

Brussels, 9 April 2020

Dear Commissioner Mr Paolo Gentiloni,

I am writing to you following your comments this week on the situation of Accidental Americans, particularly on the right of access to a basic payment account in relation to the Payment Accounts Directive.

Following extensive correspondence with the Commission over the last eight years on all aspects of the US Foreign Account Tax Compliance Act (FATCA) and its negative consequences for Accidental Americans, who are EU citizens, I have so far unfortunately not noticed any feeling of compassion with their situation. Despite the fact that their bank accounts are being (threatened to be) closed down by banks afraid of the penalties imposed by the US, the Commission very regrettably pretends that there is no problem at all, hiding behind bureaucratic excuses.

This week, you stated that with respect to the Payment Accounts Directive, *"the Commission has looked into the alleged infringements of the right to a basic bank account as prescribed, but has found no evidence of violation of the EU legal framework in the national measures transposing the Directive."*

- Can you explain, in detail, how the Commission has come to this conclusion?
- Which exact questions has it asked to the Member States?
- Has the Commission asked the Member States about financial institutions threatening to close down accounts of EU citizens that cannot provide a US Taxpayer Identification Number (TIN)
 - o If so, what was their answer, specified per Member State?
 - o If not, why not?

As regards data protection, in February 2019, the European Data Protection Board issued a statement on FATCA, in which it announced the publication of guidelines on the minimum guarantees to be included in international agreements with non-EEA countries which, once published, would be *"a useful tool also for the evaluation of intergovernmental agreements between Member States and the US government on FATCA to ensure their compliance with the GDPR."* These guidelines were adopted on 18 January 2020, and give important minimum safeguards for international agreements on data transfers, which are also highly relevant in the context of the intergovernmental agreements between the Member States and the US:

- any transfer of personal data to third countries or international organisations must, in addition to complying with Chapter V of the GDPR, also meet the conditions of the other provisions of the GDPR.
- principle of data minimisation: data transferred and further processed must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are transmitted and further processed.
- transparency obligations: information about available redress mechanisms and contact details for submitting a dispute or claim.
- independent supervision mechanisms must be provided

Has the Commission closely studied these EDPB guidelines, and does it agree that none of the intergovernmental agreements between the Member States and the US on FATCA is in line with these principles? If so, will it act and request Member States to revoke the agreements? If not, why not?

You also stated that *"Nationality ties, even when acquired by "accident", come together with the existence of reciprocal rights and duties, including paying taxes in the United States for US citizens."*

- Does this imply that the Commission considers that Accidental Americans are US citizens, rather than EU citizens? Does the Commission apply this logic - that citizenship of a third country takes precedence over EU citizenship - also to other EU citizens with dual or multiple citizenship, accidental or not? Does the Commission consider that EU citizens with dual or multiple citizenship deserve less protection of their rights by the EU? Does the Commission agree that this would be an incentive for other countries to introduce citizenship based taxation?
- Does the Commission consider that protecting the rights and interests of EU citizens is its most important main responsibility?
- Does the Commission value international relations with the US more than the rights of EU citizens, particularly in the situation of FATCA?
 - o If so, is the Commission surprised that people start losing hope that the European Union is a community of values that protects people?
 - o If not, will the Commission take its responsibility and start talking with Member States about a possible mandate by the Council for an EU agreement with the US?

It is high time that the Commission, which has the role of protecting EU citizens' rights, finally takes the problems severely affecting Accidental Americans seriously and acts.

Kind regards,

Sonhie in 't Veld

