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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
(PC-OC)

**Bilateral Treaties on Exchange of Information Relating to Tax Matters between Parties
to the European Convention on Mutual Legal Assistance in Criminal Matters
with the Bailiwick of Guernsey, the Isle of Man and the Bailiwick of Jersey**

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The Czech Republic is currently negotiating bilateral treaties with the above-mentioned territories on exchange of information relating to tax matters. These bilateral treaties are based on the Model Agreement on Exchange of Information in Tax Matters prepared by the OECD¹. Article 1 of this Model Agreement lists among the purposes for which information is to be exchanged also investigation or prosecution of tax matters. Further articles of the Model Agreement even provide for certain actions that would typically fall under the scope of mutual legal assistance in criminal matters [e.g. Article 6(1) that provides for the possibility to allow representatives of the competent authority of one Contracting Party to enter the territory of the other Contracting Party to interview individuals (without mentioning, however, the possibility of allowing presence and participation of persons other than representatives of the competent authority of the Contracting Party, such as a defence lawyer of the person investigated or prosecuted; other examples include definition of competent authorities, complete exclusion of dual-criminality check, exchange of banking information, contents of requests, rule of speciality (disguised in the provision on confidentiality) and language regime].

Based on declarations made by the United Kingdom of Great Britain and Northern Ireland under Article 25 of the European Convention on Mutual Legal Assistance in Criminal Matters, the European Convention should apply also on the Bailiwick of Guernsey, the Isle of Man and the Bailiwick of Jersey. On one hand, Article 2(a) of the European Convention provide for a (facultative) ground of refusal of the assistance if the request concerns a fiscal offence and in light of this fact treaties on exchange of information relating to tax matters certainly could be considered of significant added value, although in case of the Bailiwick of Jersey, the Article 1 of the Additional Protocol to the European Convention should apply, as application of the Additional protocol has been extended to the Bailiwick of Jersey as well. According to Article 26(3) of the European Convention, the Contracting Parties may conclude between themselves bilateral or multilateral agreements on mutual assistance in criminal matters only in order to supplement the provisions of the European Convention or to facilitate the application of the principles contained therein. On the other hand, there are provisions in the Model Agreement that vary from the European Convention, some of them substantially.

In light of the differences between the standards provided for in the European Convention and those provided for in the Model Agreement, the Czech Republic would like to ask those Parties to the European Convention that have already negotiated bilateral treaties on exchange of information relating to tax matters with the above-mentioned territories² whether, according to their interpretation, the information provided under such treaties

- a) can be used by authorities of the requesting Party as evidence in a criminal trial without any need for further, special consent of authorities of the requested Party (as suggested by Article 6 of the Model Agreement on confidentiality), or
- b) may be used by authorities of the requesting Party as evidence in a criminal trial only with specific consent of judicial authorities of the requested Party obtained under the European Convention.

¹) <http://www.oecd.org/dataoecd/15/43/2082215.pdf>

²) According to publicly available information, the following parties to the European Convention have negotiated bilateral treaties on exchange of information relating to tax matters with the above-mentioned territories, providing for exchange of information also for the purposes of investigation or prosecution of tax matters: Denmark, Finland, France, Germany, Ireland, the Netherlands, Sweden and the United Kingdom of Great Britain and Northern Ireland.

Furthermore, based on a recent statement by the OECD that insisting on following the mutual legal assistance in criminal matters procedures whenever evidence is to be obtained for use in a criminal trial (i.e. necessity to first obtain consent of judicial authorities of the requested Party under the applicable mutual legal assistance treaty, as suggested above sub b) would be “incompatible with the adopted [by the OECD] standards of the exchange of information for tax purposes”, the Czech Republic would like to ask all delegations whether following the mutual legal assistance in criminal matters procedures whenever evidence is to be obtained for use in a criminal trial, even when the information in question had already been obtained by tax authorities for tax purposes under an applicable treaty on exchange of information relating to tax matters, is in line with the standards of mutual legal assistance in criminal matters.