GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

CZECH REPUBLIC

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Czech Republic 2015

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

May 2015
(reflecting the legal and regulatory framework
as at February 2015)

BETTER POLICIES FOR BETTER LIVES

Please cite this publication as:
OECD (2015), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Czech Republic 2015: Phase 2: Implementation of the Standard in Practice*, OECD Publishing.
http://dx.doi.org/10.1787/9789264233706-en

ISBN 978-92-64-23365-2 (print)
ISBN 978-92-64-23370-6 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

Corrigenda to OECD publications may be found on line at: *www.oecd.org/publishing/corrigenda*.

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, and in Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary as updated in 2004. The standards have also been incorporated into the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in The Czech Republic, as well as the practical implementation of that framework. The international standard, which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners.

2. The Czech Republic, until 1 January 1993 a part of Czechoslovakia, is a prosperous Central European state with slightly more than 10 million inhabitants. The service sector constitutes the largest component with 58.6% of GDP, followed by industry (39.6%) and agriculture (1.8%). The main industry sectors are car manufacturing and electrical engineering. The car-related industry is the largest single industry and accounts for as much as 20% of Czech manufacturing.

3. Relevant entities are subject to comprehensive requirements under commercial, tax, anti-money laundering and accounting legislation to maintain and have available relevant ownership and bank information. Such information is generally available for EOI purposes. However, with regard to ownership information on foreign companies having their place of effective management in the Czech Republic may not be available in limited cases.

4. As of 1 January 2014, bearer shares must be immobilised, or book-entered. Bearer shares that have not been immobilised prior to 1 January 2014 were transformed automatically to certified registered shares with effect from that same date. Shareholders involved lost all rights attached to these bearer shares for the period that these shares were not immobilised, dematerialised or repealed. However, the transitional provisions do not fully ensure that information is available in practice on all holders of bearer shares in all cases. Therefore, it is recommended that the Czech Republic monitors the practical implementation including the enforcement of the recently introduced requirement regarding bearer shares to ensure that all shareholders submit their

bearer shares to the company to be furnished with the necessary changes and shareholders information is available in all cases.

5. The new Civil Code introduced the concept of trusts in Czech Law as of 1 January 2014. The Civil Code stipulates general rules concerning establishment, purpose and charter of a trust fund. Further regulation is mainly contained in the AML Act, Income Tax Act and Accounting Act. Based on the Income Tax Act the trust is obliged to register itself as a taxpayer at the regional tax office for Prague. Information to be provided includes the founding deed and the statute of the trust including information on settlors, all the trustees and beneficiaries, if they are already determined.

6. Czech accounting law requires all Czech legal entities as well as branches of foreign enterprises to keep adequate accounting records including underlying documentation for a minimum of five years. In respect of banks and other financial institutions, Czech AML, banking and accounting legislation imposes appropriate obligations to ensure that all records pertaining to customers' accounts as well as related financial and transactional information are available. The system of mandatory audits combined with independent review of the auditors ensures that reliable accounting records, supported by underlying documentation, are kept by all persons which have their accounts audited (primarily large tax payers). Furthermore, accounting information has to be filed with the annual tax return and this would be in the hands and checked within the regular framework of tax assessments of the tax authority.

7. The Czech tax administration has broad powers to access relevant information from any person and from public authorities. Non-compliance can be sanctioned with penalties. The confidentiality of bank information is protected by law but is lifted when banks are requested by the Czech tax administration to provide information. The Czech tax administration can apply their domestic powers, including sanctions, for the purpose of answering international requests for information, including in cases where it does not have an interest in the information for Czech tax purposes. The scope of professional privilege in the Czech Republic is considerably broader than the exemption for legal professional privilege under the international standard.

8. During the review period, the Czech competent authority and the tax offices involved were able to access information to reply to EOI requests concerning ownership and identity information, accounting information, bank information and other types of information, as confirmed by peer input. The requests for ownership and identity information could be replied in the great majority of the cases with information available in the tax database and the commercial registry database; and, in some cases, with information obtained from other government authorities. In order to reply to requests for underlying accounting information, in the majority of cases, the Czech Republic contacted the taxpayer concerned.

9. Peers were generally satisfied with the timeliness and completeness of the responses received from the Czech Republic.

10. The Czech Republic has a considerable network of 87 double tax conventions and 11 tax information exchange agreements that provide for exchange of information in tax matters. The vast majority of these agreements are in force and to standard. In addition, the Czech Republic is able to exchange information in tax matters with other European Union Member States under EU legislation. Moreover, as of 1 February 2014 the Czech Republic is able to exchange information also on the basis of the multilateral Convention on Administrative Assistance in Tax Matters. Nevertheless, the Czech Republic should update the small number of agreements which were found not to be fully in line with the standard.

11. The Czech Republic provides assistance at the administrative level when the requested information relates to a criminal tax matter in the requesting jurisdiction. However, the Czech Republic requires that the prior consent of its judicial authorities be obtained by the requesting jurisdiction before information exchanged under a tax information exchange agreement (DTC, TIEA or the Multilateral Convention) may be used as evidence in criminal tax proceedings in the requesting jurisdiction. The Czech Republic should monitor that its procedures to allow the use of information as evidence in criminal tax cases does not exceed the limitations on exchange of information as provided under the international standard.

12. The Czech Republic has substantial experience in EOI and it is considered by its EOI partners as an important partner. Over the period of review the Czech Republic has received 431 requests for information. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, 180 days and within one year in 45%, 80% and 97% of the time respectively.[1] The response has not yet been provided in 1% of requests received mostly in the latter part of the period under review.

13. In general, the Czech Republic has in place organisational processes to ensure effective exchange of information. The Czech Republic's competent authority for EOI purposes designated by the Ministry of Finance is the Direct Taxes International Cooperation Unit situated in the General Financial Directorate. In most cases the requested information is already at the disposal of the tax administration through its extensive databases or included in the tax payers file at the local tax office. However, there are certain important areas where improvement is needed in order to ensure that information or status updates are provided in a timely manner in all cases.

1. These figures are cumulative.

14. The Czech Republic has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of the Czech Republic's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, the Czech Republic has been assigned the following ratings: Compliant for elements A.2, A.3, B.2, C.2, C.3 and C.5, Largely Compliant for elements A.1, B.1, C.1 and C.4. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for the Czech Republic is Largely Compliant.

15. The Czech Republic has in place appropriate organisational processes to ensure effective exchange of information. Recommendations have been made where elements of the Czech Republic's EOI regime have been found to be in need of improvement. A follow up report on the steps undertaken by the Czech Republic to answer these recommendations should be provided to the PRG within twelve months after the adoption of this report.

Introduction

Information and methodology used for the peer review of the Czech Republic

16. The assessment of the legal and regulatory framework of the Czech Republic as well as its practical implementation was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The assessment has been conducted in two stages: the Phase 1 review assessed the Czech Republic's legal and regulatory framework for the exchange of information as at January 2012, while the Phase 2 review assessed the practical implementation of this framework during a three year period (1 January 2011 through 31 December 2013) as well as amendments made to this framework since the Phase 1 review up to 26 February 2015. The following analysis reflects the integrated Phase 1 and Phase 2 assessments.

17. The assessment was based on information available to the assessment team including the laws, regulations, notices and exchange of information mechanisms in force or effect as of 26 February 2015, the Czech Republic's responses to the Phase 2 questionnaire and supplementary questions, information supplied by partner jurisdictions, and explanations provided by the Czech Republic's during the on-site visit that took place from 23-26 September 2014 in Prague, Czech Republic. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance and the Tax Authorities, including officials and representatives from the Ministry of Foreign Affairs, Ministry of Justice, the Czech Bar Association, Chamber of Tax Advisers, the Czech National Bank.

18. The Terms of Reference breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review

assesses the Czech Republic's legal and regulatory framework and its application in practice against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that: *(i)* the element is in place; *(ii)* the element is in place, but certain aspects of the legal implementation of the element need improvement; or *(iii)* the element is not in place. These determinations are accompanied by recommendations on how certain aspects of the system could be strengthened where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning the Czech Republic's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. As outlined in the Note on Assessment Criteria, an overall "rating" is applied to reflect the jurisdiction's level of compliance with the standards (see the Summary of Determinations and Factors Underlying Recommendations at the end of this report).

19. The Phase 1 and Phase 2 assessments were conducted by assessment teams comprising expert assessors and representatives of the Global Forum secretariat. The 2012 Phase 1 assessment was conducted by a team, which consisted of two expert assessors and one representative of the Global Forum Secretariat: Ms Heidi-Lynn Sutton, Financial Services Counsel, Ministry of Finance, Nevis Island Administration, Saint Kitts and Nevis; Mr. Natsuki Arai, Deputy Director, International Operations Division, National Tax Agency, Japan; and Mr. Beat Gisler from the Global Forum Secretariat. For the Phase 2 assessment Mr. Beat Gisler was replaced by Mr. Boudewijn van Looij, also from the Global Forum Secretariat, while Mr. Natsuki Arai was replaced by Ms. Miki Masaki, Assistant Chief, International Operations Division, National Tax Agency, Japan.

Overview of the Czech Republic

20. The Czech Republic is a landlocked country with a territory of approximately 79 000 square kilometres and a total population of slightly more than 10.5 million inhabitants (2014 figures), located in the centre of Europe. The Czech Republic is bordered by the Slovak Republic, Poland, Austria and Germany, which are all members of the European Union. With a population of about 1 243 million people[2], Prague is the capital and the largest city. Formerly part of Czechoslovakia, the Czech Republic became an independent state on 1 January 1993.

21. Following its separation from the Slovak Republic in 1993, the Czech Republic has undergone a transition from a centrally planned economy to a

2. Czech Statistical Office: www.czso.cz/.

free market economy. The national currency is the Czech Crown (CZK).[3] Although the Czech economy also was affected by the global economic crisis of 2008-09, it continued to show a moderate growth in the period from 2006-09. However, a significant downturn in the economy was recorded in 2009, with real gross domestic product (GDP) growth swinging briefly to minus 4.1%. It rebounded to 2.3% in 2010 largely due to economic integration with the Euro area which allowed the Czech economy to benefit from the recovery in trading partner countries, particularly Germany. In 2012, however, the economy fell into a recession again, due both to a setback in external demand and to the government's austerity measures. The country pulled out of recession in the second half of 2013, followed by a steady, growth through the first half of 2014.[4] Compared to the year 2010 the gross domestic product (GDP) grew from USD 266.1 billion (EUR 196.9 billion[5]) to USD 292.0 (EUR 230.7 billion) in 2013, equalling a per capita GDP of USD 26 985 (EUR 21 318).[6]

22. Most of the Czech economy has been privatised. The service sector accounts for the largest component of GDP (58.6%) followed by industry (39.6%) and agriculture (1.8%).[7] The main industries are car manufacturing and electrical engineering. The auto industry is the largest single industry and, together with its suppliers, accounts for as much as 20% of Czech manufacturing. Over 80% of the cars produced are exported. The Czech Republic's main trading partners are Germany, the Slovak Republic, Poland, France, United Kingdom, Austria, Italy, the Netherlands, the Russian Federation, China and the United States.[8]

23. The Czech Republic joined the European Union (EU) in May 2004. It is a member of the Council of Europe, the Organisation for Economic Co-operation and Development, the North Atlantic Treaty Organization (NATO), and the Intra-European Organisation of Tax Administration. The Czech Republic is further a member of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism – MONEYVAL.

3. As of 23 October 2014: EUR 1 = CZK 27.7. Source: Czech National Bank.
4. CIA, The World Factbook, www.cia.gov/library/publications/the-world-factbook/geos/ez.html, accessed 23 October 2014.
5. As of 30 September 2014: USD 1 = EUR 0.7900. Source: US Treasury.
6. OECD Factbook 2014.
7. Ibid.
8. U.S. Department of State, www.state.gov/r/pa/ei/bgn/3237.htm, accessed 23 October 2014.

Governance and legal system

24. The Czech Republic is a parliamentary democratic republic with a multi-party system. The head of state is the President, elected for a five-year term directly by the citizens in a two-round election. Most executive power lies with the Prime Minister, who is the head of government and is appointed by the President on the basis of the general election results. The remainder of the Cabinet is appointed by the President on the recommendation of the Prime Minister. The Parliament is bicameral and consists of the Senate (members elected by popular vote to serve six-year terms; one-third elected every two years) and the Chamber of Deputies (members are elected by popular vote to serve four-year terms).

25. The country is divided into fourteen administrative regions and several thousand municipalities which are self-governing units which can issue by-laws, regulations and decisions but these must not contravene any laws or the constitutional order of the Republic.

26. The Czech legal system is based on civil law. The Constitution, ratified on 12 December 1992, is the supreme law of the Republic. The basic rights and obligations of individuals and legal persons, ownership and certain types of contracts are laid down by the Civil Code. As of 1 January 2014, a new Civil Code (No. 89/2012 Coll., hereinafter referred to as the "new Civil Code") entered into force. This new law abolishes many of the current legal regulations and focuses in considerable detail on the sphere of family law and property rights. The Commercial Code stipulates the general rules governing business relationships as well as the rules related to companies and other business entities. On 1 January, 2014 the Commercial Code was substituted by law No. 90/2012 Coll., on business corporations and co-operatives (hereinafter referred to as "Business Corporations Act"). This law can be seen as the second part of the recodification connected to the new Civil Code. The Business Corporations Act also entered into force on 1 January 2014, and specifically governs areas concerning companies and co-operatives. As of that same date, matters related to the Commercial Register are governed by Act No. 304/2013 Coll., on Public Registers of Legal Entities and Individuals (hereinafter referred as "Public Registers Act"). Apart from these more recent changes, the process of adopting new laws did not change; Constitutional laws and other laws are adopted by the Parliament. Once enacted, laws are signed by the Chairman of the Chamber of Deputies, the President of the Republic and the Prime Minister and become valid once promulgated. Ministries, other administrative agencies and territorial self-government bodies may issue regulations on the basis and within the scope of a law. A complete list of all the relevant legislation and regulations is set out in Annex 3.

27. The Supreme Court is the supreme judicial body with respect to matters which are under the jurisdiction of courts, save matters ruled on by the Constitutional Court or the Supreme Administrative Court. The Constitutional Court does not form a part of the system of ordinary courts. Its function is above all to protect fundamental rights and freedoms arising from the Constitution, the Charter of Fundamental Rights and Freedoms, and further constitutional acts of the Czech Republic, and to guarantee the constitutional character of the exercise of state power. There are further superior, regional and district courts. Judges are appointed for life by the President of the Republic. The 15 Constitutional Court justices have to be approved by the Senate and they are appointed for a ten year period. Tax cases are heard by specialised branches of the regional courts and the Supreme Administrative Court.

28. Double taxation conventions (DTCs) and tax information exchange agreements (TIEAs) are negotiated by the Ministry of Finance. After an approval process involving all government ministries and other interested parties the agreement is approved by the Council of Ministers and after its signature is sent to the Parliament by the Prime Minister. Once an agreement has passed both chambers of the Parliament it is ratified by the President. The counterpart jurisdiction is then informed of the ratification through a diplomatic note. The agreement comes into force on the day it is published in the Official Journal for International Treaties. Under the Constitution, international treaties override any contradictory domestic laws. A complete list of the agreements which have been concluded by the Czech Republic is set out in Annex 2 to this report.

Tax system

29. Czech income tax is levied according to the Income Tax Act (hereinafter "ITA", Act No. 586/1992). The ITA contains the rules for corporate income tax as well as for personal income tax. The general administrative aspects of taxation are mainly governed by the Tax Procedure Code (TPC, Act No. 280/2009). In 2008, the Czech government implemented a major overhaul of the personal income tax (PIT), replacing the previous progressive rate schedule with a single 15% flat rate levied on an enlarged base. This was accompanied by significant changes to the corporate income tax (CIT) and an increase in the concessionary rate of value added tax (VAT) applied to many goods and services. In addition to the 15% flat rate, a special "tax solidarity surcharge" for individual taxpayers applies from the tax year 2013 onwards. The tax solidarity surcharge of 7% is charged in cases where the total sum of annual's gross personal income from dependent activity and of the partial tax base from business activity (net income) exceeds the 48 multiple of the average salary for social security purposes.

30. Taxpayers in the Czech Republic are subject to a 19%[9] corporate income tax (a 5% corporate tax rate applies for pension and investment funds) and the above mentioned 15% flat personal income tax, in combination with the 7% tax solidarity surcharge. Personal and corporate income taxes are levied on the worldwide income of individuals or companies who are Czech tax residents as well as on the Czech-source income of non-residents individuals and companies. An individual is a Czech tax resident if that person has his permanent home or habitual abode (183 days rule) in the Czech Republic. A company is deemed to be resident if it has its legal seat or place of effective management in the Czech Republic (s. 17(3) ITA). Permanent establishments of foreign companies are generally taxed on Czech-source income only (with exception of passive income). Income and gains derived by resident and non-resident individual owners in resident companies are generally included in the aggregate income, which is subject to the 15% flat rate tax. Equally, capital gains on the sale of shares in a resident company by resident corporate shareholders are included in ordinary corporate income.

31. The government levies a 21% value-added tax (VAT), reduced to 15% on food, non-alcoholic drinks, books, medical products and selected services. The VAT system is harmonised with the European VAT legislation. Taxable persons (individuals and legal entities) having a seat, place of business or fixed establishment in the Czech Republic, who carry on economic activities and whose turnover exceeded CZK 700 000 (EUR 26 000) in the past 12 successive calendar months (excluding transactions without right for deduction or exempt transactions), are liable to register with the local tax administration for VAT purposes. VAT registration is, without threshold, obligatory for foreign persons (taxable persons without seat or VAT establishment in the Czech Republic) once they start to perform taxable activities in the Czech Republic and based on other facts determined by the VAT Act.

32. As of 31 December 2014 inheritance tax and gift tax are incorporated in the ITA and the income inherited is subsequently exempted from tax. Donations and gifts among direct relatives (in the direct line) and among other relatives (in the collateral line) are tax exempted. The government further levies various excise taxes, road tax, tax on the acquisition of immovable property and tax on immovable property. It also collects social security (pension and unemployment) and health insurance contributions on gross salaries. The rates are 11% for the employee (4.5 % for health insurance and 6.5 % for social security contribution with a cap of 48 times the average monthly salary[10]) and

9. All tax rates and standard values mentioned are applied for 2013 or 2014.
10. The official average monthly salary is set quarterly based on official statistics and is currently CZK 24 806 (EUR 904) based on statistics for the first quarter of 2014.

34% for the employer (9 % for health insurance and 25 % for social security contribution).

33. No local taxes have been introduced in the Czech Republic to date. Though, local fees for various purposes are levied.

34. The total tax revenues in 2013 amounted to 34.7% of the GDP.[11]

International issues and exchange of information

35. The Act on International Cooperation in Tax Administration and on Amendment of Certain Related Acts (EOI Act, Act No. 164/2013 Coll) lays out the procedure and conditions under which the competent authority of the Czech Republic can access and exchange information with another jurisdiction for tax purposes. It applies to EOI based on international agreements (DTCs and TIEAs) and EU legislation (s. 1). The Czech Ministry of Finance is the Czech competent authority for EOI purposes (s. 4) The Ministry is responsible for the development of policy and the drafting of legislation, and not the operation of the laws in practice. Performance of the international co-operation is delegated to the central liaison office, which is the General Financial Directorate (s. 6). The Ministry may also authorise other tax administrators to perform the international co-operation in the role of the liaison department.

36. The Czech Republic also exchanges information in tax matters under the Council Directive 2011/16 on administrative co-operation in the field of taxation and the EU Savings Directive (EU-SD) under which the Czech Republic provides and obtains automatically on an annual basis information on interest payments received by natural persons from/to EU members.

Overview of the financial sector and relevant professions

37. The financial sector comprises the following types of entities which all require authorisation from the Czech National Bank (CNB)[12]: or which provide the activities by establishing a branch of foreign institutions authorised by home competent authorities: banks (45), credit unions (11), insurance companies (52), investment firms (58), management companies (26), collective investment funds and unit trusts (276), pension management companies (8) and operating pension funds (58). While banks take the form of public limited liability companies, Credit Unions are organised as co-operatives that carry out activities for their members (including the State and its organisational units). The largest share of the banking sector in the Czech Republic is

11. Source: Czech authorities.
12. Numbers in parenthesis indicates the number of each type of registered entity as of February 2015.

owned by foreign banks (primarily from France, Belgium, Germany, Austria and the United States). Only four banks are owned by Czech private entities and two banks are state-owned. In addition there exist payment institutions and branches of foreign payment institutions (25) and non-bank foreign currency exchanges (982). As of 1 January 2014 the total assets of Czech banks as well as foreign banks branches active in the Czech Republic were CZK 5 142 866 million (EUR 185 663 million).

38. The financial sector is regulated by legislation prepared by the Ministry of Finance and the CNB or directly applicable EU regulation; the above mentioned entities are supervised by the CNB (National Bank Act, Act No. 6/1993). The Czech financial market is part of the EU single financial market and is open to credit and other financial institutions that offer cross-border financial services in line with the principle of the free movement of financial services. According to the Czech National Bank's 2013 Financial Market Supervision Report 2013, as of the end of 2013, ten domestic financial institutions (two banks, six insurance companies and two management companies) were operating in EU countries under the single licence without establishing a branch (i.e. they were not performing permanent economic activity). Foreign activities are not significant for these banks.

39. Statistics for the year 2005, provided in the 2007 MONEYVAL Third Round Detailed Assessment Report on the Czech Republic, show that there were:

- 7 784 persons registered as members of the Czech Bar Association;
- 3822 members of the Chamber of Tax Advisers;
- 445 registered notary offices;
- 1 260 registered auditors, 978 assistant auditors and 327 audit companies; and
- 36 940 permissions granted to conduct real estate activities.

40. Anti-money laundering/combating financing of terrorism (AML/CFT) in the Czech Republic is primarily regulated by the Act on Selected Measures against Legitimisation of Proceeds of Crime and Financing of Terrorism (the AML Act, Act No. 253/2008). This Act implemented the EU Third Money Laundering Directive and other related EU Regulations into Czech domestic law. Monitoring of AML issues is under the overall control of the Ministry of the Interior and the Ministry of Finance. The Financial Analytical Unit within the Ministry of Finance is the Czech Financial Intelligence Unit (Financial Analytical Unit or FAU) supervising the financial industry with regards to money laundering.

41. AML/CFT monitoring and supervisory activities involve the Financial Analytical Unit (FAU) and the Czech National Bank (CNB). The Ministry of the Interior's Law Enforcement Agencies (LEAs) are involved mainly in criminal proceedings and criminal investigation.

Compliance with the Standards

A. Availability of information

Overview

42. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as accounting information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of the Czech Republic's legal and regulatory framework on availability of information.

43. Czech commercial, AML and accounting legislation ensure that up-to-date ownership information is generally available for relevant commercial entities. As of 1 January, 2014, bearer shares must be immobilised, or registered at a central depository (in book entry form). Bearer shares that have not been immobilised prior to 1 January 2014 were transformed automatically to certified registered shares with effect from that same date. Shareholders involved lost all rights attached to these bearer shares for the period that these shares were not immobilised, dematerialised or repealed. However, the transitional provisions do not fully ensure that information is available in practice on all holders of bearer shares in all cases. Therefore, it is recommended that the Czech Republic monitors the practical implementation including the enforcement of the recently introduced requirement regarding bearer shares

to ensure that all shareholders submit their bearer shares to the company to be furnished with the necessary changes and shareholders information is available in all cases.

44. Foreign companies that run a business in the Czech Republic need to register their Czech branch in the commercial register if the head office is located outside the EU. A foreign company that has its head office within the EU can request to be registered, but it is no longer required to do so under the Act on Public Registers that came into effect 1 January 2014. In both cases the foreign companies are regulated by the laws of their jurisdiction of incorporation. However, they are subject to Czech accounting law and are therefore required to maintain ownership information for owners who own at least 20% of the voting rights or who, alone or in concert with others, own at least 40% of the shares. Entities may further have to keep ownership information under the tax law for the purpose of transfer pricing and carrying forward of losses. However, in the case of companies, these requirements are not sufficient to ensure that ownership information is available in all cases. General partners in foreign partnerships doing business in the Czech Republic have to file tax returns and limited partnerships have to keep accounting records identifying limited partners who make contributions to or receive profits from the partnership.

45. The new Civil Code introduced the concept of trusts in Czech Law as of 1 January 2014. The trust is obliged to register itself as a taxpayer at the regional tax office for Prague. Information to be provided includes the founding deed and the statute of the trust including information on settlors, all the trustees and beneficiaries, if they are already determined. There is no registration requirement for foreign trusts. However, a combination of accounting, tax and AML legislation requires all types of Czech trustees of foreign trusts to keep information regarding settlors and beneficiaries of such trusts.

46. Czech law allows the forming of foundations. They have to be registered in the Foundation Register and are under an obligation to disclose the identity of the founders and the members of their statutory bodies. Foundations are legal persons with property assigned to public benefit or charitable purposes. Members of their statutory bodies cannot be beneficiaries of the foundation.

47. Over the period of review The Czech Republic has received in total 431 requests for information. Ownership information has been requested in more than 47 EOI requests in the three-year review period. Statistics provided by the Czech Republic as well as input by peers indicate that information requested predominantly regarded information in respect of companies.

48. Requests regarding ownership of companies could be responded to in most cases by information available in the internal databases, tax returns, as well as taxpayer´s information that are held at file at the tax office.

49. During the period under review Czech Republic did not receive any requests relating to bearer shares, partnerships, trusts or foundations.

50. All obliged entities under AML/CFT laws are required to perform customer due diligence (CDD) measures and keep transactional records. Compliance with these obligations are monitored and supervised by the FAU and the CNB. During the period under review CNB carried out targeted AML/CFT on-site inspections in respect of banks and credit institutions. Based on a risk based approach the Control Department of the FAU conducted inspections targeted to the sectors or institutions which can be considered potentially risky.

51. Enforcement provisions are in place to ensure that relevant entities maintain information as required under the various laws. While no sanctions apply for public and private limited liability companies and co-operatives that fail to maintain a register of their shareholders/members, private limited liability companies are required to file and update shareholder/member information with Commercial Register and appropriate sanctions apply to address the risk of non-compliance. These enforcement provisions are adequately applied in practice and generally ensure that ownership information with regard to the relevant entities is available.

52. Czech accounting law requires all Czech legal entities as well as branches of foreign enterprises to keep adequate accounting records including underlying documentation for a minimum of five years. Czech accounting, tax and AML legislation require trustees of foreign trusts acting in a business capacity to keep complete accounting records for the assets and activities of such a trust Czech tax law further requires professional and non-professional trustees of a trust to keep records necessary in order to disprove tax liability for income from assets they hold in trust.

53. The system of mandatory audits combined with independent review of the auditors ensures that reliable accounting records, supported by underlying documentation, are kept by all persons which have their accounts audited (primarily large tax payers). Furthermore, accounting information has to be filed with the annual tax return and this would be in the hands and checked within the regular framework of tax assessments of the tax authority.

54. Over the period of review the Czech Republic has received in total 431 requests for information. From these 431 requests 38 were made and responded to directly by the local and regional tax offices in the border region with Germany and Slovak Republic. Czech officials were able to provide further statistics for the 393 requests that were received directly by the competent authority in Prague. From these requests 249 requests (64%) pertained to accounting information. In all cases these requests related to companies.

55. Czech authorities report that the information requested was provided in all cases. Czech EOI partners report having asked for accounting information have in general not reported any specific difficulties.

56. In respect of banks and other financial institutions, Czech AML, banking and accounting legislation imposes appropriate obligations to ensure that all records pertaining to customers' accounts as well as related financial and transactional information are available. Banks are expressly prohibited from establishing business relationships with or carrying out transactions for anonymous customers.

57. The customer identification obligations and record keeping obligations on all transactions require banking information to be available in the Czech Republic for all account holders. Compliance by banks in respect of these legal obligations is supervised by the Central Bank as well as the FAU. Through their inspections, it is found that banks keep the required information on their clients and transactions. This is confirmed by the experience of the Czech competent authority, as well as peer input, that banking information was available with banks and could be exchanged upon request.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

58. The new Civil Code (Act No. 89/2012 Coll.) in combination with the Business Corporations Act No. 90/2012 Coll. recognises and regulates a set of commercial entities which have legal personality. They are in this report described under the section for companies (private LLC, public LLC, European Company[13] and co-operative) and partnerships (general partnership, limited partnership and European Economic Interest Grouping). Their incorporation requires registration in the Commercial Register (CR). For certain commercial activities as defined in the Trade Act (Act No. 455/1991) a trade licence or a concession must be obtained.

13. Section 1(4) of the Business Corporations Act explains that a European Company is "governed by the provisions of this Act to the extent permitted by directly applicable legislation of the European Union governing the European Company.

Companies *(ToR[14] A.1.1)*

Types of entities

59. Czech legislation recognises the following types of companies:

- ***private limited liability company*** (*společnost s ručením omezeným*) – Private LLC[15]: Private LLCs are the most common legal form for a business entity in the Czech Republic. They are separate legal entities with registered capital made up of contributions paid by their owners. A private LLC can have one or more owners who are liable for the obligations of the company only up to the amount of their unpaid contribution to the company capital. The minimum contribution of one owner must at least amount to CZK 1 (EUR 0.04) for every shareholder. There were 357 430 private LLCs in the Czech Republic as at December 2013.
- ***public limited liability company*** *(akciová společnost)* – Public LLC[16]: In a public LLC, the registered capital is divided into nominal or bearer shares. As of 1 January 2014 bearer shares may only be issued as book-entry (dematerialised) securities or immobilised securities. Transitional provisions regarding existing LLCs with bearer shares are included in the Act on some measures to increase the transparency of public limited companies ("Transparency Act"). This act requires companies with bearer shares to either register such shares at the Central Depository or immobilise them through physical custody at a bank that provides securities custody services. Contrary to the situation under the former Commercial Code, the current Business Corporations Act does not hold any requirement regarding a minimum number of shareholders. This means the minimum number of shareholders is one, and irrespective whether that shareholder is an individual or not. Furthermore, the minimum capital is levelled at a minimum amount of CZK 2 000 000 (EUR 80 000) for all cases (i.e. including a public LLC formed on the basis of a public offering of shares). There were 24 889 public LLCs in the Czech Republic as at December 2013.
- ***European Public Limited Liability Company*** *(Societas Europaea)* – SE[17]: An SE is a company with a European dimension, and does

14. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*.
15. Title IV, articles 132 to 242 Business Corporations Act.
16. Title V, articles 243 to 551 Business Corporations Act.
17. SEs are regulated by Council Regulation (EEC) No. 2157/2001 on Statute for a European Company which was transposed in the Czech Republic by Act No. 627/2004.

not strictly fall under the territorial scope of the legislation relating to domestic companies in force in the country where it has been incorporated. The minimal capital is EUR 120 000 (Art. 4 EEC Council Regulation). The rules applicable to Czech public limited liability companies with regards to keeping ownership information and submitting such ownership information to the CR apply equally to SEs (Arts.9(1)(c)(ii) EEC Council Regulation and s. 7 Act No. 627/2004). There were 1437 SEs in the Czech Republic as at December 2013; and

- ***co-operative*** *(družstvo)*[18]: Cooperatives are formed by at least three members, and are established for the purpose of mutual support of its members or third parties or, where appropriate, for the purpose of doing business. Members are not liable for the debts/obligations of the co-operative. Under the Business Corporations Act co-operatives also include the European Cooperative Society. There were 15 770 co-operatives and 1 European Cooperative Society in the Czech Republic as at December 2013.

60. Private and public limited liability companies as well as co-operatives are incorporated on the day that they are registered with the Commercial Register (s. 126 New Civil Code). Corporations are set up through a memorandum of association, or, in the case of a single founder, through a deed of formation (s. 8 Business Corporations Act). A memorandum of association must be executed in the form of a notarial deed, founder's deed in the form of authenticated signatures The course of the constituting meeting of a co-operative and acceptance of the Articles of Association are also certified by a public document.

Information provided to government authorities

Commercial register (CR)

61. Companies and co-operatives have to be registered in the CR (s. 42 letter a) of the Act No. 304/2013 Coll., on Public Registers of Legal Entities and Individuals (hereinafter referred as "Public Registers Act"), which is maintained by the regional registration courts (s. 75 (2) of the Public Registers Act). Under the Public Registers Act, registration may also be performed directly by the notaries on the basis of notarial deeds, drafted by the notary that carries out the registration. Each entry, including alterations or deletions, is publicly accessible, including the tax administration (s. 120 (2) New Civil Code).

18. Title VI, articles 552 to 773 Business Corporations Act.

62. The following documents have to be submitted to the CR (s. 66 Act on Public Registers):

- the agreement of association, deed of association or memorandum of association of a public or private LLC, a copy of a notarised deed containing resolutions of the constituting general meeting of a public LLC or constituting meeting of a co-operative, articles of association of a public LLC, a private LLC or co-operative if they are to be issued under the agreement of association; as well as any later update of the aforementioned documents;
- the decision, which must be in writing, on the election or appointment or removal or termination of office of persons who are the statutory body or its members, liquidators, insolvency trustees or heads of a branch of an enterprise or who are entitled to bind the company or represent it in court or who share in the company's management or control; and
- annual reports, ordinary, extraordinary and consolidated financial statements and, if so required by a law or regulation, the proposal for profit distribution and its final status or settlement of loss, unless already a part of ordinary financial statements, the auditor's report on the auditing of financial statements and the report on relations between affiliated persons.

63. The agreement of association of a private LLC has to include the name and the registered office; the identity of the company's owners by stating their names and addresses or seats; the amount of their share of the capital, the type of shares and a description of the related rights and responsibilities. Subsequent changes of ownership have to be submitted to the CR (s. 120, (3) of the New Civil Code in connection with s. 48 (1)(j) of the Act on Public Registers).

64. The articles of association of a public LLC must contain the business name registered office; the amount of the registered capital; the number of nominal and bearer shares and their nominal value; information whether shares shall be issued as book securities or immobilised; types of shares including the rights attached to them and the number of votes connected to one share; the information about the number of shares subscribed by each founder and under which conditions. If the company has a sole shareholder, the name and registered address or permanent address, and residential address if different from the permanent address, of this shareholder is registered (s. 250 of the Business Corporations Act in connection with s. 48 (1)(k) of the Act on Public Registers). (s. 163). Therefore, no shareholders have to be identified unless there is only one owner (s. 48(k)). However, it should be noted that the company issuing shares is obliged to keep a list of shareholders with all by law prescribed data, including the bank account numbers (s. 264 Business Corporations Act).

65. The notarised deed containing the resolutions of the constituting meeting of a co-operative has to include the list of its founders and a written declaration of the founders regarding the value of the individual membership contributions to which they committed at the founding meeting (s. 560 of the Business Corporations Act). Furthermore, the co-operative has to maintain a register of members, and members are required to notify and document to the co-operative any change in the information recorded in the register of members without undue delay after such circumstance has occurred (s. 580 of the Business Corporations Act).

66. Information available with the Commercial Register can be accessed by the internet, also providing for the possibility to obtain authenticated extracts from the Register.

67. The accuracy and completeness of entries made and information provided are monitored by the Registration Courts themselves, that also maintain public registers (in compliance with section 1, para 4 of the Public Registers Act). As noted above, the legal existence of Private and public limited liability companies as well as co-operatives begin upon their registration in the Commercial Register (maintained by the Regional Court). Relevant data to be submitted upon Registration is included in notarial deeds, the accuracy and completeness thereof is certified by the notary. Accuracy and completeness of entries are therefore verified by the notary. Upon registering the Court will basically check whether all the entries as required by law are correctly administered. Furthermore, persons registered are required to update information continuously following s. 121 of New Civil Code and s. 8 of Public Registers Act. Moreover, the legislation was amended and the maximum fine was increased form CZK 20 000 up to CZK 100 000 (s. 104 of the Public Registers Act). In case of repeated breaches of these obligations the proceedings to terminate this legal person by putting it into liquidation may be commenced. This is based on Directive 2009/101/EC. Czech authorities further state that a secondary check takes place by the tax authorities (see further below). In case of any doubts, the tax officer involved will first ask the taxpayer to provide, explain or complete information (s. 128 TPC). If the requested information is not provided in time, the tax administrator will impose a penalty (s. 247(2) TPC).

68. As of May 2013 the Registration Courts, in collaboration with the Ministry of Justice as the administrator of the information system, in which the public registers are kept, began to send to the persons registered in the Commercial Registry notices of the missing submissions of documents to the Document Registry and mismatches with information available with other registries. (Resolution of the Government of the Czech Republic No. 306 of 2 May 2013). These so called pre-notices are sent automatically to the Data

Box[19] of registered persons. If a person does not fulfil the obligation after such a pre-notice, a new notice is sent and if the documents are not submitted after that, a procedural fine is imposed on the company or alternatively the proceedings to terminate the company by putting it into liquidation is initiated. Czech authorities explain that decision to impose a fine or terminate the company is made by a judge of the Registration Court and the decision therefore would depend on his consideration. However, Czech officials estimate that the number of fines or liquidations is relatively low. As they explain Courts would first request the company to correct the imperfections of its entries before a fine would be imposed, and most companies involved would submit the information as requested.

69. Documents submitted to the CR are kept for at least 20 years (Archives and Records Management Act, Act No. 499/2004and Shredding Order Relating to the Registration Courts of the Ministry of Justice, Order No. 94/2007-OIS-ST of 19 December 2008).

Information provided to tax administration

70. Taxpayers with business income in the Czech Republic, such as companies and co-operatives, have to register with the tax administration (s. 125 TPC). The taxpayer is obliged to submit the prescribed tax registration form within 15 day after its establishment, i.e. from day of entry into Commercial register; or – in other cases – within 15 days after a tax payer received any taxable income from the sources within the Czech Republic (s. 39 ITA). When registering, the taxpayer must provide the office address, location of business activity, or the delivery address and information about the individuals authorised to act on behalf of the entity (s. 126). The taxpayer has to notify the tax administration of any changes regarding this information (s. 127(1)). Information regarding owners of companies and co-operatives is not required to be filed with the tax administration as part of registration.

71. Any accounting entity's[20] annual financial statement and its annexes are an integral part of the Czech tax return (Instructions for completing corporate income tax returns). The annex to the annual financial statements has to identify any party exercising significant or controlling influence over this entity. This information has to include percentages of such holdings and description of changes (s. 39(1) Decree on Double-Entry Accounting

19. A Data Box is an electronic storage site, intended for delivery of official documents and for communication with public authority bodies.

20. The term "accounting entity" includes all legal Czech entities, all foreign persons with business activities in the Czech Republic, i.e. branches of foreign entities, sole proprietors and other entities with a statutory obligation to apply accounting (s. l(2) Accounting Act).

for Commercial Entities, Decree No. 500/2002). Significant influence is defined as holding 20% or more of the voting rights (s. 22(5) Accounting Act, No. 563/1991) (s. 1(2)). Controlling influence is defined as disposing alone or in concert with other persons of more than 40% of the entity (s. 75(2–3) of the Business Corporations Act).

72. The Czech authorities advise that all taxpayers can be subject to a tax enquiry concerning their tax position and compliance with tax obligations in the Czech Republic. The tax base for corporate income tax is based on profit and loss calculations in accordance with Czech accounting rules (s. 23(2)(a) ITA). Therefore, necessary documentation for commercial entities to prove tax positions taken are the financial statements including its mandatory attachments, accounting books and underlying documentation (i.e. contracts, invoices etc.).

73. Compliance with the obligations to register with the tax administration is monitored by the local tax offices. The authorities feel this monitoring is facilitated by the fact that they regularly receive updated information about (new) registrations from both the Commercial register and the Trade Licensing Register. In addition to the registering requirements under tax law as set out above (s. 39a ITA, s. 125 TPC), the tax authority has the right to register a person ex officio. In case of any doubts (uncompleted or incorrect data), the tax officer involved will first ask the taxpayer to provide, explain or complete information (s. 128 TPC). If the requested information is not provided in time, the tax administrator will impose a penalty (s. 247(2) TPC). Czech authorities state that they did not experience any major or frequent issues concerning tax registration.

74. In addition, and more in general, compliance with tax obligations is verified in the course of the processing of tax returns. Processing takes place at relevant financial offices and their branches by tax officials. Tax returns can be filed electronically or in paper form. In both situations tax returns are entered into an automated tax information system application called ADIS. The correctness of tax returns is checked in two stages. A first check takes place by the tax official when entering the data into ADIS. This is facilitated by the application as it automatically notifies on crucial mistakes or missing fields or mistakes in calculations. The official can print out the protocol of mistakes and can call upon the taxpayer to remove any doubts. Secondly, ADIS provides for the selection of taxpayers for the purposes of launching a tax audit. By this application the taxpayers for tax audits are chosen on the basis of the data inserted into the tax returns. Tax payers are selected based on a set of various criteria, involving a risk analysis approach.

Information held by companies

75. A public LLC has to keep a list of all holders of nominal shares. This list has to include the type of the share, its nominal value, the name and address of the shareholder, number of a bank account held, the information that is marked on the share and any changes in this information. If the company has issued shares in uncertificated (dematerialised) form, the articles of incorporation may designate that the list of shareholders is replaced by the records of uncertificated securities kept according to specific legislation[21] (s. 264 of the Business Corporation Act). In the latter case, the Central Security Depository[22] (s. 92 Capital Market Undertakings Act, No. 256/2004) or the Register for Investment Instruments (s. 93) maintains a register with ownership details (s. 111). Compliance of the Central Security Depository with regulation is supervised by the Czech National Bank. The transfer of registered shares is not effective with respect of the company until the change of shareholder is proven (s. 269(2) and s. 275(2) Business Corporations Act), otherwise there is a rebuttable presumption that with respect to the company the shareholder is a person who is in the shareholders register (s. 265(2) Business Corporations Act). The company shall update the register without undue delay after such change has been demonstrated to it (s. 265(2) Business Corporation Act. In principle, there is no supervision by public authorities with respect to the list of shareholders and its maintenance by the company. Instead, disputes with the company resulting from the list of shareholders would be decided by the Czech courts based upon civil actions or in criminal courts in case of criminal acts. However, Czech authorities further explain that the tax offices do check compliance with the obligations to keep the list of shareholders with all by law prescribed data, including the bank account details of the shareholders (§ 264 Business Corporations Act) during tax audits. The same goes for the list of partners in case of an LLc. In addition the tax offices check whether the company has updated information regarding the bank account details of all shareholders available. Dividend can be paid only to those shareholders that are listed in the list of shareholders at the date of the dividend payment. Dividend payments have to be approved by the General Assembly and have to be reflected in a written document. During the tax audit the companies are obliged to also provide such documents to the tax officials. In cases where any imperfections or deficiencies are found in respect of documents that should be available within

21. Capital Market Undertakings Act.
22. The Central Security Depository is a legal person authorised by the CNB to maintain the central register of securities in the Czech Republic, assign identification numbers to securities according to the international securities identification numbering system (ISIN) and to operate a settlement system (ss.100 and 103 Act on Business Activities in the Capital Market No. 256/2004).

the company (including list of shareholders) or in cases where any document is missing, the tax official will call upon the tax subject to provide, explain or complete information (s. 128 TPC). For this purpose the tax administrator sets a deadline that the tax payer has to meet. If not and if the taxpayer does not comply with the request for providing, explaining or completing the information within the stated deadline, the tax administrator will impose a penalty according to s. 247(2) TPC. Czech authorities further state that they did not experience any major or frequent issues concerning the availability of this type of information. Further, in the case of a sole shareholder, article 106 of the Act on Public Registers provides that a member of a statutory body of a legal entity who fails to comply with his commitment regarding the registration violates his statutory obligation of proper care (due diligence) with all corresponding potential negative impacts (i.e. if in case of breach of proper care by a member of a statutory body of a legal entity a damage arises to the legal entity, this legal entity is entitled to require a compensation).[23] Czech authorities add however that in practice this only is likely to cover a rather limited number of companies, as it only pertains to the situation where there's a sole shareholder. As noted, ownership information regarding shares issued in uncertificated (dematerialised) form is kept with the central security depository, which is regulated by the Czech National Bank. The central security depository submits statements and reports to the Czech National Bank on a regular basis (based on Decree No. 235/2008 Coll. of 23 June 2008 on information duties of the settlement system administrator and the central securities depository). The Czech National Bank supervises the compliance of the central securities depository with the provisions of Capital Market Undertakings Act, No. 256/2004. Regular reporting of the Central Securities Depository to the Czech National Bank includes annual reports, quarterly information on financial situation and performance. The Central Securities Depository also regularly reports to the CNB about the operation of the securities settlement system. This information includes details of members of the securities settlement system, financial instruments admitted to settlement and details of transactions settled in the securities settlement system. The CNB uses this information to assure itself that the securities settlement systems operate in line with the Capital Market Undertakings Act, No. 256/2004 and the rules of the system. The Czech National Bank makes use of this information also for the supervision of other entities in the capital market such as

23. Generally the statutory body of a company is the statutory director, who is appointed by the management board. Although the management board determines the basic focus of the company's business and oversees its proper operation, it is not, however, authorised to act with third parties for the company. It is the "statutory body" that is authorised to act externally for the company. In line with the business Corporation Act one or more executives constitute the statutory body of a company.

investment firms or market operators. The scope of the supervision is defined in relevant legislation.

76. As mentioned above, the articles of incorporation of a private LLC have to include the name, seat or address of its owners (s. 146 Business Corporations Act). The transfer of any shares takes effect once a copy of the effective business share transfer contract with authenticated signatures is delivered to the company (s. 209 (2). As soon as a change of ownership has been proven to the company, this change has to be entered into a list of shareholders (s. 139) and submitted to the CR (s. 120 (3) of the New Civil Code in connection with s. 48 (1)(j) of the Act on Public Registers).

77. Membership in a cooperative can be established during its foundation or on a later date, by being admitted as a member after approval of a written membership application, transfer or passing of the co-operative share (s. 577 of the Business Corporations Act). Cooperatives are under the obligation to keep a list of all their members including their names, addresses or seats (s580). Furthermore, members are required to notify and document to the co-operative any change in the information recorded in the register of members without undue delay after such circumstance has occurred. The co-operative in its turn shall register the circumstances to be recorded without undue delay after the change has been documented (s580(3)).

78. Where a company or co-operative is liquidated, the liquidator must file a petition for the company to be struck off the CR together with a statement from the locally competent state archives confirming that the safeguarding of the dissolving company´s archive and documents has been secured (s. 207 of the New Civil Code).

79. Documents such as incorporation records, statutes and articles of association have to be kept throughout the lifetime of the entity after which they can be chosen for unlimited archiving subject to public interest (Act on the Archives and Records Management (s. 3(2) and Annex I). The Czech authorities advise that shareholder/members registers have to be kept according to rules regarding financial statements, i.e. a minimum of ten years (s. 31(2)(a) Accounting Act).

Foreign companies

80. A foreign company engaged in business activities in the Czech Republic through a branch is subject to Czech commercial legislation, including accounting law (s. 1(2)(b) Accounting Act). The company has to register that branch with the CR if the head office is located outside the EU (s. 44 Act on Public Registers). A foreign company that has its head office within the EU can request to be registered, but it is no longer required to do so under the Act on Public Registers that came into effect 1 January 2014 The following

information has to be provided to the register: name and address of the branch, the name and legal form of the foreign enterprise, the foreign register where the enterprise is registered and (if available) identification number as well as its annual accounts, founding act, agreement or articles of association or similar documents and their amendments and full versions thereof (s. 49, 50 and 66 of the Public Registers Act). There is no requirement to file information identifying all owners of the foreign company.

81. The branch has to be registered with the tax administration in all cases and provide the same information as required for Czech legal entities as described above (s. 39a (2)(3) ITA). Foreign companies have to submit as mandatory part of their tax return their annual financial statements which have to include information identifying any party exercising significant or controlling influence over the foreign entity as described previously in this report. Thus the annual statement of a branch of a foreign company will have to identify owners of that company holding alone or in concert with others at least 40% of the shares or at least 20% of the voting rights. A foreign-incorporated company having its place of effective management in the Czech Republic is considered to be resident for tax purposes (s. 17(3) ITA). As such it will be subject to Czech tax law to the same extent as a Czech incorporated entity.

82. In relation to tax registration, Czech tax authorities advise that based on s. 126 TPC a new Annex to the form "Application for registration of legal entities" has been introduced in 2013 that contains an obligation to indicate the information about all owners of legal persons established outside the Czech Republic, but having its place of effective management in the Czech Republic, who have at least 20% of the voting rights in this legal person. This information has to be updated if changes occur. Therefore, there is specific requirement to submit and update ownership information on all foreign companies with sufficient nexus to the Czech Republic to the tax authorities in cases were the threshold of 20% of the voting rights is met and this information will now be readily available to the tax authorities.

83. Certain tax provisions require taxable entities, including permanent establishments of foreign entities or foreign entities centrally managed and controlled within the Czech Republic (or that have their registered office in the Czech Republic) and thus considered resident for tax purposes, to keep ownership records as may be needed to deliver a complete and correct tax return (s. 72 TPC) and may be required to produce these records during an audit (s. 86(3)):

- Czech tax law allows taxpayers who run a business to carry forward all losses as long as there has not been a substantial change of ownership of the taxpayer. Substantial change of ownership is defined as a change of more than 25% of the ownership. Though, carry forward

will be allowed even under these circumstances if the entity can prove that at least 80% of its ordinary income has been generated by the same type of activities as those that incurred the losses. A substantial change of ownership or change of control is assumed to have taken place in a company with bearer shares unless the company passes this 80% test (s. 38na ITA).

- Under certain circumstances, the Czech tax administration can adjust the tax base of a taxpayer with respect to business transactions between the taxpayer and a related person. The definition of related person includes persons who directly or indirectly own at least 25% of the taxpayer (s. 23(7) ITA).

84. There are no statutory provisions with regard to maintenance of documentation in order to meet the above tests. However, with regards to transfer pricing test, the Czech Republic has adopted the EU Code of Conduct on Transfer Pricing Documentation as guidelines which suggests that taxpayers document legal and operating structures, including a list of group members and the shareholding percentages (Decree D-334 on Transfer Pricing Documentation of Pricing Methods between Related Parties in Accordance with the Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union).

85. Thus, it is conceivable that many, but not all, foreign companies with a permanent establishment or place of effective management in the Czech Republic will have to keep track of their owners for Czech tax purposes within the context described above in the previous two paragraphs. Tax returns for branches of foreign entities and Czech entities may be taken up by the Czech tax administration for enquiry on a risk-assessment basis. However the nature of the documentation to be maintained for this purpose is unclear.

Information held by service providers

86. The Czech AML Act is a transposition of the 3rd EU Money Laundering Directive and requires obliged entities to perform customer due diligence (CDD). The obliged entities under this act are entities within the financial sector and persons or professions such as (s. 2(1)):

- tax advisors and chartered accountants;
- lawyers and notaries[24] when they offer the service of safekeeping money, securities or other valuables, or when required by customers

24. CDD requirements do not apply to lawyers should the information pertaining to the customer be obtained from the customer or in any other way during or in connection with: (a) providing legal advice or the later determination of the

to represent them or to act on their behalf in the following situations: buying or selling real estate or a business entity or part thereof; managing customers' assets, such as money, securities, business shares, or any other assets, including representing customers or acting on their behalf in relation to opening accounts in banks or other financial institutions or establishing and managing securities accounts; or establishing, managing, or controlling a company, business group, or similar entrepreneurial entity regardless of its status as a natural/legal person, as well as receiving money or other valuables for the purpose of establishing, managing, or controlling such entity; or providing services of encashment, payments, transfers, deposits, or withdrawals in wire or cash transactions, or any other conduct aimed at or directly triggering movement of money;

- any person, providing among others the following professional services to another person:
  - establishing legal persons;
  - acting as a statutory body or its member, or acting in the name of or on behalf of a legal person, or another person in a similar position, should such service be only temporary and should it be related to establishing and administration of a legal person;
  - providing a registered office, business address, and possibly other related services to another legal person; or
  - acting in other persons' name or on their behalf in specified financial and company activities; or
- any person providing services in a framework of a trust or any other similar contractual relationship under a foreign law

customer's legal standing; (b) defending the customer in criminal law proceedings; (c) representing the customer in court proceedings; or (d) providing any legal advice concerning the proceedings referred to in letter (b) and (c), regardless of whether the proceedings commenced or not, or were concluded or not (s. 27(1)). Similarly, notaries are not obliged to do CDD should the information be obtained from the customer or in any other way during or in connection with: (a) providing legal advice or the later determination of the customer's legal standing; (b) representing the customer in court proceedings subject to the mandate conferred on the public notary by law or any other legal statute; or (c) providing any legal advice relating to the proceedings referred to in (b), regardless of whether the proceedings commenced or not, or were concluded or not (s. 27(1)).

87. The AML Act requires identification of customers when entering into a business relationship[25] (s. 7(2)(b)) and when carrying out a transaction[26] exceeding EUR 1 000 (s. 7(1)).[27] Should the obliged entity suspect that a customer is not acting on its own behalf or is attempting to conceal their acting for a third party, then the obliged entity has to require the customer to submit a power of attorney (s. 8(7)). Identification of the customer involves obtaining:

- for a natural person: all names and surnames, a birth identification number or date of birth, a place of birth, residence and citizenship;
- for a natural person who is a sole proprietor: the business name or any other identification features, place of business and business identification number; and
- for a legal person: the entity's name, or other identification features, official address, business identification number or a business identification number given under foreign law.

88. The obliged entity must perform CDD to the extent necessary to determine the potential risk depending on the type of customer, business relationship, product, or transaction, when entering into a business relationship or being involved in a transaction amounting to EUR 15 000 or more.

89. Performing CDD includes, using an AML-risk based approach, identification of the beneficial owner should the customer be a legal person (s. 9(2) (b) and (3)). In case of a commercial entity, the beneficial owner is defined as a natural person, having real or legal direct or indirect control over the management or operations; or holding in person or in contract with a business partner more than 25% of the voting rights; or acting in concert and holding more than 25% of the voting rights; or a natural person, who for other reasons is the real recipient of the revenue of such an entity (s. 4(4)(a)).

90. Obliged entities are required to check the validity and completeness of the customer's identification data and information gathered (s. 8(6)). Data and written documents obtained during CDD need to be kept for ten years following the termination of the business relationship with the customer (s. 16).

25. A business relationship is defined as a relationship to handle assets of clients or to provide repetitive transactions or service (s. 4(2) AML Act).
26. A transaction is defined as an interaction that leads to the handling of property or the provision of services (s. 4(1) AML Act).
27. Certain exemptions apply with regards to the identification requirement based on the frequency, individual and accumulated amounts for an obliged entities non-core business activities (s. 34 AML Act). In the case of life insurances identification is required at the latest on the day of the payment (s. 7(3)).

91. The Czech FIU (FAU) has overall responsibility to ensure that all obliged financial and non-financial institutions comply with the obligations contained in the AML legislation. In addition, various authorities and self-regulating organisations (SRO) have supervisory responsibilities in their specific industries. The Czech National Bank (CNB) is responsible for general supervision of the entire financial market in the Czech Republic. The CNB supervision includes off-site supervision, on-site general inspections and AML compliance checks. The CNB does not have power to sanction for infringements of the AML/CFT law. This lies exclusively with the FAU. The Czech authorities stated that information held by entities due to AML requirements can easily be retrieved by the competent authority for EOI purposes.

92. As noted all obliged entities under AML/CFT laws are required to perform customer due diligence (CDD) measures and keep transactional records. Compliance with these obligations are monitored and supervised by the FAU and the CNB. As stated above, during the period under review CNB carried out targeted AML/CFT on-site inspections in respect of banks and credit institutions and the Control Department of the FAU conducts inspections targeted to the sectors or institutions which are potentially risky.

93. In practice the most frequent or common violations identified by the FAU during inspections are failure to comply with the requirement to perform identification and customer due diligence (Section 44 of the AML Act) and failure to comply with the obligation of prevention in respect of inter alia internal rules, ensuring regular training to employees, entering into a corresponding bank relationship against the provisions of the AML Act (Section 48 of the AML Act). Where violations are detected, the FAU initiates administrative proceeding and subsequently imposes a fine.

94. During the three year review period (1 January 2011 through 31 December 2013) CNB carried out around 10 targeted AML/CFT on-site inspections in respect of banks every year. The on-site inspections plan for 2014 also contained 10 credit institutions. As regards the AML/CFT supervision over non-bank financial institutions, the CNB supervises foreign exchange entities, payment service providers, electronic money issuers, capital market institutions, and insurance intermediaries. The CNB conducts its on-site inspections through the Financial Market Supervision Department located at the headquarters and regional offices (ca. 100 on-site inspectors spread over all regions). The aim of the AML/CFT inspections is generally to verify the operation and effectiveness of the AML/CFT system. On-site inspectors especially check the compliance of the examined entity's system with the AML/ CFT related legislation, as well as the entity's ability to identify and analyse suspicious transactions and to notify the FAU within the set time limit, and its strategies and control system in this area.

95. In addition to these monitoring and supervisory activities by the CNB, the FAU as the relevant body in the AML/CFT effort and at the same time the STR's receiving and analysing body is able to indicate the most risky sectors or even particular institution. The Control department of the FAU in practice may focus on such identified sectors or institutions in its inspections (as was the case with Providers of money services, Cooperative saving unions). The FAU also co-operates with the CNB in this issue. Based on a risk based approach the Control Department conducts inspections targeted to the sectors or institutions which are potentially risky. In case detecting violation the FAU initiates administrative proceeding and subsequently imposes the fine. Regarding the number of inspections the table below indicates that the total number of onsite as well as off-site inspections decreased from (in total) 159 in 2011 to 59 in 2013, but the number of on-site visits doubled during the same period of time.[28]

Year	Inspections (on-site)	Inspections (off-site)
2011	8	151
2012	7	69
2013	14	45

96. However, further statistics show that there has been a significant increase in the number of administrative proceedings (from 3 in 2011 to 19 in 2013) as well as cases where administrative sanctions have been applied (from 3 in 2011 to 15 in the year 2013), as well as a the total amount of fines applied, thus demonstrating the effect of the risk based approach.

Year	Administrative proceedings*	Number of fines imposed	The total amount of fines (in CZK)
2011	3	3	1 150 000.00
2012	13	10	630 000.00
2013	19	15	3 023 000.00

* Initiated pursuant to controls conducted by the FAU itself or referred by the CNB.

97. Supervision of obligations under the AML rules in respect of notaries is carried out by the Notarial Chamber of the Czech Republic in respect of notaries and by the Czech Bar Association in respect of lawyers. Lawyers have to report potential suspicious transactions to the "Control Committee" of the bar association. If the Committee considers the transaction suspicious,

28. Numbers regarding the financial sector and relevant professions are included in paragraphs 37-39.

it must forward the notification to the FAU (s. 27 (3) AML Act). The same obligations apply in respect of notaries and the Chamber of Notaries of the Czech Republic (NCH). Both the chambers have to supervise, at the request of the FAU, whether a specific notary or lawyer has fulfilled his obligations as set out in the AML Act. Furthermore, supervision takes place on a risk based approach.

98. In three last years the NCH exercised inspection in respect of 46 notaries in total. AML related items are part of the regular inspections and each year notaries from 4 regional NCHs are inspected. Inspections in 2012 regarded 15 notaries, and included a variety of issues such as checking CDD/ availability of copies of identification documentation,, checking of contents of the files in connection to the notarial custodies and checking of the proper notarial records. As Czech officials explained the outcomes were such that no need of taking any specific resolutions came up from the results, and no disciplinary legal action had to be taken. In 2012 the NCH also exercised 4 extraordinary inspections – two on the basis of FAU request and two based on a request from the regional NCHs. No failures in respect to the AML act were found.

99. In 2013 regular inspection took place in respect of 16 notaries. This resulted in one case regarding notaries remuneration accounting submitted for disciplinary legal action. Otherwise there were no breaches of legislation ascertained. In 2013 no extraordinary inspections occurred. However, the number of notarial offices (NO) under supervision of the Ministry of Justice increased. In 2013 Ministry of Justice inspected 14 NOs, in 2014 Ministry of Justice either already exercised or notified an inspection of 28 NOs, and this number is not final. Regarding the number of disciplinary legal actions for the period under review, statistics provided by the NCH demonstrate that in total 6 disciplinary actions were submitted in 2011, 9 in 2012 and 4 in 2013. The number of cases that could be finalised in these years was 2, 3 and 1 respectively. The average penalty applied in these cases amounted to CZK 45 000 (EUR 1 700), CZK 33 333 (EUR 1 200) and CZK 100 000 (EUR 3 700) respectively. Furthermore, it is stated that in the period between 1993 and 2013 in total 14 notaries were dismissed by the Minister of Justice as a direct consequence of a disciplinary proceeding.

100. The Czech Bar Association organises seminars informing lawyers how to meet their obligations under AML law. An official from the association stated that in practice lawyers in the Czech Republic are well informed with respect to AML obligations and cases where the association had to conduct investigations were low. In practice the Czech Bar Associations works in close relationship with the FAU. This relationship is good and also based on an official agreement.

Nominees

101. The business of providing nominee shareholding is regulated under the AML Act (s. 2(1)(h)(4))[29] as well as the Capital Market Undertakings Act (ss.4 and 4a). As obliged persons they are required to identify their customers, i.e. the person on whose behalf they hold these shares, and perform CDD at the moment of establishing the business relationship (s. 9(1)). This includes, using an AML-risk based approach, identifying the beneficial owner where the customer is a legal entity (s. 9(2)(b) and s. 3). The beneficial owner is in general defined as a natural person having real or legal direct or indirect control of an entity or holding, alone or together with other persons, voting rights or financial interest in that legal person of more than 25% (s. 4(4)). The nominee is further required to conduct ongoing monitoring, to ensure that the information held on the customer is up-to-date and to keep information for ten years following the termination of the business relationship. Compliance with these obligations are monitored and supervised by the FAU and the CNB, as stated above oversight of FAU and the CNB takes place based on a risk based approach.

102. If a person holds shares on behalf of another person as a nominee or under a (disclosed or undisclosed) mandate, the nominee would be subject to tax obligation unless they provide proof through written agreements or otherwise that they are not the beneficial owner of the assets. The Czech authorities advise that the tax authorities have the power to require any type of nominee or mandatory to provide information for purposes of the exchange of information (s 78(3) and s. 92(4) of TPC). Any person acting as nominee would have to disclose the identity of the person for whose account the shares are held.

103. In respect of nominee ownership, Czech tax authorities explain that they have so far no practical experience where they needed to use their powers to require this type of information for EOI purposes. However, they add that they did use the provisions of the TPC for domestic purposes and they experienced no problem with the information gathering in these cases. Feedback from peers confirms that that there have been no requests for this type of information during the period under review.

29. An exception applies if the nominee acts for a company with securities accepted for trading at a regulated market and which is subject to information disclosure requirements equivalent to those laid down by the European Communities law (s. 2(1)(h)(4) AML Act).

Conclusion and practice regarding the availability of ownership information on companies

104. Full up-to-date identity information is required to be available for shareholders and members of Czech domestic companies and co-operatives under the registration obligations of commercial laws and the obligations on entities to maintain registers of shareholders/members. With regard to bearer shares, it can be noted that as of 1 January 2014 bearer shares may only be issued in a book-entry (dematerialised) or immobilised (held in custody by a bank) form. Transitional provisions regarding companies that issued bearer shares prior to 1 January 2014 are included in the Act on some measures to increase the transparency of public limited companies ("Transparency Act"). This act requires companies to either register such shares at the Central Security Depository or immobilise them through physical custody at a bank that provides securities custody services. (See the section on "bearer shares" further below).

105. Foreign companies considered resident within the Czech Republic are required to include in their annual financial statement details on owners who hold at least 20% of voting rights or 40% of the shares, alone or in concert with others. In addition, in the situation where an owner holds at least 20% of the voting rights, there is also a requirement to file and update this type of information with the tax administration. Furthermore, Czech tax law results in many foreign companies with a Czech residence or branch to maintain information on their owners for the purpose of carrying forward of losses as well as transfer pricing. Therefore, there is specific requirement to submit and update ownership information on all foreign companies with sufficient nexus to the Czech Republic to the tax authorities in cases were the threshold of 20% of the voting rights is met. In practice this is likely to cover the majority of requests for ownership information in respect to foreign companies. At the same time, however, it's also clear that this does not cover limited cases where these rights represent less than 20% of the voting rights. Therefore, these requirements do not fully ensure that ownership information on foreign companies with sufficient nexus to the Czech Republic is available in all cases.

106. Where a legal owner acts, in a professional capacity[30], on behalf of any other person in an ownership chain, e.g. as a nominee, the AML Act requires the nominee to identify his/her customer.

107. Ownership information has been requested in at least 47 EOI requests in the three-year review period. Statistics provided by the Czech

30. Professional capacity as defined as *continuous activities independently conducted by an entrepreneur in his/her own name and on his/her own account for the purpose of making a profit* (s. 2(1) CoC).

Republic as well as input by peers indicate that information requested predominantly regarded information in respect of companies. Requests could be responded to in most cases by information available in the internal databases, tax returns, as well as taxpayer´s information that are held at file at the tax office.

108. Peers have indicated that the information was exchanged in the form requested and without delays in the vast majority of cases. Some peers have commented that company ownership information was not (yet) provided in some cases, for instance in two cases where the taxpayers concerned could not be identified as a taxpayer in the Czech Republic, e.g. there was no activity at the registered address, the taxpayer was not registered for tax purposes, he has not filed any tax return. The Czech authorities stated that in these cases they provided partial responses based on information that was available in their databases or in public registers. Furthermore, in three other cases the requests regarded a shareholder in the requesting jurisdiction with many Czech companies owning immovable property in the Czech Republic. As Czech EOI team explained these requests take more time to fully answer as they involve many questions and are quite labour intensive. Nevertheless, Czech authorities feel optimistic that the requested information will be provided shortly.

Bearer shares *(ToR A.1.2)*

109. The Czech Republic's legal framework with respect to bearer shares changed substantially as of 1 January 2014. In principle, Czech public limited liability companies can issue shares in registered or bearer form. This was also the case under the legislation that was in place up until 31 December 2013. Since 1 January 2014, however, bearer shares can only be issued in dematerialised or immobilised form, i.e. they have to be registered at the Central Security Depository or they have to be immobilised through physical custody at a bank that provides securities custody services (s. 274 (1) BCA). A third option would be to simply cease to have the bearer shares by converting them to registered shares. Companies that had issued bearer share certificates (unless already immobilised) had to choose one of these options and implement them by 31 December 2013. Bearer share certificates of companies that failed to make this choice deemed to become registered shares automatically as of 1 January 2014 (s. 2 (1) of the Transparency of the Public Limited Companies Act). The corresponding change in the company Articles of Association occurs automatically, and it does not require entry in the Commercial Register for this change to become effective (s. 2 (1) Transparency Act).

110. However, the company still had to invite shareholders to actually exchange their shares. The Transparency Act therefore sets out further

transitional provisions for these existing situations. These provisions basically cover a transition period that runs up until 30 June 2014. Firstly, it obliged existing shareholder to submit bearer shares to the company that issued these bearer shares to be provided with the relevant changes or for exchange of these shares by 30 March 2014 (s. 3 Transparency Act). Shareholders that did not meet this obligation lost all rights attached to these shares for the period of the delay in submitting the shares. In principle, rights will be restored when the bearer shareholder complies with all requirements, and, therefore, the loss of rights can be seen as suspensory rather than terminal. In the meantime, however, shareholders in such a case may not vote at the General Meeting, cannot be paid dividends (s. 4 Transparency Act), do not have the right to a share in a liquidation balance and cannot exercise special protected minority rights, e.g. to request the convocation of an extraordinary General Meeting. Czech officials explain further that, although a shareholder could potentially sell his shares, a successor would be in exactly the same legal position. At the same time the Board of Directors of the company is obliged to ensure that these changes were reflected in the company's Memorandum of Association and statutes and that the updated versions of these were entered in the Commercial Register by 30 June 2014 (s. 2 (2) Transparency Act together with s. 777 (1) and (2) of the Business Corporations Act).

111. In the cases were a company failed to send updated versions of the company's memorandum of association and statutes to the Commercial Register by 30 June 2014, the registry court shall invite the company to make the required changes and shall grant an additional "reasonable period of time" for the fulfilment of this obligation (777 (2) of the Business Corporations Act). As Czech authorities explained, in a legal context "a reasonable period of time" should be interpreted as a maximum period of 30 to 90 days. In case this requirement is not met after expiration of this additional period, a court shall dissolve the business corporation and order its liquidation, on the basis of a petition of the commercial register court or of a person having a legal interest (777 (2) of the Business Corporations Act). Czech officials add that this this last category would include the tax authorities as well as the State prosecution office.

112. Therefore, bearer shares issued after 1 January 2014 can only be issued in book-entered or immobilised form, i.e. they have to be registered at the Central Security Depository or they have to be immobilised through physical custody at a bank that provides securities custody services (s. 274 (2) BCA). For a transfer of ownership of bearer shares it will be necessary to change the owner in the Central Security Depository or in the bank (s. 1104 of the New Civil Code), which allows for the identification of a holder of bearer shares in all cases.

113. Companies with bearer shares that have not been immobilised or converted them prior to 1 January 2014 saw their shares transformed automatically to certified registered shares with effect from that same date. Shareholders involved lost all rights attached to these bearer shares for the period that these shares were not immobilised, dematerialised or repealed[31]. In principle, Shareholders had until 30 March 2014 to submit their shares to the company to be furnished with the necessary changes. The company, at the same time, was obliged to enter the updated Memorandum of Association in the Commercial Register before 30 June 2014. However, the Registration Courts could grant an additional "reasonable period" (30-90 days) for the fulfilment of these obligations. The Business Corporations Act provides for companies that did not meet these obligations within this period of time to be dissolved and liquidated. As noted shareholders that didn't convert or immobilised their bearer shares lost their rights on 31 Dec 2013. However, it should also be noted that restoration can in principle still continue to take place beyond the end of the transition period (as long as the company is not actually dissolved and liquidated).

114. Czech authorities have not established statistics regarding the number of companies with bearer shares. However, they provided the assessment team with a public[32] estimate from a private sector provider of economic information[33] that shows the number of public LLCs that have issued either only bearer shares, only nominal shares or both and how many of those were certificated or book-entry shares. This estimate shows that as at December 2013 there were registered 24 889 public limited companies of which at least[34] 12 499 or more than 50% had issued certificated[35] bearer shares.

115. Although Czech authorities did not have any specific statistics available that could give any indication of the number of companies that had been granted an additional period of time, or had been liquidated, Czech authorities did provide statistics regarding the total number of proceedings in the Registry Court. The data provided indicate an increase in the total number of proceedings before the Registry Court in the first half of 2014. While in total

31. Furthermore, for a transfer of ownership of bearer stocks it is necessary to change the owner in the Central Security Depository or in the bank (s. 1104 of the new Civil Code), which allows the identification of a holder of bearer shares in case of a transfer.
32. See article in www.ceskapozice.cz/ of 16 November 2011.
33. Czech Capital Information Agency (ČEKIA).
34. According to the statistics, 1 211 companies could not be allocated to the various groups.
35. In the case of certificated shares, ownership in a company is represented by a physical share certificate and not a book-entry where shares are owned, recorded and transferred electronically without issuing a physical certificate.

146 236 proceedings took place in the year 2011, 174 811in 2012, and 143 354 proceedings took place in the year 2013, this number rose to 103 685 for the first 6 months of 2014. As mentioned above, estimates are that at least 12 499 companies had bearer shares before the implementation of legal changes with respect to these shares, and Czech authorities explain that usually one proceeding would be needed for relevant shares to be changed in respect of a company. On the other hand, it is also likely that the introduction of the new Civil Code and Commercial Code triggered quite a number of changes and proceedings with the commercial register and the assessment team therefore is of the opinion that it is not clear if and how many of these changes are actually related to the conversion of bearer shares or the number of companies that have been liquidated after been granted an additional period of time.

116. Apart from the mechanisms described above, legal and practical mechanisms in the securities and company laws require certain holders of bearer shares to be identified or limit the issuance of such shares:

- Certain types of entities are prohibited to issue bearer shares: e.g. Banks (s. 20(1) Banking Act, No. 21/1992), insurance companies (s. 6 Insurance Act, No. 277/2009), and railways (s. 5 Czech Railways Act, No. 77/2002);
- Investment firms can issue bearer shares only as book-entry shares (s. 6 Capital Undertakings Act), see next bullet point;
- Book-entry securities (including bearer shares) issued in the Czech Republic are to be registered in the Central Security Depository (s. 92 Capital Market Undertakings Act) or in the Separate Register for Investment Instruments (s. 93). The depository maintains a register with details of the owner of the account (s. 111); a person whose voting rights in a company listed on the stock market reaches or exceeds 3%, 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50% or 75%, or who reduces his share in all the voting rights below such limits, must notify the issuer and the Czech National Bank. (s. 122 Capital Market Undertakings Act);
- Annual financial statements of commercial entities have to identify owners who have more than 20% voting rights or alone or in concert with others own more than 40% of the entities equity. This requirement also applies to owners who hold bearer shares; and
- Holders of bearer shares in paper form are not allowed to participate at an annual shareholder meeting or to exercise other rights attached to these shares unless they immobilise these shares (s. 3(1) Transparency Act).

117. Owners with more than a 25% interest in the company will have to be identified by obliged entities under the Czech AML legislation when the company enters into a business relationship with a financial institution or other obliged entity (see description of the Czech AML legislation above).

Conclusion and practice concerning ownership information in respect of bearer shares

118. During Phase 1 it was noted that indications were that around 50% of the Czech public LLCs have issued bearer shares, and it was concluded that it was not ensured that ownership and identity information of owners of public LLCs are available in all cases. However, as of 1 January 2014 the Czech Republic's legal framework with respect to bearer shares changed substantially.

119. After 1 January 2014 bearer shares can only be issued in dematerialised or immobilised form, i.e. they have to be registered at the Central Depository or they have to be immobilised through physical custody at the bank (s. 274 (1) BCA). For a transfer of ownership to bearer shares it will be necessary to change the owner in the central depository or in the bank (s. 1104 of the New Civil Code), which allows for the identification of a holder of bearer shares in all cases.

120. Companies with bearer shares which have not been immobilised prior to 1 January 2014 saw their shares transformed automatically to certified registered shares with effect from that same date. Shareholders involved lost all rights attached to these bearer shares for the period that these shares were not immobilised, dematerialised or repealed. Shareholders had until 30 March 2014 to submit their shares to the company to be furnished with the necessary changes. The company, at the same time, was obliged to enter the updated Memorandum of Association in the Commercial Register before 30 June 2014. The Registration Courts could grant an additional "reasonable period" for the fulfilment of these obligations. The business Corporations Act provides for companies that did not meet these obligations within this period of time to be dissolved and liquidated, on the basis of a petition of the commercial register court or of a person having a legal interest. In this respect it can be noted that, as mentioned above, shareholders that are in default do not have a right in the liquidation balance. However, it can also be noted that Czech authorities stated they don't have statistics regarding the number of companies that are complying and it is not clear what kind of oversight takes place to ensure that all companies that did not meet these obligations have been required to do so by the commercial register or any other person. Therefore the transitional provisions do not fully ensure that in practice information is available on all holders of bearer shares in all cases. As mentioned above other mechanisms only cover a small fraction of entities

that potentially can issue bearer shares and do therefore not ensure that information is available on holders of bearer shares if the companies involved did not meet their obligation to enter the updated Memorandum of Association in the Commercial Register, register them at the Central Security Depository or immobilised them through physical custody at a bank.

121. Although the number of entities that did not meet their obligations to enter the updated Memorandum of Association to the Commercial Register before 30 June 2014 – in the light of the possibility of liquidation and the fact that holders of bearer shares that are in default do not have the right to a share in a liquidation balance – is likely to cover only a (small) fraction of the entities that issued bearer shares prior to 1 January 2014, there is some uncertainty, as the holders of bearer shares can still submit their shares to the company to be furnished with the necessary changes after 30 June 2014 and the law does not provide for a final date after which such a submission will no longer be granted. Furthermore, specific statistics or oversight to this significant legal operation also seem absent. Therefore, it is recommended that the Czech Republic monitors the practical implementation including the enforcement of the recently introduced requirement regarding bearer shares to ensure that all shareholders submit their bearer shares to the company to be furnished with the necessary changes and shareholders information is available in all cases.

Partnerships *(ToR A.1.3)*

122. Czech law recognises three types of partnerships, which have legal personality:

- ***General partnerships*** (*veřejná obchodní společnost* – VOS)[36]: A general partnership has two or more partners undertaking business activities under a common business name. All partners are entitled to act on behalf of the partnership and are jointly and severally liable for the debts/obligations of the partnership not only during the existence of the partnership but also after its dissolution. There were 7 007 VOSs in the Czech Republic as at December 2013;
- ***limited partnerships*** (*komanditní společnost* – KS)[37]: A limited partnership has one or more partners with limited liability for the obligations of the company up to the amount of the unpaid parts of their contributions (limited partners – *komanditista*) and one or

36. General partnerships are regulated in Sections 95–117 of the Business Corporations Act.
37. Limited partnerships are regulated in Sections 118–131 of the Business Corporations Act.

more partners with full liability for the obligations of the partnership (general partners – *komplementář*) (Section 122 of the Business Corporations Act). The statutory body of the limited partnership are general partners. There were 769 KSs in the Czech Republic as at December 2013; and

- ***European Economic Interest Groupings*** *(EEIGs):* The EEIG is a European form of partnership in which companies or partnerships from different European countries (the partners in the EEIG) can co-operate. It must be registered in the EU State in which it has its official address. The Act No. 360/2004 implemented Council Regulation (EEC) No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping). There were 6 EEIGs in the Czech Republic as at December 2013.

123. Czech legislation also recognises *silent partnerships (tichá společnost).* A silent partnership is a contractual relationship between two parties by which the silent partners make an equity contribution into another person's business and participates for the time of existence of the silent partnership in the results of the business, and in turn this other person is bound to pay to the silent partner part of the profit (s. 2747 of the New Civil Code). The existence of the partnership is typically not disclosed to the public. Silent partnerships do not have legal personality and cannot hold real estate or own assets. They have no income or credits for tax purposes, do not carry on business and cannot be compared to a limited partnership. Therefore, these arrangements are not within the scope of the *Terms of Reference*.

124. Czech law further recognises *civil partnerships* which are a contractual association between at least two persons who are associating together as partners for a common purpose or activity. It is not a separate legal entity s. 2716 – 2746 of the New Civil Code) and is not required to register in the Commercial Registry. A CP is often used for activities of a short duration or for specific projects only. This type of partnership does not carry on business; it cannot have any income, credits or deductions for tax purposes and is not a limited partnership. Therefore it does not fall within the entities relevant to the *Terms of Reference*.

Information provided to government authorities

Commercial register

125. Partnerships are incorporated once registered in the CR. The agreement of association of a general or limited partnership has to include the corporate name and purpose of the partnership as well as the names and addresses or seats of all the members. For limited partnerships this document

also has to identify general and limited partners and include the amount of each limited partner's investment contribution, and the liability limit of each of the partners (s. 97 and s. 124 of the Business Corporations Act). This information, including any changes, is registered in the commercial register s. 48 (1) (i) of the Public Registers Act). EEIGs are subject to the same requirements as general partnerships and are registered in CR (Council Regulation (EEC) No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping and Czech Implementation Act No. 360/2004).

126. The agreement of association has to be amended when a change of ownership occurs in a partnership (ss. 110 and 119 of the Business Corporations Act). If an agreement of association of a partnership is amended, it has to be filed to the Document Registry of the CR (s. 66(a) of the Public Registers Act).

Tax authorities

127. A general partnership is treated as a transparent entity for tax purposes; its income, which is calculated according to the rules for companies, is taxed in the hands of its partners. A limited partnership is transparent in respect of its general partners and a separate taxable person (as a company) in respect of its limited partners. EEIGs are taxed like a general partnership (s. 37a ITA).

128. Like companies, general and limited partnerships as well as EEIGs have to register with the tax administration and as part of registration must provide the office address, location of business activity, or the delivery address (s. 126 TPC). Further, the partnership has to provide information about the individuals authorised to act on behalf of the entity (s. 126)Changes to the aforementioned information have to be notified to the tax administration (s. 127(1)).

129. Czech and foreign partners in a general partnership and general partners in a limited partnership have to register for tax purposes (s. 125 TPC). Regarding oversight of maintaining of information on partners reference can be made to the findings with respect to tax registration further above. Their share of the partnership's profits and losses is included in their individual tax returns (s. 18b(1 and 2) ITA). The share of profit allocated to limited partners is taxed at the level of the partnership under the rules applicable to companies and limited partners need not submit individual returns in respect of such income. There are no requirements for partnerships or partners to provide information on the partners or the partnership respectively when registering with the tax administration. However, the financial statement of a partnership is a mandatory annex to the tax return and will have to include information on owners who hold voting rights of at least 20% or ownership of at least 40% of the shares.

Information held by partnerships

130. The registration application of a general or a limited partnership shall be submitted by all partners (s. 45 (1) of the Public Registers Act) and accompanied by a partnership deed (agreement of association) which has to include all the names of the partners (see paragraph 83 above). The agreement of association has to be amended when a change of ownership occurs (s 110 and s. 119 of the Business Corporations Act; ss.83 and 93(4) CoC) and submitted to the CR, see paragraph above.

Information held by service providers

131. The obligations to perform CDD described above in the section concerning companies also apply to partnerships. Thus, obliged entities (all financial institutions and a number of classes of professionals) providing services to a partnership have to identify their customer, verify the customer's identity and identification of its beneficial owners. They have to establish the partnership's name, or other identification features, official address, business identification number or a business identification number given under foreign law. The further have to identify the beneficial owner, i.e. all natural persons who have real or legal direct or indirect control over the management or operations of the partnership; or hold in person or in contract with a business partner more than 25% of the voting rights; or are acting in concert and holding more than 25% of the voting rights; or a natural person, who for other reasons, is the real recipient of the revenue of the partnership (s. 4(4)(a) AML Act).

132. Obliged entities are required to check the validity and completeness of the customer's identification data and information gathered (s. 8(6)). Further, the obliged entity has to conduct ongoing monitoring of the business relationship including ensuring that the information held on the customer is kept up-to-date. Data and written documents obtained during CDD need to be kept for ten years following the termination of the business relationship with the customer (s. 16).

Foreign partnerships

133. Foreign partnerships doing business in the Czech Republic are subject to the same registration requirements in commercial law, as foreign companies. They have to register with the CR and are subject to Czech accounting law (s. 1(2)(b) Accounting Act. Foreign partnerships with a seat outside of the European Union are obliged to register their plant or branch plant to the CR (s. 44 of the Public Registers Act). When registering with the CR, they have to (and this applies also to the partnerships with a seat in the European Union if they are subjected to registration) provide the name and

address of the plant or branch plant, the name and the form of the foreign partnership, possibly the foreign registry where is registered and the identification number, the personal data of statutory body and the director of the branch plant; at the same time they have to deposit in the Document registry the partnership agreement as well as amendments thereof (s. 49, s. 50 and s. 66 of the Public Registers Act). The names of the partners will therefore be submitted to the CR to the extent the jurisdiction of incorporation requires such information to be included in the partnership agreement.

134. As an accounting entity foreign partnerships with business activity in the Czech Republic further have to submit their annual financial statements (including a proposal for profit distribution, s. 38i(1)(c)) to the CR and therein include the identity of partners who, alone or in concert with others, hold at least 40% of the shares or 20% of the voting rights of the partnership. Further, the contribution of assets from and distribution of profit to general or limited partners is a transaction that needs to be accounted for and the parties of this transaction have to be identified in the underlying documentation (s. 11(1) Accounting Act).

135. Foreign partnerships have to register with the tax administration (s. 126 TPC). Like Czech partnerships, they are transparent for tax purposes with regards to Czech and foreign general partners all of whom have to file a Czech tax return. The tax return has to include the partnership's financial statement including the identity of partners who reach the above mentioned thresholds for shareholding or voting rights. Czech and foreign limited partners are taxed in the same way as shareholders of a company. Their share of the profit is subject to a withholding tax of 15% (resp. 35%) (s. 36 ITA). A limited partnership is required to submit a tax return. Although, the partners do not have to be identified on the return, identity information is available in the underlying documentation which the limited partnership must keep under the Accounting Act.

Conclusion and practice the availability of ownership and identity information for Partnerships

136. Czech commercial, tax, accounting and AML legislation ensure that up-to-date ownership information is available for all relevant types of Czech partnerships. This legislation further ensures that ownership information is available on all general partners of foreign partnerships carrying on business in the Czech Republic as well as any limited partners who make contributions or receive profits from the partnership.

137. Czech authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information concerning ownership and identity information in respect of partnerships during the review period.

Trusts (ToR A.1.4)

138. The new Civil Code introduces the concept of trust into the Czech law as of 1 January 2014. The Civil Code stipulates general rules concerning establishment, purpose and charter of a trust fund. Further regulation is mainly contained in the AML Act, Corporate Income Tax act and Accounting Act.

139. With effect from 1 January 2014, trusts can be set up in the Czech Republic under the new Civil Code (s. 1448 and s. 1474 of the New Civil Code). Although the use of trusts as a legal instrument is usually associated with common law systems, it has been adopted by a number of civil law jurisdictions more recently. Under the Czech civil code a trust can be seen as an entity without legal personality. Under sections 1448 to 1474 of the new Civil Code a so called trust fund can be established during a person's life or based on a bequest (last will). Property assigned to a trust fund is not in the possession of a beneficiary or the settlor. The trustee exercises the ownership rights to the property in the trust fund in his own name, and on behalf of the fund (Section 1452 of the Civil Code).

140. The establishment of a trust fund is based on a founding act. The founding act may either take the form of a contract, concluded between the settlor and the trustee, or it can be based on a last will or testament. Both options lead to a different moment of a trust fund's creation, as a contractual trust requires acceptance on the part of the trustee, and a trust fund based on a will becomes effective on the settlor's death. Section 1449 of the Civil Code further clarifies that the trust fund can either be established for a public beneficial purpose or a private purpose. A trust fund set up for private purposes regards the benefit of a (single) person or his memory. It can be established for a commercial purpose for the benefit of founders, employees, shareholders or other persons. A public trust fund however does not have profit making or the operation of a business as its main object.

141. Section 1452 of the new Civil Code further sets out that every trust shall have its own charter that is issued by the settlor of the trust. This charter or statute must contain the trust fund's name or title including the term "trust fund" and state the fund's purpose. Further mandatory information includes conditions for disbursements, the designation of the beneficiary or method for determining the beneficiary, if applicable, and the designation of the property constituting the fund at the time of its establishment. The Civil Code does not specify the ownership of a trust fund. Instead the Civil Code just states that "the ownership rights to the property in the trust fund are exercised by the trustee in his own name, on behalf of the fund". The trustee can therefore exercise all ownership rights over a set of property and obligations, existing otherwise independently from him, under his own name and at the expenses of the trust. The trustee or trust administrator also fully

manages the assigned property in the trust. In principle, any natural person may act as trustee (s. 1453 (1) of the new Civil Code). Currently, the law does not hold the necessary specification for legal persons to act as trustee (s. 1453 (2) new Civil Code).

142. Under the Civil Code or the Act on Public Registers, trusts are not subject to any formal registration requirements and information about their existence, founders, beneficiaries and property, including those covered by the charter, and are not centrally recorded. Nevertheless, as elaborated further below, registration takes place with the tax authorities. In that context Czech officials add that there are currently plans to introduce a specific register for trusts, to be maintained by the chamber of notaries and under auspices of the Ministry of Justice.

Tax legislation

143. Based the Income Tax Act a trust fund is regarded as a taxpayers for corporate income tax purposes and trustees must fulfil the relevant tax reporting obligations on behalf of the trust, including registration of the trust at the tax office within 15 days of its formation (ss. 17(1)(f) ITA and 39a ITA). The regional tax office for Prague is the competent tax office for all trusts.

144. The trustee is the representative taxpayer of the trust and is taxed on behalf of the trust. The trust fund is subject to corporate income tax and in general the same rules apply as in case of taxation of companies. As to this the trustee is required to keep accounting records, and information to substantiate its tax base, and this information can be requested for EOI purposes. Furthermore, a trust fund is considered an accounting entity under the Accounting Act (s. 1(2)(i)). The accounting records (balance sheet, profit-loss account) are the obligatory enclosures to the tax return.

145. All trust contracts have to be registered with the tax administration by the trustee (s. 39a ITA) and receive its tax identification number. Upon registration of the trust the trustee is required to provide the following information:

- main data regarding the trust
- details regarding the trustee(s) or administrator(s) of the trust
- charter (statutes) of the trust. This includes the following information:
  - identification of the trust, including the settlor(s) of the trust;
  - identification of the property that creates the trust;
  - determination purpose of the trust;

- terms and conditions regarding the distributions of benefits from the trust;
- information regarding the duration of trust, or, if this is not stated, it is supposed that the trust is established for the indefinite period of time;
- details regarding the beneficiary, he must be identified or there must be a method identified on how the beneficiary shall be determined.

146. The Czech tax administration states it amended the annex to the registration form to clarify that the above information is to be provided in order to ascertain that all the relevant information on trusts is provided. This includes the founding deed and the statute of the trust including information on settlors, trustees and beneficiaries, if they are already determined. Furthermore, additional details about all trustees have to be provided in a special annex. This information equals the information that legal entities and individuals have to provide when being registered. As Czech tax officials explain there is a requirement to update this information if changes occur (s. 127 TPC). As there is an obligation to register for all tax payers, information provided can be cross checked. Czech authorities explain that a periodical screening is planned to be performed once a year. Further to this, the notarial deeds can be checked, based on the archives of notaries (but there is no automatic notification in case of any changes). Czech officials add that there are currently plans to introduce a specific register for trusts, to be maintained by the chamber of notaries and under auspices of the Ministry of Justice.

147. The Czech authorities further clarify that the same registration requirements as stated in the previous paragraph also apply in cases where there is a foreign trust with a Czech trustee, and the place of management of the trust is within the territory of the Czech Republic. As the trust would be regarded a Czech resident for tax purposes, the same registration and taxation requirements are applicable under Czech tax legislation. The Czech authorities add that verification checks, on-site inspections, and audits that are applied by the regional tax offices.

148. In case there is a foreign trust with a Czech trustee, and the place of management is outside the territory of the Czech Republic, Czech taxation will be limited to the income of the Czech trustee based on his tax residency in the Czech Republic. The taxpayer is obliged to register himself at the Czech tax administration for these purposes. Czech authorities add that as the trustee is a taxpayer with tax residence in the Czech Republic, he has worldwide tax liability in the Czech Republic. Consequently all rules set in ITA and TPC are applied to him without any special treatment.

149. As of September 2014 there were 10 trusts registered with the tax authorities in the Czech Republic. Czech officials confirm that these 10 trusts are domestic Czech trusts.

Accounting legislation

150. The Czech authorities advise that if a trustee acts in a professional capacity, trust assets have to be recorded either in the ordinary accounting of that trust or in off-balance sheet accounts for assets accepted into custody (s. 2.3 Czech Accounting Standard No. 1 in relation with ss.4(8) and 7(5) Accounting Act). These accounting operations have to be supported by underlying documentation in accordance with Czech accounting law and include identification of the persons involved in the trust's transactions, see section A.2 of this report.

AML legislation

151. AML legislation has a broad application and includes trustees of domestic as well as foreign trusts who act in a professional capacity. Such persons are subject to AML requirements if, in a professional capacity and in a framework of a trust or any other similar contractual relationship, they provide services such as acting in the name of or on behalf of another person in:

- buying or selling real estate, business entity, or its part;
- managing of customer assets, such as money, securities, business shares, or any other assets, including representation of the customer or acting on their account in relation to opening bank accounts in banks or foreign financial institutions or establishing and managing securities accounts; or
- establishing, managing or operating a company, business group, or any other similar entrepreneurial entity regardless of its status as well as raising and gathering money or other valuables for the purpose of establishing or managing (s. 2(1)).

152. In these circumstances the professional has to identify their customers and, using an AML-risk based approach, the beneficial owners (s. 9(2)(b) and 3). In the case of a trusteeship or any other similar legal arrangement, the beneficial owner is defined as a natural person who holds more than 25% of its voting rights or assets; is a recipient of at least 25% of the distributed assets; or in whose interest they have been established or whose interests they promote, should it yet to be determined who is their future beneficiary (s. 4(4)(c)).

Conclusion and practice regarding availability of trust information

153. Czech tax, accounting and AML legislation ensures that information is available regarding settlor and beneficiaries of a Czech trust fund as well as a foreign trust with a Czech trustee. Czech tax law requires all trustees of Czech trusts to provide the tax authorities with the statute of the trust including information on settlors, trustees and beneficiaries, if they are already determined. Furthermore, Czech tax law requires all Czech trustees of foreign trusts to keep information identifying settlor and beneficiaries of the trust in order to avoid being subject to tax with regards to the trust's asset and income attached to it. In addition, Czech accounting law requires a Czech trustee of a trust who acts in a business capacity to keep accounting records identifying settlor and beneficiaries. Such trustees are further subject to Czech AML legislation which ensures that a professional acting as a trustee or administrator of a foreign trust obtains information identifying the settlor of the trust. It also ensures identification of those beneficiaries who have at least a 25% interest in the trust.

154. As mentioned above Czech trusts as well as foreign trusts with a Czech trustee are required to be registered with the tax authorities and this will include information about the founding deed and the statute of the trust including information on settlors, trustees and beneficiaries, if they are already determined. Further to this, the annex to the tax registration form is amended to ascertain that all relevant information on trusts is provided, and tax authorities have sufficient experience in processing comparable tax registration requirements. Compliance with these tax registration requirements is reviewed within the course of regular tax proceedings, and verification checks, on-site inspections, and audits are applied by the regional tax offices. Furthermore, information provided can be cross checked and a periodical screening is planned to be performed once a year. Further to this, there are currently plans to introduce a specific register for trusts, to be maintained by the chamber of notaries and under auspices of the Ministry of Justice. As noted, however, existing tax reporting obligations have been enhanced, and it can be expected that relevant information will be readily available with Czech tax administration. However, given the recentness of the introduction of the concept of trust into the Czech law it is recommended that the Czech Republic monitors the practical implementation including the enforcement of the recently introduced requirements regarding Trusts to ensure that information on settlors, trustees and beneficiaries is available in all cases.

155. As of September 2014 there were 10 trusts registered in the Czech Republic. Czech authorities have indicated that they are not aware of any Czech individuals or service providers acting as a trustee for a foreign trust. No specific issues have been raised by peers in respect of trusts for the three-year review period.

156. No peers indicated that they had requested identity information regarding trusts in the three-year review period.

Foundations *(ToR A.1.5)*

157. As of 1 January 2014 foundations and endowment funds are regulated by the New Civil Code (s. 306–401). Foundations and endowment funds are legal persons that consist of property assigned to social or economic beneficial purposes, either publicly beneficial or for charitable purposes. Whereas for the foundation these purposes have to be permanent, endowment funds are considered as temporary[38]. Foundations are allowed to engage in commercial activities, provided that the income from these activities serves the foundation's purpose and that this is specified in the foundations statutes and in line with the foundation's charter.

158. Foundations can be established by legal or natural persons, inter vivos (between the living) or mortis causa (caused by death). The founding legal act of the foundation has to include the name and identification details of the founder, a description of the purpose of the entity; the amount of assets allocated by each founder. This act has the form of a founding charter(s. 309 and 310 of the New Civil Code), it has to include the number of members and also the details identifying the members of the board of directors and the board of supervisors, name and address of its first members, auditor and founder and determination of the administrator of the deposit. The Foundation charter has to be a public document s. 309 (4) of the New Civil Code.

159. Within one month after establishing a foundation, its statutes have to be issued (s. 314(2)). They have to include housekeeping rules and describe who is eligible to receive distributions from the entity and how these distributions are to be made. The statutes have to be deposited with the Document Registry of the Foundation Register (s. 66 of the Public Registers Act). Employees of the bodies of the foundation and next of kin and the founder and his next of kin are ineligible for foundation disbursements (s. 353 of Civil Code).

160. Non-profit entities, including foundations, are subject to tax for their income from advertisements and leasing out of property (s. 18 (3) ITA). Therefore, foundations with such income are required to register for tax purposes (s. 125 TPC) and provide information regarding the name and seat of the entity and the name of the persons authorised to represent the entity (s. 126 TPC).

38. Unless otherwise stated or evident from the context, reference to "foundations" refers to both foundations and endowment funds.

161. The legal existence of a foundation begins upon its registration in the Foundation Register (s. 315 (1) of the New Civil Code) which is maintained by the Regional Court. Information to be provided upon registering includes identification of the founder and the members of statutory bodies and also the amount of foundation´s capital (s. 311 (2) of the Civil Code). In addition, the founding act, Statute, annual reports, financial statements and other documents are listed in the Document Registry (s. 66 of the Public Registers Act).

162. Each foundation has to produce annual reports which are public and have to be submitted to the Foundation Register (s. 66 of the Public Registers Act). The annual report has to include an overview of the foundation's activities, as well as an overview of the foundation's property and its usage and provide information on donors and beneficiaries who donated or received assets valued more than CZK 10 000 (EUR 400). Such donors or beneficiaries have to be identified in the report with the exception of a beneficiary who is a natural person and who received benefits for humanitarian purposes, especially for health purposes, or a donor that asks to remain anonymous. The annual report further includes the annual financial statements and audit report, if the foundation is obliged to authenticate the annual financial statement by an auditor (ss. 20(1) and 21(1) and (4) Accounting Act).Notes of the annual financial statement have to contain information about the founders, promoters, deposits into equity, the nature and amount of these deposits. (ss.30 and 2(1)(g) Decree implementing certain provisions of the Accounting Act for accounting entities whose main activity is not business – Decree No. 504/2002).

163. Members of a foundation's statutory body who act in a professional capacity are subject to Czech AML legislation (s. 2(1)(h) AML Act). Therefore it is required to perform CDD and identify the founder(s) and beneficial owners[39] of the foundation (s. 9(1) and 9(2)(b)). When a foundation or fund has financial activity involving an obliged entity (financial institution or one of the designated categories of professionals) the obliged entity will also conduct such CDD and identify the founders plus beneficial owners of the foundation or fund.

39. In the case of a foundation, the beneficial owner is defined under the AML Law as: *(i)* a natural person, who is to receive at least 25% of the distributed funds; or *(ii)* a natural person or a group of persons in whose interest a foundation has been established or whose interests they promote in case the beneficiary of such foundation has not yet been determined (s. 4(4)(b)).

Institute

164. Based on the new Civil Code the so-called "institute" is a legal person established to carry out socially or economically useful activities, while making use of its personal and material elements (ss. 402-418 of the Civil Code). The results of institute´s activities shall be equally available to anyone under certain previously defined conditions (s. 402 of the New Civil Code). The institute may carry out only complementary business activities, while these business activities cannot cause any harm to its main activities, i.e. providing services, and the profit can be used only for its own support.

165. The legal existence of an institute begins upon its registration in the Institute Registry, where personal information of its founder statutory body and members of the board of directors and also information about the amount of contribution and the selected property disposal of the plant are registered. In addition some information has to be filed in the Document Registry, e.g. the founding acts (i.e. the founding charter or disposition in the case of death) including the purpose of the institute by defining its activities and details about its internal organisation, if this information is not already included in Statutes, and also this Statutes, if it is issued, annual financial statement and annual report are submitted (s. 405 (1) of the New Civil Code, s. 66 of the Public Registers Act).

Conclusion and practice regarding foundations

166. The Czech Republic's legal and regulatory framework ensures the availability of information on the foundation's, endowment fund's and institute's statutory bodies, founders, members of the board of directors, the supervisory board and the comptroller and beneficiaries.

167. As noted The legal existence of a foundation begins upon its registration in the Foundation Register (maintained by the Regional Court). For registration of foundation (and its legal existence) it is necessary that the foundation charter is filed in register. The same goes for the registration and existence of an institute. Since the charter has to have the form of a notarial deed, the accuracy and completeness of it is verified by the notary. In its turn, Czech notaries are supervised by Chamber of Notaries of the Czech Republic (NCH). Upon registering the Court will also check whether all the entries as required by law are correctly administered. Furthermore, any changes in respect the founding acts or any information included in it have to be included in register. The change has to have the same form as the foundation charter, which is a notarial deed. As the foundation charter is a notarial deed that is part of the documents that have to be filed upon registering of the foundation, and the same goes in case of any updates, the assessment team feels it is ensured that information regarding the founder and the members of statutory bodies is available with the Foundation Register.

168. Czech authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information concerning foundations, endowment funds or institutes during the review period.

Other entities or arrangements

Associations

169. Civil associations could have been established until the end of 2013. They are membership organisations established to pursue common interests. Within broad parameters, associations are permitted to engage in both mutual benefit and public benefit activities and are typically used for sporting clubs, etc. Beside this main activity, it may carry out also other complementary business activities, but only to support its main activity. As of 1 January 2014 the association was adapted to the new Civil Code. Existing Civil associations are also covered under these provisions (s. 3045 new Civil Code). Under the New Civil Code the association is considered as a self-governing and voluntary union of at least three persons established in order to fulfil their common interest (s. 214 (1) of the New Civil Code). Beside this main activity, it may carry out also other complementary business activities, but only to support its main activity. The members of the association are not liable for its debts. The association is established on the date of entry into the Association Register and is obliged to deposit its Statutes to the Document Registry. Into the Association Register, beside the information about the members of the statutory body, also the subject-matter of the complementary business, if it is carried out, and possibly also information about members of the arbitration committee are entered.

Beneficiary association

170. Beneficial associations (BAs) could have been established until the end of 2013. In this respect section 3050 of the New Civil Code clarifies that existing Beneficiary association are still governed under the Beneficiary Associations Act (No. 248/1995). As set out under this Act, they are non-profit entities which have no members and are established to provide beneficial services to the general public and to all clients under identical terms and conditions (s. 2(b)). This entity is often used in order to provide community services such as hospitals, homes for the elderly, drug rehabilitation clinics, community centres, and entities providing social, educational, and cultural services. As at December 2013 November 2011 there were 2 691 beneficiary associations. BAs as well as the information about their settlor(s), directors and members of its statutory bodies and the board of directors, have to be registered in the Beneficial associations Registry with the Regional

Registration Courts (s. 25 (1) and s. 54 of the Public Registers Act ss.4(2) and 5). As noted, Beneficial Associations (BAs) could have been established until the end of 2013. In this context s. 3050 of the new Civil Code sets out that beneficiary association have the right to change their legal form to that of an Institute, a foundation or endowment fund as provided for under the provisions of the new Civil Code.

AML requirements

171. Czech AML legislation requires financial institutions and service providers to perform CDD when involved with an association including identification of the entity and its beneficial owners. In case of an association or any other similar legal person the beneficial owner is defined as a natural person who holds more than 25% of its voting rights or assets; is a recipient of at least 25% of the distributed assets; or in whose interest they have been established or whose interests they promote, should it yet to be determined who is their future beneficiary (s. 4(4)(c)). It is very likely that a Czech association will be in contact with an AML obliged entity in the Czech Republic and thus subject to the above CDD requirements.

172. Czech authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information concerning ownership and identity information in respect of a Beneficiary association during the review period. No peers have reported any issues in respect of a Beneficiary association related to the three-year review period.

Enforcement provisions to ensure availability of information (ToR A.1.6)

173. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information. Non-compliance affects whether the information is available in the jurisdiction to respond to a request for information by its EOI partners in accordance with the international standard.

174. In the Czech Republic, most obligations to retain relevant information are supported by enforcement provisions to address the risk of non-compliance. The relevant enforcement provisions and mechanisms are set out below:

- if the content of an entry in the Commercial Register is contrary to a mandatory provision of the law and remedy cannot be achieved otherwise, the registration court will ask the registered person to ensure remedy. If this entity is a legal person and does not ensure remedy within the stipulated time period, the registration court may, if this

procedure is in the interests of protecting third parties, *ex officio* decide to close it by putting it into liquidation (s. 9 (1) of the Public Registers Act). The number of notices sent in this respect during the period under review could not be ascertained. The reason for this is that the registration courts all use different forms for notices, and it is not possible to determine the details of each notice. However, information is available on the number of pre-notices automatically sent related to the missing submissions of documents to the Document Registry. As noted above in section A.1.1. Registration Courts began to send notices to persons registered in the Commercial Registry in the second half of 2013 concerning missing submissions of documents to the Document Registry. Since 16 August 2013 in total 8022 pre-notices were generated for the year 2013. If a person did not fulfil the obligation after such a pre-notice, a new notice is sent and if the documents are not submitted after that, a procedural fine is imposed on the company or alternatively the proceedings to terminate the company by putting it into liquidation is initiated. However, no further statistics were available on the numbers of penalties imposed. Moreover, since the number of cases where information that was missing was actually submitted afterwards was not available either, the effectiveness of this obligation could not be fully assessed. Nevertheless, Czech officials estimate that the number of fines or liquidations is relatively low. As they explain Courts would first request the company to correct the imperfections of its entries before a fine would be imposed, and most companies involved would submit the information as requested.

- the Registrar may impose a procedural fine on a registered entity or person for failing to comply with a request to submit documents that should be filed in the Collection of Documents. The fine can be up to CZK 100 000 (EUR 3600) (s. 104 of the Public Registry Act). If the registered person did not fulfil these obligations repeatedly or if this failure to perform may cause serious harm to third persons and if there is a legal interest, the registration court may eventually commence the proceeding to close it by putting it into liquidation. The number of notices sent in this respect during the period under review could not be ascertained. The reason for this is that the registration courts all use different forms for notices, and it is not possible to determine for what specific reason the fine was imposed. Further, since the number of cases where information that was missing was actually submitted afterwards was not available either, the effectiveness of this obligation could not be fully assessed. Czech officials estimate that the number of fines or liquidations is relatively low. As they explain Courts would first request the company to correct

the imperfections of its entries before a fine would be imposed, and most companies involved would submit the missing information as requested.

- a person can be sanctioned with two years of imprisonment for presenting false or grossly distorted information to a public register; or concealing important facts in documents submitted to such registers; or endangering or limiting another person's rights by not submitting required information without undue delay (s. 254 Criminal Code). Czech statistics provided demonstrate in 16 persons were convicted in 2011, 16 persons in 2012 and 14 persons in 2013 in respect of the criminal offence of "misrepresentation of data on the state of economy and assets" subject to sec. 254 of the Criminal Code;
- In order for a transfer of a registered share to be effective vis-à-vis the company, the change of the shareholder must be notified to the company and the registered share must be presented to the company (s. 269 (2) of the Business Corporations Act). The company is required to register a change in the list of shareholders without delay as soon as the change in the shareholder's person is proven (s. 265 (2) of the Business Corporations Act) and it is liable for damage caused by non-compliance with this requirement. Supervision includes verification of information sent by subjects under their reporting obligations set out by the Capital Market Undertakings Act and the Business Corporations Act. Czech officials further confirmed that the Czech National Bank also has the right to conduct on-site inspections.
- non-compliance with tax obligations can be sanctioned with an administrative penalty of up to CZK 500 000 (EUR 18 000) (s. 247(2) TPC), or CZK 500 000 (EUR 18 000) in cases of not fulfilling obligation to be registered or other reporting duties (s. 247a TPC). The penalty can be imposed repeatedly if the unlawful condition persists (s. 248(2) TPC). Penalties under to s. 247(2) TPC are related to situations where persons seriously hinder or prevent the tax authority from administration of taxes by non-compliance with a procedural tax obligation of non-pecuniary nature. This penalty is subsidiary to other penalties which may be imposed by the tax authority according to TPC and reasons for the penalty vary from case to case. Therefore, the tax authority collects information only on number of cases and total amount paid on the penalty. The statistics provided show a decrease in the number as well as the total amount of penalties imposed. In 2011 there were 260 cases and a total amount of fines of CZK 1 483 500 (EUR 53 556) was imposed. In 2012 this number decreased slightly to 215 cases and an amount of fines of 1 237 501

(EUR 44 675) in 2012. The number dropped in 2013 to 76 cases and a total amount of fines of CZK 367 000 (EUR 13 250). The Czech Republic was not able to provide an explanation regarding this decrease in the number of fines;

- if taxes get reassessed due to breach of e.g. rules regarding carrying forward of losses or transfer pricing, a penalty of up to 20% of an additionally assessed tax can be imposed (s. 251 TPC). The statistics provided show a rather stable, but quite significant number of cases, as well as the total amount of penalties imposed. In 2011 there were 39 190 cases and a total amount of penalties of CZK 1 632 062 785 (EUR 58 919 200) was imposed. In 2012 this number was more or less the same: 40 044 cases and an amount of penalties of 1 716 006 077 (EUR 47 533 400) imposed. The number decreased slightly in 2013 to 29 105 cases and a total amount of penalties of CZK 1 562 688 037 (EUR 56 414 700);
- a foundation can be forcibly liquidated upon a request of a person with a legal interest or also without a prior request if it violates the rules for disposition of the foundation's principal endowment and for providing the foundation's distribution (s. 377 of the New Civil Code). A beneficiary association can be forcibly liquidated if it violates the rules of the Beneficiary Associations Act (s. 8(4)(f) of the act in connection with the s. 3050 of the New Civil Code). The number of cases where foundations or Beneficiary Associations were liquidated during the period under review or the reasons for such liquidation could not be ascertained.
- non-compliance with accounting Decrees No. 500/2002 and No. 504/2002 with regards to providing information on significant/controlling owners of an accounting entity and founders of a foundation can be sanctioned with up to 6% of the entity's total assets (s. 37(2) and 37a(2)). Compliance with legal accounting requirements is reviewed within the course of regular tax proceedings, e.g. during a tax audit or within other proceedings. Although the Czech tax administration does not keep overview of the specific reasons why certain penalties are imposed in respect of nonfulfillment of accounting requirements in certain cases, statistics are available on a more aggregated level showing the number and the amount of fines imposed during the period under review. The statistics provided show a significant increase of cases in as well as the total amount of penalties imposed. While the number of fines imposed under s. 37 was fairly stable and between 32 (in 2011 and 35 (in 2013), the amount of fines more than doubled from 304 742 (EUR 11 000) in 2011 to an amount of CZK 745 569 (EUR 26 900) in 2013. A stronger increase

could be noticed with regard to the fines imposed under s. 37a of the Accounting Act. In 2011 there were 358 cases and a total amount of penalties of almost CZK 11 million (EUR 397 000). In 2012 this number more than doubled to 940 cases and an amount of penalties of almost CZK 24 million (EUR 866 000). Czech officials explain that the reason for this is a stricter application of sanctions imposed by the Financial Administration and an increase in the number of administrative procedures leading to the imposition of fines. In 2013 the number stabilised around 844 cases and a total amount of penalties of CZK 21 million (EUR 760 000);

- the Central Securities Depository is liable for damage caused by errors or non-completeness in the register of securities accounts it holds according to s. 111 Capital Market Undertakings Act (s. 100(4)). During the review period, there were neither claims of damages against CSD Prague nor damages paid by CSD voluntarily to any claimant. Methods of providing services by CSD Prague are set forth in its Operating Manual and an approval of CNB is required to any change.
- a person not reporting voting rights thresholds according to s. 122 Capital Market Undertakings Act commits an offense that can be fined with up to CZK 10 million (EUR 360 000) (ss. 164 and 166). In practice compliance is facilitated by the fact that a bearer of voting rights cannot actively vote if the rights are not reported to the CNB. Reports on voting rights are made through the database which is operated by the CNB, and data collected in that database is presented publicly on the CNB website. Reports on voting rights thresholds according to s. 122 CMUA are being verified against public information, including annual reports, and transactions data from the regulated markets and traders. Czech officials state that there was no case due to which it was necessary to apply the sanction for a violation of this reporting voting rights duty.
- investment firms issuing bearer shares in breach of the Capital Undertakings Act will lose authorisation to act on capital market (s. 6 and s. 136 Capital Undertakings Act). Breaches of these provisions of the Capital Undertakings Act are in principle covered by supervisory activities of the Czech National Bank. The Czech National Bank also has the right to conduct on-site inspections. The standard tool for detecting breach of mentioned provisions of the Capital Undertakings Act is evaluation of information gathered in the basic registers, especially the Commercial register, and regular checking and analysis of these regulated entities´ entry into the register (once per month). There is also a regular reporting duty of these persons to the Czech

National Bank – once per three months. Another tool for detecting of breaches of these provisions is the analysis of the General Assembly reports and regular on-site audits at these regulated entities, which are aimed also on checking of compliance by securities traders with the s. 6 Capital Undertakings Act. However, Czech officials add that such a case has not been detected during these inspections so far.

- A regulated entity that does not comply with requirements within the AML Act to perform CDD can be sanctioned with an administrative fine of up to CZK 1 000 000 (EUR 37 000) (s. 44(2)). Where non-compliance prevents or makes it more difficult to freeze or seize proceeds of crime, or makes the financing of terrorism possible, a fine of up to CZK 50 000 000 (EUR 1 800 000) can be imposed (s. 44(4)). Czech statistics demonstrate that the number of fines as well as the total amount of the fines increased significantly over the period under review. While the number of fines imposed with regard to CDD (s44/2) was 3 in 2011, and the amount of fines CZK 1 150 000 (EUR 41 500), this number increased to 10 in 2012 (representing an amount of CZK 630 000 (EUR 22 700) of fines) and 15 in 2013, corresponding with a total amount of fines of CZK 3 023 000 (EUR 109 100).

Conclusion

175. The Czech Republic's commercial, tax, accounting and AML legislation include enforcement provisions which are applicable in case of non-compliance with provisions that ensure availability of relevant ownership information. Though, whereas sanctions apply to private LLCs that do not submit updated ownership to the Commercial Register, no sanctions apply to public LLCs and co-operatives that fail to maintain a register of their shareholders/members. Nevertheless, sanctions apply to these two types of entities if they do not include information on owners who do exercise significant or controlling influence over the entity. In general The Czech Republic has in place an adequate oversight system of requirements to keep ownership information. Although in some cases specific statistical data was not available concerning the number of enforcement actions, the information and explanation provided by Czech officials with respect to these cases do not impair with the overall picture that enforcement provisions are adequately applied in practice and generally ensure that ownership information with regard to the relevant entities is available.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place but certain aspects of the legal implementation need improvement.	
Factors underlying recommendations	**Recommendations**
Companies incorporated outside of the Czech Republic but having their place of effective management (and thus tax residency) therein are subject to specified requirements to maintain identity information concerning their owners. However, this information may not be available in limited cases where the ownership represents less than 20% of the voting rights in the company.	The Czech Republic should ensure that ownership and identity information are available in all cases for foreign companies having a sufficient nexus with the Czech Republic.
Czech legislation does not provide for sanctions in all cases for public limited liability companies and co-operatives that fail to maintain ownership information.	The Czech Republic should introduce appropriate enforcement measures to address the risk of public limited liability companies and co-operatives not complying with the requirement to maintain a register of their shareholders and members.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
As of 1 January 2014, bearer shares must be immobilised, or book-entered. Bearer shares that have not been immobilised prior to 1 January 2014 were transformed automatically to certified registered shares with effect from that same date. Shareholders involved lost all rights attached to these bearer shares for the period that these shares were not immobilised, dematerialised or repealed. However, the transitional provisions do not fully ensure that information is available in practice on all holders of bearer shares in all cases.	It is recommended that the Czech Republic monitors the practical implementation including the enforcement of the recently introduced requirement regarding bearer shares to ensure that all shareholders submit their bearer shares to the company to be furnished with the necessary changes and shareholders information is available in all cases.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

176. A condition for exchange of information for tax purposes to be effective, is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records. The obligations to maintain reliable accounting records are found in the laws governing the various types of entities covered by this report, and in the Accounting Act.

General requirements (ToR A.2.1)

177. All legal entities, including all companies, partnerships, foundations[40] and beneficiary societies[41] which have their seat, i.e. registered office, in the Czech Republic as well as all foreign companies or partnerships which carry out business or other regulated activities within the Czech Republic (hereinafter "accounting entities") and trustees acting in a professional capacity, are subject to the Czech Accounting Act (s. 1(2)). Czech accounting law applies to all foreign partnerships with branches in the Czech Republic and foreign companies which are resident for tax purposes based on place of effective management due to the requirement within Czech tax law to provide financial statements in accordance with Czech accounting standards.

178. Accounting entities have to keep accounting records that show the position of, and movements in, their assets, liabilities, equity, as well as costs (expenditures) and revenues, and their profits and losses (trading result) (s. 2 Accounting Act). Further, they have to keep their accounting records in a manner which will enable them to draw up financial statements giving a true and fair view of their financial position (s. 7). Accounting records have to be complete, i.e. record all relevant transactions (s. 8(3)) and properly documented (s. 8(4)).

179. Accounting systems have to allow preparation of financial statements which include, as a minimum, a balance sheet, profit and loss account as well as notes explaining and supplementing the information contained in the aforementioned financial statements (s. 18).

180. All accounting entities have to produce an annual report which shall provide an overall, well-balanced and comprehensive information on their

40. See Article 24(1) Foundation Act.
41. See Article 19(4) of the Beneficial Associations Act (No. 248/1995).

performance, activities and current economic position (s. 21(1)). All entities that are required to register with the CR have to submit the annual report to the register. The obligation to produce an annual report for accounting entities is specified in the Accounting Act (s. 20 (1) (a–d)). In specified cases (s. 20 (2) Accounting Act) annual report is not produced. The obligation to publish an annual report and deadline for its publishing is listed in Accounting Act (s. 21a (1)). However, for all accounting entities there exists an obligation to produce financial statements for the accounting period (s. 18 Accounting Act).

181. The Accounting Act and related decrees are applicable to both legal persons which have their seat, i.e. its registered office in the Czech Republic and foreign persons which carry out business in the Czech Republic (s. 1(2) (b) Accounting Act).

182. An audit of financial statements and annual report is statutorily required for all accounting entities (including limited liability companies, branch offices and individual entrepreneurs) that meet at least two out of three requirements specified below for a period of two consecutive years (s. 20 of the Accounting Law).

- net turnover exceeds CZK 80 million (EUR 2 890 000);
- balance sheet total amount exceeds CZK 40 million (EUR 1 445 000); and
- the average number of employees exceeds 50 persons.

183. For public limited liability companies an audit is required if only one of these conditions is met for this period (s. 20).

184. Individuals and legal entities subject to a statutory audit of financial statements are required to prepare an annual report, including the auditor's report and financial statements. An annual report must be published through a submission to the documents register of the Commercial Registry after authentication by the auditor and the approval by the statutory body. Czech authorities estimate that the number of entities that is subject to statutory audits is comparable with the number of entities that is considered a large taxpayers in the Czech Republic (handled by the Specialised Tax Office for large tax payers in most cases).

185. The Act on Accounting No. 563/1991 Coll. determines a trust formed under Czech Civil Code as an entity obliged to keep an accounting records (s. 1(2)(i) and s. 8(1) Accounting Act) and therefore is covered by the general rules applicable to accounting entities At the same time under certain conditions an obligation arises to have its financial statements verified by an auditor arises (s. 20(1)(e) Accounting Act). The ITA deems a trust formed under the Czech Civil Code to be a taxpayer subject to corporate income tax

(s. 17(1)(f) ITA) and imposes the obligation to file tax returns. The accounting records (balance sheet, profit-loss account) are the obligatory enclosures to the tax return. As a taxpayer the trust is obliged to register itself at the local relevant tax authority.

186. No specific accounting rules exist for foreign trusts administered by Czech trustees. However, the accounting obligations previously described, require trustees who act in a business capacity to keep full accounting records and underlying documents for all operations of the trust (not simply for their own income derived from the trust). They are further subject to the below AML accounting requirements. Both professional and non-professional trustees who are not the beneficial owners of the trust asset have to keep necessary records in order to disprove Czech tax liability for income from that asset. Though, this may not require the trustees to keep accounting records that fully reflect the financial position and assets/liabilities of the foreign trust. Nevertheless, transactions of a trust with a non-business trustee can be subject to Czech AML requirements if the trustee e.g. *(i)* opens an account or establishes a relationship related to the trust with a Czech bank or other fiduciaries subject to AML legislation; or *(ii)* purchases or sells any real property for the trust via a lawyer or other professional who would also be subject to the AML/CFT framework. A potential narrow gap remains of those trusts which have a non-professional trustee and none of the aforementioned activities in the Czech Republic. The Czech Republic should monitor this gap to ensure it does not in any way hamper the effective exchange of information in tax matters.

187. Failing to keep accounting information as provided for by the Accounting Act can be administratively sanctioned with up to 6% of the entity's total assets (s. 37(2) and 37a(2)). As stated above under section A.1.6 compliance with these legal accounting requirements is reviewed within the course of regular tax proceedings, e.g. during a tax audit by local and regional tax offices and data provided indicates that oversight takes place and fines have been imposed. Further, the following can be sentenced with imprisonment of up to two years or prohibition of business activity: Not keeping legally required accounting documentation; entering into such accounting documentation false or grossly distorted data; altering, destroying, damaging, making useless or concealing such documents, and thus endanger proprietary rights of another or imperil proper and timely imposition of tax (s. 254 Criminal Code).

188. An obliged entity subject to Czech AML legislation (including a person acting, in a business capacity, as trustee of a trust) is obliged to keep records of all data and documents on all transactions within a business relationship (including transactions between a trustee and a settlor or beneficiary) for at least 10 years. The same obligation applies in case of

occasional transactions exceeding EUR 1 000 (ss.16 and 7(1)). The scope of records to be kept is very broad and comprises all data and written documents about the transactions. This includes underlying documents as well. Failing to comply with these requirements can be sanctioned with a fine of up to CZK 10 000 000 (EUR 361 000) (s. 44(3 and 4)).

189. Czech tax legislation requires relevant entities (including foreign companies which have a branch or are considered resident for tax purposes) to keep records evidencing income and expenses as well as assets and liabilities (s. 23(2) ITA). Such records include records and documents required by accounting law. Further, business entities and other entities which are involved in gainful activities are required to keep specific records of cash payments they make unless such payments are already recorded as part of an accounting system (s. 97 TPC). Also, all relevant entities' annual financial statements and their annexes are an integral part of the Czech tax return (Instructions for completing corporate income tax returns). Non-compliance with procedural tax obligations can be sanctioned with an administrative penalty of up to CZK 50 000 (EUR 1800) (s. 247(2) TPC). The penalty can be imposed repeatedly if the unlawful condition persists (s. 248(2)). Further, sanctions apply (such as assessment of additional tax) where taxpayers are not able to provide sufficient evidence for facts relevant to their tax positions.

Conclusion

190. All relevant Czech entities as well as foreign entities involved in business activities in the Czech Republic are required under Accounting Act to keep accounting records that correctly explain the entity's transactions, enable it to determine the entity's financial position with reasonable accuracy at any time and allow financial statements to be prepared. The requirements under the Accounting Act are supplemented by obligations imposed by the AML Act and the Income Tax Act.

Underlying documentation *(ToR A.2.2)*

191. Czech accounting law explicitly requires all accounting entities to base their accounting records on underlying accounting vouchers (s. 6(1) Accounting Act). These vouchers are documents that have to be dated and include information on the content of the underlying transaction, the parties involved, the amount of the transaction and date issued (s. 11(1)). The Accounting Act states that in addition to accounting vouchers the accounting entity has to keep depreciation plans, inventory lists etc. (s. 31(2)(b)). There is no explicit requirement within the Czech accounting law to keep copies of original invoices, contracts etc. However, Czech accounting law states that an accounting entity must be able to prove each event or transaction for which

there has to be an accounting record (s. 33a(1)). The Czech authorities advise that this requires keeping originals of documents underlying the transaction or event such as invoices and contracts.[42] Furthermore, the Act states that *an accounting entity can use payroll lists (wage sheets), documents used for tax purposes (such as invoices) and other documents pursuant to other statutory provisions as its accounting records* (Article 32(2)); in which case these documents have to be kept for a minimum of 5 years.

192. Czech tax law requires that relevant entities keep evidence providing information regarding income and expenses as well as assets and liabilities. The Czech authorities advise that this would normally require such entities to keep underlying copies of original documents, including invoices and contracts. Further, as mentioned above, Czech AML legislation requires regulated entities to keep underlying documentation for transactions that exceed EUR 1 000.

The 5-year retention standard (ToR A.2.3)

193. Czech accounting law requires all accounting entities to keep their annual financial statements as well as annual reports for a period of ten years. Other accounting records including vouchers and other underlying documentation have to be kept for a period of five years (s. 31 Accounting Act).

194. Due the statute of limitation in Czech tax law, accounting information relevant for tax purposes has to be kept for a minimum of three years and three months after the end of the tax period (ss. 148(1) and 136(1) TPC) unless the tax for the year in question is subject to tax proceedings (s. 14(2) et seq.). To the extent this information is also required to be kept in accordance with provisions of the Accounting Act, it will be maintained for at least five years.

195. Where Czech AML legislation requires obliged entities to keep records and documents of transactions, these have to be kept for ten years (s. 16(2)).

Conclusion and practice regarding the availability of accounting information

196. All relevant entities and arrangements are required to maintain accounting records and the underlying documents in the Czech Republic. Furthermore, under the Accounting Law annual financial statements as well as annual reports must be kept for a period of ten years. Other accounting records including vouchers and other underlying documentation have to be kept for a period of five years.

42. Though the original documents can subsequently be transformed into other formats as long as this transformation is traceable (s. 33(3) Accounting Act.

197. As mentioned above accounting information has to be filed with the annual tax return and this would flow into the tax authorities database, Statistics provided by the Czech authorities indicate that in the majority of requests accounting information requested was already in the hands of the tax authorities, while in the remaining cases information was obtained from the taxpayer. This would typically concern underlying documentation, such as contracts (loan agreements), transaction information and invoices, as this type of information is not part accounting information that is filed with annual tax return and therefore not in the tax authority's database.

198. As tax authorities explain the tax base for corporate income tax purposes is determined based on the accounting records (s. 23 ITA). Compliance with these legal accounting requirements is reviewed within the course of regular tax proceedings, e.g. during a tax audit by local and regional tax offices. Statistics provided demonstrate that the number of fines and the corresponding amounts for violating accounting rules have increased during the period under review (see also under element A.1.6 above).

199. As stated above certain taxpayers are subject to a statutory audit, and they are required to prepare an annual report, including the auditor's report and the financial statements. Because of this statutory obligation, large taxpayers must have their accounts audited. The audits are to be carried out by certified auditors who are registered with the Chamber of Auditors of the Czech Republic, regulated by Act No. 93/2009 Coll. on Auditors. According to the public website, as of 21 November 2014, 1669 auditors and audit firms were registered. Oversight on the performance of auditing activity takes place by the Public Audit Oversight Board (the Board). The Board is charged with the supervision of the activity of the Chamber of Auditors and is independent from the auditors' profession. All auditors are subject to independent monitoring and review through on-site inspections by the Board. During the inspections the adherence to accounting and (international) auditing standards is assessed, as well as the competence of the individual auditors. Both procedural aspects and the quality of the work are reviewed, and disciplinary measures have been taken as a result of the reviews.

200. The system of mandatory audits combined with independent review of the auditors ensures that reliable accounting records, supported by underlying documentation, are kept by all persons which have their accounts audited (primarily large tax payers). Furthermore, accounting information has to be filed with the annual tax return and this would be in the hands of the tax authority. If the financial statements are not enclosed, the taxpayer is called upon by the financial office to remedy this failure. Czech officials add that in practise it does not happen that the taxpayers would not enclose the obligatory annexes.

201. Over the period of review the Czech Republic has received in total 431 requests for information. From these 431 requests 38 were made and responded to directly by the local and regional tax offices in the border region with Germany and Slovak Republic. Czech officials were able to provide further statistics for these 393 the requests that were received directly by the competent authority in Prague. From these requests 249 requests (64%) pertained to accounting information. In all cases these requests related to companies.

202. Czech authorities report that the information requested was provided in all cases. Czech EOI partners report having asked for accounting information have in general not reported any specific difficulties. One peer noted that in a request for accounting documents concerning the sale and purchase of art (purchasing agreements, invoices, contracts, etc.), the Czech Competent Authority advised that they were unable to find the entity and the individual involved could also not be contacted because he was living in the requesting jurisdiction.

203. Requests received mainly pertained to tax returns, accounting statements, bank documents, current accounts/balances of clients and suppliers. Besides this information, copies of invoices, payment documents, ledger accounts regarding interest paid and received, delivery notes, transaction information and contracts (underlying documentation) are often requested.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

204. Czech law prohibits anonymous accounts (s. 41c (3) and (4) of the Act No. 21/1992 Coll., on Banks, and s. 7(2)(c) of the AML Act) and anonymous passbooks (s 41c (3) and (4) of the Act No. 21/1992 Coll., on Banks and s. 2676 of the New Civil Code). Further, an agreement to establish an account, an agreement to make a deposit into a deposit passbook or a deposit certificate; or an agreement to make any other type of deposit are subject to identification according to specific AML provisions (s. 7(2)(c) AML Act).

205. The Czech Republic allowed bearer passbooks until they were abolished in December 2002 by way of amendment of the Act on Banks.[43] This amendment established that only withdrawals, but no deposits, can be made with these passbooks unless they are re-issued as bank books in nominative form. Further, when a withdrawal is made, the banks are required to identify the customer (s. 7(2)(g) of the AML Act). Also, after 2012, the banks are no longer obliged to honour the passbooks. However, Czech authorities advise that banks are not prohibited to do so and that banks have also honoured withdrawal requests after 2012. However, as Czech officials explain one of the major banks of the Czech Republic has publicly stated that it will only extend the time limit for paying the deposits until the end of 2015. This bank has decided to return all the remaining funds to Czech society through a Foundation, more specifically to support Czech society in the areas of science, research, development and education. The Czech tax authorities advise that approximately 1.6 billion CZK (EUR 58 million), distributed over 2.49 million passbooks, were still outstanding as at the end of August 2014. The Czech Republic should strengthen the measures already put in place so that information on the owners of these passbooks is available and effective exchange of information enabled should a need arise.

206. All credit and financial institutions, including management companies and investment funds in the Czech Republic are subject to the Czech AML Act (s. 2(1)(a) and (b)). They have to identify their customers prior to establishing business relationships with or carrying out transactions for the customers (ss.8 and 9), unless the customer itself is an AML-regulated entity with AML obligations equivalent to those imposed by the European Community legislation and supervised to that respect (s. 13(1)(b)).

207. The CDD measures to be undertaken include the identification of the customer and verification of his identification as well as ongoing monitoring of the business relationship including ensuring that the information held on the customer is kept up-to-date (s. 8(6)). Banks are also required to identify the beneficial owners of their customers (s. 9(2)(b)).[44] All data and documents gathered when identifying customers and performing CDD have to be kept for a minimum of ten years (s. 16).

208. The AML Act imposes penalties on banks that fail to comply with their CDD and record keeping requirements. Banks that fail to conduct

43. In case of bearer passbooks there is no account holder but a savings passbook owner.

44. The definition of "beneficial owner" depends on the type of entity and are described under the various sections in part A.1 of this report. It generally requires direct or indirect control of a natural person of at least 25% of an entity or its revenue core assets (s. 4(4) AML Act).

appropriate CDD are liable to a fine of up to CZK 1 000 000 (EUR 36 000). Where non-compliance prevents or makes it more difficult to freeze or seize proceeds of crime, or makes the financing of terrorism possible, a fine of up to CZK 10 million (EUR 360 000) can be imposed (s. 44).

209. Czech banks and Czech branches of foreign banks are subject to the Accounting Act (s. 21(1) Banking Act). Banks must therefore keep accounting information as described in section A.2 of this report. Further, this legislation requires banks to keep separate records in their accounts of transactions made for a client's account and keep these records for a period of ten years (s. 21(2) Banking Act). Non-compliance can be sanctioned with fines of up to CZK 50 000 000 (EUR 1 800 000) (s. 36e(4)(c)). Finally, payment system institutions[45] and investment firms are required to maintain documents and records pertaining to transactions and services rendered to customer for a minimum of five years (s. 28(1) Payment Systems Act No. 284/2009 and s. 17 Capital Market Undertakings Act No. 256/2004). Non-compliance can be sanctioned with CZK 10 000 000 (EUR 360 000) and CZK 20 000 000 (EUR 722 000) respectively (s. 125 Payment System Act and s. 157 Capital Markets Undertakings Act).

Availability of banking information in practice

210. With regard to the record keeping requirements by banks, both the Czech National Bank (CNB) and the Financial Analytical Unit (FAU) are responsible for supervision of the compliance with all the requirements stemming from the AML Act, including the record keeping requirements. The CNB supervises compliance with these requirements, as a part of the general supervision, but also through targeted on-site inspections focused on AML issues. The FAU primarily conducts targeted inspections. In practice, both the CNB and the FAU co-ordinate their inspections, in order to prevent overlap. However, sanctions for breaches of the AML Act are applied by the FAU only. Therefore AML-specific breaches identified by the CNB are reported to the FAU. Nevertheless, breaches of the AML requirements often also constitute breaches of the general governance requirements, for which the CNB can apply sanctions directly.

211. During the period from 1 January 2010 to 30 June 2014 the CNB carried out a total of 35 on-site targeted inspections relating to AML/CFT in credit institutions. From 2010 onwards the CNB conducted 10 targeted AML/CFT inspections in credit institutions every year. The on-site inspections

45. According to the Act on Payment Systems, No. 284/2009, the payment system institutions are legal entities authorised by the Czech National Bank to provide (i) payment services listed in the authorisation or activities linked to payment services including granting of loans.

plan for 2014 also contains 10 credit institutions. In total there are 12 experts devoted to the AML inspections. As at November 2014, the Central Bank supervises 45 banks, including 22 branches of foreign banks, as well as 11 credit unions.

212. In order to carry out on-site inspections more effectively, the CNB is using the results of self-assessment questionnaires that were sent to banks, credit unions and life insurance companies. As Czech authorities explain this approach enables the CNB to determine in more detail the cycle of inspections which would catch all financial obliged entities at some point. This risk-based supervisory approach for AML/CFT on-site inspections´ planning further includes the outcome of the last on-site inspection, the market share and the particular sector risk of the institution involved, as well as AML/CFT relevant information gained from FAU and other departments within the CNB, as well as foreign regulators and publicly available information (mass media).

213. Based on this risk based approach deficiencies were identified in almost all inspected institutions. Main deficiencies identified by the CNB concern issues relating to client acceptability rules, CDD and monitoring of transactions. However, Czech officials state that the seriousness of these infringements did not require imposing financial sanctions or licences to be revoked during the period under review. According to the CNB, imposing remedial measures was appropriate and sufficient in all these cases. Czech officials explain that CNB´s general supervision policy is rather preventative and educational than remedial or restrictive. However, sanctions for failure to maintain banking information under AML law as well as the Accounting Act have been imposed by the FAU (based on section 16 of the AML Act). Statistics provided regarding the number of fines imposed by the FAU for respective infringements of requirements to Identification of Client, CDD, or record keeping requirements (data retention) indicate that the total number of fines that were imposed in this context increased from 9 in 2011 to 17 in 2012 and decreased slightly to a total of 14 in 2013, mainly due to the absence of fines imposed with regard of data retention requirements in that year.

214. During the three-year review period, bank information was requested in more than 80 cases. Peers indicated that banking information was provided in all cases.

Conclusion

215. The customer identification obligations and record keeping obligations on all transactions require banking information to be available in the Czech Republic for all account holders. Compliance by banks in respect of these legal obligations is supervised by the CNB as well as the FAU. Through

their inspections, it is found that banks keep the required information on their clients and transactions. This is confirmed by the experience of the Czech competent authority, as well as peer input, that banking information was available with banks and could be exchanged upon request.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
Although opening of bearer passbooks was prohibited in 2002, some pre-existing passbooks are still in existence and identity information on their holders will not be available unless a withdrawal takes place.	The Czech Republic should strengthen measures so that information on the holders of bearer passbooks is available to its competent authority.

Phase 2 rating
Compliant

B. Access to information

Overview

216. A variety of information may be needed in a tax inquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether the Czech Republic's legal and regulatory framework gives to the authorities access powers that cover relevant persons and information, and whether the rights and safeguards that are in place would be compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

217. The Czech tax administration has broad powers to access information relevant for the tasks of the tax administration from any person and from public authorities. These powers can be exercised through on-site and off-site inspections. Non-compliance can be sanctioned with penalties. The tax administration has the power to enter premises, inspect relevant documents and take copies thereof as well as seize items that may serve as proof. Further, the tax administration can take witness statements. In this latter case, the taxpayer has to be notified unless there is a danger of delay.

218. The confidentiality of bank information is protected by law but this is lifted when banks are requested in writing by the Czech tax administration to provide information regarding accounts and transactions. Banks submit the requested information upon a request of the tax office. This request may be sent electronically (via secured access, i.e. data box), which makes communication quick and flexible.

219. The Czech tax administration can apply their domestic powers, including sanctions, for the purpose of answering international requests for information, including in cases where it does not have an interest in the information for Czech tax purposes.

220. The scope of information subject to the professional privilege for lawyers and tax advisors is very broad and goes beyond the international standard. In practice, however, the tax authorities advise that they will request information from the taxpayer who is obliged to provide the requested information. However, it should be noted that this approach does not seem to provide a remedy in cases where a foreign tax payer is involved. Cases where the relevant information is held only by a tax advisor or a lawyer are according to the Czech authorities not frequent and during the period under review this issue didn't come up in practice.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

The competent authority

221. The designated competent authority for exchanging information for tax purposes under all Czech Republic's exchange of information instruments is the Minister of Finance (Ministry of Finance). In accordance with the Act on International Cooperation in Tax Administration and on the Amendment of Certain Related Acts No. 164/2013 Coll. (thereinafter "EOI Act"), the General Financial Directorate (thereinafter GFD) is authorised by the Ministry of Finance as a central liaison office. Within GFD the powers to exchange information on income tax matters are delegated to Direct Taxes International Cooperation Unit (thereinafter DLO) which should act in co-operation with 8 regional financial offices that are authorised for direct international (cross-border) co-operation (more information see below). The DLO functions as the EOI Team.

222. The contact information of the Czech competent authority is fully identifiable in the OECD and Global Forum websites. The contact details are also listed on the EU websites (CIRCABC), Moreover, the Czech Republic generally provides the contact information of its competent authority to treaty partners when finalizing treaty negotiations.

Bank, ownership and identity information (ToR B.1.1)/Accounting records (ToR B.1.2)

223. The tax administration is under a general duty to systematically ensure taxpayers' and third parties' compliance with obligations under the TPC and for that purpose to keep necessary registers and records regarding the taxpayers (s. 9 and 11). The administration is required and entitled, prior to the commencement of tax proceedings or whenever during the course of tax proceedings, to check the completeness of the records and registration data of the taxable parties and retrieve any data concerning their income, financial standing and other factors relevant for the correct levying and recovery of taxes (s. 78).

224. The Tax Procedure Code (TPC) provides broad powers to the tax administration to obtain a wide variety of information for domestic tax purposes. They can generally perform investigations and call upon persons "participating in the tax procedure" to fulfil their obligations (s. 11). "Persons participating in the tax procedure" are defined as taxpayers and third persons (s. 5(3) TPC).

225. All public authorities (including the Financial Intelligence Unit) and persons who keep records of persons or things or keep other information relevant for the administration of taxes are under an obligation to provide information to the tax administration if requested to do so (s. 57(1)). These authorities and persons are required to provide any kind of information they are in possession of irrespective of the reason why they are in possession of this information. Public inspection authorities (e.g. the Auditor General, national and local governmental auditors, and regulatory authorities) are also required to automatically disclose to the tax administration the findings of their inspections, if such findings are relevant to the administration of taxes (s. 59(1) TPC).

226. The Czech tax administrations have the power to perform investigations. Any person is required to give an explanation to a tax official if required to do so (s. 79(2) TCP). The tax administration can also perform on-site investigations in order to search for evidence concerning taxpayers and third parties (s. 80 et seq.). In the course of such investigations, the tax official has the right to access business premises, including the home of a taxpayer if it is used for business activities. The tax official can access accounting documents and other information to the extent this is necessary for the conduct of the tax administration's tasks (s. 81). The taxpayer and other persons present during the on-site visit are required to provide assistance to the tax official (s. 82(1)).

227. Persons holding any kind of documents or other items are required to surrender or hand over such documents or items to the tax official upon

request of the tax administration and allow the official to temporarily remove such items from the premise (s. 82(2)). Documents and other items that may serve as evidence may be seized by the tax official where there are concerns that there would be great difficulty obtaining such items by other means (s. 83(1)).

228. Any person is obliged to testify as a witness on important circumstances that are known to that person. The witness statement must be truthful, without concealing anything. A person can refuse to testify if this could lead to criminal prosecution against that person or a close person[46]; or to the extent such testimony would violate a statutory confidentiality obligation unless released from this confidentiality obligation by a competent authority or the person whose interests are protected by that obligation. The taxpayer subject to the investigation has the right to attend the witness testimony and ask questions. The tax administration has to notify the taxpayer of the testimony unless there is danger of delay. The notification has to include the tax matter and the name of the witness unless there is danger of delay (s. 96 TPC). This notification requirement is further dealt with in section B.2 of this report. During the period under review information concerning a witness statement was requested and provided. One peer indicated that it requested this type of information in a number of cases and no issue was raised. Other peers didn't raise any issue in this respect either.

229. The TPC states that banks including foreign banks, credit unions and payment institutions are required, on request, to provide the tax administration with information regarding accounts, account holders, balances and transactions regarding such accounts as well as credits and deposits (s. 57(3)). As a matter of administrative process, for the identification of a client its full name and identification number (IČO) or date of birth are commonly used as unique identifiers. The Czech authorities advise that this information is not absolutely required as long as there is enough information available to sufficiently identify the person in question, e.g. an account number. Czech officials add that this happened in 1-2 cases during the period under review. In these cases a request was sent to all 44 banks and the information could be obtained and provided. As mentioned above bank information was requested in more than 80 cases during the three-year review period. Information requested is sought directly from the bank involved and there were no issues obtaining the information. Banks submit the requested information upon a request of the tax office. This request may be sent electronically, which makes facilitates requesting and obtaining the information.

46. A close person is defined according to Civil Code s. 116: "A close person shall be defined as a relative in direct line, brother or sister and the spouse; other persons in a family or other relation shall be considered close to each other if a detriment suffered by one of them is reasonably felt as own by the other.".

230. The International Assistance in Administration of Taxes Act (No. 164/2013 – EOI Act) lays down the procedure and conditions under which the competent authority of the Czech Republic can access and exchange information with another jurisdiction for tax purposes. The EOI act provides for the (minimum) information that should be included in the standard form of incoming and outgoing requests. It applies to EOI based on international agreements and EU legislation (s. 1 EOI Act) and covers a whole range of direct taxes such as personal income tax, corporate income tax, real estate tax, inheritance tax, gift tax and real estate transfer tax (s. 1(4) EOI Act). When information is requested under an EOI agreement, the Czech competent authority can co-operate with the foreign authority and apply all the access powers provided for in the TPC (s. 3 EOI Act).

231. The main sources of information for the tax administration are:

- the tax database ("ADIS") – the main database of the tax administration. It contains information obtained from taxpayers' tax returns including – for all business corporations and banks – accounting records (balance sheet and profit and loss account), as well as all information contained in all tax registration forms, tax assessments and third party reporting such as information from the land registry, insolvency registry, resident registry and motor vehicle registry. It is mostly used for the identification of taxpayers, their addresses, reported income, taxes paid, residency, ownership information in respect of partnerships and (as of 1 January 2014) trusts (all information on trustees, beneficiaries and nominees), etc. Moreover ADIS also holds information regarding EOI requests and information provided;
- the Commercial Register*:* Czech tax offices have direct access to a wide range of information (including initial registration, change in the name, change in the address and part of the document register). Registration information is also publicly available. Tax officials involved can also directly contact the Commercial Registry and request its co-operation;
- Information held by other Czech governmental authorities: on-line access is primarily used to obtain all public information in possession of different governmental authorities. In cases of non-public information, governmental authorities are obliged to grant information on request according to the Tax Procedure Code s. 57(1)). Czech officials report that co-operation is good and there are no problems for tax offices to obtain the requested information. The whole process takes 3-5 months, maximum 6 months depending on the complexity of the case and the number and kind of the questions.

- the taxpayer's file at the local tax office – includes tax returns, financial reports, communication between the taxpayer and assessing officer, original documentation obtained from the taxpayer or audit reports;
- the taxpayer – the taxpayer is contacted directly only for information which cannot be obtained otherwise. This is the case for accounting underlying documentation such as invoices, shipment bills, contracts or business correspondence. In these cases the financial office (or branch) carries out enquiry to ascertain the relevant requested information at the taxpayer or a person or an entity that is a subject to the request. This takes 1-5 months depending on whether the taxpayer is co-operative, keeps obligatory records or requested evidence, proves the fact of the matter (burden of proof lies on the taxpayer generally) and communicates immediately. In this case, the information requested can be provided in very short time (within 1 month). If further investigation or hearing of witnesses (third persons) is necessary the time needed for obtaining information requested and for the answer is longer. In general more time is needed when more than one financial office is involved in the case;
- banks in respect of banking information. Banks submit the requested information upon a request of the tax office. This request may be sent electronically, which makes communication quick and flexible.

232. Based on a first assessment of requests the EOI team (DLO) translates and assigns incoming EOI requests to the responsible regional tax offices or Specialised Tax Office. Basic requests regarding residence status confirmation or address ascertainment will be responded to directly by DLO, based on information that is available in an internal database containing addresses of all tax payers in the Czech Republic. In all other cases the request will be forwarded to one of the 14 regional tax offices. Regional as well as local tax offices have full access to ADIS and the other databases and can provide the requested information directly to the EOI team if the requested information is contained therein and is readily retrievable. Regional offices will forward more complicated requests to the local tax offices where paper files are available. All transfers take place by a secured internal e-mail system. If information is not contained in one of the databases or in the tax file, the Czech Tax Authority uses powers under the TPC described above to obtain the requested information.

233. As Czech authorities explain in practice most EOI requests will be forwarded to a local tax office and will be followed by a local inspection (onsite investigation). This is typically the case where the information cannot be gathered from the databases or from the file of the tax payer kept by the financial office. Czech officials estimate that an onsite visit (local inspection)

takes place in around 70% of all EOI requests. In some cases an audit will be launched. Both a local inspection and an audit can be based on an EOI request. In the case of a local inspection the tax payer will be contacted by phone or e-mail and invited to come to the tax office, or the tax official involved will visit the tax payer at his or her address. The tax payer can be asked to answer questions and to provide documents and other information. The tax official will explain what he is looking for and why (for example to verify a transaction with a foreign tax payer). The tax official would mention the tax administration purposes, without specifying that it is for the purpose of EOI or a request. The visit will usually be followed by minutes or official records drawn up and signed by the tax payer and the tax official holding a protocol of an oral hearing (s. 80(3) TPC). These minutes will be part of the tax payers file, and can be send abroad if the information therein is relevant in the context of an EOI request.

234. Over the period under review, the requested information was:

- already at the disposal of the EOI Unit in 4.6% of requests;[47]
- already at the disposal of the tax administration in 61.6% of requests;
- already at the disposal of another governmental authority in 11% of requests;
- in possession or control of the taxpayer subject to the enquiry in 65.6% of requests;
- in possession or control of a third party in 2.3% of requests;
- in possession of a bank in 6% of requests.

235. During the review period, the Czech competent authority and the tax offices involved were able to access information to reply to EOI requests concerning ownership and identity information, accounting information, bank information and other types of information, as confirmed by peer input. The requests for ownership and identity information could be replied in the great majority of the cases with information available in the tax database and the commercial registry database; and, in some cases, with information obtained from other government authorities. In order to reply to requests for underlying accounting information, in the majority of cases, the Czech Republic contacted the taxpayer concerned.

236. Peers were generally satisfied with the timeliness and completeness of the responses received from the Czech Republic.

47. A majority of the requests asks for more than one type of information.

Use of information gathering measures absent domestic tax interest (ToR B.1.3)

237. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes.

238. Under the EOI Act, the Czech competent authority can co-operate with the foreign authority and apply all the access powers provided for in the TPC (s. 3 EOI Act). The EOI Act further states that the liaison office can not refuse to provide information for the reason that such information is not relevant for the purposes of tax administration in the Czech Republic (s. 12(3) EOI Act). Based on these provisions, a request made under an EOI agreement pertaining to a foreign tax matter is thus treated as a Czech tax matter and is fulfilled using all the domestic tax information gathering powers available in the Czech Republic. No issue regarding domestic tax interest arose in practice nor was there any issue indicated by peers.

Compulsory powers (ToR B.1.4)

239. Jurisdictions should have in place effective enforcement provisions to compel the production of information.

240. A taxpayer or a third party can be summoned where that person's personal attendance is necessary (s. 100(1) TPC). The deadline for providing information is set by the tax authority discretion. Where a summoned person fails to appear without a good reason, a ruling can be issued for the Police to bring that person before the tax administration (s. 100(2)).

241. The Czech tax administration can impose a fine on a person who without proper reason seriously obstructs or frustrates the tax administration by not complying in time with a procedural obligation (such as provision of information or allowing access to premises) that has been imposed on him by law or by a tax official (s. 247 TPC). The fine can be up to CZK 500 000 (EUR 18000), or, similarly, as of the 1 January 2015 a penalty up to CZK 500 000 under 247(2) or 247a(1) in cases of not fulfilling obligation to be registered or other reporting duties. The fine can be imposed repeatedly until the failure is rectified (s. 248(2)). Further, the tax administration can make a discretionary tax assessment and impose a fine based on the additional assessment if a taxpayer does not provide requested information (ss. 250 and 251). Sanctions under s. 247(2) including not providing ownership or accounting information in 2011 were applied in 260 cases and a total amount of fines of CZK 1 483 500 (EUR 53 500) was imposed. In 2012 this number decreased slightly to 215 cases and an amount of fines of 1 237 501 (EUR 44 675). The number dropped significantly in 2013 to 76 cases and a total amount of fines of CZK 367 000 (EUR 13 250), see also section A.1.6 above.

242. Criminal tax offences are investigated and prosecuted by the criminal authorities. The Czech tax authorities are generally obliged to report suspected criminal tax offences to these authorities and provide information and proofs gained during the course of their own inspections. They do not themselves have power to search any premises. In this respect Czech officials explain that s. 81(1) TPC authorises tax officials to enter the premise of a tax payer during on-site investigations and tax payers have an obligation to allow tax officials to enter their premises for the purpose of administration of taxes. Further, tax officials are authorised to search and seize evidence in the scope necessary for achievement of tax administration's aims (e.g. to find out and assess tax liabilities and to ensure its payment). However, as Czech officials add this power requires tax entities' participation (assistance) because tax officials do not have powers comparable to police officers or the tax executor in respect of the recovery of tax claims. Tax payers that do not comply with this obligation can be fined a penalty up to CZK 500 000 (s. 247(2) TPC) or, as of the 1 January 2015, a penalty up to CZK 500 000 under 247(2) or 247a(1) in cases of not fulfilling obligation to be registered or other reporting duties, while maintaining the possibility to summon this tax payer. Czech officials explain that if the tax payer would still not respond they would summon the tax payer. Where a summoned person fails to appear without a good reason, a ruling can be issued for the Police to bring that person before the tax administration (s. 100(2)). Furthermore it was explained that tax administrators can request assistance from officers of the General Customs Directorate (customs service), as they have greater powers than tax administrators. Tax administrators would ask this assistance for protection reasons and with the aim of preservation of evidence (e.g. if there is a possibility of destruction of evidence).

Secrecy provisions *(ToR B.1.5)*

Financial institutions

243. The Czech Republic has statutory bank secrecy. All bank transactions and financial services of banks, including account balances and deposits, are subject to banking secrecy (s. 38(1) Banking Act). However, information regarding customers and their transactions may be submitted to the tax administration by a bank without the client's consent upon the written request of the tax administration under the conditions laid down by the TPC (s. 38(3)(c) Banking Act).

244. As mentioned above, the TPC states that banks, branches of foreign banks, credit unions and payment institutions are required, on request, to provide the tax administration with information regarding accounts, account holders, balances and transactions regarding such accounts as well as credits and deposits (s. 57(3)TPC).

245. Banks are also required to automatically provide the tax administration with information on interest payments to natural persons from EU member States based on s. 38fa Income Tax Act which implements the EU Savings Directive.

246. Banks submit the requested information upon a request of the tax office. This request may be sent electronically. During the three-year review period, bank information was requested in more than 80 cases. Czech competent authority state that banking information was provided in all cases. This is confirmed by peer input, stating that banking information was available and could be exchanged upon request.

Professional privileges

247. Members of the Czech Bar Association are required not to divulge any information obtained in the course of providing legal services unless the privilege is waived by the client (s. 21(1) Legal Professions Act (Act No. 85/1996)). The term "legal services" is defined as representation in courts, legal counselling, and legal drafting. This privilege applies to employees of the lawyer or the law firm as well as to other persons who are involved, along with the lawyer or the law firm, in the provision of legal services (s. 21(9)). Legal privilege does not apply if a lawyer/employee/involved person acts as a nominee shareholder, trustee, settlor, company director or under a power of attorney to represent a company in its business affairs.

248. Members of the Czech Chamber of Tax Advisors, their staff members or representatives are obliged to maintain confidentiality on all the facts of which they have learnt in connection with provision of tax advisory services. They can only be released from this obligation, also for the purpose of criminal proceedings, by the clients through their declaration, but even in this case the Tax Advisers or their representatives are obliged to maintain confidentiality, if it is in the client's interest. The obligation of confidentiality shall not apply to the cases where the law regulations impose an obligation to frustrate and report commitment of a criminal offence. No breach of the obligation of confidentiality is committed if the matter concerns fulfilment of obligations towards appropriate authorities according to the AML Act. (s. 6(9) Tax Consultancy Act – Act No. 523/1992).

249. The Czech authorities advise that the above privileges for lawyers and tax advisors apply vis-à-vis the tax administration and that they also cover working papers or documents executed in the course of a transaction or the evidence of the fact of a transaction (including contracts, deeds or other instruments). However, the Czech tax administration has the powers to require such information from the client or other persons, not covered by a professional privilege, who hold such information to the extent such

information holders are subject to the above described access powers of the Czech tax administration.

250. Moreover, Czech authorities put forward that the nature of the profession of tax advisor in the Czech Republic is comparable with attorneys-at-law, justifying an extension of professional privilege to tax advisors. They add that the Tax Consultancy Act (Act No. 523/1992) expressly recognises the status of a tax advisor as a representative of the client. Furthermore, a tax advisor has the right to represent his client in proceedings before an administrative court. The Czech Republic therefore adds that tax consultancy should be compared to the legal services provided by attorneys-at-law (with limitation to tax law), also based on the following:

- the TPC recognises a special procedural status of a tax advisor as an appointed representative of the taxpayer, and certain privileges are granted under this law to tax advisers and attorneys as legal representatives alike (s. 25-31).
- similarly to attorneys-at-law, a tax advisor has to pass a qualification exam (section 5 paragraph 7 of the Act No. 523/1992 Coll.). An essential part of the exam covers selected areas of law.
- tax advisors fall under the disciplinary jurisdiction of their professional body, just as is the case with attorneys-at-law.

251. The AML Act specifically exempts lawyers and public notaries from keeping or providing information that they obtained while providing legal advice or representing the customer in court proceedings regardless of whether proceedings commenced or not, or were concluded or not (s. 27).

Conclusion and practice

252. The Czech professional privilege covers not only lawyers but also tax advisors. In both cases it includes communication produced for purposes other than that of seeking or providing legal advice or use in existing or contemplated legal proceedings. Both privileges further cover working papers or documents executed in the course of a transaction or the evidence of the fact of a transaction (including contracts, deeds or other instruments). Further, the legal privilege covers not simply information enclosed within a communication between a professional and a client but also within a communication between a client and another person who is not a professional. Apart from the question whether tax advisors are covered under attorney-client privilege, the scope of information subject to legal professional privilege in the Czech Republic is wide and beyond the international standard. This provides a professional privilege that is considerably broader than the exemption for legal professional privilege under the international standard.

253. In practice, however, the tax authorities state that they will requests information from the taxpayer who is obliged to provide the requested information. Cases where the relevant information is held only by a tax advisor or a lawyer are according to the Czech authorities not frequent in practice. In practice, there was no case during the period under review where the Czech Republic requested information from admitted legal representatives for exchange of information purposes. Consequently, there was no case where professional privilege has been claimed to cover the requested information. The Czech Republic also did not decline to provide the requested information during the period under review because it is covered by legal professional privilege or any other professional secret and no peer indicated any issue in this respect.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The privileges attaching to certain information held by legal advisers and tax advisers are more extensive than prescribed by the standard, and could impede effective exchange of information in a given case.	The Czech Republic should ensure that domestic provisions on professional privileges allow exchange of information in line with the standard.

Phase 2 rating
Largely Compliant

B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information *(ToR B.2.1)*

254. The Terms of Reference provides that rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

255. Under Czech domestic law there is no obligation for the Czech authorities to give notice to the person who is the object of a request for information made by another jurisdiction's competent authority and the tax administration's decision to exercise their access powers are as such not appealable (s. 109(2) TPC). As a consequence, the domestic law of the Czech Republic does not contain a disposition that allows the person who is the object of a request for information to oppose and challenge such request and exchange. However, there is a notification procedure with respect to witness statements (TPC s. 96). As mentioned under part B.1 in this report, when the tax administration asks a third party to provide a witness statement, the concerned taxpayer must be notified unless there is danger of delay (s. 96 TCP). The notification has to include the reference number of the tax case and the name of the witness unless there is a danger that this latter information could frustrate the purpose of the statement in which case the name of the witness will not be included. The taxpayer subject to the investigation has the right to attend when the tax administration is taking witness statement and may ask questions.

256. The Czech tax authorities advise that the right of a taxpayer to be present at a witness statement is mainly applied within the context of domestic tax proceedings/conduct, and would not need to be applied in the same way in cases where the witness statement was related to an EOI request regarding a foreign tax payer.

Conclusion and practice

257. With the minor exception of a possible prior notification in cases of a third party witness statement, there seem to be no rules on rights and safeguards which could unduly prevent or delay effective exchange of information. It is recommended that the exception from prior notification of a witness statement be specifically permitted where the notification is likely to unduly prevent effective exchange of information. During the period under review information concerning a witness statement was requested and provided. One peer indicated that it requested this type of information in a number of cases and no issue was raised. Other peers didn't raise any issue in this respect either. Therefore this issue didn't come up in practice.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C. Exchanging information

Overview

258. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanisms for doing so. A jurisdiction's practical capacity to effectively exchange information relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report assesses the Czech Republic's network of EOI agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

259. In the Czech Republic, the legal authority to exchange information is derived from double tax conventions and tax information exchange agreements after the same are approved by parliament and then ratified by the president. These agreements prevail when in conflict with domestic legislation.

260. The Czech Republic has a considerable network of bilateral agreements that provide for exchange of information in tax matters. This network currently covers 98 jurisdictions through 87 double tax conventions (DTCs) as well as 11 tax information exchange agreements (TIEAs). All agreements are in force with the exception of four DTCs, Protocols to two DTCs and three TIEAs. All but one of the agreements not in force were signed in 2011.

261. The Czech Republic signed the Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention) on 26 October 2012. The Multilateral Convention has been ratified and entered into force on 1 February 2014 in the Czech Republic.

262. In addition, the Czech Republic is able to exchange information in tax matters with other European Union (EU) Member States[48] under the EU Council Directive 2011/16/EU of 15 February 2011.

48. The EU Member States covered by this Council Directive are: Austria, Belgium, Bulgaria, Cyprus*, Croatia, the Czech Republic, Denmark, Estonia, Finland,

263. The large majority of the Czech Republic's agreements meet the international standard. Nevertheless, the Czech Republic should update the small number of agreements which were found not to be fully in line with the standard[49]. Further, the Czech Republic should continue its program of updating its older agreements and entering into new agreements with relevant jurisdictions.

264. The Czech Republic's EOI agreements cover its 10 major trading partners and more than half of the Global Forum members as well as all EU member states and all but one of the OECD members. The Czech Republic has not refused to enter into an exchange of information agreement with any Global Forum member seeking to do so. The Czech Republic has a full ongoing negotiation program. In addition, The Czech Republic is currently updating its older agreements by establishing Protocols to bring the exchange of information articles to the international standard.

265. All of the Czech Republic's EOI agreements contain confidentiality provisions to ensure that the information exchanged will be disclosed only to authorised persons. This is also ensured in practice. Consequently there was no case where information was unlawfully disclosed during the period under review.

266. Most[50] of the Czech Republic's EOI agreements ensure that the contracting parties are not obliged to provide information which would disclose trade, business, industrial, commercial or professional secrets or information which is the subject of legal professional privilege or to make disclosures which would be contrary to public policy. As noted in Part B of this report, the scope of information subject to legal professional privilege in

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France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

*Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

*Footnote by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

49. The agreements with Brazil and Sri Lanka.

50. The exception is the DTC with Sri Lanka, where is no provision about public order.

the Czech Republic is wide and beyond the international standard. However, it did not happen in practice during the period under review that information was requested and not provided because it was covered by trade, business, industrial, commercial or professional secrets or subject of legal professional privilege.

267. The Czech Republic's competent authority for exchange of information is the CLO Unit situated in the General Financial Directorate (thereinafter GFD). Within GFD the powers to exchange information on income tax matters are delegated to Direct Taxes International Cooperation Unit (thereinafter DLO) which should act in co-operation with 8 regional financial offices that are authorised for direct international (cross-border) co-operation (more information see below). The DLO functions as the EOI Team and is responsible for exchange of information in the field of direct taxes. The Czech Ministry of Finance and the tax administration designated by the Ministry are the Czech competent authority for EOI purposes (s. 4 and 6 3(1). There are no legal restrictions on the ability of the competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. The Czech Republic received 431 requests related to direct taxes over the period 1 January 2011 to 31 December 2013. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, 180 days and within one year in 45%, 80% and 97% of the time respectively.[51]

268. The Czech Republic has in place appropriate organisational processes to ensure effective exchange of information. However, there are certain areas for improvement in order to ensure that information is provided in a timely manner in all cases (see section C.5). The Czech Republic should also provide status updates in cases where it is not in position to meet the 90 day deadline.

C.1. Exchange-of-information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

269. The Czech Republic currently has 87 signed Double Tax Conventions (DTCs), only four of which are not in force (with Colombia, Kosovo, Pakistan and Liechtenstein).The Czech Republic has signed 11 TIEAs, eight are in force and three are not yet in force (with Bahamas, Monaco, Cook Islands). Further, two Protocols to the existing DTCs signed with Kazakhstan and Ukraine are not yet in force. The Czech Republic authorities have an ongoing programme of establishing agreements and revising agreements where necessary in order to bring them to standard.

51. These figures are cumulative.

270. In addition to its network of DTCs and TIEA's, the Czech Republic signed the Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention) on 26 October 2012. The Multilateral Convention has been ratified and entered into force in the Czech Republic on 1 February 2014.

271. The EOI agreements (both DTCs, TIEAs as well as the Multilateral Convention) signed by the Czech Republic are subject to Article 10 of the Czech Constitution. Under the Constitution, treaties ratified by the President of the Republic with consent of the Parliament override any contradictory domestic laws (Art. 10).

272. In addition to the exchange of information on request, the Czech Republic sends information for tax purposes to other jurisdictions on a regular basis, both spontaneously and automatically.

Foreseeably relevant standard (ToR C.1.1)

273. The international standard for exchange of information envisages information exchange on request to the widest possible extent. Nevertheless it does not allow "fishing expeditions", i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 26(1) of the OECD Model Tax Convention:

> The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

274. Most of the Czech Republic's DTCs provide for the exchange of information that is "foreseeably relevant", "necessary" or "relevant" to the administration and enforcement of the domestic laws of the contracting parties concerning taxes covered in the DTCs. This scope is set out in EOI Article in the relevant DTCs and is consistent with the international standard.[52] However, the DTCs with Brazil and Germany do not meet the

52. The OECD *Model Tax Convention on Income and on Capital* recognises in its commentary to Article 26 (Exchange of Information) that the terms "necessary" and "relevant" allow the same scope of exchange of information as does the term "foreseeably relevant".

foreseeably relevant standard as they only permit EOI for the purposes of enforcing the provisions of the DTC. New protocols with the Netherlands, Belgium, Singapore and Switzerland have entered into force since 2013 which contain the standard provision regarding EOI. Furthermore, Germany, as a EU member, is also subject to the Council Directive 2011/16/EU as well as the Multilateral Convention, which, in case of EOI with this jurisdiction, also allows for exchange of foreseeably relevant information in line with the standard, the limited wording in this DTC is not a concern in practice.

275. Under the TIEA with Guernsey, the requested party is under no obligation "to provide information which is neither held by the authorities nor in the possession of nor obtainable by persons who are within its territorial jurisdiction" (emphasis added). Thus, it uses the words "obtainable by" instead of the expression "in control of" used in Article 2 of the OECD Model TIEA. This deviation, found in most of the TIEAs with Guernsey, is considered to be consistent with the standard. Furthermore both Guernsey and the Czech Republic are now covered by the Multilateral Convention, which also will allow for exchange of foreseeably relevant information in line with the standard.

276. Czech authorities add that in a small number of cases courts of justice of a neighbouring jurisdiction sent requests for information for the purpose of civil judicial proceedings directly to the Czech regional tax offices. These requests were declined as they were not sent by the competent authority of the neighbouring jurisdiction and were not covered by the proper procedures and EOI instrument.[53] The estimation is that these requests represent less than 1 % of all cases.

277. No request for information during the period under review were declined by the Czech Republic on the basis that the requested information was not foreseeably relevant, and no clarifications in this respect were asked. Furthermore, no issue in respect of the interpretation of the foreseeable relevance was reported by peers.

In respect of all persons (ToR C.1.2)

278. For exchange of information to be effective it is necessary that the obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information

53. The Czech Republic explains that they do not consider these (small number of) requests made by courts of justice of a neighbouring jurisdiction as requests for information under tax treaties or EU Directive, therefore these cases are not included into EOI statistics as provided in the chart in section C.5.

requested. For this reason the international standard for exchange of information envisages that EOI mechanisms will provide for exchange of information in respect of all persons.

279. All of the Czech Republic's DTCs, TIEAs as well as the Multilateral Convention provide for EOI in respect of all persons.

280. In practice, no issue restricting exchange of information in respect of the residence or nationality of the person to whom the information relates or of the holder of information has been indicated by Czech authorities or peers.

Obligation to exchange all types of information (ToR C.1.3)

281. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity, as well as ownership information. Both the OECD Model Convention (Article 26(5)) and the OECD Model TIEA (Article 5(4)), which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

282. Out of the Czech Republic's 87 DTCs:

- twenty eight DTCs[54] contain Article 26(5) of the OECD Model Tax Convention spelling out the obligations of the contracting parties to exchange information held by financial institutions, nominees, agents and ownership and identity information; and
- the Czech Republic's other 59 DTCs do not contain Article 26(5) of the OECD Model Tax Convention.

283. For the 59 DTCs that do not contain Article 26(5) of the OECD Model Tax Convention, the absence of this paragraph does not automatically create restrictions on exchange of bank information. The commentary to Article 26(5) indicates that while paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the

54. Armenia; Austria, Bahrain; Barbados; Belarus; Belgium; Colombia (not yet in force); China; Croatia; Denmark; Hong Kong, Kazakhstan (in protocol not yet in force); Kosovo (not yet in force); Liechtenstein (not yet in force); Luxemburg; the Netherlands, New Zealand; Norway; Pakistan (not yet in force); Panama, Poland; Russian Federation; Saudi Arabia, Serbia, Singapore, Switzerland; Ukraine (in protocol not yet in force) and Uzbekistan.

Article did not authorise the exchange of such information. As described in Part B of this report, the domestic laws of the Czech Republic do not limit access to bank information for the purposes of international exchange of information The Czech authorities confirm that they can exchange banking information in the absence of Article 26(5). However, exchange of such information will be subject to reciprocity[55] and there may be domestic limitations in the laws of some of these partners.[56] Such limitations have been found in the Peer Reviews of Austria and Luxembourg. However, the DTCs with Luxembourg and Austria contain the standard provision of Article 26(5) Model Convention.

284. All TIEAs concluded by the Czech Republic contain a provision similar to Article 5(4) of the OECD Model TIEA, which ensures that the requested jurisdiction shall not decline to supply the information requested solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

285. In practice, the Czech Republic has not declined a request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest. This has been confirmed by peers.

Absence of domestic tax interest (ToR C.1.4)

286. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. Jurisdictions must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction. This is specifically stated in both the OECD Model Convention (Article 26(4)) and the OECD Model TIEA (Article 5(2)), which are primary authoritative sources of the Global standard for EOI.

55. The reciprocity principle is codified in the Czech legislation (s. 10(5) EOI Act).

56. Out of these 59 jurisdictions, only 17 have so far been reviewed: Australia, Canada, Estonia, France, FYROM, Germany, Hungary, India, Indonesia, Ireland, Italy, Japan, Malaysia, Philippines, Spain, United Kingdom and the United States. And 24 of the 59 jurisdictions are not Global Forum members: Albania, Azerbaijan, Bosnia Herzegovina, Bulgaria, Egypt, Ethiopia, Jordan, Korea (Dem. People's Rep.), Kuwait, Latvia, Lebanon, Lithuania, Moldova, Mongolia, Montenegro, Romania, Sri Lanka, Syria, Tajikistan, Thailand, Tunisia, United States, Venezuela and Vietnam.

287. Out of the Czech Republic's 87 DTCs:

- Twenty eight DTCs[57] contain provisions similar to Article 26(4) of the OECD Model Tax Convention, which oblige the contracting parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested party does not have a domestic interest in the requested information;
- the DTC with Sri Lanka only allows the exchange of "information which is at a party's disposal under their respective taxation laws in the normal course of administration. Agreements with this restrictive language may not allow the competent authorities to use their access powers to obtain any kind of information for EOI purposes. Thus, the Czech Republic does not have agreement in place to the standard with this jurisdiction.
- the remaining 59 DTCs do not contain explicit provisions obliging the contracting parties to use information-gathering measures to obtain and exchange requested information without regard to a domestic tax interest.

288. There are no domestic tax interest restrictions on the Czech Republic's powers to access information in EOI cases (see Part B of this report). As such, the exchange of information in the absence of domestic interest in respect of the remaining 59 DTCs will be subject to reciprocity and will depend on the domestic limitations (if any) in the laws of some of these partners.[58] The Czech Republic should renegotiate DTCs with those partners that currently have domestic tax interest restrictions under their domestic laws to include a provision similar to Article 26(4) of the OECD Model Taxation Convention.

289. All TIEAs concluded by the Czech Republic contain a provision similar to Article 5(2) of the OECD Model TIEA, which allows information to be obtained and exchanged notwithstanding it is not required for a Czech Republic domestic tax purpose.

290. In practice no issues or difficulties were reported regarding the application of access powers employed for EOI purposes.

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57. Armenia; Austria, Bahrain; Barbados; Belarus; Belgium; China; Colombia (not yet in force); Croatia Denmark; Hong Kong, Kazakhstan (in protocol not yet in force); Kosovo (not yet in force); Liechtenstein (not yet in force); Luxemburg; the Netherlands, New Zealand; Norway; Pakistan (not yet in force); Panama, Poland; Russian Federation; Saudi Arabia, Serbia, Singapore, Switzerland, Ukraine (in protocol not yet in force) and Uzbekistan.
58. Out of the 59 jurisdictions, only 17 have already been reviewed, 24 are not members of the Global Forum, see lists in footnote 56).

Absence of dual criminality principles (ToR C.1.5)

291. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

292. There are no dual criminality provisions in any of the Czech Republic's DTCs or TIEAs. Accordingly, there has been no case when the Czech Republic declined a request because of a dual criminality requirement.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

293. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters"). The Czech Republic provides assistance at the administrative level when the requested information relates to a criminal tax matter in the requesting jurisdiction. The Czech Republic will, on request, give as much priority to such cases as possible.

294. All of the Czech Republic's DTCs and TIEAs provide for exchange of information in both civil and criminal tax matters. The TIEA with San Marino includes Article 8 of the Model TIEA. However, Article 1(2) states that "information received by the requesting Party under this Agreement may be used in the requesting Party as evidence in criminal proceedings only if judicial or other competent authorities of the requested Party give consent to it in accordance with the laws of the requested Party if such consent is, under these laws, necessary" (Art. 1(2)).

295. A comparable interpretation regarding the use of information received under the convention as evidence in criminal proceedings is applied by the Czech Republic under the Multilateral Convention. The Czech Republic added a declaration stating that it interprets article 22, paragraph 2 of the Multilateral Convention as "not establishing any automatic right of the requesting State to use information received in accordance with the Convention as amended by the Protocol as evidence in criminal proceedings, but information received in accordance with the Convention as amended by the Protocol may be used by the requesting State in criminal proceeding as evidence only if judicial authorities of the requested State or any other authorities of the requested State competent under the laws of the requested State give consent to it in accordance with applicable international treaties on mutual legal assistance

in criminal matters and the domestic law of the requested State concerning providing mutual legal assistance in criminal matters." The Czech authorities advise that this is in essence the same requirement and it applies in all cases to criminal proceedings in tax cases in general and would also apply to information initially exchanged for administrative tax proceedings. This requirement may prevent effective exchange of information or the use thereof and is therefore not to standard. Moreover, during the onsite visit Czech officials clarified that in practice a statement of this very same nature is included in responses to all EOI requests provided by the Czech Republic, irrespective of the EOI instrument used and irrespective whether any language to this effect in that particular agreement would be included.

296. As Czech authorities explain, in practice the Czech Republic requires an indication from the requesting jurisdiction in cases where the information is sought to be used as evidence in criminal tax proceedings or when requested information is provided and – at a later stage – is actually used as evidence in criminal tax proceedings. If information is requested is to be used as evidence in criminal tax proceedings, mutual legal assistance (MLA) is used. The Czech Republic clarified that it does not require existence of a mutual legal assistance treaty in order to provide judicial assistance in criminal matters, but is able to provide it on the (non-treaty) basis of reciprocity. If the purpose is not known at the moment of the request, the Czech Republic states that it will supply the information, but requires the other jurisdiction to ask for permission if the jurisdiction at a later stage plans to use the information as evidence in criminal tax proceedings. Czech officials underscore that in their view these proceedings are necessary in the light of human rights legislation at international level. However, The Czech authorities clarified that their interpretation does not prevent exchange of information for criminal tax purposes in general or their use in criminal tax proceedings in general. As Czech authorities explain, the use of the exchanged information in criminal tax proceedings is possible as "operative information" (criminal intelligence). However, the Czech Republic requires that the prior consent of its judicial authorities be obtained by the requesting jurisdiction under mutual legal assistance arrangements before information exchanged under a tax information exchange agreement (DTC, TIEA or the Multilateral Convention) may be used as evidence in criminal tax proceedings in the requesting jurisdiction. Requests for consent received are submitted to Regional Courts, as granting the consent lies within their competence. However, requests for consent can also be granted by the Regional Public Prosecutors Offices, if the request is made in the pre-trial phase of a criminal proceeding. Czech authorities add that in criminal tax cases, this can be expected to be the normal procedure. Czech authorities further clarify that the basic logic is that the consent shall be given, unless otherwise stated and that there are only two reasons for non-granting of the consent (s. 20 of the Act no. 104/2013 Coll. on International

Judicial Cooperation in Criminal Matters). This would be the case if using such information as evidence would be inadmissible for the purposes of criminal prosecution in the Czech Republic (this regards in particular human rights obligations contained in the European Convention on Human Rights as also included in the Czech Constitution (Charter of Fundamental Rights and Freedoms). This would include the right to life, non-discrimination regarding political opinions, religion, sex), or in cases where there is a risk that using such information as evidence would frustrate criminal proceedings conducted in the Czech Republic or seriously imperil another significant interest (s. 20(3) of the Act no. 104/2013 Coll. on International Judicial Cooperation in Criminal Matters). Regarding the human rights obligations As Czech authorities further explain in both cases it would involve checking if information provided concerned a person that is also prosecuted in the Czech Republic – this can be done fairly quickly ("minutes") since there is one centralised electronic database in the Czech Republic concerning prosecuted persons. It would further involve an evaluation of what information was provided on the level of tax authorities. In case this information was provided in the form of written documents Czech authorities do not foresee a particular problem to give consent.

297. The Czech authorities further clarified that they have not received a request for information which would indicate exactly that the request is sent related to a criminal proceeding. In practice, therefore, there has been no case where the Czech Republic declined a request because it related to a criminal tax matter, and no peers have raised any issues in this regard either.

Provide information in specific form requested *(ToR C.1.7)*

298. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

299. There are no restrictions in the Czech Republic's domestic laws that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. This is reinforced in the Czech Republic's DTC with the United States, which contains express provisions (under Article 27(3)) that strengthen the need to provide information in the form requested. Further, all of the TIEAs signed by the Czech Republic include a provision akin to Article 5(3) of Model TIEA.

300. Peer inputs indicate that the Czech Republic provides the requested information in adequate form and no issue in this respect has been reported.

In force (ToR C.1.8)

301. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where such arrangements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

302. The Czech Republic has brought all its EOI agreements into force expeditiously. All agreements are in force with the exception of four DTCs, two Protocols to DTCs and all the TIEAs. The Czech Republic has completed all steps which are necessary on its part to bring the Protocol with Belgium into force. The average time between signature and entry into force for its post-2000 agreements is under 15 months.

Be given effect through domestic law (ToR C.1.9)

303. For information exchange to be effective, the parties to an EOI arrangement need to enact any legislation necessary to comply with the terms of the arrangement.

304. The Czech Republic's EOI agreements are given the force of law once they are approved by national Parliament, ratified by the President of the Czech Republic and there is an exchange of notes on ratification or exchange of notes on completion of domestic approval with the relevant EOI partner and once the agreement is promulgated in the Collection of Treaties (one of the two main official journals of the Czech Government, together with the Collection of Laws). The Czech Constitution provides that the provisions of its EOI agreements override older and newer domestic laws (Art. 10). EOI provisions of an international agreement are in addition incorporated through the Czech EOI Act which states that the rules of this act regulate the procedures and conditions under which the Czech authorities provide information based on an international treaty.

305. The Czech Republic has transposed EU Council Directive 2011/16/EU on administrative co-operation in the field of taxation through Act No.: 164/2013 Coll. on international co-operation in tax administration and on the amendment of certain related Acts (hereinafter: "EOI Act", which also clarifies that the powers and obligations of the Tax and Customs Authority in relation to its duties of collection and transmission of data apply to all bilateral or multilateral international EOI agreements, including DTCs, TIEAs as well as the Multilateral Convention.

306. While there are some concerns with respect to availability of information, as discussed in Part A.1 of this report, there are no limitations, save for a concern with respect to the scope of professional privileges, in domestic legislation providing for access to information by the authorities. Thus, the Czech Republic can be considered to have given full effect to these arrangements through domestic law.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
The Czech Republic requires that the prior consent of its judicial authorities be obtained by the requesting jurisdiction under mutual legal assistance arrangements before information exchanged under a tax information exchange agreement (DTC, TIEA or the Multilateral Convention) may be used as evidence in criminal tax proceedings in the requesting jurisdiction.	The Czech Republic should monitor that its procedures to allow the use of information as evidence in criminal tax cases does not exceed the limitations on exchange of information as provided under the international standard.

C.2. Exchange-of-information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

307. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

308. The Czech Republic's network of bilateral agreements (DTCs and TIEAs) encompasses a wide range of counterparties, including:

- all of the 27 other EU jurisdictions;
- all but one of the OECD member countries[59];
- all of its 10 primary trading partners[60];
- 17 of the G20 jurisdictions[61];
- 57 of the Global Forum member jurisdictions; and
- 6 African, 26 Asian, 3 Caribbean, 1 Central American, 45 European, 2 North American, 2 Oceanic and 2 South American jurisdictions.

309. The Czech Republic has agreements with all of its main trading partners: Germany, the Slovak Republic, Poland, France, Austria, Italy, the Netherlands, the Russian Federation, the United Kingdom, the People's Republic of China and the United States. While the EOI agreement with Germany, one of its biggest trading partners, is not fully to the international standard, as mentioned above, both are EU members subject to the Council Directive 2011/16/EU which allows for exchange of information in line with the standard.

310. The Czech Republic has a considerable network of agreements allowing for exchange of information for tax purposes. In addition, the Czech Republic authorities have an ongoing programme of establishing agreements and revising agreements where necessary in order to bring them to standard.[62] No peers have reported that the Czech Republic declined to establish an EOI agreement with a jurisdiction seeking the same.

311. The wording of the Czech Republic's domestic access powers would permit access to information for the purpose of Multilateral Convention, to the same extent as they currently do for its DTCs and TIEAs.

59. The Czech Republic does not have an agreement with Chile.
60. Germany, the Slovak Republic, Poland, France, Austria, Italy, the Netherlands, Russian Federation, United Kingdom, China and the United States.
61. The Czech Republic does not have an agreement with Argentina.
62. The Czech Republic is currently negotiating TIEAs with Dominica, Anguilla, Grenada, Marshall Islands, Seychelles and Mauritius. TIEAs with Belize, Monaco, Sint Maarten, Aruba and Cook Islands are at various levels of legislation process. It has negotiated many DTCs and Protocols to them which are nowadays at various levels of legislation process.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	The Czech Republic should continue to develop its EOI network with all relevant partners.

Phase 2 rating
Compliant

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use, and safeguards *(ToR C.3.1)*

312. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

313. All the Czech Republic's EOI agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. While each of the articles in the Czech DTCs might vary slightly in wording, these provisions contain all of the essential aspects of Article 26(2) of the OECD Model Tax Convention. The Czech Republic's TIEAs have confidentiality provisions modelled on Article 8 of the OECD Model TIEA. As the provisions in the Czech Republic's EOI agreements would override any contradicting domestic legislation, Czech authorities are required to keep confidential all information received as part of a request or as part of a response to a request regardless of any provisions in other laws.

314. Czech tax law requires officials, taxpayers and third parties to keep confidential all information concerning other persons which they learned in the course of the tax procedure (s. 52(1) TPC). This confidentiality obligation

covers all types of information obtained in connection with tax administration, including information obtained in the course of international co-operation. With regards to information received from other jurisdictions under a legal instrument, confidentiality provisions of these instruments prevail over the Czech Tax Procedure Code. Penalties for breaches of confidentiality are stipulated in the Tax Procedure Code, s. 246. A person who breaches confidentiality is subject to a fine of up to CZK 500 000 (EUR 18 000).

In practice

315. All officials dealing with information on taxpayers are obliged to keep all the information as confidential. The confidentiality rules are provided mainly in the TPC (Section 52 – Section 55), but also in the provisions on confidentiality contained in bilateral agreements (DTCs, TIEAs) and they are also part of the multilateral Convention on Mutual Assistance in Tax Matters.

316. The requests that are received by DLO are stored at shared data storage, which is accessible only for DLO's officials and the paper documents are safely stored in. The same rules are followed at tax offices. Information obtained from a treaty partner including the EOI request is a part of the taxpayer's file kept at the tax office. Generally, the requests for information received are kept in "not public" part of the taxpayer's file, i.e. part of the file with restricted access even for taxpayer himself. Only information concerning the taxpayer himself may be disclosed to this taxpayer or to person authorised by this taxpayer under taxpayer's request and only to the extent that is necessary to obtain information requested. Czech authorities clarify that any other information (e.g. competent authority, foreign taxpayer's data, and third person's data) is not disclosed.

317. Generally these safeguards are used: Encrypted access to databases and applications/systems, lists of users, secured applications and communication channels, agreement on confidentiality maintenance with every employee involved.

318. Third persons are only allowed to enter the premises of the DLO with an accompaniment of a responsible official and the materials concerning the EOI cannot be taken out of the premises of the DLO. For an e-mail communication only secured channels are used.

319. Entry to the tax offices premises is restricted and protected. Information obtained in relation to requests that is kept in the respective taxpayer's file can be accessed only by the authorised assessing officer responsible for the respective taxpayer's assessment. It can be distinguished from information obtained from domestic sources and is clearly identifiable.

320. No breach of confidentiality was encountered during the last three years neither in a domestic nor in an exchange of information context.

All other information exchanged (ToR C.3.2)

321. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, background documents to such requests, and any other documents or communications reflecting such information.

322. The confidentiality provisions in The Czech Republic's agreements use the standard language of Article 8 of the OECD Model TIEA and Article 26(2) in the Model DTC or language comparable to these articles. Thus, they do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax administration of either jurisdiction.

Ensuring confidentiality in practice

323. The offices of the DLO are located within the General Financial Directorate. The Head of DLO has a separate office, while the other office is shared by around four persons. All offices can be locked separately.

324. Incoming requests in physical form are delivered directly to the DLO, and only the DLO staff and the Director will see the request. Requests from other EU member states are generally received via the secure intra-EU Closed Communication Network (CCN).

325. All requests are entered onto the central DLO database by the Secretary. This database is only accessible by the DLO Secretary and the Head of DLO. All other DLO officers keep their own records on their personal computers, to which only they have access. Individual printers are also available to each ITAD officer inside its office. Paper files are kept in the offices of the DLO officers and are locked and only accessible to DLO staff.

326. Correspondence between the DLO and the regional and local tax offices is sent as secured tax administration's mail. In the regional and local offices, respective taxpayer's file can be accessed only by the authorised assessing officer responsible for the respective taxpayer's assessment.

327. Most EOI requests are received and responded with regard to EOI partners within the EU and communication with them takes place via CCN mail. In other cases registered post is used.

328. No issues regarding the confidentiality of information have been raised by Czech exchange of information partners.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

Exceptions to requirement to provide information *(ToR C.4.1)*

329. The international standard allows requested parties not to supply information in response to a request in certain identified situations.

330. In line with the standard, the Czech Republic's DTCs and TIEAs, the contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.[63]

331. Communications between a client and an attorney or other admitted legal representative are only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where legal professional privilege is more broadly defined it does not provide valid grounds on which to decline a request for EOI. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, EOI resulting from and relating to any such activity cannot be declined because of legal professional privilege.

332. All of the Czech Republic's DTCs ensure that the contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is subject to legal professional privilege. However, the term "professional secret" is not defined in the DTCs and therefore, considering the definition provisions of the DTCs (see Article 3(2) of the Model DTCs), this term would derive its meaning from the Czech Republic's domestic laws. As noted in Part B of this report, the scope of information subject to professional privilege in the Czech Republic is wide and goes beyond the international standard.

63. Though "Ordre public" is not specifically mentioned in the DTC with Sri Lanka. See further below.

333. The Czech Republic's DTC with Sri Lanka is the only DTC which does not contain express safeguards that allow the contracting parties to decline to supply information when doing so is contrary to public policy. This is not consistent with the international standard and it is recommended that the Czech Republic renegotiate the DTC to bring it up to the standard.

334. According to the Czech EOI Act, the competent authority is entitled to decline to provide information if the tax confidentiality rules in the relevant Czech legislation are stricter than those of the requesting jurisdictions and that jurisdiction fails to observe such stricter conditions (s. 21(1)). The Act further states that providing information can be declined if would give rise to a disclosure of a business secret, violation of secrecy imposed by the special legal act (including attorney-client privilege) or in case of information whose disclosure would contradict the interest of the Czech Republic and public order. To the extent these conditions go beyond the ones contained in the EOI instrument, the latter provisions would prevail (Art. 10 Constitution).

335. In practice, there was no case during the period under review where the Czech Republic requested information from admitted legal representatives for exchange of information purposes. Consequently, there was no case where professional privilege has been claimed to cover the requested information. The Czech Republic also did not decline to provide the requested information during the period under review because it is covered by legal professional privilege or any other professional secret and no peer indicated any issue in this respect.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The Czech Republic's tax treaties do not define the term "professional secret" and the scope of the term "professional secret" under its domestic laws is wide and goes beyond the international standard.	It is recommended that the Czech Republic restricts the scope of the protection under the term "professional secret" in its domestic laws so as to be in line with the standard for the purpose of agreements for exchange of information.

Phase 2 rating
Largely Compliant

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

336. In order for EOI to be effective, it needs to be provided in a timeframe which allows the tax administration to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

337. None of the Czech Republic's DTCs require the provision of request confirmations, status updates or the provision of the requested information, within the timeframes foreshadowed in Article 5(6) of the OECD Model TIEA. Seven out of the nine TIEAs signed by the Czech Republic so far, do so: the TIEAs with Bermuda, the Virgin Islands (British), the Isle of Man, San Marino, Andorra, Cayman Islands and Bahamas require that the competent authority of the requested jurisdiction confirms receipt of a request; notifies any deficiencies in the request within 60 days; and, if unable to obtain and provide the requested information within 90 days, inform the requesting jurisdiction and explain the reason for its inability, the nature of the obstacles or the reasons for refusing to provide information (art 5(7)).

338. There appear to be no legal restrictions on the Czech Republic tax administration's ability to respond to EOI requests within 90 days of receipt. The Czech EOI Act states that the competent authority shall provide the requested information without undue delay, but no later than within two months from the day of receipt of the request and if the info is not in possession of such information, it shall provide the information no later than within six months from the day of receipt of the request unless a longer time limit is agreed with the liaison office of the other state. If obstacles occur in obtaining the requested information hindering the providing of such information, the competent authority shall without any delay inform the requesting competent authority of such a situation, including an indication of the causes of the obstacles or grounds for the declination (s. 10).

339. The Czech Republic has received 431 requests for information over the period of review. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, 180 days and within one year in 45%, 80% and 97% of the time respectively.[64]

64 These figures are cumulative.

340. The following table shows the time needed to send the final response to these EOI requests including the time taken by the requesting jurisdiction to provide clarification (if asked).

Response times for requests received during the three-year review period

	2011		2012		2013		Total	
	num.	%		%	num.	%	Num.	%
Total number of requests received *	141	100.00	134	100.00	156	100.00	431	100.00
Full response: ≤90 days **	75	53.19	54	40.30	65	41.67	194	45.01
≤180 days (cumulative)	122	86.52	99	73.88	124	79.49	345	80.05
≤1 year (cumulative)	139	98.58	130	97.01	148	94.87	417	96.75
>1 year	140	99.29	134	100.00	152	97.44	426	98.84
Declined for valid reasons	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested	0	0	0	0	0	0	0	0
Requests still pending at date of review	1	0.71	0	0.00	4	2.56	5	1.16

* Czech Republics' method of counting requests is the following: 1 written request from an EOI partner is counted as 1 EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested. However, if there is a request from abroad concerning one foreign tax subject and for example three Czech subjects (each of these belong in most cases to different local tax authorities), the Czech Republic counts it as one request from abroad and three requests in the Czech Republic for the internal statistical purposes.

** The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

341. As the table shows the number of requests was fairly stable during the period under review and around 150 per year. Most requests were received from Germany, Slovak Republic, and Poland (in order of significance). As Czech authorities explain, these jurisdictions are mainly neighbouring countries and many Czech taxpayers are active or earn income in these jurisdictions.

342. The Czech Republic provided the requested information within 90 days for 45% of requests. Czech officials explain that cases where a response could not be provided within 90 days they were not related to a specific type of information, but rather to the complexity of the request involved. However, they add that certain types of information such as banking information or information regarding residency or addresses can be provided within three months in the majority of cases. Mostly the requests are answered in the time period of five to six months, also depending on complexity of the case. As explained above under element B requests that require assistance from the tax offices, such as audits of the taxpayers for inquiries and accountancy examinations typically would take longer than 90 days to answer. Response

times have increased a bit over the period under review as the Czech Republic was able to respond around 53% to 42% of the requests within the period of 90 days from 2011 through to 2013. However, it can also be noted that the percentage of responses given within 180 days in comparison dropped more moderately from 87% in 2011 to 80% in 2013, indicating that a larger percentage of cases was responded to within the timeframe between 90 and 180 days.

343. Around 1% of all received requests over the period under review are pending at the date of the on-site visit. There was no case where the Czech Republic declined to provide the requested information. In around 1% of all received requests over the period under review it took the Czech Republic more than one year to respond. As Czech officials explained the delay in these cases was mainly due to the complex nature of the requests in combination with human resources available, and there were no problems to obtain or collect the information.

344. Where information required to process the request is missing the Czech Republic in general supplements the missing information with information already at the disposal of the tax administration, for instance in the database. Only if this is not successful or cannot be done the Czech Republic requests clarifications regarding the facts. Peers did not raise any issues in this regard.

Updates

345. During the period under review Czech authorities did not regularly provide an update on the status of the request where, for any reason, the Czech Republic has not been possible to obtain and provide the information requested within 90 days of receipt of the request. As Czech authorities report, within the current IT framework it's difficult for the competent authority to send status updates. They add that they didn't receive any complaints from EOI partners on this. They further explain that Czech EOI partners are used to obtaining the answers within a period of 4-6 months at the latest and if the answer is needed earlier, this need is usually indicated in the request and such request is handled with priority. Therefore the Czech Republic did not systematically provide updates where it was not able to respond to a request within the 90 days period. The Czech Republic is recommended to provide status updates to its EOI partners within 90 days where relevant.

Organisational process and resources *(ToR C.5.2)*

346. DTCs and TIEAs are negotiated and signed by the Minister of Finance (or authorised person). The Ministry or the entity (department of the General Financial Directorate or Financial Office) within the tax administration designated by the Ministry are the competent authority (s. 3(1) EOI Act). The competent authority for exchange of information designated by the

Ministry is located within the General Financial Directorate. The General Financial Directorate is the higher of the two levels of the tax administration: General Financial Directorate, and Financial (Tax) Offices[65]. Furthermore there is one Appellate Financial Directorate and one Specialised Tax Office for large tax payers.

347. The Direct Taxes International Cooperation Unit (DLO Unit) is responsible for exchange of information regarding direct taxes. In the area of direct taxes, the exchange of information is performed by the Direct Taxes International Cooperation Unit (thereinafter DLO) that comprises altogether 9 officials.

348. Out of the 9 employees working within the DLO Unit (including the head of unit), about half of them are involved in all kinds of international co-operation in respect of direct taxes, including work related to transfer pricing etc. However, as of September 2014 this unit was split into two separate units, clearly establishing one DLO unit that deals exclusively with EOI in direct tax matters, while all the other activities are handled now by a separate unit. As mentioned above exchange of information in the border region with Germany and Slovak Republic is handled directly by the local and regional tax offices. In total there are 8 regional financial offices authorised for this and co-operation is based on respective MOUs with the Slovak Republic and with Germany.[66] In each of these offices one or two officials would be responsible for this type of co-operation. As Czech officials explain this authorisation is granted in compliance with the EU Directive 2011/16/EU. The authorised financial offices regularly inform the DLO on the statistics of cases done within the framework of this direct cross-border co-operation. Over the period of review in total 38 requests were made and responded to directly by the local and regional tax offices in the border region.

349. All international requests for information are handled and processed by the DLO Unit. The DLO Unit is responsible for communication with the other competent authorities and for administration of the gathering of the requested information. This includes checking whether the responses sent by the regional tax offices include all the requested information and in the requested format, and, if the requested information cannot be provided, that the tax office provides an explanation as to why it was not able to provide all the requested information.

65. The Czech authorities advise that this institutional structure of the tax administration has changed as of 1 January 2013. The structure was reduced to basically two levels. Further changes will concern competencies of tax and customs administration and social security administration.

66. For cross border cooperation with Germany the appointed offices are offices for regions Jihocesky, Plzensky, Karlovarsky, Ustecky, Liberecky; for cross border cooperation with Slovakia the appointed offices are offices for regions Jihomoravsky, Zlinsky, Moravskoslezsky).

350. Once the request is received it is allocated by the DLO Unit to one of the 14 regional tax offices responsible for handling the tax affairs of individual taxpayers. There are 14 tax regions within the Czech Republic.[67] Each tax office is responsible for one of the regions. In addition to 14 tax offices with local jurisdiction there is one specialised tax office for large taxpayers, i.e. tax payers with a turnover of more than approximately CZK 2 billion (EUR 80 million). As a first step requests would be translated and forwarded to one the regional tax offices. The requested information can be gathered there, but this is not very common in practice. As elaborated further below, requests are normally handed over to a local tax office (i.e. branch of regional tax office) and handled by the tax official responsible for the taxpayer concerned. It is the responsibility of this tax official to ensure that all steps necessary to obtain the requested information were taken and that the provided information is correct and well evidenced.

Handling of EOI requests

351. When a request for exchange of information is received, the request will first get a unique reference number assigned to it at the DLO unit. After this first step the head of DLO will allocate the request to one of the officials in the DLO office that will be responsible for handling the request. The request is listed into an overview of all received documents and the relevant information including the date of receipt and the responsible official are inserted. Requests and documents received through CCN mail are saved on the shared data storage server (S drive) of the DLO. The official responsible for the case will process this file on his PC. In case additional information is needed the DLO officer asks the requesting competent authority for clarification. The request is handled as confidential and security precautions are in place.

352. The DLO officer will first verify the identity of the taxpayer concerned via the tax database or Register of Citizens. If it is possible to provide the information requested by DLO, the request is assigned to one responsible person and answered directly to the requesting country. Such cases are not common and would typically concern the residence status confirmation or address ascertainment. The answer is usually sent within 2 or 3 weeks. In all other cases, the request will be forwarded to the regional office, based on the seat of the registered office or address of the person concerned.The necessary information is translated into Czech by the DLO officer and filed in a standard e-form which is sent together with the supporting documentation (if any) to the respective contact person in the regional tax office who assigns the request to the tax official. The tax official then decides on the most efficient way to obtain the requested information.

67. These regions are: Capital of Prague, Stredocesky, Jihocesky, Plzensky, Karlovarsky, Ustecky, Liberecky, Kralovehradecky, Pardubicky, Vysocina, Jihomoravsky, Olomoucky, Zlinsky, Moravskoslezsky.

353. As Czech authorities explain in practice most EOI requests will be forwarded from the regional level to a local tax office and will be followed by a local inspection (on-site investigation). This is typically the case where the information cannot be gathered from the databases that can be accessed on the regional level or from the file of the tax payer kept by the financial office on a local level. In these cases the financial office (or branch) carries out enquiry to ascertain the relevant requested information at the taxpayer or a person or an entity that is a subject to the request. This takes 1-5 months depending on whether the taxpayer is co-operative, keeps obligatory records or requested evidence, proves the fact of the matter (burden of proof lies on taxpayer generally) and communicates immediately. In this case, the information requested can be provided in a relatively short period of time (within 1 month). If further investigation or hearing of witnesses (third persons) is necessary the time needed for obtaining information requested and for the answer is longer. The length depends on whether there is a need to co-operate with another financial office related to the identified supplier or provider. Czech authorities explain that meeting the time limits for exchange of information is the priority for them, and prolongation in their experience is seldom.

354. Once the requested information is gathered by local the tax office, the response will then go through the same route as the request back to the DLO Unit. Once the reply is received the DLO checks whether the obtained information represents an adequate response to the request. If the information is sufficient, the reply (including titles of supplementary documentation) is translated into English and sent to the requesting Competent Authority.[68]

355. Communication between the CLO Unit and the local tax office is carried out through a secure email network. For communication between competent authorities of EU member states the CCN network is used.[69] With regard to other countries, the requested information is sent by the registered post.

68. Requests received within the framework of the cross-border cooperation are processed directly by one of the 8 appointed regional offices involved. In each of these offices one or two officials would be responsible for this type of cooperation. When the inquiry requires direct contact with the tax payer or any investigation, the case is forwarded to the financial office's branch under supervision of this office. After that the branch sends the investigation outcomes to the regional office which sends the reply to the partner office abroad. The conditions of secrecy are kept in same way like in case of cooperation through the DLO.

69. CCN mail means the common platform based on the common communication network (CCN), developed by the European Union for all transmissions by electronic means between competent authorities in the area of customs and taxation.

Internal deadlines

356. The EOI act states deadlines in which the EOI office is required to provide the requested information to the requesting jurisdiction. After receiving the request, the EOI office shall confirm receipt of the request to the other state without undue delay but no later than within seven working days after receiving the request (s. 10(1) EOI Act). The EOI office shall provide the requested information within two months after receiving the request. However, this period is extended to six months if the EOI office is not in possession of the requested information, unless a longer time limit is agreed with the requesting state (s. 10(2) EOI Act). The EOI act further sets out that, if the EOI office is not able to provide the requested information within this timeframe, it shall notify the requesting state within three months from the day of receipt of the request, of the reasons for non-provision of the information and of the date when it can be expected that it will provide the requested information (s. 10(3) EOI Act). No official further time frames and deadlines are provided for the individual steps regarding handling of requests and obtaining information.

IT tools, monitoring, training

357. The main IT tool used for gathering of the requested information is the tax database ADIS and its internal applications (see section A.1). The information contained in the tax database can be supplemented with information in the person's tax file (e.g. correspondence with the taxpayer, notifications regarding the taxpayer from other government bodies) or other public or government sources (e.g. internet, Commercial Registry, Register of Foundations, Register of Citizens, Register of Real Estates or Register of Cars).

358. The EOI database currently consists of an excel sheet where all information needs to be manually entered. Monitoring of the process of handling requests is based on the information contained in the EOI database but there are no automatic monitoring functionalities built in such as reminders to keep deadlines or statistical reports. The General Financial Directorate is developing a new database. The new IT system is expected to become fully operational in 2015.

359. DLO officers are in daily contact with the head of the DLO Unit and discuss with him any issues that arise. The overall EOI performance is evaluated by the head of the DLO Unit on a monthly basis based on an overview of outstanding cases as produced by the respective DLO officer. Reports on EOI performance form part of annual reports of the financial administration which are provided to the Ministry of Finance.

360. Officers of the DLO Unit are well trained and appropriately educated. All officers receive regular training on internal guidelines and

directives. Officers in the DLO Unit also attend international forums on EOI (e.g. EU committees, FISCALIS seminars, OECD WP10 meetings), so as to keep up-to-date with global developments as well as establish network of personal contacts for more effective exchanges.

361. The DLO Unit trains all contact persons on a regular basis. Training is given at least every six months. The officials working in the exchange of information are mainly university graduated; all of them participated in special seminars/trainings on international taxation issues held at training centres of the Financial Administration. These trainings are organised "in-house" and the speakers are employees of the General Financial Directorate and sometimes of the Ministry of Finance. In addition regular meetings of officials involved in the international taxation issues, including EOI related topics, take place every six months. These meetings are usually attended by DLO staff, two officials from each financial office, Large Taxpayers' Office, and the Appellate Financial Directorate. The purpose of these meetings is to discuss a wide variety of topics in the field of international direct taxation including international co-operation. During these meetings special questions and cases are discussed.

Absence of restrictive conditions on exchange of information *(ToR C.5.3)*

362. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

363. Other than those matters identified earlier in this report, there are no further aspects of the Czech Republic's domestic laws that appear to impose additional restrictive conditions on exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Phase 2 rating	
Compliant	
Factors underlying recommendations	**Recommendations**
In a number of cases, the Czech Republic has not provided status updates within the 90 day period.	The Czech Republic should provide status updates to its EOI partners within 90 days where relevant.

Summary of Determinations and Factors Underlying Recommendations

Overall Rating
LARGELY COMPLIANT

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
Phase 1 determination: The element is in place but certain aspects of the legal implementation of the element need improvement.	Companies incorporated outside of the Czech Republic but having their place of effective management (and thus tax residency) therein are subject to clear requirements to maintain identity information concerning their owners. However, this information may not be available in limited cases where the ownership represents less than 20% of the voting rights in the company.	The Czech Republic should ensure that ownership and identity information are available in all cases for foreign companies having a sufficient nexus with the Czech Republic.
	Czech legislation does not provide for sanctions in all cases for public limited liability companies and co-operatives that fail to maintain ownership information.	The Czech Republic should introduce appropriate enforcement measures to address the risk of public limited liability companies and co-operatives not complying with the requirement to maintain a register of their shareholders and members.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely compliant	As of January 1, 2014, bearer shares must be immobilised, or book-entered. Bearer shares that have not been immobilised prior to 1 January 2014 were transformed automatically to certified registered shares with effect from that same date. Shareholders involved lost all rights attached to these bearer shares for the period that these shares were not immobilised, dematerialised or repealed. However, the transitional provisions do not fully ensure that information is available in practice on all holders of bearer shares in all cases.	It is recommended that the Czech Republic monitors the practical implementation including the enforcement of the recently introduced requirement regarding bearer shares to ensure that all shareholders submit their bearer shares to the company to be furnished with the necessary changes and shareholders information is available in all cases.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1 determination: The element is in place.	Although opening of bearer passbooks was prohibited in 2002, some pre-existing passbooks are still in existence and identity information on their holders will not be available unless a withdrawal takes place.	The Czech Republic should strengthen measures so that information on the holders of bearer passbooks is available to its competent authority.
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
Phase 1 determination: The element is in place but certain aspects of the legal implementation of the element need improvement.	The privileges attaching to certain information held by legal advisors and tax advisors are more extensive than prescribed by the standard, and could impede effective exchange of information in a given case.	The Czech Republic should ensure that domestic provisions on professional privileges allow exchange of information in line with the standard.
Phase 2 rating: Largely compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely Compliant	The Czech Republic requires that the prior consent of its judicial authorities be obtained by the requesting jurisdiction under mutual legal assistance arrangements before information exchanged under a tax information exchange agreement (DTC, TIEA or the Multilateral Convention) may be used as evidence in criminal tax proceedings in the requesting jurisdiction.	The Czech Republic should monitor that its procedures to allow the use of information as evidence in criminal tax cases does not exceed the limitations on exchange of information as provided under the international standard.

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
Phase 1 determination: The element is in place.		The Czech Republic should continue to develop its EOI network with all relevant partners.
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1 determination: The element is in place but certain aspects of the legal implementation of the element need improvement.	The Czech Republic's tax treaties do not define the term "professional secret" and the scope of the term "professional secret" under its domestic laws is wide and goes beyond the international standard.	It is recommended that the Czech Republic restricts the scope of the protection under the term "professional secret" in its domestic laws so as to be in line with the standard for the purpose of agreements for exchange of information.
Phase 2 rating: Largely Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Compliant	In a number of cases, the Czech Republic has not provided status updates within the 90 day period.	The Czech Republic should provide status updates to its EOI partners within 90 days where relevant.

Annex 1: Jurisdiction's response to the review report[70]

The Czech Republic would like to thank the Secretariat of the Global Forum for Transparency and Exchange of Information for Tax Purposes and the assessment team for the very kind cooperation and guidance during the Phase 2 Peer review process as well as recommendations contained in the report. The Czech Republic also would like to express its appreciation to the Peer Review Group and member countries for their valuable input.

The Czech Republic is committed to working closely with the Global Forum as well as treaty partners from other tax jurisdictions with the aim of enhancing the mutual cooperation in tax matters and addressing the issues of tax avoidance and evasion

70. This Annex presents the jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

Annex 2: List of all exchange-of-information mechanisms in force

Multilateral agreements

The Czech Republic exchanges information under:

- The EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation and repealing Directive 77/799/EEC. This Directive is in force since 11 March 2011. It repeals Council Directive 77/799/EEC of 19 December 1977 and provides inter alia for exchange of banking information on request for taxable periods after 31 December 2010 (Article 18). All EU members are required to transpose it into national legislation by 1 January 2013. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Cyprus[71], Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom;
- EU Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual

71. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states.

Bilateral agreements

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	Albania	DTC (double taxation convention)	22-06-1995	10-09-1996
2	Andorra	TIEA (Tax Information Exchange Agreement)	11-6-2013	05-06-2014
3	Armenia	DTC	06-07-2008	15-07-2009
4	Australia	DTA (double taxation agreement)	28-03-1995	27-11-1995
		MAC	26-10-2012	01-02-2014
5	Austria	DTC	08-06-2006	22-03-2007
		Protocol	09-03-2012	26-11-2012
6	Azerbaijan	DTC	24-11-2005	16-06-2006
7	Bahamas	TIEA	06-03-2014	
8	Bahrain	DTC	24-05-2011	10-04-2012
9	Barbados	DTC	26-10-2011	06-06-2012
10	Belarus	DTC	14-10-1996	15-01-1998
		Protocol	11-08-2010	31-05-2011
11	Belgium	DTC	16-12-1996	24-07-2000
		Protocol	15-03-2010	13-01-2015
12	Bermuda	TIEA	15-08-2011	14-03-2012
13	Bosnia and Herzegovina	DTC	20-11-2007	12-05-2010
14	Brazil	DTC	26-08-1986	14-11-1990
15	British Virgin Islands	TIEA	13-06-2011	19-12-2012
16	Bulgaria	DTC	09-04-1998	02-07-1999
17	Canada	DTC	25-05-2001	28-05-2002
18	Cayman Islands	TIEA	26-10-2012	20-09-2013
19	China	DTC	28-08-2009	04-05-2011
20	Colombia	DTC	22-03-2012	

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
21	Cook Islands	TIEA	04-02-2015	
22	Croatia	DTC	22-01-1999	28-12-1999
		Protocol	04-10-2011	30-07-2012
23	Cyprus[72]	DTC	28-04-2009	26-11-2009
24	Denmark	DTC	25-08-2011	17-12-2012
25	Egypt	DTC	19-01-1995	04-10-1995
26	Estonia	DTC	24-10-1994	26-05-1995
27	Ethiopia	DTC	25-07-2007	30-05-2008
28	Finland	DTC	02-12-1994	12-12-1995
29	France	DTC	28-04-2003	01-07-2005
30	FYROM/Macedonia	DTC	21-06-2001	17-06-2002
31	Georgia	DTC	23-05-2006	04-05-2007
32	Germany	DTC	19-12-1980	17-11-1983
33	Greece	DTC	23-10-1986	23-05-1989
34	Guernsey	TIEA	15-09-2011	09-07-2012
35	Hong Kong, China	DTC	06-06-2011	24-01-2012
36	Hungary	DTC	14-01-1993	27-12-1994
37	Iceland	DTC	18-01-2000	28-12-2000
38	India	DTC	01-10-1998	27-09-1999
39	Indonesia	DTC	04-10-1994	26-01-1996
40	Ireland	DTC	14-11-1995	21-04-1996
41	Isle of Man	TIEA	18-07-2011	18-05-2012
42	Israel	DTC	12-12-1993	23-12-1994
43	Italy	DTC	05-05-1981	26-06-1984
44	Japan	DTC	11-10-1977	25-11-1978
45	Jersey	TIEA	12-07-2011	14-03-2012
46	Jordan	DTC	10-04-2006	07-11-2007
47	Kazakhstan	DTC	09-04-1998	29-10-1999
		Protocol	24-11-2014	
48	Korea, Democratic People's Republic of	DTC	02-03-2005	07-12-2005
49	Korea, Republic of	DTC	27-04-1992	03-03-1995

72. See previous footnote.

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
50	Kosovo	DTC	26-11-2013	
51	Kuwait	DTC	05-06-2001	03-03-2004
52	Latvia	DTC	25-10-1994	22-05-1995
53	Lebanon	DTC	28-08-1997	24-01-2000
54	Liechtenstein	DTC	25-09-2014	
55	Lithuania	DTC	27-10-1994	08-08-1995
56	Luxembourg	DTC	05-03-2013	31-07-2014
57	Malaysia	DTC	08-03-1996	09-03-1998
58	Malta	DTC	21-06-1996	06-06-1997
59	Mexico	DTC	04-04-2002	27-12-2002
60	Moldova	DTC	12-05-1999	26-04-2000
		Protocol	14-10-2004	13-07-2005
61	Monaco	TIEA	31-07-2014	
62	Mongolia	DTC	27-02-1997	22-06-1998
63	Montenegro	DTC	11-11-2004	27-06-2005
64	Morocco	DTC	11-06-2001	18-07-2006
65	Netherlands	DTC	04-03-1974	05-11-1974
		Protocol	26-06-1996	11-04-1997
		Protocol	15-10-2012	31-05-2013
66	New Zealand	DTC	26-10-2007	29-08-2008
67	Nigeria	DTC	31-08-1989	02-12-1990
68	Norway	DTC	19-10-2004	09-09-2005
69	Pakistan	DTC	02-05-2014	
70	Panama	DTC	04-07-2012	25-02-2013
71	Philippines	DTC	13-11-2000	23-09-2003
72	Poland	DTC	13-09-2011	11-06-2012
73	Portugal	DTC	24-05-1994	01-10-1997
74	Romania	DTC	08-11-1993	10-08-1994
75	Russian Federation	DTC	17-11-1995	18-07-1997
		Protocol	27-04-2007	17-04-2009
76	San Marino	TIEA	25-11-2011	06-09-2012
77	Saudi Arabia	DTC	25-04-2012	01-05-2013

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
78	Serbia	DTC	11-11-2004	27-06-2005
		Protocol	08-09-2009	28-02-2011
79	Singapore	DTC	21-11-1997	21-08-1998
		Protocol	12-09-2014	26-06-2013
80	Slovak Republic	DTC	26-03-2002	14-07-2003
81	Slovenia	DTC	13-06-1997	28-04-1998
82	South Africa	DTC	11-11-1996	03-12-1997
83	Spain	DTC	08-05-1980	05-06-1981
84	Sri Lanka	DTC	26-07-1978	19-06-1979
85	Sweden	DTC	16-02-1979	08-10-1980
86	Switzerland	DTC	04-12-1995	23-10-1996
		Protocol	11-09-2012	11-10-2013
87	Syria	DTC	18-05-2008	12-11-2009
88	Tajikistan	DTC	07-11-2006	19-10-2007
89	Thailand	DTC	12-02-1994	14-08-1995
90	Tunisia	DTC	14-03-1990	25-10-1991
91	Turkey	DTC	12-11-1999	16-12-2003
92	Ukraine	DTC	30-06-1997	20-04-1999
		Protocol	21-10-2013	
93	United Arab Emirates	DTC	30-09-1996	09-08-1997
94	United Kingdom	DTC	05-11-1990	20-12-1991
95	USA	DTC	16-09-1993	23-12-1993
96	Uzbekistan	DTC	02-03-2000	15-01-2001
		Protocol	08-12-2011	15-06-2012
97	Venezuela	DTC	26-04-1996	12-11-1997
98	Vietnam	DTC	23-05-1997	03-02-1998

Annex 3: List of laws, regulations and other relevant material

Civil and Commercial law

Civil Code (Act No. 89/2012)

Act on Business Companies and Cooperatives (Business Corporations Act 90/2012)

Act on Private International Law (Act No. 91/2012)

Act implementing Council Regulation (EEC) No. 2157/2001 on Statute for a European Company, Act No. 627/2004

Act implementing Council Regulation (EEC) No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping, Act No. 360/2004

Acts on other relevant entities

Citizen's Associations Act (Act No. 83/1990, abolished by the Act No. 89/2012)

Beneficiary Associations Act (No. 248/1995, abolished by the Act No. 89/2012, can be applied to already existing beneficiary associations – see article 3050 of the New Civil Code)

Act on Foundations and Endowment Funds (Act No. 227/1997, abolished by the Act No. 89/2012)

Procedural Law

Code of Civil Procedure (Act No. 99/1963)

Act on Special Judicial Proceedings (Act No. 292/2013)

Taxation law

Income Tax Act (ITA, Act No. 586/1992)

Tax Procedure Code (Tax Code, Act No. 280/2009)

Accounting law

Accounting Act (Act No. 563/1991)

Decree on Double-entry Accounting for Commercial Entities (Decree No. 500/2002)

Decree implementing certain provisions of the Accounting act for accounting entities whose main activity is not business, if they keep double entry accounting. (Decree No. 504/2002)

AML and financial regulation law

Banking Act (Act No. 21/1992)

National Bank Act (Act No. 6/1993)

Capital Market Undertakings Act (Act No. 256/2004)

Act on Selected Measures against Legitimisation of Proceeds of Crime and Financing of Terrorism (the AML Act, Act No. 253/2008)

Insurance Act (Act No. 277/2009)

Payment Systems Act (Act No. 284/2009)

Act on Credit Unions (Act No. 87/1995)

Act on the Activity of Occupational Pension Funds (Act No. 340/2006)

Act on Retirement Savings (Act No. 426/2011)

Act on Supplementary Pension Savings (Act No. 427/2011)

Act on bureau-de-change activity (Act No 277/2013)

Act on Insurance Intermediaries and on Independent Loss Adjusters (Act No. 38/2004)

Act on Management Companies and Investment Funds (Act No. 240/2013)

Act on some Measures to Increase Transparency of Public Limited Companies (Act No. 134/2013)

Information Exchange for Tax Purposes law

International Cooperation in Tax Administration Act (No. 164/2013)

Other legislation

Advocacy Act (Act No. 85/1996)

Archives and Records Management Act (Act No. 499/2004)

Czech Railways Act (Act No. 77/2002)

Czech legislation is available at: http://portal.gov.cz/wps/portal/_s.155/699/place.

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OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(23 2015 15 1 P) ISBN 978-92-64-23365-2– 2015

Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: CZECH REPUBLIC

This report contains a "Phase 2: Implementation of the Standards in Practice" review, as well as revised version of the "Phase 1: Legal and Regulatory Framework review" already released for this country.

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the *UN Model Tax Convention*.

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ISBN 978-92-64-23365-2
23 2015 15 1 P

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