

Brussels, 30 June 2014

**G20 Finance Ministers**

c/o Senator the Hon Mathias Cormann  
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***Subject: Data protection, legal and constitutional aspects of Automatic Exchange of Information***

Dear Minister,

The European banking sector would like to reiterate its full support to the G20 Governments' aim of combating international tax evasion for which the automatic exchange of information on tax matters is an essential pillar. In this specific area, the OECD recently released a "Common Reporting Standard" (hereafter the "CRS") in order to promote an international standard for "Automatic Exchange of Financial Account Information" which has a broad scope across three dimensions: (i) financial information (ii) accountholders subject to reporting (iii) financial institution required to report. As far as possible in a very challenging timetable, the European Banking Federation has been actively participating in the consultation held by the OECD on the CRS.

For the system to be effective, it is crucial for a single and harmonised standard to be applied and for it to be proportionate to the pursued objectives and compatible with the national legal frameworks around the world. Legal security for all players – tax administrations, taxpayers and financial institutions – is a key factor.

As a general matter, we are concerned that the CRS takes a blanket approach to data collection and exchange when a more targeted response could be held by a Court to be better suited to the pursuit of the legitimate aim of combating tax evasion. Yet, the CSR - which goes far beyond the US "FATCA" reporting system, which will affect fewer persons in comparison - raises questions as regards its compatibility with the legal frameworks of countries and that of the European Union (EU) in particular. We note that most if not all Members States of the EU have committed to be early adopters of the CRS, thus the effectiveness of the CRS in the EU will of course have an impact on the standard globally.

Issues are at stake with respect to the fundamental right to privacy and to the protection of personal data. There is a risk that the data could be used for purposes other than combating

tax evasion. Data protection and confidentiality arrangements may be inadequate in some countries, although there is a provision which provides for non-transfer if countries security does not meet OECD standards.

A very recent and important decision of the Grand Chamber of the Court of Justice of the European Union (CJEU) on 8 April 2014 has led to the invalidation of the so-called “Data retention Directive” on the basis of the European Charter on Fundamental Rights.<sup>1</sup> Limitations on the exercise of the rights recognised by this Charter are subject to the principle of proportionality. According to the CJEU, *“the principle of proportionality requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not exceed the limits of what is appropriate and necessary in order to achieve those objectives”*. In the annex attached to this letter, we have compared the key aspects of the invalidated directive with the main provisions of the CRS: it appears that there is a risk that the latter could constitute a disproportionate harm to the fundamental right to privacy and to the right of protection of personal data in the EU.

In addition to the EU law, constitutional frameworks of each country implementing the CRS should also be taken into account: we note for instance a recent decision of the French Constitutional Court of March 13, 2014<sup>2</sup> which simply cancelled the creation of a national register of loans to individuals as unconstitutional, the purpose of which was to identify consumer loans granted to individuals<sup>3</sup>. The French Constitutional Court concluded that *“having regard to the nature of the recorded data, the extent of its processing, the frequency of its use, the large number of people that may have access to it and the lack of guarantees concerning the access to the registry, the provisions challenged constitute an infringement to the right to privacy that cannot be regarded as proportionate to the pursued aim.”*

Different constitutional traditions within member states also influence the interpretation of the Data Protection Directive.

Any legal uncertainty risk arising from the lack of proportionality of the CRS must thus be cleared upfront, before any legislation implementing the CRS is introduced either by way of a EU legal instrument (e.g. a Directive), or “domestically” by EU Member States in order to apply bilateral or multilateral agreements for the CRS. The risk of invalidation and the legal uncertainty it would create could have various undesirable circumstances, some foreseeable, some unforeseeable. First, due to the importance of the right at stake, there is a great risk of liability for the public authority that imposes this law. Second it could be extremely difficult to repair the damage done to the citizen should the legislation be invalidated. Third with the actual background (PRISM...), it is likely to generate in the minds of the public the feeling that their private lives are under constant surveillance. This could lead to numerous legal challenges from taxpayers vis-à-vis their national tax authorities and financial institutions which may pose a great threat to the success of the measures. Last but not least, tax administrations and financial institutions would be required to implement costly processes, only to see them invalidated at a later stage.

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<sup>1</sup> Judgment of the Court (Grand Chamber) of 8 April 2014: Case C-293/12 Digital Rights Ireland and C-594/12

<sup>2</sup> Conseil Constitutionnel, Décision n° 2014-690 DC, 13 mars 2014.

<sup>3</sup> It was also supposed to identify the information on repayment incidents related to loans to individuals not acting for business purposes and the information relating to over-indebtedness and bankruptcies.

We therefore call for a thorough legal analysis to be undertaken by the Governments of the “early adopters” as soon as possible and before its adoption (presumably in autumn this year) with respect to their legal and constitutional frameworks, and specifically with respect to the EU one. An opinion from the CJEU and of the Article 29 Working group (for data protection aspects) should also be sought.

A revision of certain requirements of the OECD standard could be envisaged in order to ensure the proportionality for instance the reinstatement of thresholds in order to exclude low value accounts or the limitation of items to be reported. Furthermore, we note that a more proportionate approach could enhance the acceptance of the public opinion, thus ensuring the effectiveness of a law.

Yours sincerely,



Guido Ravoet

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## Annex A

The OECD recently released a “Common Reporting Standard” in order to promote an international standard for “Automatic Exchange of Financial Account Information”. The aim of this standard is to increase the exchange of information between tax administrations in order to protect the integrity of the different tax systems. To achieve this goal, the OECD has introduced a Common Reporting Standard (CRS). The CRS has a broad scope across three dimensions: (i) financial information (ii) accountholders subject to reporting (iii) financial institution required to report.

The provisions of the CRS raise many questions concerning the fundamental right to privacy and to the protection of personal data. In the light of the recent decision of the Court of Justice of the European Union (CJEU) of 8 April 2014, certain provisions may be incompatible with the European law.

Like in the annulled Directive on Data Retention, Articles 7, 8 of the Charter may be relevant with regard to the question of the validity of an implementation of the CRS. There could be an interference with the rights laid down in Articles 7 and 8 of the Charter (rights to privacy and protection of personal data). Indeed, with these data it is very simple to have a full knowledge of the tax payers’ assets, source of income and relationship with different countries. For instance, if a new account is opened in a country, it is likely that the tax payer went to this country or has a link with this country.

*According to article 52 of the Charter “Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”*

Therefore a law may interfere in a particularly serious manner with the fundamental rights to privacy but only if the essence of the rights or freedom is respected (I). This limitation must be proportionate and necessary to protect the general interest (II).

In the tables below, we tentatively put in perspective the main aspects of the Data Retention Directive which were invalidated and the reasons why it was invalidated with the provisions of the CRS which may raise the same kind of issues.

**I. A serious interference with fundamental rights that could cause problems with the respect of the essence of fundamental rights?**

<b>Grounds for invalidating the Directive 2006/24/EC:</b>	<b>Comparison with the data subject to reporting in the CRS.</b>
<b>A. A serious interference to the fundamental rights</b>	
<b>The data subject to reporting in the invalidated Directive:</b>	<b>The data subject to reporting in the CRS:</b>
<p>(a) data necessary to trace and identify the source of a communication:</p> <ul style="list-style-type: none"> <li>• concerning fixed network telephony and mobile telephony: the calling telephone number; the name and address of the subscriber or registered user;</li> <li>• concerning Internet access, Internet e-mail and Internet telephony: the user ID(s) allocated; the user ID and telephone number allocated to any communication entering the public telephone network; the name and address of the subscriber or registered user to whom an Internet Protocol (IP) address, user ID or telephone number was allocated at the time of the communication;</li> </ul> <p>(b) data necessary to identify the destination of a communication:</p> <ul style="list-style-type: none"> <li>• concerning fixed network telephony and mobile telephony: the number(s) dialled (the telephone number(s) called), and, in cases involving supplementary services</li> </ul>	<ul style="list-style-type: none"> <li>• The name, address, TIN and date and place of birth (in the case of an individual) of each Reportable Person (a very broad concept)<sup>4</sup> that is an Account Holder of the account, in the case of any Entity that is an Account Holder and that is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN of the Entity and the name, address, TIN and date and place of birth of each Reportable Person<sup>5</sup></li> <li>• The account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account<sup>6</sup></li> <li>• The total Gross amount of interest, dividends and total gross proceeds</li> </ul>

<sup>4</sup> The term "Reportable Person" means a Reportable Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause; (iii) a Governmental Entity; (iv) an International Organization; (v) a Central Bank; or (vi) a Financial Institution.

<sup>5</sup> OECD, *Standard for Automatic Exchange of Financial Account Information, Common reporting standard*, 2014 p14 Part II Text of Model Competent Authority Agreement and Common Reporting Standard, Model Agreement Between The Competent Authorities of [Jurisdiction A] and [Jurisdiction B] on the Automatic Exchange of Financial Account Information to improve International Tax Compliance, Section 2, a)

<sup>6</sup> Ibid d).

<p>such as call forwarding or call transfer, the number or numbers to which the call is routed; the name(s) and address(es) of the subscriber(s) or registered user(s);</p> <ul style="list-style-type: none"> <li>concerning Internet e-mail and Internet telephony: the user ID or telephone number of the intended recipient(s) of an Internet telephony call; the name(s) and address(es) of the subscriber(s) or registered user(s) and user ID of the intended recipient of the communication;</li> </ul> <p>(c) data necessary to identify the date, time and duration of a communication:</p> <ul style="list-style-type: none"> <li>concerning fixed network telephony and mobile telephony, the date and time of the start and end of the communication (etc.)</li> <li>concerning Internet access, Internet e-mail and Internet telephony: <ul style="list-style-type: none"> <li>the date and time of the log-in and log-off of the Internet access service, (...)</li> <li>the date and time of the log-in and log-off of the Internet e-mail service or Internet telephony service (...)</li> </ul> </li> </ul> <p>(d) data necessary to identify the type of communication:</p> <ul style="list-style-type: none"> <li>concerning fixed network telephony and mobile telephony: the telephone service used;</li> <li>concerning Internet e-mail and Internet telephony: the Internet service used;</li> </ul> <p>(e) data necessary to identify users' communication equipment or what purports to be their equipment:</p>	<p>for custodial accounts or depository accounts as the case may be;</p> <ul style="list-style-type: none"> <li>or the total gross amount paid or credited to the Account Holder for other accounts made to the Account Holder during the calendar year or other appropriate reporting period<sup>7</sup></li> </ul> <p>The CRS also requires to report:</p> <ul style="list-style-type: none"> <li>The name and identifying number (if any) of the Reporting Financial Institution<sup>8</sup></li> </ul> <p><b><i>May one consider that the CRS provisions that require the collection and reporting of many items of information pertaining to the identity and financial situation of a person constitute a serious interference to the fundamental rights?</i></b></p>
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<sup>7</sup> Ibid g).

<sup>8</sup> Ibid c).

<p>(...)</p> <p>(f) data necessary to identify the location of mobile communication equipment:</p> <p>(...)</p>	
<p><b>B. Potential issues with the respect of the essence of fundamental rights</b></p>	
<p><b>No data revealing the content of the communication may be retained pursuant to this Directive.</b></p> <p>So far as concerns the essence of the fundamental (...) it must be held that, even though the retention of data required by Directive 2006/24 constitutes a particularly serious interference with those rights, it is not such as to adversely affect the essence of those rights given that, the directive does not permit the acquisition of knowledge of the content of the electronic communications as such.</p>	<p>The CRS requires Financial Institutions to report the following information:</p> <p>The account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account<sup>9</sup></p> <p>The total Gross amount of interest, dividends and total gross proceeds for custodial accounts or depository accounts as the case may be; or the total gross amount paid or credited to the Account Holder for other accounts made to the Account Holder during the calendar year or other appropriate reporting period<sup>10</sup></p> <p><b><i>May one consider that the CRS provisions do require to permit the acquisition of the content of banks accounts, of the financial situation of a person and other facts relating to private life (transfers to other persons' bank accounts) which may affect the essence of fundamental rights?</i></b></p>

<sup>9</sup> Ibid d).

<sup>10</sup> Ibid g).

**II. The limitation of the fundamental rights must be proportionate and necessary to protect the general interest.**

We note that there is a justification of the interference, by the CRS, with the rights guaranteed by Articles 7 and 8 of the Charter (i.e. the fight against offshore tax evasion). However, a first question is whether the justification for the Data Retention Directive could be considered as stronger (i.e. the fight against serious crime and terrorism).

It seems necessary to verify the **proportionality** of the interference with the fundamental right caused by the CRS in the light of the CJEU's decision. The main question is whether the CRS or at least certain of its requirements should be amended in order to comply with the proportionality principle.

(In the table below, comments are in italics)

	<b>Grounds for invalidating the Directive 2006/24/EC:</b>	<b>Comparison with CRS provisions</b>
<b>A. An imprecisely delimited interference with fundamental rights</b>		
<i>The lack of limitations in the scope of the directive.</i>	The directive covers, in a generalised manner, all persons and all means of electronic communication as well as all traffic data without any differentiation, limitation or exception being made in the light of the objective of fighting against serious crime.	May one consider that the CRS provisions cover, in a generalised manner, almost all persons (natural or legal) and almost all financial account without any differentiation, limitation or exception being made in the light of the objective of fighting against offshore tax evasion?
	The directive applies even to persons for whom there is no evidence capable of suggesting that their conduct might have a link, even an indirect or remote one, with serious crime.	May one consider that the CRS provisions apply even to persons for whom <b>there is no evidence</b> capable of suggesting that their conduct might have a link, even an indirect or remote one, with offshore tax evasion?
	The Directive does not require any relationship between the data whose retention is provided for and a threat to public security and, in particular, it is not restricted to a retention in relation (i) to data pertaining to a particular time period and/or a particular geographical zone and/or to a	May one consider that the CRS provisions <b>do not require any relationship between the data whose communication is provided for and a threat of offshore tax evasion</b> and, in particular, they are not restricted to a retention in relation (i) to data pertaining to

	<p>circle of particular persons likely to be involved, in one way or another, in a serious crime, or (ii) to persons who could, for other reasons, contribute, by the retention of their data, to the prevention, detection or prosecution of serious offences.</p>	<p>a particular time period and/or a particular geographical zone and/or to a circle of particular persons <b>likely to be involved</b>, in one way or another, offshore tax evasion, or (ii) to persons who could, for other reasons, contribute, by the retention of their data, to the prevention, detection or prosecution of offshore tax evasion?</p>
<p><i>The lack of any objective criterion limiting the access to the data.</i></p>	<p>The Directive fails to lay down any objective criterion by which to determine the limits of the access of the competent national authorities to the data and their subsequent use for the purposes of prevention, detection or criminal prosecutions concerning offences that, in view of the extent and seriousness of the interference with the fundamental rights may be considered to be sufficiently serious to justify such an interference. On the contrary, the Directive simply refers, in a general manner to serious crime, as defined by each Member State in its national law.</p>	<p>May one consider that the CRS does not lay down <b>any</b> criterion by which to determine the limits of the access of the competent national authorities to the data and their subsequent use for the purposes detection or criminal prosecutions concerning offshore tax evasion that, in view of the extent and seriousness of the interference with the fundamental rights may be considered to be sufficiently serious to justify such an interference?</p>
	<p>The Directive does not lay down any objective criterion by which the number of persons authorised to access and subsequently use the data retained is limited to what is strictly necessary in the light of the objective pursued. Above all, the access by the competent national authorities to the data retained is not made dependent on a prior review carried out by a court or by an independent administrative body whose decision seeks to limit access to the data and their use to what is strictly necessary for the purpose of attaining the objective pursued and which intervenes</p>	<p>May one consider that the CRS does not lay down any objective criterion by which the number of persons authorised to access and subsequently use the data retained is limited to what is <b>strictly necessary</b> in the light of the objective pursued. The access by the competent national authorities to the data retained is not made dependent on a prior review carried out by a court or by an independent administrative body whose decision seeks to limit access to the data and their use to what is strictly necessary for the</p>

	following a reasoned request of those authorities submitted within the framework of procedures of prevention, detection or criminal prosecutions. Nor does it lay down a specific obligation on Member States designed to establish such limits.	purpose of attaining the objective pursued and which intervenes following a reasoned request of those authorities submitted within the framework of procedures of prevention, detection or criminal prosecutions?
<i>The lack of clear rules concerning the data retention period</i>	The Directive requires that those data be retained for a period of at least <b>six months</b> , without any distinction being made between the categories of data set out on the basis of their possible usefulness for the purposes of the objective pursued or according to the persons concerned. Furthermore, that period is set at between a minimum of 6 months and a maximum of 24 months, but it is not stated that the determination of the period of retention must be based on objective criteria in order to ensure that it is limited to what is strictly necessary. (§ 64)	Nothing in the CRS. Data retention period is supposed to <b>be similar to FATCA (6 years)</b> <sup>11</sup> without any distinction being made between the categories of data set out on the basis of their possible usefulness for the purposes of the objective pursued or according to the persons concerned. Furthermore it is not stated that the determination of the period of retention must be based on objective criteria in order to ensure that it is limited to what is strictly necessary.
<b>B. Insufficient safeguards to ensure the security and protection of data</b>		
<i>Insufficient safeguards to ensure the security and protection of data</i>	<p>The irreversible destruction of the data at the end of the data retention period <i>is not ensured.</i></p> <p><u>The Directive does not require the data in question to be retained within the European Union</u>, with the result that it cannot be held that the control, explicitly required by Article 8(3) of the Charter, by an independent authority of compliance with the requirements of protection and security, as referred to in the two previous paragraphs, is fully ensured.</p>	There is only one mention in the CRS of “appropriate safeguards to ensure that the information received pursuant to this Agreement remains confidential and is used solely for the purposes set out in the [Convention]/[Instrument]” - OECD, Standard for Automatic Exchange of Financial Account Information, Common reporting standard, 2014 p14 Part II Text of Model Competent Authority Agreement and Common Reporting Standard, Model Agreement Between The

<sup>11</sup> Revised Draft of the Commentaries on the CRS, OECD, Section IX paragraph 7.

Chief Executive

		<p>Competent Authorities of [Jurisdiction A] and [Jurisdiction B] on the Automatic Exchange of Financial Account Information to improve International Tax Compliance.</p> <p>There is nothing in the CRS on destruction of the data and on supervision by an independent authority.</p>
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## **Annex B: additional questions relating to the identification / due diligence requirements and to the amount of data reported / exchanged**

### 1. Identification / due diligence requirements

Before any reporting occurs under the automatic exchange of information system, Financial Institutions are first required to identify Reportable Persons by undertaking identification / due diligence procedures. These procedures may notably imply the search of certain “indicia”. A client may be deemed to be a tax resident of a certain country because of the presence of such indicia, which are however items of information which may not be reported and exchanged (they are only “indicators” of a potential tax residency. E.g.: a power of attorney granted to a person with an address in a Reportable Jurisdiction).

Despite the fact that these items of information are not reported / exchanged, there may be privacy and data protection issues around them too. One may indeed raise questions as to the identification / due diligence requirements.

*Indicia: (CRS, Section III, B(2) – Pre-existing Low Value Individual Accounts)*

- a) *Identification of the Account Holder as a resident of a Reportable Jurisdiction*
- b) *Current mailing or residence address (including a post office box) in a Reportable Jurisdiction*
- c) *One or more telephone numbers in a Reportable Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution*
- d) *Standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction*
- e) *Currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or*
- f) *A “hold mail” instruction or “in-care-of” address in a Reportable Jurisdiction if the reporting Financial Institution does not have any other address on file for the Account Holder*

#### **(i). Pre-existing clients:**

A single client can potentially be reported as tax resident of multiple jurisdictions in case of various diverging indicia. The bank has the option to ask clarification or not about these diverging indicia but the client may not answer to the banks’ request. In addition, this client may also be reported as tax resident of the bank’s jurisdiction under a domestic tax reporting requirement.

#### **QUESTIONS**

Does such tax reporting create any issue regarding data protection rules provided by Directive 95/46/EC, in particular with regard to the principle of the lawfulness of the processing of personal data?

Is such an indicia approach proportionate to the aim pursued and compliant with the legitimate purpose principle?

**(ii). Pre-existing clients / B1 procedure:**

Question on the legality of due diligence procedures imposed by the CRS (as it may be described in the official commentary under way) for preexisting accounts:

- B1 Procedure (Section III.B.1. of the CRS which allows an FI to rely on the current residence address in its records based on Documentary Evidence (essentially officially issued documentation type): this procedure may imply certain processing of the client data base)
- Electronic Record Search for Low Value Accounts (Section III.B.2. of the CRS which imposes to FIs an electronic search of their data to find certain indicia listed in that Section): this procedure always implies a processing of the client data base and potentially the subsequent collection and processing of additional information if certain indicia are found (which may imply contacting the client).
- Enhanced Review Procedures for High Value Accounts (Section III.C. of the CRS which imposes to FIs an electronic search and as the case may be a paper record search to find certain indicia listed in that Section): this procedure may imply a processing of the client data base and potentially the subsequent collection and processing of additional information if certain indicia are found (which may imply contacting the client).

**QUESTIONS**

Are the searches required from FIs under these procedures of the CRS in line with the EU data protection framework and respectful of the proportionality principle in the situation where:

- there is already an international reporting requirement in place which requires an FI to report interest payments made to non-resident account holders of an EU country to its tax administration (which in turn communicates this information to the residency country of the account holder), or
- there is already a domestic reporting requirement in place which requires an FI to report certain income payments made by the FI to resident and/or non-resident account holders to its tax administration.

Both of these situations allowing the tax administrations which are the recipients of these information to confirm or deny the tax residency status of account holders already today.

**(iii) New accounts (including of pre-existing clients):**

The CRS requires Financial Institutions to request a self-certification for every new account - including in certain cases from a pre-existing client - in which the client must declare his tax residency or tax residencies. The Financial Institution must then “check the reasonableness” of such self-certification to potentially challenge the certifications of the client. For instance, if a conflict of addresses appear in the self-certification and the Documentary Evidence provided by the client upon the opening of the account (e.g. a passport), additional steps must be carried out by the Financial Institutions (for instance to obtain a “reasonable explanation” from the client).

**QUESTIONS**

Does the “check of reasonableness” create any issue regarding data protection rules? (in particular, for pre-existing clients, the financial institution may already have the information on the tax residency of the client).

Is the fact that there is no precise and objective procedure in the OECD standard on the items that a Financial institution must take into account to confirm the reasonableness acceptable? (there are only examples in the official commentary)

**2. Potential issues with respect to the amount and level of information/personal data exchanged for each reportable client**

Section I of the CRS Annex provides that the following information be reported by FI:

- 1. the name, address, jurisdiction(s) of residence, TIN and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s) of residence and TIN of the Entity and the name, address, jurisdiction(s) of residence, TIN and date and place of birth of each Reportable Person;*
- 2. the account number (or functional equivalent in the absence of an account number);*
- 3. the name and identifying number (if any) of the Reporting Financial Institution;*
- 4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;*
- 5. in the case of any Custodial Account:*

- a) *the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and*
  - b) *the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;*
6. *in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and*
  7. *in the case of any account not described in subparagraph A(5) or (6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period*

## QUESTIONS

Does this requirement create difficulties with respect to the European data protection framework and rules?

Does the requirement to report the items above to several countries in cases where a client is “suspected” to have other tax residencies than that recorded by the FI or declared by him (or where the client may have more than one tax residency) constitute a proportionate approach with respect to the objective pursued and respectful of the principle of lawfulness (NB: According to directive 95/46/EC article 6 – personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed) ?

Does the fact that other legal instruments are already available in the international context (double taxation treaties which may allow States to exchange information upon request) and in the EU context (e.g. Directive on Cooperative Assistance) which allow Member States to obtain information on specific cases have an influence on the previous question? In particular, given the objective of the CRS of detection of accounts opened by a certain tax resident abroad, is it proportionate that the CRS automatically requests information other the identity and account number of the client? Shouldn't the other type of information be requested solely once a State has confirmed (and in particular has cleared the status of the client when conflicting indicia appear?)