

## Obligation to submit BTR and flexibility under Article 13 of the Paris Agreement

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*This advice is provided in response to **Query 74/23***

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### **Query:**

Please advise if the flexibility provisions under Article 13 of the Paris Agreement mean that least developed countries (LDCs) and small island developing States (SIDS) are not obliged to submit biennial transparency reports (BTRs) under the Enhanced Transparency Framework (ETF).

### **Advice:**

The query is concerned with the nature of the reporting requirement under the ETF and the flexibility afforded in the Paris Agreement to LDCs and SIDS regarding reporting under the ETF. We understand that some Parties are challenging LDC request for support with reporting, on the basis that they (LDC) are not legally obliged to report.

The ETF established under Article 13 of the Paris Agreement (PA) builds on the existing reporting system under the Convention. It establishes a common system for all countries but acknowledges the challenge the more onerous requirements will present for many developing countries and accordingly provides flexibility in what and how they report. This is reflected in the PA: it envisages that all Parties will report under the framework - Article 13.7 states that “each Party shall regularly provide the following information ...” (emphasis added). All Parties are therefore under an obligation to submit the BTRs, including LDCs and SIDS. Flexibility is explicitly provided in Article 13.1, 13.2 and 13.12, although the provisions give little guidance as to the nature of this flexibility. Furthermore, Art.13.3 acknowledges the special circumstances of LDCs and SIDS.

Decisions 1/CP.21, 18/CMA.1 and 5/CMA.3 elaborate on the flexibility: for example, Decision 1/CP.21 states that flexibility will apply in the scope, frequency, and level of detail of reporting (and in the scope of the review). Additionally, and relevantly, para.90 of the same decision provides that all Parties will report biennially, except for LDCs and SIDS who “may submit this information at their discretion”. The provision is mirrored in Decision 18/CMA.1 (para.4). Given the focus of the provision – on the frequency for reporting, we understand this to mean that they are given a discretion as to when they report.

Decision 18/CMA.1 also states that LDCs and SIDS may submit the information referred to in paragraph 10 (i.e. national inventory reports, information to track progress in implementing NDC, etc.) at their discretion. (Annex II. E. 11.) In our view, this is an illustration of the flexibility afforded to LDCs and SIDS in scope, level and timing of reporting, rather than a discretion as to whether or not to report. This is further supported by the placement of the provision: it is included in the section on reporting

format, i.e. a section covering procedural aspects of reporting. Moreover, the same decision indicates that the application of flexibility provided for in the provisions of the MPGs is to be self-determined by developing countries needing such flexibility in the light of their capacities.

Separately but importantly, we note that mandatory support for developing countries in their implementation of Article 13 is explicitly provided under Article 13.14 (and in para. 7 of Decision 18/CMA.1).

Some examples of flexibility in the ETF are outlined in the below table. Please note this list is not intended to be exhaustive.

<b>Paris Agreement</b>	
<b><u>Article 13</u></b>	
Paragraph 1	1. In order to build mutual trust and confidence and to promote effective implementation, an enhanced transparency framework for action and support, with built-in flexibility which takes into account Parties' different capacities and builds upon collective experience is hereby established.
Paragraph 2	2. The transparency framework shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities. The modalities, procedures and guidelines referred to in paragraph 13 of this Article shall reflect such flexibility.
Paragraph 12	12 (...) the review shall also identify areas of improvement for the Party and include a review of the consistency of the information with the MPGs referred to in paragraph 13 of this Article, taking into account the flexibility accorded to the Party under paragraph 2 of this Article ....
<b><u>Decision 1/CP.21</u></b>	
Paragraph 89	89. Decides that, in accordance with Article 13, paragraph 2, of the Agreement, developing country Parties shall be provided flexibility in the implementation of the provisions of that Article, including in the scope, frequency and level of detail of reporting, and in the scope of review, and that the scope of review could provide for in-country reviews to be optional, while such flexibilities shall be reflected in the development of modalities, procedures and guidelines referred to in paragraph 91 below;
Para. 92 b)	92. Also requests the Ad Hoc Working Group on the Paris Agreement, in developing the recommendations for the modalities, procedures and guidelines referred to in paragraph 91 above, to take into account, inter alia: (a) The importance of facilitating improved reporting and transparency over time; (b) The need to provide flexibility to those developing country Parties that need it in the light of their capacities;
Para.94	94. Requests the Ad Hoc Working Group on the Paris Agreement, in developing the modalities, procedures and guidelines referred to in paragraph 91 above, to consider, inter alia: (a) The types of flexibility available to those developing country Parties that need it on the basis of their capacities;
<b><u>Decision 18/CMA.1</u></b>	
<i>Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement</i>	

Preamble	Also recognizing that flexibility for those developing country Parties that need it in the light of their capacities is reflected in the modalities, procedures and guidelines for the transparency of action and support.
Paragraph 3	3. The guiding principles of these modalities, procedures and guidelines (MPGs) are: (c) Providing flexibility to those developing country Parties that need it in the light of their capacities.
Paragraph 4	4. In accordance with Article 13, paragraph 2, of the Paris Agreement, the enhanced transparency framework shall provide flexibility in the implementation of the provisions of Article 13 to those developing country Parties that need it in the light of their capacities, and these MPGs shall reflect such flexibility.
Paragraph 5	5. These MPGs specify the flexibility that is available to those developing country Parties that need it in the light of their capacities pursuant to Article 13, paragraph 2, reflecting flexibility, including in the scope, frequency and level of detail of reporting, and in the scope of the review, as referred to decision 1/CP.21, paragraph 89.
Paragraph 6	6. The application of a flexibility provided for in the provisions of these MPGs for those developing country Parties that need it in the light of their capacities is to be self-determined. The developing country Party shall clearly indicate the provision to which flexibility is applied, concisely clarify capacity constraints, noting that some constraints may be relevant to several provisions, and provide self-determined estimated time frames for improvements in relation to those capacity constraints. When a developing country Party applies flexibility provided for in these MPGs, the technical expert review teams shall not review the Party's determination to apply such flexibility or whether the Party possesses the capacity to implement that specific provision without flexibility.