

From:
Nicholas Lee



To:
Belastingdienst
Postbus 2508
6401DA Heerlen

To the Data Protection Officer for the Belastingdienst,

I am writing to you to submit a GDPR Article 18 Right to Restrict Processing request concerning all tax and account data exchanges that are occurring between the Netherlands and the United States under the "United States-Netherlands Foreign Account Tax Compliance Act Inter-Governmental Agreement" (US-NL FATCA IGA).

This has been a subject of prior correspondence with the Belastingdienst, involving:

- An art. 15 Subject Access Request & art. 16 right to rectify request dated 04 July 2021.
- An art. 21 objection to data processing, sent on September 14 2021.
- A notice of standard processing deadlines being exceeded, sent on October 15 2021.
- The included letter informing the Belastingdienst that the *extended* processing deadline has also been exceeded, dated December 15 2021.¹

This is wholly unacceptable, and the non-responsiveness indicates a wilful disregard for data subject rights protected under the GDPR.

The original article 15 request attempted to simply understand the contents, accuracy, and appropriate minimisation of data being transmitted to the United States.

The article 21 request clearly laid out data protection concerns about the data exchange, generalised somewhat due to the failure of the Belastingdienst to provide a meaningful response to the art. 15 request.

Having exhausted all non-disruptive means of seeking for my data subject rights to be protected, I must unfortunately now invoke article 18 and seek a restriction of **all personal data processing relating to the US-NL FATCA IGA**. Specifically, this restriction must prevent *all* data exchange involving my personal data with the United States until:

- Accounts not subject to reporting have been removed / excluded from the data exchange
- The data subject (myself) has been provided a copy of the data to be exchanged and adequate opportunity to review and correct data has been provided.
- The overall GDPR compliance of data exchanges under the US-NL FATCA IGA has been comprehensively evaluated and all concerns have been directly addressed.

I substantiate this at a high level on the following grounds:

- (1a) I contest the accuracy of the personal data to be reported on an ongoing basis. It is plausibly erroneous and excessive, and must be *assumed* to be so until the Belastingdienst adequately responds to the original art. 15 access request. There is an associated and still outstanding art. 16 rectification request from 04 July 2021 that remains to be processed.

¹ Note that the extended processing deadline is only applicable if invoked in a timely manner. The Belastingdienst has not communicated its intention to use this extended processing time.

- (1d) I have objected to processing pursuant to Article 21, pending verification of the lawfulness of data processing. There is an outstanding Art. 21 objection from 14 September 2021 that has yet to be verified, or even acknowledged, by the Belastingdienst.

To comply with the General Data Protection Regulation, the following must occur following the receipt of this complaint:

- I will be informed in a timely manner, as defined by GDPR, of when the Restriction of Processing has been applied.
- Data processing, except with my consent shall cease and be limited *only* to storage. This precludes processing, transmission, or transfer of data to other entities.
- I will be informed *prior* to the removal of any restrictions

I will also note that the prevailing guidance from the European Data Protection Board is that the existence of an agreement with a third country authority *does not* imply a public interest (See Guidelines 02/2018). Such an interest requires reciprocity, strict and comprehensive assessments that must be conducted, and all possible data subject protections must be maximised.

The lack of data protection adequacy in the United States that has been decried by the European Union Parliament and in the CJEU's Schrems II ruling indicates that even if a public interest were to apply, there are inadequate safeguards to support the transfer and the data processing that occurs to facilitate it.

I await acknowledgement of the GDPR Article 21 objection and this GDPR Article 18 restriction of processing request, and the timely handling thereof.

Best regards,
Nicholas Lee

15 December 2021

