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European Commission / TAXUD  
Council of the EU  
Petitions' Committee (PETI)  
European Data Protection Board (EDPB)

[access-to-documents@edps.europa.eu](mailto:access-to-documents@edps.europa.eu)  
European Data Protection Supervisor (EDPS)  
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**Mishcon de Reya**

Africa House  
70 Kingsway  
London WC2B 6AH  
DX 37954 Kingsway  
T: +44 20 3321 7000  
[www.mishcon.com](http://www.mishcon.com)

London | Cambridge | Oxford | Hong Kong | Singapore

## **FATCA | European Commission's discriminatory approach to taxation**

We refer to our previous correspondence that is available [online](#).

The European Commission likes to style itself as "the guardian of the EU treaties". The glossary of the EU (under the heading of '[Enforcement of EU law](#)') states as follows:

*"Article 17 of the Treaty on European Union (TEU) states that the European Commission, as the **guardian of the EU treaties**, has the task of enforcing EU law, by monitoring the application of EU primary and secondary law and ensuring its uniform application throughout the EU. It gathers information to monitor EU Member States' compliance."*

In this capacity, [yesterday](#) the Commission referred Spain to the CJEU for breaching one of the four EU freedoms, notably the freedom of movement of capital by way of a discriminatory tax treatment of non-residents. Nothing surprising there.

However, under the heading '[Justice and Fundamental Rights \(Protection, rights and justice for EU citizens\)](#)', it is also stated that:

*"EU citizens enjoy many freedoms and protections, including personal data protection and anti-discrimination laws"*

Alas, as is [well known](#), for almost a decade now, the Commission has been steadfast in its refusal to enforce the fundamental rights to privacy and data protection enshrined in the EU Charter of fundamental rights in respect of a discriminatory measure imposed by the US on EU citizens under FATCA, with the help of bilateral agreements struck by EU Member States, **despite vocal criticism from the European Parliament** ([here](#)).

By picking and choosing which EU freedoms it wishes to enforce (and against whom), **the Commission shows a selective approach to the Rule of Law**, which will hurt its moral standing as 'guardian of the EU treaties'. It is time for the EU to pay heed to the [complaints from EU FATCA petitioners](#) and put an end to the discriminatory breach of EU fundamental in the context of FATCA.

**Filippo Nosedà**  
Partner

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Brussels, 12 March 2025

### **European Commission - Press release**

#### **"Commission decides to refer SPAIN to the Court of Justice of the European Union due to discriminatory tax treatment of non-resident taxpayers"**

Today, the European Commission decided to refer Spain to the Court of Justice of the European Union for having failed to remedy an infringement in relation to the free movement of capital (Article 63 TFEU) due to a discriminatory tax treatment of non-resident taxpayers."