



# **BEPS Action 13 on Country-by-Country Reporting**

**PEER REVIEW DOCUMENTS**

February 2017





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by-Country Reporting  
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*Abbreviations and acronyms*

<b>APA</b>	Advance pricing arrangement
<b>BEPS</b>	Base erosion and profit shifting
<b>CbC</b>	Country-by-Country
<b>CFA</b>	Forum on Tax Administration
<b>G20</b>	Group of twenty
<b>MCAA</b>	Multilateral component authority agreement
<b>MNE</b>	Multinational enterprise
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>XML</b>	Extensible markup language





## Summary

The Action Plan on Base Erosion and Profit Shifting (“BEPS Action Plan”) identified 15 actions to address BEPS in a comprehensive manner. In October 2015, the G20 Finance Ministers endorsed the BEPS package which includes the report on Action 13: *Transfer Pricing Documentation and Country-by-Country Reporting* (“the 2015 Action 13 Report”, OECD (2015)).

The Country-by-Country (CbC) reporting requirements contained in the 2015 Action 13 Report, OECD (2015), form one of the four BEPS minimum standards. Each of the four BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the Inclusive Framework on BEPS commit to implementing the Action 13 minimum standard and to participating in the peer review, on an equal footing.

The purpose of a peer review is to ensure the effective and consistent implementation of an agreed standard and to recognise progress made by jurisdictions in this regard. Peer reviews should be conducted in a manner that is clear; targets the core elements of the standard and areas of risk; ensures that jurisdictions are treated fairly and equally; and is resource efficient.

The peer review is a review of the legal and administrative framework put in place by a jurisdiction to implement the CbC reporting standard. This peer review is a separate exercise to the 2020 review to evaluate whether modifications to the CbC reporting standard should be made.

The peer review will evaluate the Inclusive Framework member’s implementation of the standard against an agreed set of criteria. These criteria are set out in terms of reference, which include each of the elements that a jurisdiction needs to demonstrate it has fulfilled in order to show proper implementation of the standard. The Action 13 Report, OECD (2015), recommended that the first CbC Reports be required to be filed for fiscal years beginning on or after 1 January 2016. It was however acknowledged that some jurisdictions may need time to follow their particular domestic legislative process in order to make necessary adjustments to the law. In this respect, the peer review will take account of the specific timeline followed by certain jurisdictions, and the review will focus on the efforts taken by these jurisdictions in order to meet their commitment to implement the minimum standard.

The manner in which the peer review is undertaken is set out in an agreed methodology. The methodology<sup>1</sup> sets out the procedural mechanisms by which jurisdictions will complete the peer review, including the process for collecting the relevant data, the preparation and approval of reports, the outputs of the review and the follow up process.

The terms of reference and methodology do not alter the Action 13 minimum standard. Any terms used in the terms of reference or methodology take their meaning from the language and context of the 2015 Action 13 Report, OECD (2015), and the references therein.

The peer review will be undertaken by an Ad Hoc Joint Working Party 6 – Working Party 10 sub-group (hereafter referred to as the “CbC Reporting Group”).

### **Approach to the peer review of Action 13 – CbC Reporting**

This document contains the key documents to be used for the peer review, which reflect the agreed approach: (1) the terms of reference and (2) the methodology for the conduct of peer reviews of the Action 13 minimum standard.

The terms of reference focus on the following three key aspects of the CbC reporting standard that a jurisdiction must meet:<sup>2</sup>

- A. The domestic legal and administrative framework<sup>3</sup>
- B. The exchange of information framework; and
- C. The confidentiality and appropriate use of CbC reports.

The methodology recognises that the three key aspects of CbC reporting will be implemented and become operational over the coming years, starting with the domestic legal and administrative framework being put in place generally in 2016, followed by the international exchanges of CbC reports to occur for the first time by mid-2018, and the work to ensure that CbC reports are kept confidential and used appropriately in any subsequent tax compliance actions. Given the fact not all of these three key aspects can be implemented at the same time, these three key aspects will be reviewed according to a staged approach. A staged review enables the review of aspects of CbC reporting to occur as they are implemented, starting in 2017 and allowing for the early detection of inconsistencies in implementing the minimum standard as well as providing an opportunity for early remedial action to be taken by jurisdictions, if necessary.

A consolidated report on the outcomes of the peer reviews would be submitted to the Inclusive Framework on BEPS on an annual basis, with more frequent reporting including requests for guidance and decision as and when needed. These reports will also inform the discussions in 2020 of the effectiveness of the design of the CbC reporting standard.

### **Note**

1. The peer review would apply to reviews conducted in the context of the Inclusive Framework for BEPS Implementation. The modalities for reviews of jurisdictions of relevance, which may be identified in the future and which have not joined the Inclusive Framework, will be agreed in due course.
2. In the course of conducting the peer review, information will also be sought for monitoring purposes as to the implementation of the other transfer pricing documentation set out in the Action 13 Report, OECD (2015), being the Master File and Local File or equivalent. This is not part of the minimum standard and will not be considered in the peer review on CbC reporting.

3. This includes legislation, regulations and other guidance and the administrative and regulatory framework.

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## **Terms of reference for the conduct of peer reviews of the Action 13 minimum standard on country-by-country reporting**

### **Background - Summary of the Action 13 minimum standard**

1. The objective of the CbC report is to provide tax administrations with a high level overview of the operations and tax risk profile of the largest multinational enterprise groups (“MNE” Groups). CbC reporting applies to MNE Groups with annual consolidated group revenue of EUR 750 million or more (or near equivalent in local currency) in the immediately preceding fiscal year. The CbC report is prepared on an annual basis, and includes information broken down for each jurisdiction in which the MNE Group operates. This includes the amount of revenue from unrelated parties and related parties, profit or loss before income tax, income tax paid and accrued, stated capital, accumulated earnings, number of employees and tangible assets, as well as a list of every entity in the group, its jurisdiction of tax residence and the nature of its business, and a section for additional explanatory information. In order to ensure consistency in the implementation of CbC reporting across a large number of jurisdictions, the Action 13 Report contains a standard template in accordance with which the CbC report must be prepared.

2. The framework for CbC reporting will generally operate as follows: the Ultimate Parent Entity of the MNE Group will prepare and file its CbC report with the tax administration in its jurisdiction of tax residence. That tax administration will automatically exchange the CbC report with the tax administrations in the jurisdictions listed in the CbC report as being a place in which the MNE Group has a Constituent Entity resident for tax purposes. This exchange is carried out subject to the terms of an International Agreement (such as the multilateral Convention on Mutual Administrative Assistance in Tax Matters or a Double Tax Convention or a Tax Information Exchange Agreement) permitting automatic exchange of information, as well as a Qualifying Competent Authority Agreement which sets out the operational details of the exchange of CbC reports. Other filing mechanisms, known as surrogate parent filing and local filing, can be used in specific cases as an alternative to this general mechanism.

3. The Action 13 Report and the relevant International Agreements and Qualifying Competent Authority Agreements set out the necessary safeguards for the international exchange of CbC reports. In addition to confidentiality obligations that apply to any exchange of information under an International Agreement, there are important provisions relating to the permitted use of the CbC reports. The standard permits the use of CbC reports for assessing high-level transfer pricing risk, for assessing other BEPS-related risks, and, where appropriate, for economic and statistical analysis. The standard requires that no tax administration will use information in the CbC reports as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and full comparability analysis. The information in a CbC report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate, and should not be used by tax administrations to propose transfer pricing adjustments based on a global formulary apportionment of income. If a jurisdiction does

make such an adjustment, it commits that the jurisdiction's competent authority will promptly concede the adjustment in any relevant competent authority proceeding.

4. The Action 13 Report recommended that jurisdictions introduce CbC reporting with respect to fiscal years beginning on or after 1 January 2016, subject to the time necessary to complete domestic legislative processes, that CbC reports be filed within 12 months of the end of the MNE Group's fiscal year, and that CbC reports be exchanged within 15 months of the end of the MNE Group's fiscal year (18 months for the first reporting period). Consequently, the first CbC reports would be filed by MNE Groups with the relevant tax administration by 31 December 2017 (covering the 2016 calendar fiscal year), and then exchanged between relevant tax administrations by mid-2018. In subsequent years, the international exchange of CbC reports will occur by 31 March each year (with respect to calendar years).

5. The Action 13 Report, however, acknowledged that some jurisdictions may need time to follow their particular domestic legislative process in order to make necessary adjustments to the law. Each member of the Inclusive Framework will be included in the peer review for each year, providing an opportunity to report on the progress in implementing CbC reporting.<sup>1</sup>

## Terms of Reference

6. These terms of reference break down the key components of the standard into specific criteria, focussed around three key elements:

- A. The domestic legal and administrative framework
- B. The exchange of information framework
- C. The confidentiality and appropriate use of CbC reports

7. Each Inclusive Framework member jurisdiction will be assessed against these terms of reference. Defined terms used throughout this document take their meaning from the 2015 Action 13 Report (OECD, 2015) including the model legislation it contains. For convenience, a glossary of certain key terms is included in section D of these terms of reference.

### *A. The domestic legal and administrative framework*

8. Jurisdictions should put in place the domestic legal and administrative framework to ensure CbC reporting by the relevant taxpayers to the tax administration. This requires the following:

- (a) **Parent entity filing obligation.** Introducing a CbC report filing obligation on Ultimate Parent Entities:
  - i. which applies to an entity which is resident in its jurisdiction and which is the Ultimate Parent Entity of an MNE Group;
  - ii. which applies to MNE Groups with annual consolidated group revenue in the immediately preceding fiscal year of 750 million Euro or more (or a near equivalent amount in domestic currency as of January 2015);
  - iii. whereby the Ultimate Parent Entity is required to include in the CbC report any Constituent Entity that is (i) any separate business unit of the MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such

business unit of the MNE Group were traded on a public securities exchange, (ii) any such business unit that is excluded from the MNE Group's Consolidated Financial Statements solely on size and materiality grounds, and (iii) any permanent establishment of any separate business unit of the MNE Group included in (i) or (ii) provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

iv. which would not exclude an entity from CbC reporting other than as permitted by the 2015 Action 13 Report (OECD, 2015).

(b) **Scope and timing of parent entity filing.** Providing that the filing of a CbC report by an Ultimate Parent Entity (or, if applicable, by a Surrogate Parent Entity) must be in accordance with the following:

- i. reporting commences from a specific fiscal year;<sup>2</sup>
- ii. the CbC report includes all of, and only, the information as contained in the CbC report template in the Action 13 Report<sup>3</sup> (OECD, 2015) with regard to each jurisdiction in which the MNE Group operates;
- iii. the CbC report is required to be filed no later than 12 months after the last day of the reporting Fiscal Year of the MNE Group;
- iv. where rules or guidance are issued on other aspects of filing requirements (e.g. details on source of data, currency issues, definitions of information to be reported), ensuring that they are not inconsistent with, and do not circumvent, the minimum standard.

(c) **Limitation on local filing obligation.**<sup>4</sup> If local filing requirements have been introduced, that such requirements apply only as follows:

- i. whereby local filing applies to a Constituent Entity resident for tax purposes in the given jurisdiction;
- ii. that the content of the CbC report is not required to contain more than that required of an Ultimate Parent Entity;
- iii. that even if the conditions for local filing in (iv) have otherwise been met, no local filing of a CbC report can be required by the jurisdiction unless it has met the requirements of confidentiality, consistency and appropriate use;<sup>5</sup>
- iv. that no local filing of a CbC report relating to a particular fiscal year can be required unless one or more of the following conditions have been met with respect to that fiscal year:
  - a) the Ultimate Parent Entity of the MNE Group is not obligated to file a Country-by-Country Report in its jurisdiction of tax residence; or
  - b) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the given jurisdiction is a party but does not have a Qualifying Competent Authority Agreement in effect to which this jurisdiction is a party by the time for filing the Country-by-Country Report;<sup>6</sup> or

- c) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified to the Constituent Entity by its tax administration;
  - v. if there is more than one Constituent Entity of the same MNE Group that is resident for tax purposes in the jurisdiction, an MNE Group is allowed to designate one Constituent Entity to file the CbC report which would satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the given jurisdiction.
- (d) **Limitation on local filing in case of surrogate filing.**<sup>7</sup> If local filing requirements have been introduced, local filing will not be required when there is surrogate filing<sup>8</sup> in another jurisdiction by an MNE Group, to the extent that the following conditions are met with respect to that fiscal year:
- i. the jurisdiction of the Surrogate Parent Entity requires filing of CbC reports that include all of, and only the information as contained in the CbC report template in the Action 13 Report (OECD, 2015);<sup>9</sup>
  - ii. there is a Qualifying Competent Authority Agreement in effect with the jurisdiction of tax residence of the Surrogate Parent Entity by the filing deadline of the CbC report;
  - iii. the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the jurisdiction otherwise imposing local filing of any Systemic Failure;
  - iv. the CbC report is exchanged by the jurisdiction of the Surrogate Parent Entity;
  - v. the jurisdiction of the Surrogate Parent Entity has been notified by the Constituent Entity resident for tax purposes that it is the Surrogate Parent Entity, by a certain date (if such notifications are required);
  - vi. a notification is received from the Constituent Entity resident for tax purposes in the jurisdiction indicating the identity and tax residence of the Reporting Entity, by a certain date (if such notifications are required).
- (e) **Effective implementation.** Providing for enforcement provisions and monitoring relating to CbC reporting's effective implementation:<sup>10</sup>
- i. having mechanisms (such as notifications and penalties) to enforce compliance by all Ultimate Parent Entities and Surrogate Parent Entities with their filing obligations;
  - ii. applying the above mechanisms effectively;
  - iii. determining the number of Ultimate Parent Entities and Surrogate Parent Entities which have filed a CbC report, and in the case of local filing, determining the number of Constituent Entities filing CbC reports.

### ***B. The exchange of information framework***

9. The peer review will consider whether and to what extent jurisdictions have international exchange of information agreements that allow automatic exchange of information. Jurisdictions should exchange the CbC reports submitted to them by the Ultimate Parent Entity or Surrogate Parent Entity with certain other tax administrations. Jurisdictions should:



- (a) Within the context of the international exchange of information agreements that allow automatic exchange of information,<sup>11</sup> have Qualifying Competent Authority Agreements that are in effect with jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use prerequisites that underpin the Action 13 minimum standard;
- (b) Ensure that each of the mandatory fields of information required in the template contained in Annex III to the Transfer Pricing Guidelines Chapter V Transfer Pricing Documentation – Country-by-Country Report as contained in the 2015 Action 13 Report (OECD, 2015) are present in the information exchanged;<sup>12</sup>
- (c) With respect to each CbC report, ensure that the CbC reports are exchanged with all tax jurisdictions listed in Table 1 of the CbC reporting template, provided there is an International Agreement and Qualifying Competent Authority Agreement in place with such jurisdictions;
- (d) Ensure that the information to be exchanged is transmitted to the relevant jurisdictions on an annual basis in accordance with the timelines provided for in the relevant Qualifying Competent Authority Agreements;<sup>13</sup>
- (e) Ensure that a temporary suspension of exchange of information or termination of a Qualifying Competent Authority Agreement would be carried out only as per the conditions set out in such agreement;
- (f) Ensure that their Competent Authority consults with the other Competent Authority before making a determination of Systemic Failure or significant non-compliance by that other Competent Authority;
- (g) Ensure that the format used for the information to be exchanged complies with the OECD XML Schema and the information is provided in accordance with the OECD XML Schema User Guide;
- (h) Ensure that an appropriate encryption method and method for electronic data transmission are in place.

### ***C. Confidentiality and appropriate use of CbC reports***

10. Jurisdictions should ensure that CbC reports are kept confidential and used appropriately. This requires the following:

11. With respect to confidentiality, jurisdictions should:

- (a) Have international exchange of information mechanisms which provide that any information received shall be treated as confidential and, unless otherwise agreed by the jurisdictions concerned, may be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the exchange of information clause. Such persons or authorities should use the information only for such purposes unless otherwise agreed between the parties and in accordance with their respective laws;
- (b) Have the necessary domestic rules or procedures to give effect to the restrictions contained in the International Agreement and related Qualifying Competent Authority Agreement;
- (c) Have in place and enforce legal protections of the confidentiality of the information contained in CbC reports which are received by way of local filing, which preserve

the confidentiality of the CbC report to an extent at least equivalent to the protections that would apply if such information were delivered to the country under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD, 2011), a Tax Information Exchange Agreement or a tax treaty that meets the internationally agreed standard of information upon request as reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes;

- (d) Have effective penalties for unauthorised disclosures or unauthorised use of confidential information;
  - (e) Ensure confidentiality in practice, for instance having in place a review and supervision mechanism to identify and resolve any breach of confidentiality;
  - (f) Respect the terms of the International Agreement and related Qualifying Competent Authority Agreement, including the limitation on use of information received for taxable periods covered by the agreement.
12. With respect to appropriate use:
- (a) Jurisdictions should have in place mechanisms (such as legal or administrative measures) to ensure that CbC reports which are received through exchange of information or by way of local filing:
    - i. can be used only to assess high-level transfer pricing risks and other BEPS-related risks and, where appropriate, for economic and statistical analysis;
    - ii. cannot be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis;
    - iii. are not used on their own as conclusive evidence that transfer prices are or are not appropriate;
    - iv. are not used to make adjustments of income of any taxpayer on the basis of an allocation formula (including a global formulary apportionment of income).
  - (b) Where an adjustment is made in contravention of the above conditions, that jurisdiction making such an adjustment will promptly concede such adjustment in any competent authority proceedings.<sup>14</sup>
13. Jurisdictions should have in place procedures or mechanisms to ensure that a consultation process takes place between Competent Authorities in cases where an adjustment of the taxable income of a Constituent Entity, as a result of further enquiries based on the data in the CbC report, leads to undesirable economic outcomes.<sup>15</sup>

#### ***D. Defined terms***

14. The following defined terms used throughout this document take their meaning from the model legislation contained in the 2015 Action 13 Report (OECD, 2015) (and the CbC reporting Multilateral Competent Authority Agreement (MCAA) where relevant):

15. “MNE Group” means any Group that (i) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and (ii) is not an Excluded MNE Group.

16. “Excluded MNE Group” means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than 750 million Euro (or an amount in local currency approximately equivalent to 750 million Euro as of January 2015) during the Fiscal Year immediately preceding the reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year.

17. “Reporting Entity” means the Constituent Entity that is required to file a country-by-report conforming to the requirements in Article 4 in its jurisdiction of tax residence on behalf of the MNE Group. The Reporting Entity may be the Ultimate Parent Entity, the Surrogate Parent Entity, or any entity described in paragraph 2 of Article 2 of the model legislation.

18. “Ultimate Parent Entity” means a Constituent Entity of an MNE Group that meets the following criteria:

- i. it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence<sup>16</sup>; and
- ii. there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in subsection (i) above in the first mentioned Constituent Entity.

19. “Qualifying Competent Authority Agreement” means an agreement (i) that is between authorised representatives of those jurisdictions that are parties to an International Agreement and (ii) that requires the automatic exchange of Country-by-Country Reports between the party jurisdictions.

20. “Surrogate Parent Entity” means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the Country-by-Country Report in that Constituent Entity’s jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in subsection (ii) of paragraph 2 of Article 2 of the model legislation applies.

21. “Systemic Failure” with respect to a jurisdiction means that a jurisdiction has a Qualifying Competent Authority Agreement in effect with another jurisdiction, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement) or otherwise persistently failed to automatically provide to that other jurisdiction Country-by-Country Reports in its possession of MNE Groups that have Constituent Entities in that other jurisdiction.

## Notes

<sup>1</sup> It is recognised that developing countries may face capacity challenges in implementing CbC reporting. The G20 has asked that the OECD take into account those capacity challenges in the timelines for implementation of the BEPS package, and this has been done by the Inclusive Framework in adjusting the Action 5 timelines and allowing for the deferral of the Action 14 peer

reviews. Many developing countries are interested in receiving CbC reports, and as such will introduce CbC reporting obligations even if they do not have any MNE Groups headquartered in their jurisdiction that would be subject to CbC reporting. This is because introducing domestic legislation for CbC reporting is a precondition in order to receive CbC reports. However, it is possible that there are developing countries that do not have any MNE Groups headquartered in their jurisdiction that would be subject to CbC reporting, and that are not yet ready to receive CbC reports. In such cases, rather than find such developing countries to have failed to implement CbC reporting, the peer review will instead require a certification process whereby the jurisdiction could confirm that there are no MNE Groups within scope that are headquartered in the country and documenting how that fact is known for the year in question. This would be confirmed for each year. Where this certification is made, such countries would therefore not be subject to further peer review for the year in question. This would be part of the 2020 review.

2. The minimum standard recommends that the first CbC reports be required to be filed for MNE fiscal years on or after 1 January 2016. However, it is acknowledged that some jurisdictions may need time to follow their particular domestic legislative process and they may therefore introduce a later start date.
3. See Annex III to Chapter V Transfer Pricing Documentation – Country-by-Country Report. (OECD, 2015).
4. A “local filing” obligation means an obligation to file or otherwise make available a CbC report imposed on a Constituent Entity other than the Ultimate Parent Entity of an MNE Group. Local filing is not required to be introduced in order to meet the minimum standard and the absence of local filing requirements will not affect the outcome of the peer review on CbC reporting.
5. See Paragraph 60 of the Action 13 Report (OECD, 2015).
6. It is noted that Paragraph 60 of the Action 13 Report (OECD, 2015) does not allow this condition to be invoked by the given jurisdiction in the circumstance where it is not willing to enter into a Qualifying Competent Authority Agreement with the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes (i.e., in the context of the MCAA it does not designate such jurisdiction as an intended exchange partner), despite the fact that this latter jurisdiction meets the requirements of confidentiality, consistency and appropriate use.
7. “Surrogate filing” means filing for a particular Fiscal Year by a Surrogate Parent Entity of a CbC report conforming to the requirements in the jurisdiction of residence of the Surrogate Parent Entity for filing CbC reports, with the tax administration of this jurisdiction on or before the date required by this jurisdiction for the filing of CbC reports.
8. Including parent surrogate filing (or “voluntary filing”) as per the OECD Guidance on the Implementation of Country-by-Country Reporting on 2015 BEPS Action 13 (OECD, 2015) issued in June 2016, which may apply for a transitional period.
9. See Annex III to the Transfer Pricing Guidelines Chapter V Transfer Pricing Documentation – Country-by-Country Report.
10. Jurisdictions may use a variety of different mechanisms to ensure effective implementation of CbC reporting obligations. The terms of reference require that there be one or more mechanisms in place and that such mechanism(s) be effective in practice. The terms of reference do not prescribe that a particular mechanism must be used to meet the minimum standard.
11. It is acknowledged that jurisdictions may not have exchange of information instruments in place with all members of the Inclusive Framework. Jurisdictions are encouraged to expand the coverage of their international agreements for exchange of information. However, as this can take time, for the purposes of the peer reviews, jurisdictions will be assessed on their compliance with the minimum standard in respect of the exchange of information network in effect for the year of the particular annual review.
12. The template is also contained in the MCAA.

13. Although jurisdictions which would exchange information on CbC reports may set specific dates, it is expected that there would at least be an annual exchange of information in order to meet the policy intention of the minimum standard. For exchanges of information under the CbC Multilateral Competent Authority Agreement (MCAA), the following timelines apply:
- (i) For the first exchange of CbC reports, no later than 18 months after the last day of the fiscal year of the MNE Group
  - (ii) For subsequent exchanges, no later than 15 months after the last day of the fiscal year of the MNE Group.
14. A separate peer review of mutual agreement procedures is being carried out in connection with the BEPS Action 14 Report (*Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD, 2015). The peer review of CbC reporting is separate from the Action 14 peer review.
15. See footnote 1 to paragraph 59 of the 2015 Action 13 Report (OECD, 2015).
16. Where a partnership is the Ultimate Parent Entity, for the purpose of determining where it is required to file the CbC report in its capacity as the Ultimate Parent Entity, the jurisdiction under whose laws the partnership is formed / organised will govern if there is no jurisdiction of tax residence. See OECD Guidance on the Implementation of Country-by-Country Reporting on BEPS Action 13 issued in June 2016.

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## **Methodology for the conduct of peer reviews of the Action 13 minimum standard on country-by-country reporting**

### **Introduction and scope**

1. This methodology sets out the process for undertaking the peer reviews of jurisdictions' compliance with the Action 13 minimum standard on country-by-country (CbC) reporting. It sets out the scope, the information that will be used to conduct the reviews, the timelines and procedures, outline of the peer review reports, the process for discussion and approval of reviews, amendments and interpretation, and the confidentiality of peer review documents.
2. All members of the Inclusive Framework on BEPS and any non-member jurisdiction relevant to the work will undergo a yearly peer review, starting from 2017. As part of the BEPS Action Plan, the 2015 Action 13 report (OECD, 2015) will be reviewed in 2020.
3. A phased approach for the peer review will take into account the fact that implementation by jurisdictions of the three key aspects described in the terms of reference will take place progressively, starting with putting in place the domestic legal and administrative framework and exchange of information instruments in 2016 and 2017, followed by the international exchange of CbC reports starting by mid-2018, and finally the use of those reports in tax compliance activity beginning in the second half of 2018. Such an approach will allow starting the peer reviews to identify any issues requiring improvement at an early stage rather than waiting until implementation is complete before commencing this work. It will also help anticipate and inform the discussions in 2020 of the effectiveness of the design of the CbC reporting standard.
4. There will be three phases for the peer review structured into annual reviews, starting respectively in 2017, 2018 and 2019. Each phase will focus on different key aspects of jurisdictions' implementation so as to mirror the evolving background. An annual review process will allow the CbC Reporting Group to report annually to the Inclusive Framework and to take into account any updates since the previous review, as well as follow-up actions of reviewed jurisdictions further to any recommendation made by the Inclusive Framework.
5. During phase one (starting in 2017), the review will focus on the domestic legal and administrative framework as well as certain aspects of confidentiality. During phase two (starting in 2018), the review will focus on the exchange of information framework and appropriate use. Phase two will start in the spring so as to allow feedback on the first exchanges of information which are to take place by mid-2018. During phase three (starting in 2019), the review will cover all three key aspects of jurisdictions' implementation. A detailed timeline of each phase is provided in the Annex.
6. Each year's review process will culminate in the production of an annual report on CbC reporting implementation. The 2017 and 2018 annual reports will cover only the

review of the key aspects in question, while the 2019 report will cover the review of all key aspects.

### **Information used to conduct the peer review**

7. The sources of information that will be used in the review of each member of the Inclusive Framework on BEPS and any identified jurisdiction of relevance (i.e., each reviewed jurisdiction) include:

- Information from the reviewed jurisdiction, provided by the reviewed jurisdiction in a self-assessment questionnaire to be completed for each year of the review, as well as supporting materials such as legislation and other explanatory material;
  - For simplicity, the same questionnaire, covering all aspects of the terms of reference, will be used for reviewed jurisdictions each year. However, jurisdictions will be expected to answer only the questions relating to the aspects covered during the annual review concerned, in accordance with the timeline described below.<sup>1</sup>
  - Once an aspect of CbC reporting has been reviewed, then the response in subsequent years to the portion of the peer review questionnaire dealing with this aspect will be expected to provide only an update on any changes and action taken to address recommendations for improvement, if applicable.
- Information from peers (i.e., other members of the Inclusive Framework), providing input and feedback on the exchange of information and appropriate use of CbC reports. This input and feedback will be obtained annually through peer input questionnaires;
  - For simplicity, the same questionnaire will be used to gather input from peers in each of the phases. However, jurisdictions will be expected to answer only the questions relating to the aspects covered during the annual review concerned.
- Information provided to the OECD in its role as Co-ordinating Body Secretariat for the multilateral Convention for Mutual Administrative Assistance in Tax Matters and the CbC Reporting Multilateral Competent Authority Agreement (MCAA); and
- Information on the assessments of confidentiality and data safeguards conducted in the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) with respect to the automatic exchange of financial account information (the Common Reporting Standard).<sup>2</sup>

8. Because peer review is an intergovernmental process, business and civil society groups' participation in the formal evaluation process and, in particular, the evaluation exercise and the discussions in the CbC Reporting Group is not specifically solicited. The publication of the schedule of upcoming reviews would enable interested parties to provide information either to tax administrations or to the OECD Secretariat.<sup>3</sup> However, as the process works on the basis of a peer review system, the report ultimately reflects the views of the peers of the reviewed jurisdiction.



## Timeline and items covered for each peer review stage

9. The review of every member of the Inclusive Framework on BEPS (including any identified jurisdiction of relevance) will be conducted for each phase in accordance with the following timelines. A detailed timeline of each phase is provided in the Annex.

10. Phase one of the peer review (2017) will focus on the first key area for the peer review which is the domestic legal and administrative framework.<sup>4</sup> The review process will cover all items included in Section A of the terms of reference (the domestic legal and administrative framework) and corresponding questions (see table below). As the first exchanges of CbC reports will not occur before mid-2018, phase one of the review will focus only on certain items relevant to the exchange of information network. In addition, since confidentiality and appropriate use aspects are a prerequisite for exchange of information, an initial review of these aspects will also be carried out during phase one (see table below for the specific items covered during phase one).

11. The review process will start in early 2017, given that it is a priority to review the implementation of the domestic framework. It will extend until the end of the year, with an approval process by the CbC Reporting Group expected for early 2018, and approval by the Inclusive Framework no later than its June 2018 meeting. This flexible timeline is designed to allow sufficient time for reviewed jurisdictions and peers to carry out the required actions for the first annual review.

12. Phase two of the peer review will focus on the exchange of information (including feedback on the first exchanges of information) as well as appropriate use (see table below for the specific items covered during phase two). Given that the first exchanges of CbC reports will occur in mid-2018, the review process will start in the spring of 2018 and will provide opportunities for updated information later in the year, so that reviewed jurisdictions and peers will be able to provide timely input, with approval by the CbC Reporting Group in the first few months of 2019 and approval by the Inclusive Framework no later than its June 2019 meeting.

13. Phase three of the peer review will cover all three key aspects with a view to having a complete picture of jurisdictions' implementation. Like the previous year, the review process will start in the spring of 2019, with approval by the CbC Reporting Group in the first few months of 2020 and approval by the Inclusive Framework no later than its June 2020 meeting.

14. For each of the phases of the peer review, the following items would be covered:

Peer review phases	Components of terms of reference covered by the review	Corresponding questions in the questionnaire for reviewed jurisdiction or peer input, as relevant
<b>2017</b>		
Domestic legal and administrative framework	Section A: all items	All questions included in Part I.
Exchange of information framework	Section B: item 9 a)	Questions 11 to 14 and 23 of Part II.
Confidentiality, consistency and appropriate use	Section C: items 11 a), 11 b), 11 c), 11 d), and 12 a)	Questions 24, 25, 26, 27, 28 and 30 of Part III.
Peer input	Section B: item 9 a)	Questions 1 to 3, 11, 17 and 18

2018		
Domestic legal and administrative framework	If applicable: update of Section A (including for jurisdictions which have not provided input the previous year)	If applicable: all questions included in Part I.
Exchange of information framework	Section B: items 9 b) to h) If applicable: update of item 9 a) of Section B (including for jurisdictions which have not provided input the previous year)	All remaining questions of Part II. If applicable: questions 11 through 14 and 23 of Part II.
Confidentiality, consistency and appropriate use	Section C: all items If applicable: update of items 11 a), 11 b), 11 c) and 11 d) and 12 a) (including for jurisdictions which have not provided input the previous year)	All remaining questions of Part III. If applicable: questions 24, 25, 26, 27, 28 and 30 of Part III.
Peer input	All sections	All questions
2019		
Domestic legal and administrative framework	Section A: all items (updates as the case may be)	All questions included in Part I. Update as the case may be.
Exchange of information framework	Section B: all items (updates as the case may be)	All questions included in Part II. Update as the case may be.
Confidentiality, consistency and appropriate use	Section C: all items (updates as the case may be)	All questions included in Part III. Update as the case may be.
Peer input	All sections	All questions

### Data gathering and review process

15. Each year, the review of every member of the Inclusive Framework on BEPS (including any identified jurisdictions of relevance) will be conducted in accordance with the following data gathering and review processes which are presented in chronological order (a detailed timeline of each phase is provided in the Annex). Taking into account the need to efficiently manage resources, the approval process for the annual reports by the CbC Reporting Group will be carried out through the written procedure. Two rounds of approvals by the CbC Reporting Group through the written procedure will take place. Where material relating to a reviewed jurisdiction has not been approved under the written procedure, there will be a third round of approvals conducted through discussion at a meeting of the CbC Reporting Group.

Process	Explanation
1. Secretariat sends self-assessment questionnaire to all Inclusive Framework members, for completion.	The self-assessment questionnaire covers each aspect of the terms of reference for the given phase. Jurisdictions should provide responses in sufficient detail to allow an assessment to take place, and where relevant should include supporting material such as a copy of relevant legal provisions. No confidential taxpayer-specific information should be included. Questionnaire responses and any supporting material should be provided in English or French.
2. Reviewed jurisdictions (all members of the Inclusive Framework) submit completed self-assessment questionnaire to Secretariat.	The Secretariat will perform a high-level check of the questionnaires received in order to identify any obvious problems (such as missing answers / incorrect interpretation of questions / obvious errors / etc.) or for any necessary clarification. If the Secretariat identifies any such problems, the Secretariat will discuss these with the relevant jurisdiction and where relevant the jurisdiction will be encouraged to submit a revised questionnaire.
3. Self-assessment questionnaire uploaded to CbC Reporting Group secure Clearspace site.	The received questionnaire (or the revised questionnaire as the case may be) will be made available on the CbC Reporting Group secure Clearspace site.
4. Peer input questionnaire sent to all Inclusive Framework members, for completion.	All members of the Inclusive Framework on BEPS will be given the opportunity to examine the questionnaires and to provide peer input on their experience with respect to the reviewed jurisdiction in connection with CbC reporting. Jurisdictions providing peer input should not include any confidential taxpayer-specific information. Peer input is encouraged but not required. Peer input questionnaires should be answered in English or French.
5. Peer input questionnaire responses provided to Secretariat and shared with reviewed jurisdiction. Reviewed jurisdictions may provide written comments to Secretariat.	The Secretariat will share the peer input received on a reviewed jurisdiction only with that reviewed jurisdiction. Reviewed jurisdictions will have the opportunity to respond to the peer input to the Secretariat.
6. Draft section on each reviewed jurisdiction sent to that jurisdiction for comments/approval. Written comments from reviewed jurisdictions.	The Secretariat will prepare a draft of a short section for each reviewed jurisdiction (i.e., an individual section of the annual report), with any Secretariat proposals for recommendations for improvement where relevant. The outline of the draft section on each Inclusive Framework member is included in the next section of this methodology. Each reviewed jurisdiction will have the opportunity to review its draft section, and have the opportunity to provide comments to the Secretariat (including text to be included in the section which would provide the jurisdiction's response to the review of its implementation of CbC reporting) in advance of the draft section being circulated to the CbC Reporting Group. The Secretariat will discuss with the reviewed jurisdiction the incorporation of any changes to its draft section. If the reviewed jurisdiction does not provide any comments on its section, it will be considered to have approved the section.
7. Compilation of individual sections sent by Secretariat to the CbC Reporting Group for comments/approval (first round of approval by the CbC Reporting Group). Revised draft section sent by	The Secretariat will prepare a compilation containing all draft sections relating to each reviewed jurisdiction, and send the compilation to the CbC Reporting Group for approval. This will be the first round of approval by the CbC Reporting Group. Delegates of the CbC Reporting Group to provide written comments, if any, on the draft reports.  At the same time, for any draft section which was revised, the Secretariat

Process	Explanation
<p>Secretariat to the reviewed jurisdiction concerned for comments/approval. Secretariat requests update of peer input questionnaires</p>	<p>will send the revised section relating to a reviewed jurisdiction to this reviewed jurisdiction, for approval. The Secretariat will request IF members to update their peer input, and will provide the revised input to the reviewed jurisdiction. The reviewed jurisdiction may provide comments to the Secretariat on its section and/or the revised peer input. In the absence of comments, the jurisdiction will be considered to have approved the section. Sections which are not the subject of any written comments from the CbC Reporting Group or the reviewed jurisdiction will be considered to be approved.</p>
<p>8. Revised draft section sent by Secretariat to the reviewed jurisdiction concerned for approval.</p>	<p>If comments from the CbC Reporting Group or from a reviewed jurisdiction are received that necessitate a change to the draft section for the reviewed jurisdiction, a revised draft section will be sent to that jurisdiction for approval.</p>
<p>9. Draft annual report sent to the CbC Reporting Group for approval of any material not yet approved (second round of approval by the CbC Reporting Group).</p>	<p>Secretariat will compile all sections relating to all reviewed jurisdictions into a draft annual report on CbC reporting implementation. This draft annual report will reflect written comments received from reviewed jurisdictions, if any. It will be sent to the CbC Reporting Group for approval of any material not yet approved during the previous round of approval by the CbC Reporting Group. This will be the second round of approval by the CbC Reporting Group. Members of the CbC Reporting Group may provide the Secretariat with written comments on a section of the annual report which has not yet been approved. If no comments are received from the CbC Reporting Group with respect to a reviewed jurisdiction's section contained in the annual report and that section has been approved by the reviewed jurisdiction concerned, that section of the report will be considered to be approved by the CbC Reporting Group. Secretariat will revise the sections concerned in the draft annual report based on comments received.</p>
<p>10. Approval of annual report by CbC Reporting Group at meeting (third round of approval by CbC Reporting Group).</p>	<p>In respect of any Inclusive Framework member's section of the annual report that has not been approved under the written procedure, that jurisdiction's report will be tabled for discussion at a meeting of the CbC Reporting Group. This will be the third round of approval by the CbC Reporting Group. The CbC Reporting Group meeting will constitute the last possible time when a reviewed jurisdiction may present updated information demonstrating actions taken to address or improved any issue found during the review process. See below for more detail on the process for approval of reports.</p>

### Outline of annual report on CbC reporting implementation

16. The annual report will contain two parts.
17. First, the introduction and executive summary. This will explain the background to the peer review and a synthesis of the progress made by Inclusive Framework members in implementing CbC reporting in accordance with the items of the terms of reference covered during the annual review.
18. Second, with respect to each member of the Inclusive Framework, the annual report will contain a short section on that jurisdiction's implementation of the CbC reporting standard. The report will include proposed recommendations to address any shortcomings

for each jurisdiction, if necessary. However, there will be no ratings of compliance in the peer review.

19. The section of the annual report for each Inclusive Framework member will contain the following, and will generally be short:

1. Overview of implementation: current status and outcomes of previous reviews (if any);
2. Domestic legal and administrative framework, including any recommendations or action taken to address recommendations from previous reviews (if any);
3. Exchange of information, including any recommendations or action taken to address recommendations from previous reviews (if any);
4. Confidentiality and appropriate use, including any recommendations or action taken to address recommendations from previous reviews (if any);
5. The jurisdictions' response to the review (if any).

### **Discussion and approval of annual report**

20. As outlined in the sections on timeline and data gathering and review process, the annual report will be submitted to the CbC Reporting Group for approval under the written procedure. Delegates of the CbC Reporting Group will be asked to approve the annual report in its entirety, or, if they cannot, to approve the individual sections in the annual report pertaining to specific Inclusive Framework members.

21. Any section of the annual report that is not approved by written procedure will be scheduled for discussion at a meeting of the CbC Reporting Group. At the meeting, for each reviewed jurisdiction whose section was not approved via the written procedure, the Secretariat will briefly introduce the section of the draft annual report that relates to the jurisdiction. CbC Reporting Group delegates will have an opportunity to ask any additional questions regarding the reviewed jurisdiction. The reviewed jurisdiction will have the opportunity to have its views represented to the CbC Reporting Group. It will have the options of attending the meeting and participating in the discussions of its review either in person or remotely, or of asking the Secretariat to explain the reviewed jurisdiction's comments to the CbC Reporting Group.<sup>5</sup> The reviewed jurisdiction may also provide a response to its review, to be included in the section on that jurisdiction.

22. On the basis of the discussion, the CbC Reporting Group may agree amendments to the annual report and any proposed recommendations if needed.

23. The CbC Reporting Group will submit the agreed annual report to the Inclusive Framework on BEPS, inviting it to adopt the report. In the exceptional circumstances that the CbC Reporting Group is unable to approve a section relating to a particular reviewed jurisdiction, this will be referred to the Inclusive Framework on BEPS together with an explanation. The CbC Reporting Group may also seek guidance from the Inclusive Framework if any issue of importance needs to be considered.

### **Amendments and interpretation**

24. The CbC Reporting Group may agree to any amendments to the terms of reference, methodology or questionnaires for undertaking the peer reviews. Any such amendments

will be agreed by the CbC Reporting Group members on the basis of consensus and approved by the Inclusive Framework on BEPS.

25. The CbC Reporting Group may agree on additional technical guidance to clarify the Action 13 minimum standard, which would be submitted for approval to Working Party 6 or Working Party 10 as appropriate, and for further approval by the Inclusive Framework. If new guidance is agreed, jurisdictions will be expected to adjust their implementation to reflect that guidance, if necessary, as soon as is practicable. It is acknowledged that jurisdictions may require additional time to implement such changes including any necessary changes to domestic law.

### **Confidentiality of peer review documents**

26. Documents produced by a reviewed jurisdiction during a review (including responses to the questionnaire for reviewed jurisdictions, responses to the peer input questionnaire and responses to the Secretariat's queries) as well as draft documents and written comments on draft documents and peer comments will be treated as confidential and for official use only. These documents should not be made publicly available. Any breach of confidentiality should be brought to the attention of the Chair of the CbC Reporting Group, who will decide on the appropriate action in consultation with the CbC Reporting Group as appropriate. The annual report will remain confidential but will be made public if the Inclusive Framework decides to declassify it.

## **Notes**

1. If an aspect of CbC reporting has not yet been implemented by a reviewed jurisdiction, the jurisdiction will note that the section of the questionnaire is not yet applicable and provide any useful details in this respect, and should provide an update on implementation progress.
2. The Global Forum has conducted preliminary expert assessments of confidentiality and data safeguards with respect to the standard on automatic exchange of information. Given its expertise in this area and the importance of ensuring that the reviews are conducted efficiently, the CbC Reporting Group will rely on the work of the Global Forum on confidentiality and data safeguards and will not form its own conclusions on this aspect of the review. In most cases, this will entail restating the Global Forum's conclusion as to a reviewed jurisdiction, together with a reviewed jurisdiction's description of recent updates on implementation of the confidentiality and data safeguards requirements, if applicable, to the extent these have not yet been considered by the Global Forum. However, given that there are some jurisdictions which are members of the Inclusive Framework on BEPS but which have not been assessed by the Global Forum, a mechanism for a review of these jurisdictions will be needed. It is anticipated that the Inclusive Framework on BEPS will consider the best approach to designing such a mechanism and the results of this consideration would be taken into account by the CbC Reporting Group.
3. For example, in a number of areas, business may possess relevant information.
4. As the 2015 Action 13 Report (OECD, 2015) recognizes that some jurisdictions may need time to follow their particular domestic legislative process, reviewed jurisdictions which have not yet

implemented or completed their domestic legal and administrative framework in 2017 will need to answer questions 2 a), 2 b) and 2 c) of the questionnaire of the reviewed jurisdiction in the first year's questionnaire relating to their implementation steps, and will provide information on the final domestic legal and administrative framework in the questionnaire in the subsequent year.

5. These options address the fact that not all members of the Inclusive Framework are represented on the CbC Reporting Group.

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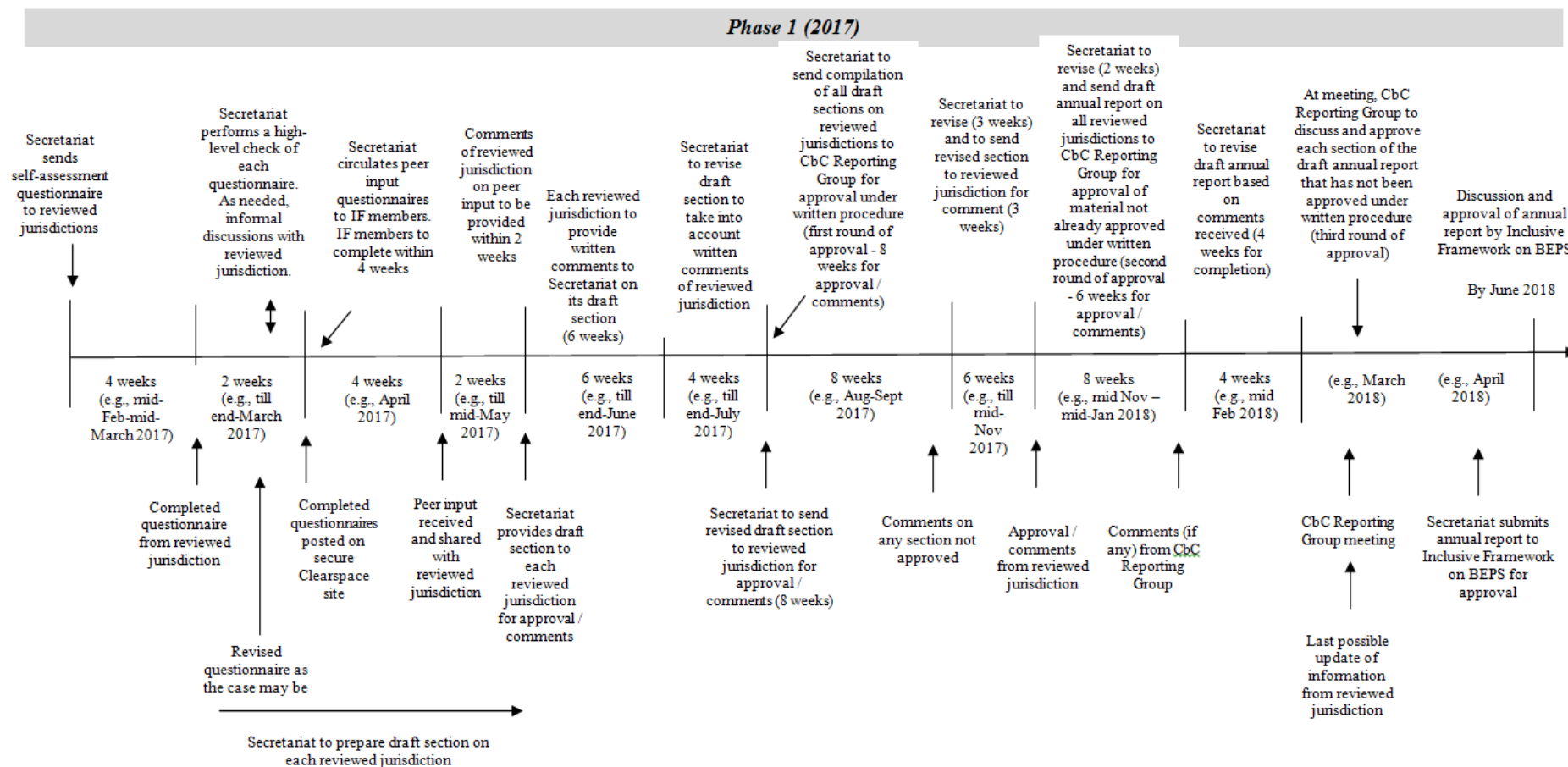
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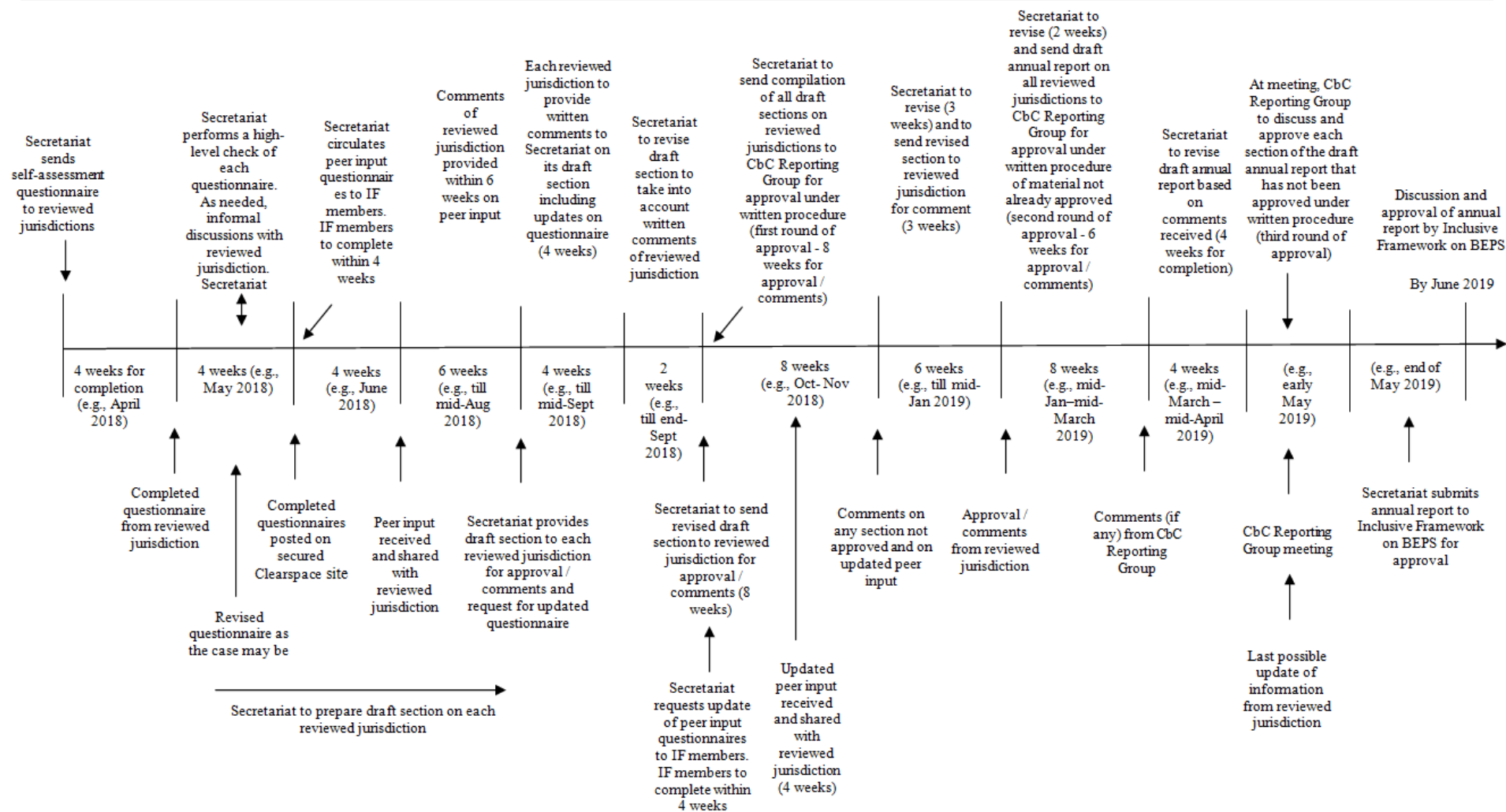




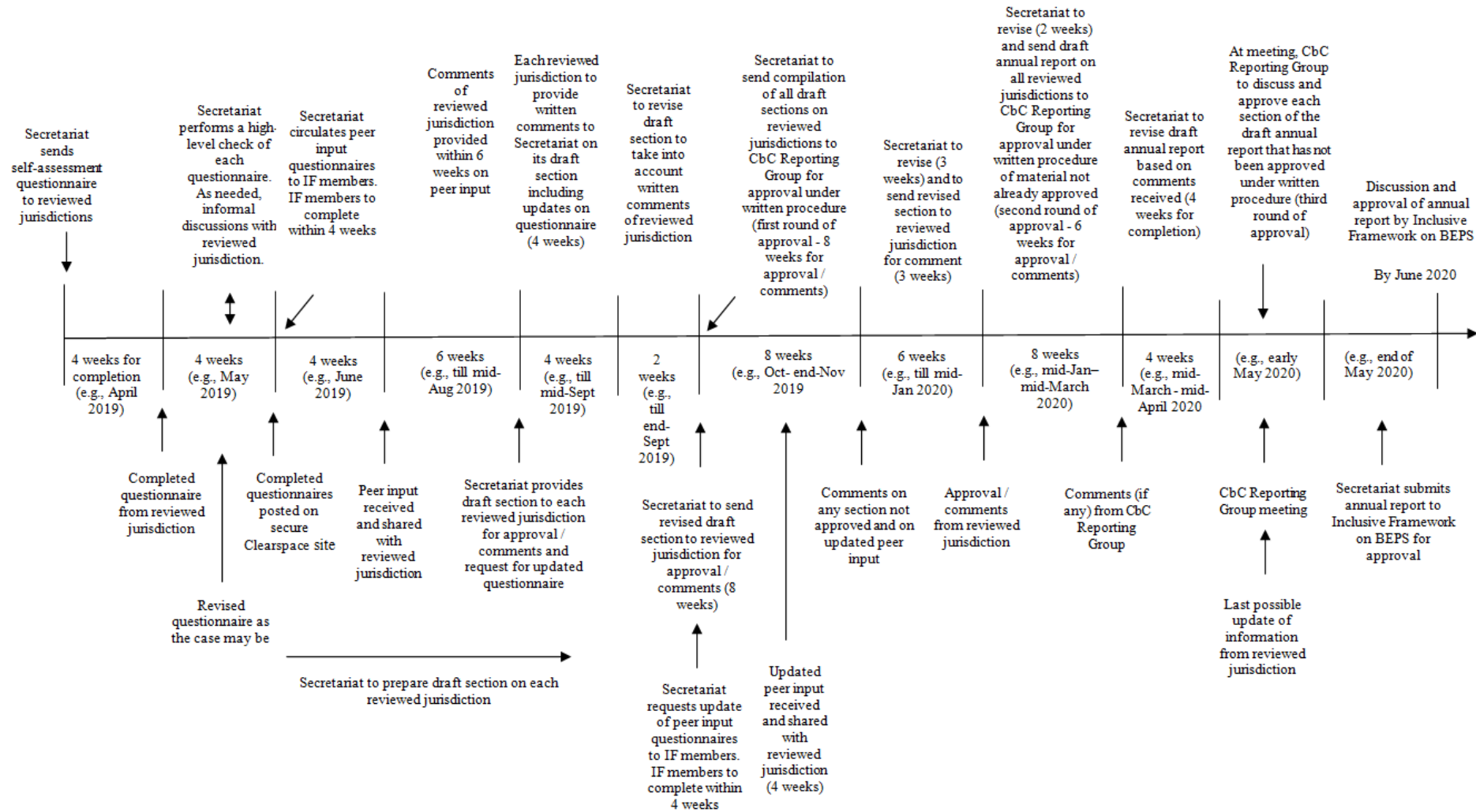
## Annex to the methodology - detailed outlines of each phase of the peer review



*Phase 2 (2018)*



## Phase 3 (2019)







# BEPS Action 13 on Country-by-Country Reporting

PEER REVIEW DOCUMENTS