

## 2 Key role of the BEPS MLI

### Ratification of the BEPS MLI

46. Since the provisions of the BEPS MLI first started to take effect, in 2019, the BEPS MLI has rapidly strengthened the bilateral tax treaty network of jurisdictions that ratified it. The number of agreements between members of the Inclusive Framework that became compliant with the BEPS MLI increased more than tenfold (from 60 to over 650) between 2019 and 2021; in 2022, this number increased by another 30%, to exceed 850. As in previous years, the peer review continues to reveal an important difference in the progress made on implementing the minimum standard by jurisdictions that have ratified the BEPS MLI compared with other jurisdictions.

47. Over the past year, 13 jurisdictions that are members of the Inclusive Framework have ratified the BEPS MLI: Andorra, Bahrain, Belize, Bulgaria, Cameroon, China (People's Republic of) (the instrument of approval also covering Hong Kong (China)), Romania, Senegal, the Seychelles, South Africa, Spain and Thailand.<sup>1</sup>

48. On average, nearly 50% of the treaty networks of jurisdictions for which the BEPS MLI started to take effect as of 1 January 2022,<sup>2</sup> are compliant with the minimum standard in 2022, as shown in the Table 2.1.

49. For the jurisdictions that ratified the BEPS MLI after October 2021,<sup>3</sup> the relevant provisions of the BEPS MLI had generally not yet started to take effect for their agreements on 31 May 2022. This is because provisions of the BEPS MLI can generally only start to take effect for an agreement after a period of time that follows the latest of the dates on which the BEPS MLI enters into force for each of the partners to an agreement. This period could roughly amount to a year from the latest ratification.<sup>4</sup>

50. As observed in prior peer reviews, while the jurisdictions that ratified the BEPS MLI made good progress in the implementation of the minimum standard, those that did not sign or ratify the BEPS MLI made comparatively little progress, in general, in implementing the minimum standard. Only around 15% of the agreements concluded by those jurisdictions are compliant.

51. The 2022 peer review thus continues to show the importance of swift ratification of the BEPS MLI. All signatories to the BEPS MLI that have not yet ratified it are therefore encouraged to do so.

52. The OECD Secretariat has liaised with the signatories of the BEPS MLI that, at the time of the drafting of this report, had not yet ratified it and notes that Mexico is aiming to deposit its instrument of ratification of the BEPS MLI during the fourth quarter of 2022.

Table 2.1. Treaty networks and ratification of the BEPS MLI

Jurisdiction	Date of BEPS MLI Signing	Date of BEPS MLI Ratification	Agreements in force on 31 May 2022	Compliant agreements on 31 May 2022	% of network compliant	% of network with IF members compliant
Albania	28 May 2019	22 September 2020	43	24	56%	58%
Andorra	07 June 2017	29 September 2021	9	8	89%	88%
Australia	07 June 2017	26 September 2018	45	25	56%	61%
Austria	07 June 2017	22 September 2017	91	32	35%	41%
Bahrain	27 November 2020	23 February 2022	45	1	2%	3%
Barbados	24 January 2018	21 December 2020	31	15	48%	39%
Belgium	07 June 2017	26 June 2019	95	45	47%	56%
Belize	11 January 2019	07 April 2022	5	0	0%	0%
Bosnia-Herzegovina	30 October 2019	16 September 2020	38	20	53%	59%
Bulgaria	07 June 2017	16 September 2022	71	3	4%	5%
Burkina Faso	07 June 2017	30 October 2020	4	2	50%	20%
Cameroon	11 July 2017	21 April 2022	6	0	0%	0%
Canada	07 June 2017	29 August 2019	94	42	45%	53%
Chile	07 June 2017	26 November 2020	33	22	67%	69%
China (People's Republic of)	07 June 2017	25 May 2022	102	4	4%	5%
Costa Rica	07 June 2017	22 September 2020	4	0	0%	0%
Croatia	07 June 2017	18 February 2021	66	41	62%	69%
Curaçao	07 June 2017	29 March 2019	4	1	25%	33%
Czech Republic <sup>1</sup>	07 June 2017	13 May 2020	92	40	43%	48%
Denmark	07 June 2017	30 September 2019	71	36	51%	60%
Egypt	07 June 2017	30 September 2020	59	29	49%	60%
Estonia <sup>2</sup>	29 June 2018	15 January 2021	62	12	19%	20%
Finland	07 June 2017	25 February 2019	73	43	59%	69%
France	07 June 2017	26 September 2018	120	51	43%	54%
Georgia	07 June 2017	29 March 2019	57	28	49%	54%
Germany <sup>2</sup>	07 June 2017	18 December 2020	94	10	11%	12%
Greece	07 June 2017	30 March 2021	57	38	67%	71%
Guernsey	07 June 2017	12 February 2019	14	10	71%	69%
Hong Kong (China) <sup>2</sup>	07 June 2017	25 May 2022	43	5	12%	12%
Hungary	07 June 2017	25 March 2021	83	47	57%	63%
Iceland	07 June 2017	26 September 2019	41	29	71%	73%
India	07 June 2017	25 June 2019	95	46	48%	59%
Indonesia <sup>2</sup>	07 June 2017	28 April 2020	71	26	37%	47%
Ireland	07 June 2017	29 January 2019	74	48	65%	68%
Isle of Man	07 June 2017	25 October 2017	10	6	60%	60%
Israel	07 June 2017	13 September 2018	60	33	55%	61%
Japan	07 June 2017	26 September 2018	78	50	64%	72%

Jersey	07 June 2017	15 December 2017	15	8	53%	54%
Jordan	19 December 2019	29 September 2020	39	19	49%	67%
Kazakhstan	25 June 2018	24 June 2020	55	27	49%	57%
Korea	07 June 2017	13 May 2020	94	49	52%	59%
Latvia	07 June 2017	29 October 2019	64	40	63%	69%
Liechtenstein	07 June 2017	19 December 2019	21	20	95%	95%
Lithuania	07 June 2017	11 September 2018	58	37	64%	70%
Luxembourg	07 June 2017	09 April 2019	84	54	64%	67%
Malaysia	24 January 2018	18 February 2021	74	34	46%	57%
Malta	07 June 2017	18 December 2018	78	51	65%	70%
Mauritius	05 July 2017	18 October 2019	44	20	45%	55%
Monaco	07 June 2017	10 January 2019	10	6	60%	67%
Netherlands	07 June 2017	29 March 2019	93	53	57%	64%
New Zealand	07 June 2017	27 June 2018	40	23	58%	62%
Norway	07 June 2017	17 July 2019	85	22	26%	33%
Oman	26 November 2019	07 July 2020	36	12	33%	43%
Pakistan	07 June 2017	18 December 2020	66	34	52%	65%
Panama	24 January 2018	05 November 2020	17	12	71%	71%
Poland	07 June 2017	23 January 2018	82	46	56%	66%
Portugal	07 June 2017	28 February 2020	77	43	56%	63%
Qatar	04 December 2018	23 December 2019	78	35	45%	55%
Romania <sup>2</sup>	07 June 2017	28 February 2022	88	1	1%	1%
Russian Federation <sup>2</sup>	07 June 2017	18 June 2019	84	42	50%	62%
San Marino	07 June 2017	11 March 2020	24	16	67%	68%
Saudi Arabia	18 September 2018	23 January 2020	55	26	47%	58%
Senegal	07 June 2017	10 May 2022	20	3	15%	10%
Serbia	07 June 2017	05 June 2018	64	40	63%	68%
Seychelles	07 June 2017	14 February 2021	29	1	3%	4%
Singapore	07 June 2017	21 December 2018	93	55	59%	69%
Slovak Republic	07 June 2017	20 September 2018	70	37	53%	60%
Slovenia	07 June 2017	22 March 2018	60	38	63%	70%
South Africa	07 June 2017	30 September 2022	79	0	0%	0%
Spain <sup>2</sup>	07 June 2017	28 September 2021	93	4	4%	5%
Sweden <sup>2</sup>	07 June 2017	22 June 2018	79	5	6%	12%
Switzerland <sup>2</sup>	07 June 2017	29 August 2019	108	20	19%	20%
Thailand	09 February 2022	31 March 2022	61	0	0%	0%
Ukraine	23 July 2018	08 August 2019	75	37	49%	58%
United Arab Emirates	27 June 2018	29 May 2019	110	46	42%	52%
United Kingdom	07 June 2017	29 June 2018	132	63	48%	59%

Uruguay	07 June 2017	06 February 2020	23	16	70%	73%
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1. The Czech Republic has 92 agreements in force. These 92 agreements relate to 93 jurisdictions, because the Czech Republic continues to apply the agreement with former Serbia and Montenegro to both Serbia and Montenegro. The Czech Republic has listed this agreement to be covered under the BEPS MLI only in respect of Serbia. The agreement complies with the minimum standard only in relation to Serbia.

2. Estonia, Germany, Hong Kong (China), Indonesia, Romania, the Russian Federation, Spain, Sweden and Switzerland made a reservation under Article 35(7) of the BEPS MLI to delay the entry into effect of the BEPS MLI after completing their domestic procedures.

## Gaps in coverage of BEPS MLI

53. Throughout the 2022 peer review, gaps in the coverage of the BEPS MLI were identified. These gaps exist because the BEPS MLI is a flexible instrument that allows each signatory to decide which of its agreements it wishes to cover under the BEPS MLI. Thus, at the time of signature, signatories are required to deposit lists of agreements they want to modify. The BEPS MLI only modifies bilateral agreements listed by both treaty partners.

### **One-way agreements**

54. Where an agreement has been listed under the BEPS MLI by only one of its treaty partners although both treaty partners have signed the BEPS MLI, the minimum standard would not be implemented in the agreement. The revised methodology has made it explicit that where both partners have signed the BEPS MLI, but only one has listed the agreement, listing the agreement would be interpreted as a request to implement the minimum standard. The parties would have an obligation to implement the minimum standard in the agreement and agree bilaterally on the method to be used.

55. The 2022 peer review reveals that about 160 bilateral agreements, concluded between pairs of signatories to the BEPS MLI that are members of the Inclusive Framework, would not be modified by the BEPS MLI because, at this stage, only one jurisdiction had listed the agreement under the BEPS MLI (“one-way agreements”).<sup>5</sup>

56. In some cases, the treaty partner that has not listed a “one-way agreement” to be covered under the BEPS MLI has formulated a plan to implement the minimum standard in that agreement by expanding its list of covered tax agreements under the BEPS MLI to include that agreement. In other cases, those “one-way agreements” have not been listed under the BEPS MLI because the treaty partner is pursuing bilateral renegotiations to implement the minimum standard. That treaty partner may also be intending to cover elements that go beyond the implementation of the minimum standard and other treaty-related BEPS measures.

### **Waiting agreements**

57. The 2022 peer review reveals that there are about 240 bilateral agreements concluded between pairs of jurisdictions that are members of the Inclusive Framework where only one of them has signed the BEPS MLI (“waiting agreements”). For that reason, none of these agreements would, at this stage, be modified by the BEPS MLI. Nearly all these agreements would become covered under the BEPS MLI if the treaty partner that has not yet signed the BEPS MLI would do so and would list the agreement.

58. The OECD Secretariat has been liaising with some of the jurisdictions that were working towards signature of the BEPS MLI as part of their plan to implement the minimum standard (see Section 4 below). Those included Antigua and Barbuda, Benin, Eswatini, Mauritania and Montenegro, which between them have around 40 waiting agreements that would become covered agreements under the BEPS MLI following their signatures.

## Notes

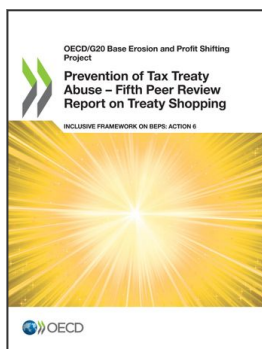
<sup>1</sup> One other jurisdiction that is not a member of the Inclusive Framework (Lesotho\*) also ratified the BEPS MLI in the past year.

<sup>2</sup> The BEPS MLI generally started to take effect as of 1 January 2022, with respect to agreements of jurisdictions that ratified it before the end of September 2021.

<sup>3</sup> Bahrain, Belize, Bulgaria, Cameroon, China (People's Republic of) (with the instrument of approval also covering Hong Kong (China)), Romania, Senegal, the Seychelles, South Africa and Thailand (as well as Lesotho\*) deposited their instruments of ratification of the BEPS MLI after October 2021.

<sup>4</sup> Article 35 of the BEPS MLI provides for the rules on its entry into effect and divides modifications into two categories based on the type of taxation to which they apply. In general, under Article 35(1)(a), with respect to taxes withheld at source on amounts paid or credited to non-residents, the BEPS MLI enters into effect on or after the first day of the next calendar year that begins on or after the latest of the dates on which the Convention enters into force for each of the Contracting Jurisdictions to a Covered Tax Agreement. As for all the other taxes levied by a jurisdiction, Article 35(1)(b) provides that the BEPS MLI generally enters into effect with respect to taxable periods beginning on or after the expiration of a period of six calendar months from the latest of the dates on which the Convention enters into force for each of the Contracting Jurisdictions to a Covered Tax Agreement.

<sup>5</sup> The BEPS MLI can only modify bilateral agreements that have been listed by both treaty partners under the BEPS MLI.



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