# Banking Secrecy– An endangered species?
# Dr. Andreas Schwörer – The cross-boundary use of evidence

The cross-boundary use of evidence

## I Outline:

### 1 The Questions to answer are:

**A** Does the international law limit the use of evidence just by border-crosssing? If yes, why?
Consequences for data delivery via the TIEA:
**B** Is it possible to use an evidence delivered by the TIEA a second time for another purpose/ new case?
**C** Could an evidence requested & delivered for tax purposes used for the criminal purpose?

### 2 Consequences for the Banking Secercy:

Is the banking secrecy endangered?

## II Definition of the Banking Secrecy

**The purpose of the banking secrecy is to shield banking information against the usage for tax purposes.**
This means the tax authority must be excluded from taking notice of banking information.

*This above definition is drafted for the description of the taxation proceeding and to outline the constitutional anchor of the banking secrecy.*
*There may be another definition of the banking secret, particularly from the civil contract law point of view.*

↔ **Definition of the Fiscal Secret:**
The purpose of the fiscal secrecy is to shield tax information against the usage for criminal prosecution purposes.
Nowadays this strict effect is not granted anymore.

## III Definition Evidence

An information is just a fact or a data.
**An information for a specific purpose makes the information to an evidence.**
Such a purpose can be taxation or punishment. (tax or a criminal proceeding).

Since all informations are collected for tax and/ or criminal proceeding purposes every information is an evidence.
Theoretically there might be another purpose, but I will not examine other purposes.
Since any information is used for the purpose taxation or punishment, I define hereby (for the following paper) every information is a piece of evidence.

## IV Privacy – Datenschutzgrundrecht (Austria) – informationelles Selbstbestimmungsrecht (Germany)

**Privacy is protected by all European constitutions and the EHRC/ EMRK and TEU/ EUV as a basic individual right.**
**Privacy is a common constitutional standard within the EU and Europe (EEA, Switzerland).**

**Data collection, data transfer, data usage and the change of the purpose of collected data are infringements in the right of privacy as an fundamental / constitutional right.** Such a lesion can be justified by a law.
(atteinte aux droits de la personnalité – protection des données personnelles).

**The mutual assistance in fiscal matters and/ or criminal matters is as a data transfer an infringement which requires a justification by the parliamentarian law.**
**This rule applies within a state between different administrative branches and of course cross-boundary.**

It is very important to recognize the change of the purpose of collected data or the usage of data as an infringement.
Also the computer aided data combination and data search are a fundamental right/ constitutional relevant infringement in privacy.

**Any infringement is preliminarily an infringement in a right. Such an infringement action can be justified upon a law and probable cause.**

## V Reservation of Statutory Powers. Gesetzesvorbehalt

**Data collection, data transfer, data usage and the change of the purpose of collected data can only take place upon a law.**

Permittance of data usage, on the one hand side, and the prohibition of data transfer, on the other side, are methods of securing an informational checks & balances system within one state. Of course also a cross-boundary.

## VI Rule of Law and probable cause

**An infrigement in the right of privacy can be justified on a legal basis and upon the actual facts in an individual case.**
(Not just an idea).
**Purpose of the rule:** No fishing expeditions. No jurisdiction allows fishing expeditions.

**Any state action which infringes a fundamental right requires a probable cause.**
This is a common standard in all states and jurisdictions, in tax law and in criminal law.

**The *amount of facts* in different states or in various legal branches is highly different: tax law versus criminal law.**

**Any single state action is determined by an aim, purpose and the affected individuals.**
**A *new* purpose requires a *new* probable cause.**

Of course it is always highly controversial disputed whether enough facts are given or not.
Even within one and the same criminal procedural code the amount of suspicion or probable cause is various for different measurements.
Probable cause is the objective probability that the facts someone believes in are true.
For an attorney, something might be merely an idea for the prosecutor and district attorney the same "things" are facts, which could entitle the state for a legalized infringement for search and seizure, warrant of arrest.

In German: Verdacht in criminal law, hinreichender Anlass in tax law, suspicion.

**These facts must be given ex ante. There is no state action without the prerequisite of facts.**
An initially illegal action cannot become legal by finding the facts you need ex ante to justify the action.
No law or constitution knows an ex-post legitimation for an initially illegal action. Otherwise an action without inducement (pre given facts) could be justified. An ex post legalization would produce arbitrariness in a state.
A coersive action doesn´t become illegal from the beginning (ax ante) by unsuccessfulness.
But an action is illegal without *initial* facts justifying such an action.

**An infringement action requires probable cause as a temporal and causal precondition in order to become ex ante a justified and legal action.**

Since in the LGT Case, as in the case of the latest DVD discussed in Germany (CreditSuisse and HSBC), the prosecutor had no legal trace track, there is no legal usage of data.

**Any data usage can only take place upon data, which are acquired autonomically legal.**
A data connection or data usage beyond or against the law is illegal.

In Austria and Liechtenstein *the old banking secret did generally* exclude tax purposes from being a legitimate cause to acquire bank information. The **Banking Secrecy** - as a shielding effect against the usage of data for fiscal purposes - does work by requiring certain facts in order to break the banking secret (§ 30 german AO; § 38 austrian BWG & the new austrian Amtshilfedurchführungsgesetz). Even in german law not every occasion is allowed as an opportunity for the inquiry of banking data. For example, the tax audit of a bank may not be abused to control the tax declarations of the banking clients.

Today, 2010, the banking secret does not deny an inquiry of banking information for tax purposes in Austria or Liechtenstein. But anyway the requirements for the amount and convincement of facts permitting an break-through of the banking secrecy are nowadays determined by the criminal/ tax procedural code **and can be individually interpreted on a constitutional legal basis by every state.** The probable cause can still defined upon a national constitutional legal basis.
-> Christina Juhaz ÖJZ 2009 page 755, Kontoauskunftsersuchen an alle österreichischen Banken?

## VI Territorial Principle as an original source for the mutual assistance treaties (in criminal and in fiscal matters)

**The laws of a souvereign state do only have power within its borders.**
**The laws of a nation are valid as far as the power of another nation isn´t affected.**

This principle does describe the spatial sovereignty and the effectiveness of laws and power.
This principle is weakened since it is common to punish someone for a crime committed abroad and to tax someone´s economic capability upon extraterritorial income.
However, this principle does prohibit any enforcement measurements (seizure and search; arrest warrants; inquiry of witnesses; collecting, using and transferring of data).
The spatial reference to a state stays with the decisive connecting factor for the legal permission to legally infringe fundamental rights.

The territorial principle stays THE OBSTACLE for any cross-boundary data usage or data transfer.

The power of a state is limited by the borders.
The power for investigations in criminal and fiscal matters is limited by the borders.

**Originally, in the international law of nations itself there is no duty for mutual assistance.**

The mutual assistance is preconditioned by mutual consent. A data exchange has never taken place without mutual consent.
*-->There is no duty in the international law for a tax haven or microstate to comply with the wishes of the OECD or any high-tax state.* The territorial principle does generate the OPTION to deny a data exchange. There is no duty to justify such denial. The reason for a denial can be rational or irrational. A state can deny an information exchange just because of the selfish protection of its economy.

The option to deny an information exchange is originally a de facto option.
The option to deny any data exchange is renounced by the conclusion of mutual agreements and treaties.

Although such a treaty does create rights and duties, mutual assistance treaties don´t generate a de facto option of compelling a state to supply data.
Therefore even nowadays within a lot of treaties there is no data exchange without the consent or against the consent of the requested party.

No treaty nor any de facto practice knows a data supply without or against the consent of the requested party.
Treaties describe what is supposed to happen, but treaties are not enforceable.
The original option to deny a data exchange means that all mutual assistance treaties are just general and mutual accepted rule under which conditions an exchange takes place and under which conditions an exchange can be denied.
The option to deny is described by the mutual treaties but not limited upon the options and conditions mentioned in such treaties.
A treaty does not replace the mutual consent in case of a single data exchange.
The option to deny an exchange does always exist, independently whehther such denial is justified or not.
In nearly every jurisdiction the weight and evaluation of interests is practiced. Because of a complete denial of mutual assistance is possible, the territorial principle itself doesn´t know this principle of proportionality.

**The territorial principle does generate the option to limit an information exchange. Now and in the future.**

## VII Mutual duty of assistance versus individual rights

Any state is obliged to regard fundamental rights according to its own constitution.
This duty in favor of individuals exists independently whether the consequences of a state action do appear within or outside of its borders.
Such a duty to protect individual rights exists also if there is a duty in mutal assistance treaties.
Not everything what a state is obliged towards another state may be executed considering individual rights. A state which is granting to much cross-boundary legal assistance might be sued in a civil tort action, since upon the requested states own laws and constitution the state is obliged to protect individual rights.

## VIII Conditions for the usage of evidence, besides the complete denial of information exchange

If the data collection was illegal, the question arises: Can a state deny the information supply?
For the protection of individual rights the question arises, can a state deliver information with an additional precondition of usage.

All treaties like OECD-Double Tax Treaties (Art 26 III), Mutual assistance in the criminal matters of the member states of council of Europe, the national german IRG, austrian ARHG, swiss IRSG, mutual assistance in fiscal matters of the member states of the EU (Art 8 EU directive 77/799) do limit the data usage upon a specific kind of taxes, upon the specific cases which are described by the specific offences in a catalogue, a specific request, a specific person etc.

Particularly, in the mutual assistance in a criminal matter the option of specific conditions in using delivered information is practiced.
Such a condition limits the usability upon an ex ante described individual case.
**It is, for example, practiced that no other person besides the one mentioned in the criminal assistance request can be tracked or accused.**

The option to declare conditions is not a written law. It is the effect of the territorial principle. Since the whole denial of an information exchange is possible - *argumentum a maiore a minore* - the preconditioned assistance must be possible too.
The conditions are accepted in order to provide an incentive for reluctant states to become more cooperative, since they can determine the scope of usability. This is practiced and acknowledged by all states. Therefore, the principle of territoriality is not subject to the principle of proportionality.

Such conditions can be declared because of illegal data collection, because something went wrong, but the state doesn´t want to declare the data inquiry or search and seizure action completely void.
Additionally such conditions are used to conserve individual rights cross-boundary without an illegal part of information gathering.
Additionally such conditions can be declared to protect the own economy.

**Even conditions against the international law or treaties must be followed.**
-> Schomburg in Schomburg/ Lagodny § 72 RN 3 german IRG

In the criminal mutual assistance such conditions are known and accepted.
In the fiscal mutual assistance such conditions can take effect under the standardized provisions of Art. 26 III OECD-DoubleTaxTreaty or Art. 8 EU directive 77/799. Although the fiscal assistance does not know these individual case conditions beyond the wording of the agreements, it is according to the principle of territoriality also possible to limit the fiscal assistance with such conditions. According to the territorial principle, the requesting party must obey such conditions.

Any information exchange must be brokered by the state of the physical territorial power.
There is neither a self-service by the requesting party, nor the power of the requesting party to “redefine”, reinterpret or enlarge a condition of the requested party.

Since the data transfer is initially an infringement of privacy, which can become legal by justification, such a justification can cross-boundary only take place upon the aware delivery by the requested party.
**There is no legal data usage upon involuntarily supplied data.**
Voluntary mean no self-service, no data bargain (LGT-DVD).
This is the cross-boundary rule of law principle.

> Within the national procedural law, this doctrine is not ackonwledged by the majority opinion.

In non cross-border cases: The data usage without an initially legitimate basis is generated by relativating of interest, weighting of interests ideas (Abwägungslehre, Rechtskreistheorie, principe de proportionnalité).

**Cross-boundary the territorial principle is by its nature not subject to negociation for one party.**

Any evaluation of interests is cross-border not possible without or against the wish of the source jurisdiction.

## IX The territorial principle has the effect of a cross-boundary reservation of statutory powers (Gesetzesvorbehalt).

Any cross-boundary information exchange takes place under the clause/ reservation of optional denial and under the clause/ reservation of a free decision of the requested party.
A legal data usage in the requesting state can only take place upon a free decision of the requested party.

The Liechtenstein-DVD cannot be used (LGT-Case: german secret service bought data by a former bank employee).

## X The legal basis for limitation of an action in the legal order of the requested state

**According to the purpose and the intention of the parties to enter a legal binding treaty any mutual assistance is limited by the national law of the requested party.**

**Argumentum e contrario:**
**No state ever had the intention to provide assistance against or beyond its own laws or constitution.**
**& No state has the legal power to provide assistance against or beyond its own laws or constitution.**

**This is the interpreted result of Art. 1, 3, 5 of the EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS.**
**Conclusion: Any assistance is limited by the laws and constitution of the requested party.**

## XI Can this limitation be overruled by the EU?

PROTOCOL established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union

21.11.2001 C326/02 - Requests for information on bank accounts

Reading Art. 1 I of this protocol you could doubt whether the limitation from Art. 1, 3 European Convention Mutual Assistance in Criminal Matters still applies.

Art. 9 III 2 EU directive 48/2003 expels the option of information denial which Art. 8 EU directive 77/799 still grants.
Art. 9 III 2 EU directive 48/2003 comprehends the ideas of Art. 8 EU directive 77/799.
Austria has not passed the Art 9 III 2 EU directive 48/2003 in the austrian EG-Quellensteuergesetz.
Although Germany has passed the Art 9 III 2 EU directive 48/2003 in its Zinsinformationsverordnung the german fiscal minister requires the application of the ideas and conditions of Art. 8 EU directive 77/799 *with its information exchange minimizing effect* even in cases outside the mutual assistance in fiscal matters between EU member states.

**Can this limitation of an assistance in the law of the requested party be overruled by the EU?**
No.
Because there is not remedy to coerce a state to act in a way which is against or beyond its own laws and/ or constitution.
Art. 7 I TIEA-OCED, Art. 7 II b) TIEA Germany Liechtenstein, Art. 7 II b) Germany-Jersey; Art. 26 III a OECD-DoubleTaxTreaties; Art. 8 I, III Eu directive 77/799; *and in the future EU KOM 2009 28 Art. 22 I 1*.
The EU KOM 2009 28 Art. 22 I 1 shows this limit will stay in the future.
**Any mutual assistance is and will stay limited by the law and constitution of the requested party.**

## XII The Liechtenstein DVD (DVD with tax data bought by the german secret service)

The DVD may not be used according to international law. The data are acquired by the violation of the territorial principle. The bargain is a circumvention of the mutual agreements and an attack on the sovereignty of the source states. This is fraud legis. The initial obtainment was illegal. Since any infringement has to be initially justified by facts in order be legalized, this evidence has to be excluded because the dvd was originally the first but poisoned trace. The verdict must be not guilty, since there is no admitted evidence.

You would have to overrule the rule of law, fundamental rights and the territorial principle in order to condemn the defendant without a confession. This happened by a German court .

There is one German sentence (LG Bochum 2 Qs 2/09 7.8.2009) which does not exclude the DVD as inadmissible evidence. This verdict does not take into regard the structure of international law. A constitutional lawsuit is brought in.

Concerning the negotiations with tax havens: Neither the OECD nor any high tax state like Germany has a title to enforce a mutual treaty or an information exchange in a specific case.

## XIII The fiscal secret of the TIEA

The protection of tax data is determined by the permission or prohibition of data usage in Art. 8 TIEA.

Remember the territorial Principle:
There is no legally cross-boundary data usage without the mediation of the source state.
No transfer against or without the intent of the supplying state.
A state can condition the data usage with any optional clause.

This limitations of the territorial principle in the international law are written in Protocol Art. 3 b) S. 1 TIEA Germany-Liechtenstein; Art. 2 a) TIEA Germany-Jersey.
This codifies the "no-usage-without-consent-idea".
In my opinion, the usage limitation effect of the protocol supplementary (MOU) is just declarative, since this effect is an unwritten option which does always exist. Therefore, this effect can take place even in the OECD-TIEA.

The fiscal secret of Art. 8 III TIEA with the protocol supplementary does limit the data usage upon the purpose specified by the requested party. → Liechtenstein and Jersey ***can*** limit the data usage upon certain determined purposes. This purpose is normally the same like the purpose indicated by the requesting party (Germany, USA). ***However,*** if the purpose described by the delivering party (FL, Jersey etc.) permitting the data usage differs from the purpose described by the requesting party, the purpose defined by the requested party overrides the purpose in the request and limits the usability of the information.

This effect is emphasised by the circumscription of the individual case in Art. 5 V TIEA
The fiscal secret in Art. 8 TIEA does not replace the national fiscal secret. The TIEA fiscal secret joins the national fiscal secret.

**The limitation of usage upon a single case is the reason why the TIEA fiscal secret performs a new and higher protection standard and a better shielding effect like the fiscal secret of Art. 26 III OECD Double tax treaties.**

Art. 8 III TIEA has to be applied with the above mentioned territorial principle.

The permission of a national fiscal secret is not sufficient to enlarge the scope of legal usage of the transferred data.
The scope of data usage cannot be enlarged unilaterally.
The scope of usability depends on the approach of the governments of the micro states like Liechtenstein and Jersey. Their governments ***can*** minimize the scope of

usability of transfered data. They don´t have to. We attorneys have to pay attention to the diplomatic letter accompanying the information exchange.

## XIV Fruit of the poisonous tree doctrine in the TIEA

Remember the territorial principle and the effect of data usage as an infringement of individual rights.
There is no data usage without an initially legal permission.

This data protection effect is emphasised by the duty to delete data and by the duty to pay recovery for damages.
See Protocol No 3 f) and g) TIEA Germany-Jersey, Protocol No 3 b) c) g) i) TIEA Germany-Liechtenstein.

This indicates that the protection against data usage has another and stronger root in the international law than in the national law.

## XV Rule of Law, probable cause and TIEA data delivery

The individual facts are required to avoid fishing expedition, big brother and Orwell´s 1984.
The individual facts are required additionally to accomplish an information exchange request.
If you don´t know what you´re looking for, it is difficult to find something and to accomplish an inquiry.

The disclosure of the facts by the requesting party to the requested party is necessary to determine whether the legal prerequisites of a national procedural code (tax and/ or criminal law) and the national constitution allow the inquiry and the following transfer & usage.
Some measurements require certain conditions: search & seizure, arrest warrants, telephone monitoring.
All the specific actions have to be justified ex ante with sufficient facts. This is the idea of a probable cause.
The facts define the limitation of the purpose for the data usage.
This structure is more or less the same in all nations according to national procedural code in combination with the constitutions.

A data transfer cannot take place without a trace. This statement is valid for the TIEA and for the mutual assistance in criminal matters, which both do still not practice an automatic information exchange.

### 1 The development of the disclosure of the facts in the fiscal and criminal mutual assistance agreements

#### a Exchange of fiscal information

In the Double Tax treaties, the disclosure of facts is required.

The EG-AHG (german law for mutual fiscal assistance in fiscal matters with member states of the EU) doesn´t mention the communication of the facts.
However, the requirement for the communication of facts is even acknowledged by the german federal minister for finance in BMF Merkblatt IV B 1 S 1320 11/06 vom 25.01.2006 BStBl 2006, 26 Tz 2.2.1.f. Anlagen 2, 3.

b Exchange of criminal information
The facts have to be disclosed: -> See Nr. 8, Nr. 114 german RiVASt; § 56 I austrian ARHG, § 56 I liechtensteiner ARHG; Art. 14 I lit b); Art. 14 II European Convention on mutual assistance in Criminal Matters.

The trend is the disclosure of the facts. The facts of the case have to be determined by the requesting party ex ante and have to be transfered with the request.
Although the disclosure of the facts was at all times important, in order to accomplish national laws & constitutional prerequisites, the relevance of the communication of the facts becomes more and more acknowledged. This is not a specific reservation of former tax havens. This is a common constitutional standard in Europe and even USA.

For example: the communication of facts is necessary to indicate an officer whether there are rights to refuse the testimony.
If the officer forgets the miranda warning, it is difficult to determine according to which legal system you have to determine the accessibility of evidence. -> Which national exclusionary rule does apply?

2 Exchanges of facts via TIEA
The information request has to be determined very specifically according to Art 5 V TIEA.
The person, the kind of tax, purpose, etc.

## 3 Double usage of exchanged data?

**a National fiscal secret standard**
Traditionally, facts exchanged for fiscal purposes can be used for further fiscal cases according to the national fiscal secret standard.
Although the fiscal secret was to shield fiscal data against the criminal prosecution. In many cases fiscal dates are used for criminal purposed. Only in case of a conflict with nemo tenetur/ right against self-incrimination the usage is strictly inadmissible.

**b International fiscal secret standard**
Dates exchanged via OECD-DoubleTaxTreaties or within EU mutual assistance in fiscal matters can be used for further ex ante described fiscal purposes.

**c International fiscal secret standard and the usability of fiscal facts for criminal purposes**
Sometimes the purpose of usage might be changed to criminal purposes, but only within that single tax case which initiated the fiscal information exchange. A usage of

data delivered by fiscal assistance agreements is inadmissible for other criminal cases besides the one which provoked the information exchange.
This single case assistance follows the same structure like a mere criminal assistance case without tax purposes. The criminal assistance is traditionally dominated by this single case assistance practice. A second case requires a new request.
Particularly, for a information transferred upon tax assistance the usage is inadmissible in non-tax-evasion-but-criminal-cases.

Such usage can be allowed by a further request, indicating the purpose and the root / source of the information and the consent by the source jurisdiction.
However, according to the territorial principle such usage is *preliminarily* denied.

**d International standard in information exchange for criminal matters**
Traditionally, data exchanged for a criminal purpose can be used only for the disclosed individual case. There is no usage in a second case without the consent of the requested party.
This practice can be developed - *argumentum e contrario* - with the second protocol to the European Convention on Mutual Assisatance in Criminal Matters: Art. 26 II permitted the first time a double usage for criminal purposes. (likewise Art. 23 European Convention on Mutual Assisatance in Criminal Matters of the EU member states.)
Art. 26 IV second protocol to the European Convention on Mutual Assisatance in Criminal Matters describes the right of information for the supplying state, in case the receiving state wants to use an information for a second purpose.

**e Usage of Information delivered via mutual assistance in criminal matters for tax purposes**
The usage of dates delivered via mutual assistance in criminal matters for tax purposes is inadmissible as long as the delivering state has not agreed such a change of the purpose.

## 4 Fiscal versus criminal purpose

a. The tax purpose has to be mentioned and described according to Art. 5 V TIEA -> Therefore - *argumentum e contrario* - a criminal purpose has to be indicated expressis verbis. Without mentioning criminal purposes in the request the information cannot be used for criminal purposes.

b. The persuasiveness of facts is different for inquiries in a fiscal proceeding and for search & seizure actions in the criminal procedures.
-> The strength of suspicion and therefore the facts which are disclosed to the requested party determine according to the national legal standard of the requested party whether fiscal and/ or criminal proceeding actions are admissible.
-> There is no automatic double usage permission.
Dates collected for fiscal purposes cannot automatically be used for criminal purposes. This might be possible.
The double usability depends inter alia whether the original amount of suspicion was sufficient.

This system is ensured with above mentioned effects of the rule of law, probable cause, privacy rights and territorial principle.

**The purpose of a request is usually the same like in the answer, but the purpose answering the assistance request could be closer. The closer purpose described by the requested state determines the data usage in the requesting state.**

**5 Double usage of data delivered via TIEA??**
**Not automatically. The purpose in the assistance request limits ex ante the usability.**
There might be a usability for criminal ***and*** tax purposes, if both purposes are described according to Art. 5 V TIEA in the request.

The TIEA is the first exchange agreement which does officially cover criminal purposes besides fiscal purposes.

This very specific description of individual facts in Art. 5 V TIEA is new in the mutual assistance in fiscal matters.
This Art. 5 V TIEA is the idea to limit ex ante the request and the following usage very strictly. This idea comes from the mutual assistance in criminal matters.
This reluctant data usage system of the TIEA is necessary and a logical step in order to protect the idea of a single case request and an ex ante described purpose.

**This effects are the common results of the territorial principle, the provisions in the protocol and the TIEA fiscal secret.**

**It is not allowed to use data acquired via TIEA for further cases or persons, not even as a trace**.
This implements a strict fruit of the poisonous tree doctrine, without discretion for the requesting party.
It is according to Art 8 III OECD-TIEA not allowed to submit dates aquired via TIEA to other states.

**XVI Limitation in the law of the requested party in the TIEA**
Remember: Any mutual assistance is and will be limited by the law and constitution of the requested party.
This is written in Art. 7 TIEA.
**However, there is ONE new exemption in the TIEA: Art. 7 II 2 TIEA-OECD; Art. 7 II b) TIEA Germany-Liechtenstein; Art. 7 II b) TIEA Germany-Jersey**
**The banking secrecy cannot be claimed as a national limit which denies an information exchange.**

**Banking secret is no veto anymore that avoids banking facts from being used for fiscal or criminal purposes.**
**Without the ex ante given sufficient facts an information exchange has to be denied.**

**The sufficiency of facts can be interpreted by the requested state upon its national legal and constitutional level.**

**The justification of the denial of an information request will take place on a constitutional argumentation basis.**

The banking secrecy has to be interpreted on a more constitutional level.
What are sufficient facts, probable cause? How can we avoid big brother?
Therefore, not everything what is in the bank has to be necessarily submitted to another state.
The success of this constitutional argumentation depends very much on the behavior of governments of the micro states.
The political intention is necessary for the above described TIEA-practice.

## XVII Philosophical Outlook

The banking secrecy is endagered, yes. In my opinion, the absolute shielding effect of the banking secrecy is abolished.
What can we do? Use all political influence to convince micro states to minimize a future information exchange with the national legitimate interpretation of probable cause and privacy.
A fair taxation does not require the identification of beneficial owners.
A fair tax rate and an automatic tax transfer to the taxpayer´s residence state is sufficient.
All a taxpayer need is a certificate issued by a bank that the taxes for a specific account are paid to a specific domicile state.
This certificate could be displayed by the taxpayer in case of an investigation to the national authorities of his domicile state.
Otherwise the assets could stay unidentified.
A fair tax rate regards governmental caused inflation in determining a fair level.
Convince all societies in all discussions that buying illegal obtained facts is another criminal action which has to be prosecuted.
Personal & economic basic rights are endangered by the socialistic intentions of all big OECD member states which are nowadays rather socialistic than capitalistic societies.
Centuries ago the right of religious liberty was an achievement by Luther and Calvin.
Nowadays religious freedom is acknowledged as a human right.
The next centuries the battle is about the approval of economic and privacy rights.
The challenge for us is to convince the society and gain the social approval that information access and the tax burden is limited by natural human rights.
Such rights exist independently by a governmental or state approval.
Humans are free by nature and no minions who has to finance wars or other political ideas.

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