate a clear position following the seminal CJEU judgment in the *Schrems II* case, notwithstanding the EDPB Guidelines (which we tested on 6 March 2020), and more recent CJEU judgments in the areas of data protection and international data transfers, including a recent judgment specifically in relation to transfers of data to the US[10].

4.6 Our correspondence with the EDPB, both before and after the 77-page long decision by the Belgian DPA decision two years ago confirms the picture of a paralysed system.

4.7 The problems are well-known. They have been fleshed out in opinions and studies that are available online, based on internal documents that have already been widely discussed in correspondence that is also available online[11], as well as the Belgian DPA decision.

4.8 To put it bluntly, AEOI systems designed in the late 2000s and early 2010s prior to the Snowden revelations and prior to the introduction of the GDPR are disproportionate and incompatible with the fundamental freedoms enshrined in the EU Charter of fundamental rights, in that they apply indiscriminately to all account holders – regardless of any indicia of tax evasion and (in the case of the CRS/DAC2) without any thresholds.

4.9 Since our first Access to Documents request in 2023, negotiations appear to be "ongoing", without anything to show in terms of progress, as the only form of real progress would require a complete re-setting of the framework for tackling tax evasion through efficient mechanisms that do not endanger the fundamental rights of law-abiding citizens. As discussed in our report, this could include withholding tax agreements, or a more robust approach to Art.

[8] Minutes of a meeting held in Paris on 13 December 2011 between the European Commission, the G5 (France, Germany, Italy, Spain and the UK), the OECD and the US Treasury, reproduced on page 2 of our letter dated 13 April 2020.

[9] See the various documents reproduced in our letters dated 9 April 2020, 11 April 2020 and 13 April 2020.

[10] See footnote 12 of our Access to Document Request.

[11] Our correspondence with the EU and the OECD spans over 200 letters.

[redacted]

26 of the OECD's Model Tax Convention, which in the past (prior to the adoption of AEOI) did not work, mainly because a number of jurisdictions (including Austria and Luxembourg) applied strict banking secrecy rules that had the net effect of frustrating any effective exchange of information on request. Now that banking secrecy is no longer an obstacle, a case-by-case solution modelled on a revamped Art. 26 of the OECD Model could offer an appropriate solution to achieving the public objectives pursued by AEOI.

In the circumstances, EU petitioners have demonstrated an overriding interest in obtaining a full disclosure of the documents listed in the table above in order to review the legal position and, if necessary, take judicial redress to protect their fundamental rights.

5. **Objection #3 unfounded**

"The documents address very sensitive tax policy issues that may significantly affect the location of business activities between the EU and non-EU jurisdictions. The issues at hand are economically important to many governments and citizens across the EU. Any further disclosure of the documents is likely to trigger unwarranted and undesirable behaviour by economic operators which would interfere with Member States' fiscal policy. The information contained in the requested documents could be used to hinder the international exchange of tax information and thus create obstacles in the fight against international tax fraud. Therefore, further disclosure of the requested documents at this stage could harm the fight against tax fraud and adversely affect the protection of the public interest as regards the financial and economic policy of the European Union and its Member States."

Individuals

5.1 FATCA and the CRS affect primarily accounts held by individuals, rather than businesses.

5.2 There are countless reasons why law-abiding citizens might have bank accounts abroad. This includes workers, students and immigrants, for whom having a bank account abroad (e.g. in the country where they come from or in the country in which they study) reflects a normal fact of life.

5.3 As regards individuals, your objection does not make any sense. It simply does not apply in this scenario. And yet, AEOI affects millions of individuals, including the EU FATCA petitioners.

5.4 This objection is, therefore, quite curious.

Businesses

5.5 It is a well-known fact that the EU has locked horns with powerful Big Tech companies who tried to shift profits by carefully locating their business activities between the EU and non-EU jurisdictions. These egregious

practices – known as profit erosion and profit shifting (**BEPS**) have been at the centre of the OECD/G20 led work to combat BEPS. Under the OECD/G20 Inclusive Framework on BEPS, over 140 countries and jurisdictions are working together to implement 15 measures to tackle tax avoidance, improve the coherence of international tax rules and ensure a more transparent tax environment. The 15 BEPS actions include measures designed to remove the incentive of taxpayers to shift income from a market country into foreign subsidiaries in a low-tax jurisdiction (so-called 'CFCs', Action 3), harmful tax practices, including the requirement of substance (Action 5), double tax treaty abuses (Action 6), Permanent establishment status (Action 7), transfer pricing (Actions 8, 9 and 10), BEPS data collection (Action 11), the disclosure of aggressive tax planning (Action 12) and Country-by-Country reporting (Action 13).

5.6 In addition, BEPS 2.0 rules (also known as Pillar 2) introduced a global minimum tax rate of 15% for large businesses, So far, more than 140 countries intend to adopt Pillar 2 and 27 jurisdictions have enacted local versions of the new global minimum tax regime.

Objection #3 is curious, because it openly puts business interests ahead of the fundamental rights of law-abiding citizens. Insofar as it refers to individuals, your objection does not make sense. And in relation to businesses, since the introduction of AEOI in the early 2010s, a whole set of rules (BEPS. Pillar 1, Pillar 2) have been adopted which better addresses the concerns raised in your objection.

In these circumstances, your objection is not capable of override the public interest in the disclosure of the documents mentioned in the table at the beginning of this letter.

6. Objection #4 unfounded

"Finally, it should be noted that discussions within the Council on the application of the General Data Protection Regulation to the automatic exchange of tax information are ongoing. These documents give details of progress made so far and identify the difficulties that still need to be addressed before the Council can reach a political agreement on this sensitive issue. Release to the public of the information contained in these documents would affect these discussions and diminish the chances of the Council reaching an agreement."

6.1 Discussions within the Council on the application of the GDPR to AEOI have been going on for over a decade, albeit without any progress, notwithstanding the consistent case law from the CJEU in the area of international data transfers (including the Schrems II judgment).

6.2 In its formal resolution on FATCA, adopted 8 years ago, the European Parliament openly criticised EU institutions for the "lack of prioritisation" and the "absence of meaningful decisions and corrective measures despite the significant CJEU case law developments over the past 5 years".

[redacted]

6.3 For years now, EU petitioners and data protection campaigners have tried to engage with the EU in a real effort to open an active dialogue on the GDPR implications of AEOI.

6.4 For years, EU institutions have refused to acknowledge the legitimate concerns of EU petitioners and engaged in an endless institutional ping-pong designed to frustrate any real progress and avoid accountability. Indeed, it took the European Commission 4 years to simply acknowledge the request of proceedings against EU Member States in relation to FATCA.

6.5 The European Parliament referred to the phenomenon of "institutional forbearance" and "institutional deference". These are cute expressions, which in plain English mean "passing the buck".

6.6 Following the string of CJEU judgments on data protection, including in relation to international transfers[12], EU institutions should have taken some sort of action and corrective measures. Instead, all we can see are years of "internal discussions".

6.7 While the Council is entitled to have internal discussions, this is not a free pass for avoiding tackling an open secret, notably the violation of fundamental rights of millions of law-abiding citizens by a systematic bulk transfer of their data to third countries.

> Objection #4 is not a free pass for endless discussions and institutional dithering.
>
> In light of the clear evidence of a lack of corrective measures and a lack of engagement with EU petitioners and data protection campaigners for almost a decade, it comes a point where the public interest of procedural transparency, as it results from Articles 1 and 10 TEU and from Article 15 TFEU (see paragraphs 61-62 of the *Sovim* judgment) must override the Council's interest in keeping its internal discussions confidential.
>
> In the circumstances, the public interest of disclosure overrides the interest of the Council to keep its deliberations private.

7. Final remarks

7.1 It is not as if the Council is not aware of the issues mentioned in our Access to Documents Request and this Confirmatory Application.

7.2 The issues regarding FATCA and the CRS are well-documented in opinions and resolutions from within the EU.

7.3 As regards FATCA, our request for access to documents must be read against the backdrop of recent developments in the United States, notably

[12] See footnote 12 of our Access Request.

[redacted]

(a) president Trump's attack on the Rule of Law and on the judiciary;

(b) the unauthorised access of IRS data by Elon Musk's DOGE;

(c) official reports from the US Treasury on the uselessness of FATCA, and the IRS's "departure from the comprehensive FATCA strategy";

(d) official reports from the IRS on its inability to process FATCA data;

(e) official reports on the poor state of data security within the IRS, including reports of 'critical safeguard weaknesses', a 'bubble-gum IT system', document management deficiencies, both generally and in relation to FATCA) and the loss of millions of taxpayers' data;

(f) official reports from the US Senate on the disproportionate nature of FATCA;

(g) the mounting concerns in the media and civil society[13] for the lack of action in relation to transfers of personal data to the US;

(h) concerns raised by the European Commission (class of 2010-2013) (see also here at p. 8)[14]

7.4 In relation to the CRS, your generic objections must be read against the following quantitative data:

(a) the CRS aims to fight against tax evasion. However, under the CRS information is exchanged with a number of countries, including several authoritarian regimes, that do not levy any individual taxes[15] or which have a territorial system of taxation[16], so that foreign bank accounts are not a problem.

(b) a number of parliamentarians have raised concerns about the transfer of personal data under the CRS to countries with a poor human rights record (see also here);

(c) concerns with the possible abuse of CRS data by autocratic governments have also been raised by a group of Dutch investigative journalists ('countries abuse money laundering rules to silence critics') and the UK's oldest defence think tank, the Royal United Services Institute ('charting Authoritarian Abuses of the FATF Standards').

7.5 The fight against tax evasion should focus on tax evaders. The defence of fundamental rights focuses on law-abiding citizens. When introducing

[13] See the letter dated 27 March 2025 from Sophie in 't Veld to the EU. Sophie in 't Veld, as I you know, is the former MEP who fought a similar access to documents request against the European Commission in the past. For years, she has been echoing the concerns of EU FATCA petitioners within the European Parliament.
[14] JUST/C3/[Edited]/ARES (2011) 1263041 dated 7 November 2011.
[15] Countries that do not levy any individual taxes include the UAE and Saudi Arabia.
[16] Territories with a territorial system of taxation include Hong Kong.

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transparency measures to combat tax evaders, the fundamental rights of law-abiding citizens should be respected as a fundamental right.

7.6 Overall, your objections focus on the *objectives* of AEOI (which are not in dispute). By contrast, our concerns relate to the lack of proportionality and necessity of blanket measures that require a bulk transfer of sensitive personal data to third parties without any safeguards for law-abiding citizens.

7.7 In conclusion, our Access to Documents Request relies on an overriding interest on disclosure and procedural transparency, which requires full disclosure of the documents mentioned in the table at the beginning of this letter.

7.8 Our request complies with the requirements for disclosure set out in the case law of the CJEU in this area, notably *Pech v Council* (C-408/21 and T-252/19); *De Capitani v European Parliament* (T-540/15); *and In 't Veld v Commission* (C-350/12 and T-529/09), as discussed in the Information Note from the General Secretariat of the Council (11788/14).

Best regards,

[redacted]