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# **Rule Makers or Rule Takers? Examining Developing Countries' Participation in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting**

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## **Abstract**

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework on BEPS) is one of the leading initiatives to combat tax avoidance and evasion. Although the Inclusive Framework emphasizes that all members of the Inclusive Framework participate on an ‘equal footing’, the Inclusive Framework has received criticism for not sufficiently incorporating developing countries and their interests into the framework. This study wished to examine the criticisms of the Inclusive Framework, and the role of developing countries within the Inclusive Framework. By looking at existing literature on negotiations and the Inclusive Framework and conducting interviews with five experts on international tax and development, the project suggests seven limitations that might particularly affect the role of developing countries under the work of the Inclusive Framework. These seven limitations can be categorized into three different categories of limitations, namely: formal and procedural limitations; institutional aspects; and limitations beyond the OECD and the Inclusive Framework.

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# 1 Introduction

Every year, billions, perhaps trillions, of dollars cross borders through tax avoidance and evasion by private individuals and multinational corporations (MNCs). Although the estimates vary, the underlying issue is that money that could have been collected by governments around the world to be spent on education systems, healthcare, or building infrastructure, systematically ends up, legally or illegally, in low-tax states and/or tax havens.<sup>1</sup> Researchers and analysts suggest that tax avoidance and evasion may have particularly serious implications for low- and middle-income countries (see for example the International Monetary Fund paper authored by Crivelli et al. (2015)), with some going as far as to describe the process as a catalyst of inequality (Alvaredo et al., 2017). Several initiatives have been introduced as attempts to prevent or eliminate tax avoidance and evasion globally, and one of the most prominent initiatives is the OECD/G20 Inclusive Framework against Base Erosion and Profit Shifting (Inclusive Framework on BEPS). The framework is an initiative mandated by the G20 countries and is located under the OECD, but has invited non-member states to take part in the initiative in an attempt to reach an agreement on how to tackle corporate tax avoidance and evasion.

This study seeks to explore the extent to which developing countries participate in the Inclusive Framework on BEPS. OECD emphasizes that members of the Inclusive Framework participate on “equal footing”, suggesting that all members have the same opportunity to influence negotiations and outcomes (OECD, n.d.-b). However, stakeholders from academia and civil society have criticized the framework for not being a truly global forum since many countries are still not members of the framework (Ryding, 2021), for using coercive instruments to get non-OECD and non-G20 countries to join (Oei, 2021), for its outcomes failing to represent developing countries’ interests (TJNA, 2021), and for the lack of transparency during the negotiations (Christians & Apeldoorn, 2018). By looking at literature on negotiations, literature on the Inclusive Framework, OECD documents, and conducting interviews with experts on international tax justice and negotiations, this thesis aims to examine the critique of the Inclusive Framework and to evaluate the extent to which the Inclusive Framework on BEPS incorporates developing countries’ interests in its efforts to combat international tax avoidance

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<sup>1</sup> Tørsløv et al. (2021) estimates that 36% of multinational profits, around 600 billion dollars are shifted to tax havens globally. Zucman (2017) estimated \$8.7 trillion, which makes up 11,5 % the world’s GDP are “held in offshore by ultrawealthy households”.

and evasion. Subsequently, this poses the question of whether developing countries are rule makers or if they are predominantly rule takers, which this thesis will further explore.

Although this question could have been studied in various fora and venues, I have chosen to focus on the OECD/G20 Inclusive Framework on BEPS because it is one of the most prominent “inclusive” initiatives. It is particularly interesting to look at the OECD/G20 Inclusive Framework due to its significance on matters of international taxation, as well as by its ability to be the closest to setting a ‘global’ standard on tax regulations. By acknowledging that tax avoidance and evasion is a major issue for developing countries, it is important to evaluate the role of developing countries under the framework. This is particularly interesting because the OECD is an organization whose members consist of predominantly high-income and upper-middle-income countries, and therefore an organization that work towards ensuring the interests of its members. There seems to be a consensus within the existing literature postulating certain challenges within the G20/OECD Inclusive Framework on BEPS that particularly affects developing countries. While some of the critique is followed by suggestions to increase the inclusivity of developing countries (Christensen et al., 2020; OECD, 2021a), those who are more opposed towards the framework advocate for the creation of an intergovernmental body on tax under the UN in order to better ensure equal participation (Ryding, 2022b).

This thesis will start by presenting the objectives of this study, and the main and sub research questions used to guide the direction of the data collection, analysis, and conclusion of the thesis. This includes defining two key concepts, namely *inclusivity* and *developing countries*. Next, it will provide a thematic background for the thesis. This includes looking at the current international structure on tax and how it was developed, demonstrating that there has been a conflict of interests between developing and developed countries in the creation and formulation of the current structure. Further, it will provide context and information about the creation of the Inclusive Framework before it finally will look at the existing literature on the limitations and challenges of developing countries’ inclusion in the Inclusive Framework. The next chapter will then outline theories which might be useful to deepen the understanding of the findings and data, by looking at a framework for studying negotiations on international economic relations and classical theories of International Relations (IR) on power. The next chapter will present and elaborate on the research design and aspects of the methodology. It will present experts interviews as a method of data collection, the process of recruiting participants, a presentation of the participants, as well as a description of the data collection process, including how ethical considerations were reflected upon and included. It will also

present how the data was analyzed by doing a thematic analysis. Lastly, it will consider and discuss the limitations of this study and how it might influence the trustworthiness of the study. Chapter 5 presents and discusses the findings of this study and suggests seven different limitations to the participation of developing countries in the Inclusive Framework. These will then be discussed, utilizing theory and literature.

## 1.1 Research Questions (RQs) and Objectives

The objective of this study is to examine the critique of the Inclusive Framework, as well as to gain a deeper understanding of the role of developing countries under the Inclusive Framework. Thus, this thesis will focus on the negotiations and cooperation of the Inclusive Framework from an International Relations (IR) perspective and will not attempt to look at the economic impact that the agreements might have. Additionally, this study aims to focus on the limitations and challenges of the Inclusive Framework and will not elaborate on the potential strengths of the framework. It does therefore not include attempts or measures taken by the OECD of enhancing the participation of developing countries unless it directly contradicts the findings of this study. The delineation to explicitly focus on challenges and limitations has been done to be more transparent about the collected data and does not suggest that the findings are presenting *all aspects* that might influence the participation developing countries.

Therefore, the main research question that this study will attempt to answer is:

To what extent does the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting enable the equal participation of developing countries in the negotiations?

In addition, this study will have two supporting sub-questions:

- What are the barriers in the OECD and/or the Inclusive Framework that limit the inclusion of developing countries?
- How might theories of power and negotiation help us better understand these limitations?



## 1.2 Key Concepts

Since the study wishes to explore the inclusion of developing countries and their interests within the Inclusive Framework, it seems relevant to further explore and define the concepts of ‘inclusivity’ and ‘developing countries’.

### 1.2.1 Inclusivity

There is an assumption embodied by the research design and research questions that postulates how one of the goals of the OECD is to be an inclusive forum. The OECD has not provided any reason for inviting non-member countries to their work on BEPS, but Christians and Apeldoorn (2018, p. 227) argue that it “*appears to respond to charges that the organization cannot claim legitimacy as a “global tax policy leader” while maintaining processes that are both exclusive and opaque.*”. This suggests that a potential reason for opening the Inclusive Framework to non-members as well as for their work on BEPS to gain legitimacy. However, despite opening the Inclusive Framework for non-members to participate “*on an equal footing*”, the OECD did not define what this entails or which measures that were put in place to ensure this equal participation (Brauner, 2021, p. 6). The lack of a definition and clarity makes it difficult to address the framework’s ability to ensure inclusivity, as well as the challenges and success that comes with it. Yet, as one of the main objectives of this project is to examine the limitations for inclusivity of developing countries in the Inclusive Framework, it is necessary to define the term inclusivity.

According to the Oxford English Dictionary, inclusivity refers to “*the practice or policy of providing equal access to opportunities and resources for people who might otherwise be excluded or marginalized*”. Inclusivity is concerned with “equal access” to opportunities and resources, and in the context of the Inclusive Framework, one way of understanding the term refers to countries’ opportunity to participate and shape the outcome of negotiations. Based on the definition, one can read that inclusivity often focuses on those “*who might otherwise be excluded or marginalized*”, such as countries, which in this context can mean the non-G20 and non-OECD countries, given that the BEPS project was developed as a G20 and OECD project, *or* one can choose to apply it to developing countries who, generally speaking, have less economic power in negotiations on economic matters. Therefore, inclusivity in this thesis will

be used somewhat synonymous with the OECD's notion that all members "participate on equal footing", while also addressing those countries who are not included in the framework. Grounded in the general definition of inclusivity and the context of the Inclusive Framework, the working definition of inclusivity will be *the practice or policy of providing equal access to opportunities, resources, and influence for (developing) countries that might otherwise be excluded or marginalized from negotiations.*

### 1.2.2 Developing Countries

This project sets out to explore the limitation of inclusion of developing countries and how (if) that affects the representation of developing countries' interests in the political outcome of the Inclusive Framework negotiations. There are some aspects of researching *developing countries* as a group that should be addressed. Firstly, the concept of development and developing countries have been heavily criticized due to its arguably normative approach with underlying implications. It suggests that developing countries are countries that are in the process of becoming developed, suggesting that other countries ("developed countries") are at the final stage of this process and that this is a stage that developing countries should strive towards, which overall provides an understanding of how discourses and practices are shaped (Escobar, 1992).

By using the term developing countries, there is also an implicit assumption that all countries included in this category have the same interests, the same capacity, and the same impact on the negotiations, which is not the case. In fact, some countries that are included in the notion of 'developing countries', are also members of the OECD, such as Mexico and Colombia<sup>2</sup>. Similarly, some of the members of the G20 are occasionally referred to as developing countries, such as India and Brazil. This categorization of developing countries thus suggests that emerging economies like India and Mexico can be grouped together with countries categorized as 'least developed countries', such as Haiti and Bhutan.

Nevertheless, due to the focus of this study, it is considered an appropriate term to use for the purpose of this project because it is the terminology that is used by the OECD, by several of the participants, as well as used in large parts of the literature. Therefore, this is a necessary

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<sup>2</sup> See for example the country classification in the *World Economic Situation and Prospects* provided by the UN (2020).

generalization to make, given the scope and purpose of the research. However, as an attempt to limit the potential ambiguity that might arise from using the term, more accurate terminology will be used when possible. Thus, the reader should be aware of the variation of terms as an active choice in order to be more precise regarding which countries the data, arguments, or literature refers to.

## 2. Thematic Background

This chapter will provide some thematic background for this thesis. It will start by looking at the development and characteristics of the current international structure on tax, before looking at the Inclusive Framework and the work they do. Finally, there will be a section outlining some of the existing literature on limitation of the Inclusive Framework.

### 2.1 The Current International Structure on Tax

It is essential to examine the current international tax structure governing how cross-country activity is taxed. Today's international tax system consists of "*a network of bilateral treaties, and the international standards that those treaties encode into hard law*" (Hearson, 2021, p. 4). Practically, all of these bilateral agreements are based on the non-binding soft law model conventions by OECD or UN, of which the latter to a large extent is based on the former (Arnold, 2016, p. 7). The very basic functioning of the international economic system requires agreements, be they bilateral or multilateral on the rules that govern economic transactions, and chief among them is how taxation applies. The question, then, is who makes those rules and who benefits from their current formulation.

Following World War I, increased efforts were put into place "*designing a workable system of international tax laws*" (Durst, 2019, p. 34). A key issue that had to be addressed was the issue of double taxation of multinational enterprises (MNEs) in cases of transnational activity, something that increasingly occurred (Wells & Lowell, 2014, p. 18). When MNEs conducted transnational business, there were three main tax jurisdictions that could claim the taxing rights: The source countries, "*the countries where production takes place*"; the residence countries,

*“the countries where a company is deemed to reside”*; and the destination country, *“the countries where sales take place”* (Nersesyan, 2021, p. 23). To ensure that businesses were not taxed twice or multiple times on the same profit, there was a need for international agreements to decide and codify which countries had the taxing rights in cases where several tax jurisdictions could claim these rights. In the early 1920s, both the ICC and the former League of Nations were attempting to find solutions to how one could solve the issue of double taxation.

The goal of the ICC was to *“promote trade and investment, open markets for goods and services, and facilitate the free flow of capital”* (Wells & Lowell, 2014, p. 13). The issue of double taxation was considered a fundamental challenge to their goal, and it was one of the first topics discussed by the organization (Wells & Lowell, 2014, p. 13-14). They developed a proposal to international taxation, suggesting that transnational activity should be taxed using a profit-split method, which involves seeing the multinational group as one entity and dividing taxing rights based on agreed-upon formula (Durst, 2019, p. 36; Wells & Lowell, 2014, p. 16). *“The premises behind this ICC proposal were that (i) the MNE was simply a stakeholder and should not bear double taxation; and (ii) residual income should be allocated between the countries on a proportional basis”* (Wells & Lowell, 2014, p. 16). The ICC approach was rejected by the League of Nations in 1923, primarily due to the disbelief of finding one formula that all countries would implement (Durst, 2019, p. 36). Although the ICC approach was rejected, it has recently been proposed to the Inclusive Framework as an approach to solve the current issue of BEPS and the digital economy.

The League of Nations were also working on the issue of double taxation and created the framework that international tax is still regulated by today. The League’s preference for a *“multilateral tax treaty system with multiple bilateral tax treaties”* remains the structure that governs international tax (Kobetsky, 2011, p. 106). Due to the diversity of domestic tax systems at the time, the League recognized how a multilateral treaty for many/all countries to sign would have to be in such general terms that it would be of no practical value (Kobetsky, 2011, p. 121-122). The model convention would work as a framework with suggestions to how the taxing rights and details could be divided. The bilateral negotiations would therefore allow states to discuss and shape the details of the treaty to ensure that the bilateral agreement was fit for purpose between the two jurisdictions in question (Kobetsky, 2011, p. 121). Today, there are more than 3000 bilateral tax treaties, and 82 percent of the world’s foreign direct investments (FDIs), including 81 percent of the FDIs into lower-income countries, are covered by tax treaties (Hearson, 2021, p. 4).

Practically all of the current bilateral tax treaties are based on the OECD model tax treaty or the UN model tax treaty (Arnold, 2016, p. 7). Initially, the League of Nations began developing proposals for model tax treaties, which included the main elements that the organizations and special committees had discussed. However, they were not unanimously accepted, which was an requirement for the League of Nations, and the OECD (at the time OEEC) took responsibility for developing an accepted model convention (Arnold, 2016, p. 140; OECD, 2017, p. 9-10). Given that the OECD is an organization with countries that share many economic characteristics and interests, it was easier for the members to agree upon a model convention reflecting their own interests, although it still included elements previously discussed by the League of Nations.

This foundational work was predominantly done and governed by higher income countries, firstly because many developing countries were still colonies at the time, and secondly because of the generally limited membership of the OECD (Durst, 2019, chapter 3; Hearson, 2021, chapter 2). Although the global structure and content of tax treaties were developed by OECD countries, *“lower-income and transition countries began to be absorbed into this system from the 1970s, concluding more and more bilateral tax treaties and developing their tax codes on the basis of OECD tax concepts and standards, some of which they adopted wholesale”* (Hearson, 2021, p. 32). Subsequently, developing countries expressed discontent with the OECDs model treaty’s emphasis on taxation in the country of residence, which was typically higher-income and capital exporting countries, and the UN therefore developed a model tax convention between developed and developing countries in the 1980s (Vega, 2013, p. 133). The UN model is to a large extent based on the OECD model and can be described as a *“compromise between the principle of taxation in the country of residence of the taxpayer and the principle of taxation in the country where income has its source, and gives greater weight to the source principle than the OECD”* (Vega, 2013, p. 134).

The current international structure that governs how countries should tax transnational activity consists of more than 3000 bilateral treaties, which “successfully” codifies and divides the different countries’ taxing rights<sup>3</sup>. However, the current system fails to stop tax avoidance and

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<sup>3</sup> Successfully in terms of managing to divide the taxing rights, not in terms of preventing BEPS style planning (which repeatedly is addressed through this thesis) nor dividing the taxing right in a fair way. See Hearson (2018) or Wells and Lowell (2014) for more empirical discussions of the division of taxing rights.

evasion, which has implications for both developed and developing countries. This provides the background for which the OECD/G20 Inclusive Framework on BEPS was initiated.

## 2.2 The OECD/G20 Inclusive Framework on BEPS

The framework on BEPS was initiated by G20 leaders, who, following a meeting in Los Cabos in 2012, assigned the OECD with the task of addressing BEPS and the digital economy (Motala, 2020). The digital economy was directly addressed because companies are not necessarily present in the countries where profit was made, and thus complicates the process of taxing them according to the current taxing rules. The request of the G20 leaders came as a response to the disclosures of MNEs avoiding taxes, with leakages of documents revealing “*potentially problematic tax ruling practices of jurisdictions*” and shortages of public revenues following the 2008 financial crisis, among other reasons (Oei, 2021, p. 7-8). The BEPS action plan, consisting of 15 action points, was released in 2013, and recommendations for how to address BEPS were finalized in 2015 (Oei, 2021, p. 8).

In 2016, the BEPS Inclusive Framework was established, opening for non-OECD/non-G20 countries to participate in the pledge to combat BEPS (OECD, n.d.-b). The purpose of the Inclusive Framework was that “*interested countries and jurisdictions, including developing economies, can participate on an equal footing in the development of standards on BEPS related issues, while reviewing and monitoring the implementation of the OECD/G20 BEPS Project*” (OECD, n.d.-b). In other words, the framework was created as a forum that would both continue standard-setting work, but with an expanded member base, and oversee the implementation of the BEPS action plan. The participation of the non-OECD/G20 countries was conditioned to their agreement to implement the four BEPS “minimum standards”, which are four of the 15 action points (Ault, 2019, p. 6-7). Today, the framework formally has 141 members, where 38 are OECD countries (26,95%) and 8 are non-OECD G20 countries (5,67%), meaning that 95 members are non-OECD/non-G20 countries and jurisdictions (67,38%). However, it is worth mentioning that several countries are still not a part of the Inclusive Framework. According to a briefing paper from 2021, out of the then 46 countries that were categorized as ‘least developed countries’ by the International Monetary Fund (IMF), 35 of them were *not* a part of the Inclusive Framework, and less than half of the 54 African countries

were part of it (Ryding, 2021, p. 1). Formally, all members of the OECD/G20 Inclusive Framework on BEPS participate on an “equal footing”, suggesting that there is a “*vision of international tax policy negotiation in which all participating states have a meaningful say in decision-making that affects them*” (Christians & Apeldoorn, 2018, p. 226).

One of the key processes within the Inclusive Framework the last few years has been the work towards developing a solution for taxing the increasingly digital economy. This process is often referred to as *BEPS 2.0*, because it revisits and further builds on the work from the initial BEPS project. A fundamental question in this debate is whether the current system “*remains fit for purpose in the modern global economy*” (OECD, n.d.-a), and thereby addresses the very foundation of the current system. A lot of preliminary work on the topic has been conducted by the OECD as a part of the initial BEPS project, and in 2019, the Inclusive Framework published a policy note outlining the way forward, asserting that they would approach the issue through a two-pillar approach to the issue (OECD, 2019). Since then, the *BEPS 2.0* process has consisted of negotiations, public consultations, and statistical analysis (OECD, n.d.-a). In October 2021, the Inclusive Framework published a statement, which claimed that “*The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (IF) has agreed a two-pillar solution to address the tax challenges arising from the digitalisation of the economy,*” and described the “*agreed components of each Pillar*” (OECD, 2021b). The October agreement marks an important milestone because it was the first negotiated agreement by the framework, outlining the work forward on efforts to combat tax avoidance and evasion.

However, leading up to and following the agreement, several stakeholders expressed dissatisfaction about the October Statement. The Argentinian minister of Economy, Martin Guzmán, claimed that developing countries had been “*forced to choose between something bad and something worse. Worse is to get nothing. Bad is what we are getting.*” (Guzmán, as cited in Agyemang et al. (2021)). Four developing countries chose to not sign the agreement, namely Nigeria, Kenya, Pakistan, and Sri Lanka. The Global Alliance for Tax Justice (GATJ) launched a campaign calling on countries to reject the agreement, which over 250 civil society organizations have signed (GATJ, 2021).

This summarizes the work of the OECD and the Inclusive Framework, as well as it provides the background for the development of the October agreement. The dissatisfaction expressed by several stakeholders and the claims that developing countries’ interests are not incorporated

to this agreement, demonstrates the need to look closer at the Inclusive Framework and the negotiations. Are there barriers that limit the equal participation of developing countries?

### 2.3 Literature on the Limitations of the Inclusivity of the Inclusive Framework

While the section above provides a brief introduction to the Inclusive Framework, this section will look at some of the literature addressing the limitations of the Inclusive Framework when it comes to the inclusion of developing countries. Researchers and voices from civil society organizations have argued that the name might not be as inclusive as it implies, and this section will attempt to give a brief overview of some of the critiques.

One example of such research is Christensen et al. (2020), who investigated whether non-member states of the OECD and G20, and particularly low-income countries, are actually participating on “equal footing” in the framework. Their research found that the expansion of the Inclusive Framework “*has made little difference to the number of lower-income countries attending meetings at which the practical technical policy work is done, and that most members are fairly silent participants.*” (Christensen et al., 2020, p. 6-7). They found that the low attendance and participation of non-member states can be explained by several reasons, which they categorize into three interrelated causes: “*broad structural obstacles to participation, specific aspects of the OECD/IF’s way of working that exacerbate these issues, and low expectations of the potential gains from participation*” (Christensen et al., 2020, p. 13). These obstacles include everything from financial and human resource constraints for specialists to travel to Paris, the rapid pace of negotiations and policymaking, a “brutal” and/or “intimidating” environment, the need for translation, rapid timelines discouraging countries from disagreeing or holding up the negotiations, to lower-income countries not expecting to be able to influence the negotiations, for example, because it is based and focused on “*OECD instruments and [is] dominated by larger economies*” (Christensen et al., 2020, p. 13-15).

Similarly, Christians and Apeldoorn (2018) argue that although the goal of equal participation is important, there is a need to address institutional governance issues before the OECD reaches this goal. This includes the need for qualified personnel and technical expertise on the topics being negotiated under the Inclusive Framework, with the authors arguing that “[i]f participating on an equal footing is the key to getting priority tax policy concerns addressed in a systemic way, securing participation by qualified and knowledgeable personnel becomes



*paramount*” (Christians and Apeldoorn, 2018, p. 232). They underline that this is not an issue that is unique to the OECD/G20 Inclusive Framework on BEPS, but something that can be found in all questions concerning international relations. Furthermore, they highlight the need for better institutional and procedural transparency to truly make the initiative inclusive, arguing that the lack thereof means that “*the decision to move forward with the Inclusive Framework is fundamentally an act of trust in the OECD as an institution*” and not an informed decision (Christians and Apeldoorn, 2018, p. 233). Christians and Apeldoorn (2018) conclude that unless more is done to ensure the inclusivity of the framework, the chances of “inclusivity” remaining as mere “political rhetoric” is high (Christians and Apeldoorn, 2018, p. 233).

At the same time, more critical voices within civil society suggest that more drastic changes must be made. Earlier this year, the European Network on Debt and Development (Eurodad), published a *Proposal for a United Nations Convention on Tax* written by Tove Ryding (Ryding, 2022b). The proposal is a discussion paper that proposes what a UN Convention on Tax might look like and argues that there is a need for “*intergovernmental negotiations where all countries can participate as equals*” (Ryding, 2022b, p. 5). In the explanation for the need for a UN Convention on Tax, the author addresses the OECD/G20 Inclusive Framework on BEPS, and criticizes the notion that countries need to accept a pre-negotiated agreement (the BEPS package) in order to join the framework, which has also been “*very central to the overall agenda and outline for the inclusive framework*”, as well as the limited transparency to the public (Ryding, 2022b, p. 5). Thus, they argue that there is a need for a UN Convention and Tax to solve the issues of tax-related illicit financial flows, to ensure the equal participation of all countries.

The literature outlined above demonstrates that there are significant limitations with the Inclusive Framework. The study conducted by Christensen et al. (2020) gives a thorough explanation of some of the practical and very concrete hindrances for developing countries to participate on equal footing in the Inclusive Framework. Additionally, the article by Christians and Apeldoorn (2018) takes more of a theoretical and background approach to the issue, also bringing specific recommendations to the table. At the same time, civil society organizations have advocated for the creation of a UN body on tax or an intergovernmental forum on tax under the UN, and the arguments are addressing the lack of a global forum where the countries are participating on equal footing. This study wishes to gain greater insight into the arguments

of civil society organizations, which advocate for the creation of an intergovernmental body in the UN, as well as the critique they are directing towards the Inclusive Framework.

### 3. Theory

This chapter of the thesis will outline some of the theories on power, as well as present an ‘analytical toolkit’ to study negotiations on international economic relations developed by Woolcock (2011). These theories are included to explore how different theoretical approaches suggests that states can exercise power or influence other states in international negotiations. Some aspects of these theories will later be used in the discussion, to deepen the understanding and meaning of the findings, making it possible to discuss the significance and reflect upon the potential implications of these findings.

#### 3.1 Theories of Power

Power is a key concept within International Relations (IR) and important when studying how decisions are made. This section attempts to outline some of the different understandings and theories of power, which can later be used to explore how power might affect developing countries’ ability to participate and influence the negotiations within the Inclusive Framework.

The traditional way of looking at the power within IR is to study power as a capability, focusing on a state’s possession and attributes (Heywood, 2011, p. 210). This means that the focus is on a state’s military, wealth, population size, technological advancement, geographical location, and natural resources (Heywood, 2011, p. 210). Another way of studying power is by looking at the relations aspect of it, by defining it as “*ability of one actor to influence another actor or actors in a manner not of their choosing*” (Heywood, 2011, p. 211). By considering power as relational, one is studying the influence and behavior of a stakeholder, rather than seeing power as “property” (Baldwin, 2016, p. 50). One does not ignore the capacity of the stakeholder when one studies relational power, rather one looks at how the stakeholders utilize this capacity to influence the outcomes (Heywood, p. 211).

The realist school of IR, one of the classical approaches within IR, tend to argue that all states are power-seeking, something they ascribe either to human nature (classical realists) or to the

anarchical structure of the international system, thus seeking power is a necessity for the survival of the state (neorealists) (Dunne & Schmidt, 2020, p. 136-138; Heywood, 2011, p. 52-61). Realists argue that due to the anarchical international system, states are concerned with conserving or better their position relative to the other states, something that arguably *“discourages cooperation and reduces the effectiveness of international organizations, because, although all states may benefit from a particular action or policy, each state is actually more worried about whether other states benefit more than it does”* (Heywood, 2011, p. 60). In other words, realists suggests that states are concerned with ‘relative gains’ because they are seeking to maximize their power within the anarchical, international, system. Realists generally claim that *“a state’s leverage in the international system is a positive and linear function of its capabilities”* (Schneider, 2005, p. 667), meaning that a state’s capabilities (wealth, military power etc.) will make up the state’s power to influence other states’ behavior or decisions.

The liberalist school of IR, another classical theoretical approach within IR, on the other hand are more concerned with the absolute gains and argue that *“states are always willing to cooperate if they calculate that they will be better off in real terms as a result”* (Heywood, 2011, p. 67). Liberals, especially institutionalist liberals, believe that states cooperate because they can *“achieve more by working together than by working separately”*, and they are thus not as concerned with relative power compared to the realist tradition (Heywood, 2011, p. 436). They therefore tend to claim that *“asymmetric interdependence”* of the negotiations constitutes a significant part of a country’s bargaining power (Schneider, 2005, p. 666-667)(Schneider, 2005, p. 666-667). Asymmetric interdependence refers to the idea *“that a state can more credibly threaten to end international cooperation when that action would hurt the other country more than itself”* (Janusch, 2018, p. 218). This suggests that a country which is not significantly dependent or has relatively small potential gains from the negotiations has more bargaining power, as they have less to lose from ending the negotiations.

The liberalist and realist perspective on power provides some overarching ideas of how states might have and use power to influence international negotiations.

Another way of understanding power, is to study power as multi-dimensional or as having different ‘faces’, such as Steven Lukes’ theory on the three faces of power (Lukes, 2005). Lukes describes that the first face of power focuses on *“behaviour in the making of decisions on issues over which there is an observable conflict of (subjective) interests, seen as express policy preferences, revealed by political participation”* (Lukes, 2005, p. 19). According

to this approach to power, one can understand power by looking how stakeholders behave in certain situations where there are identified differences of interests or preferences (an observable conflict), and then look at which interests and preferences are represented in the outcome of the situation (Lukes, 2005, p. 17). This approach focuses on decision-making behavior for example by studying who initiated the different alternatives for the decision making, who brought up the rejected alternatives, who has the power to use veto and in what situations will they use it in, and how this behavior affects the outcome (Lukes, 2005, p. 17).

The second face of power is not only concerned with who makes the decisions but addresses that there is a power in deciding what is, and what is not, being discussed (Lukes, 2005, p. 20-25). Whereas the first face of power explores the exercise of power by looking at the interests of those within the political system, the second face *“also considers the preferences exhibited by the behaviour of those who are partly or wholly excluded from the political system”* (Lukes, 2005, p. 24). There is a power in deciding what should be discussed and decided upon, and a central element is that some stakeholders benefit from not having to discuss certain topics and decisions (Lukes, 2005, p. 21). The second face of power, which is two-dimensional, emphasizes that an analysis of power should not only look at the decision-making, but also the nondecision-making (Lukes, 2005, p. 22). Whereas a decision is *“a choice among alternative modes of action”*, a nondecision is *“a decision that results in suppression or thwarting of a latent or manifest challenge to the values or interests of the decision-maker”* (Lukes, 2005, p. 22). The second face of power *“allows for consideration of the ways in which decisions are prevented from being taken on potential issues”* (Lukes, 2005, p. 25). In other words, one can say that the second face of power theorizes the power of deciding what should, and what should not, be subject of debate through intentionally or unintentionally silencing topics and voices that might challenge the interests of the decision-maker (Lukes, 2005, p. 21-25).

The third face of power, which is Lukes' contribution to the debate, suggests that one way of making another stakeholder do as you want is by affecting their preferences, wishes, and minds (Lukes, 2005, p. 27). He criticizes the two-dimensional approach on power for focusing on observable conflict, and thereby *“ignore the crucial point that the most effective and insidious use of power is to prevent such conflict from arising in the first place”* (Lukes, 2005, p. 27). He thus adds another dimension to the analysis of power, where one distinguishes between the subjective interests and the real interests, a term he uses with caution, of the stakeholder, and study how norms, discourses, institutional practices, and structures systematically shapes the preferences and interests of stakeholders (Lukes, 2005, p. 25-29, 144-150). This thesis will not

set out to try to explore the “objective” or “subjective” interests of the members of the Inclusive Framework, however, it clearly demonstrates that there are numerous ways of studying and understanding power.

### 3.2 Theory of Negotiations on International Economic Relations

To better understand the different aspects of the negotiations under the OECD/G20 Inclusive Framework on BEPS, it is useful to look at some of the existing literature on negotiation in international economic relations. This part will thus look at some of the factors that are suggested to influence intergovernmental negotiations in the literature. The aspects are inspired by an “analytical toolkit” developed by Woolcock (2011), where he outlines which factors one should study when looking at economic negotiations. He outlines six factors, and this thesis will look at four of them: relative economic power; international institutions or regimes; interests; and domestic decision-making and institutions. He also suggests that markets are a structural factor, which might influence the negotiations, and that “*there is an immediate, interdependent relationship between economic diplomacy and markets*” (Woolcock, 2011, p. 21), and that ideational factors might also influence negotiations on international economic relations (Woolcock, 2011, p. 24). In this thesis, markets, and ideational factors, will not be looked at as separate factors. This chapter will outline the four factors based on the analytical toolkit and explore how it might be considered in the analysis and discussion.

#### 3.2.1 Relative Economic Power

The first factor Woolcock outlines is how relative economic power might influence the negotiations and outcomes. He argues that states with greater economic power have the ability to influence the agenda and outcomes to a larger extent than smaller and less powerful economies, and that negotiators from larger economies generally have better sources of information, resources, and negotiation capacity (Woolcock, 2011, p. 18). He describes how relative economic power generally refers to the relative size of an economy, but that sector and other factors also play a role (Woolcock, 2011, p. 18). Further research on the topic address support that relative economic power might influence international negotiations, for example through difference in negotiation capacity.

An empirical way of studying how relative economic power or capabilities might influence international negotiations, is to look at states' negotiation capacity. Negotiation capacity refers to the *"ability of a country to participate effectively in a given negotiation"* (Jones et al., 2010, as cited in Chan, 2020, p. 202). Negotiation capacity is particularly important *"in settings where consensus is the means of decision-making and countries need not win a vote, but rather persuade opponents"* (Onderco, 2019, p. 421). Variation of negotiation capacity can be explained through many different factors, inter alia gap in access to data, analytical resources, or governance capacity to develop a position on what is being discussed (Chasek, 2001, p. 269; Panke, 2020, p. 639), difference of delegation size which creates a gap in technical and specialized knowledge (Chasek, 2001; Onderco, 2019), inconsistency in composition of the delegation (Chasek, 2001), or access to negotiation support from NGOs *"as a source of specialized knowledge to address the information-provision gap in negotiation capacity"* (Chan, 2020, p. 207). Although the differences do not directly correlate with the distinction between "developed" and "developing" countries, some of these challenges particularly disadvantage smaller and poorer countries due to limited resources (Chan, 2020, p. 203). *"It would be useful for each country to have several technical experts, an international lawyer, diplomats with negotiating experience and high-level government officials who know the limits of their government's position on each issue"* (Chasek, 2001, p. 169). However, limited resources might result in negative implications by how countries cannot afford to send a large delegation to negotiations or spend a lot of resources on analyzing and developing alternatives in the negotiations, suggesting that economic resources affect the negotiation capacity, and thus might affect a country's ability to participate effectively.

Given the goals of this project, it is relevant to ask how the relative economic power, including difference in negotiation capacity, might influence developing countries and their interests in international negotiations.

### 3.2.2 International Institutions or Regimes

The second factor outlined by Woolcock is the need to look at International Institutions or Regimes in economic negotiations (Woolcock, 2011, p. 19). Woolcock (2011) argues that it is not enough to solely consider states when looking at international economics, but that one must also consider institutions and regimes that have developed over time, and how they might

influence economic diplomacy. A regime can be defined as “*principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area*” (Krasner, 1983, as cited by Woolcock, 2011, p. 20). These regimes might be formal, or informal, explicit, or implicit (Woolcock, 2011, p. 20).

However, the role of international institutions is a long-standing debate within the discipline of International Relations, and there are different views on the role and the power of intergovernmental organizations (IGOs).

Realists, who emphasize the power-seeking “nature” of states, see IGOs as another forum for power politics or “*simply as instruments controlled by powerful states*” (Heywood, 2011, p. 434). John Mearsheimer, a prominent realist scholar, suggests that in terms of economic politics, the purpose of institutions is to regulate and streamline the expansive amounts of economic activity, but also argues that a key function is that they “*help great powers manage the behavior of the weaker states in ways that suit the great powers’ interests*” (Mearsheimer, 2019, p. 10-11). He claims that the influence of the international institutions is limited and that they “*do not take on a life of their own, and thus do not have the power to tell the leading states what to do. They are simply tools of the great powers*” (Mearsheimer, 2019, p. 11). Mearsheimer is, in other words, suggesting that institutions act on behalf of powerful states, and that their impact is limited when it comes to alter the behavior of the leading states.

Liberalists on the other hand, believe that international organizations operate “*essentially as neutral umpires or referees, capable of standing above, and even, to some extent, imposing order on, the incipient power politics of the state-system*” (Heywood, 2011, p. 424). Liberalists see institutions and organizations as enablers of this cooperation. Robert Keohane and Lisa Martin, two leading liberal institutionalists, argue that institutions are particularly important when it comes to distributional questions, because they “*can mitigate fears of cheating and so allow cooperation to emerge*” as well as “*alleviate fears of unequal gains of cooperation*” inter alia by providing valuable information (Keohane & Martin, 1995, p. 45). Institutional theorists believe that institutions are created based on states' interests and that they are characterized “*by the prevailing distribution of capabilities*”, meaning that the role and “power” of the institutions will vary according to the role and tasks they are attributed (Keohane & Martin, 1995, p. 47).

As demonstrated, liberalists and realists have contrasting views on the role of institutions and organizations, where realists claim that they are instruments for powerful states to influence less powerful states' behavior, while liberalists claim that international institutions and

organizations enable the cooperation between states, according to the capabilities distributed to the institution.

Several studies have been conducted with an aim to explore how and whether institutions and secretariats can impact intergovernmental negotiations. Bjurulf and Elgström (2004), for example, studied the role of institutional aspects of the EU and how they influenced one specific decision-making process of regulation on transparency rules within the EU. They looked at different institutional aspects, namely: the agenda-shaping rules; decision-making procedures and voting rules; informal norms; timetables and deadlines; and interventions by other institutional actors, and concluded that “*institutional factors do indeed have considerable impact on EU negotiations*” (Bjurulf & Elgström, 2004, p. 265). Similarly, Beach (2004) studied the influence of the EU Council Secretariat, which “*on paper [is] merely an administrative and technical secretarial assistant to the Council*” (Beach, 2004, p. 408), and argued that the Secretariat was influential because of a “*combinations of its high level of expertise, the Secretariat’s reputation of being a trusted intervening actor, its privileged institutional positions, and the skillful use of pragmatic and behind the scenes agenda-shaping and brokering strategies*” (Beach, 2004, p. 429).

Corresponding with the researchers studying how the institutions of the EU might affect the outcomes of negotiations in the EU, several studies have looked at the role of the secretariat in multilateral negotiations on environmental or climate issues. Bauer (2006) suggests that secretariats hold authority which influences the negotiations, but also underlines that the authority and how it is exercised vary. The book *Managers of Global Change: The Influence of International Environmental Bureaucracies* (Biermann & Siebenhüner, 2009), studies different environmental secretariats and looks at how they influence international negotiations. The book concludes that “*bureaucracies have a sizable autonomous influence as actors in global environmental policy*”, by providing knowledge, facilitating the negotiations, being “*capacity builders in international politics*”, as well as influencing and shaping agendas and negotiations processes (Biermann & Siebenhüner, 2009, p. 319).

Whereas liberalists and realists theoretically explore the role of institutions within IR, the empirical research outlined above suggests that institutions have significant power to influence negotiations and put forward how they might do so. This supports the argument of Woolcock (2010), who suggests that it is useful to look at organizations and institutions when studying international economic relations and negotiations. For this thesis, it will therefore be relevant



to look at the formal decision-making processes within the OECD, such as how decisions are made and how the voting happens, since these have the potential to influence the BEPS negotiations.

### 3.2.3 Interests

The third factor to consider when studying economic negotiations outlined by Woolcock (2011) is Interests. He postulates that although national interests are not the only interests involved, interests-based approaches still predominantly focus on domestic factors (Woolcock, 2011, p. 21). He claims that most of the literature will have a rationalist approach, assuming that “*governments are utility maximizing in negotiations, having first defined a national preference based on a balance of sometimes competing national interests*” (Woolcock, 2011, p. 21). However, Woolcock claims that multilateral negotiations often prevent countries from getting sufficient overview of all the options, including the costs and benefits of these options, and that agents, the negotiators on behalf of the state, are making decisions based on “*bounded rationality*”, meaning “*rational decisions based on less than full knowledge or information*” (Woolcock, 2011).

The theory of three faces of power, as outlined in section 3.1, suggests that the three faces of power propose different sorts of interests that could be studied when looking at power. The first face of power focuses on interests observed through the behavior within the system, the second suggests that it is worth studying the observable interests that are not included into system, and the third suggests that there is a distinction between objective and subjective interests and thus, that interests are not always observable. This suggests that if we wish to study the interests of the members of the Inclusive Framework, this could either be done by looking at their behavior in the negotiations (for example voting pattern and alternatives proposed in negotiations), their behaviors or grievances outside of the political system which is not incorporated, or we would have to study and assume their objective interests.

### 3.2.4 Domestic Decision-Making and Institutions

The fifth factor that is worth evaluating in economic negotiations is the Domestic Decision-Making and Institutions (Woolcock, 2011, p. 23). Given that the different states involved in the negotiations might have different domestic decision-making processes, it could potentially also affect the outcome and decision-making process. Woolcock (2011) describes how some states might want a democratic foundation for entering the negotiations, thus seeking support from parliament before, which might slow down the negotiations process. When the negotiations have started, it might also be worth looking at the flexibility of agents negotiating on behalf of the states: how far can they move away from the state's preferences and still have the states ratify it after? (Woolcock, 2011). *“In all cases the ministries or other agencies responsible for negotiating agreements will seek to ensure that they have domestic support among the principals or the legislature at all times to ensure that agreements are ratified”*, thus one might argue that the negotiations are happening on two levels: internationally and domestically (Woolcock, 2011, p. 23).

The analytical tool outlined by Woolcock (2011) is helpful because it highlights certain aspects that need to be included in the analysis to understand what is going on in the negotiations for a solution on the issue of BEPS.

## 4. Research Design and Methodology

This chapter of the thesis will present the research design and methodology used for this project. The research design is a qualitative study, where five semi-structured interviews were conducted with experts on international tax cooperation from different perspectives within academia and civil society. All the interviews were conducted on the online platform Zoom, which allowed the participation of some of the most relevant experts in the field, although they are based in different parts of the world. All of the interviews were conducted in English, and therefore, there has been no need for translating the data. Furthermore, reports, statements, and publications by the OECD have been used to confirm and decline what has been discussed in the interviews, and relevant literature has been used to further elaborate on what the participants argued, as well as to gain an overall deeper understanding of the data.

## 4.1 Data Collection and Recruitment of Participants

The data collection of this project consisted of interviews with experts on the topic of international tax justice. This section of the thesis will outline expert interviews as a data collection method, describe how the participants were recruited and provide a short presentation of the participants, describe how the data was collected, as well as reflect the ethical considerations taken prior, during, and after the interviews.

### 4.1.1 Expert Interviews as a Data Collection Method

The primary method for data collection has been individual, semi-structured expert interviews conducted on the online platform Zoom.

An expert interview can be described as “*a qualitative interview based on a topical guide, focusing on the knowledge of the expert*” (Döringer, 2021, p. 266). There is extensive literature discussing the strengths and weaknesses of expert interviews as a method for data collection in qualitative research. One strength of conducting expert interviews is that it “*can serve to shorten time-consuming data gathering processes, particularly if the experts are seen as “crystallization points” for practical insider knowledge and are interviewed as surrogates for a wider circle of players*” (Bogner et al., 2009, p. 2). They can provide “insider information” about institutions, processes, or knowledge that might otherwise be impossible or difficult to access, as well as they can provide access to other experts within the topical field, who could otherwise have been overlooked (Bogner et al., 2009, p. 2). There is also potential for more indirect benefits, such as increased motivation to participate due to a similar scientific background, a “*shared understanding of the social relevance of the research*”, curiosity about the research topic, wanting to convey their knowledge and ideas, or wishing to participate in making a difference (Bogner et al., 2009, p. 2).

There are different types of expert interviews, and this project has used *systematizing expert interviews* (Bogner & Menz, 2009). This approach does not investigate the experts but rather focuses on the experts’ “*capacity to provide researchers with facts concerning the question they are investigating*” (Bogner & Menz, 2009, p. 47). The interview “*is an attempt to obtain*

*systematic and complete information”, and the expert “is treated here primarily as a guide who possesses certain valid pieces of knowledge and information, as someone with a specific kind of specialized knowledge that is not available to the researcher” (Bogner & Menz, 2009, p. 47). The systematizing expert interview focuses on technical and processual knowledge, where technical knowledge refers to “highly specific knowledge of a field, for instance, on technical applications, information, or data”, and process knowledge refers to “knowledge that is based on practical experience and the institutional context of actions” (Döringer, 2021, p. 266).*

One of the participants addressed the inaccessibility, and highly technical and procedural complexity of the tax field:

*“We normally say this when people are starting to work on tax, that you have this period the first year where you sit and feel stupid because you do not understand how it works. And then there is a breakthrough when you realize that it does not work. It is not written in a clear way. There are so many things that are not clear in those rules [referring to OECD outcomes documents], so it is a very interesting journey to try to get into the world of tax. But the highly technical documents that do not necessarily make sense, is, unfortunately, a part of it”.*

Ryding (2022a)

Given the technical and procedural complexity of the international tax field, using expert interviews as a data collection method gave access to data that otherwise would have been difficult to obtain.

#### 4.1.2 Recruiting the Participants

The participants in this project were experts in the field of international tax cooperation that had demonstrated a specific interest in the need to include developing countries in international forums. They were identified by their publications, position in organizations, and the work they have done on developing countries’ role in international tax cooperation. All the participants’ names or organizations came up in the preliminary research of the project. The interviews were conducted digitally, thus, there were no geographical restrictions when recruiting the participants.

After having identified the potential participants for the project, they were contacted through email. In total, ten experts were directly contacted regarding participation in the project, as well as two relevant organizations (press contacts) through email, and one relevant organization through an official Facebook page in their direct messages. The email included a brief introduction of the project, why they had been asked to participate, and what it would entail, and an invitation to participate in a 45-minute-long interview over Zoom. Out of the ten experts directly contacted, four of the email addresses were found online, two were provided by the organizations approached, and four email addresses were provided by other informants. Six of the directly contacted experts responded, and there were arranged interviews with five of them. When the interviews were scheduled, the participants received a link to the Zoom meeting and the Consent Form, which included additional information about the project, at least one day prior to the scheduled meeting.

In addition to the current participants, there was a desire to talk to someone from within the OECD working with tax or directly with the Inclusive Framework, but unfortunately, none of the multiple inquiries to arrange interviews was replied to.

#### 4.1.3 Presentation of the Participants

This section will give a brief presentation of the participants of the project. The participants have different background and positions, which provided a variety of knowledge and perspectives to the data. The participants are listed according to when the interviews were conducted.

##### **Tove Ryding – 29.03.2022**

Tove Ryding works for the civil society organization *Eurodad* (European Network on Debt and Development), where she manages the tax justice team. Ryding has done a lot of work on the inclusion of the Inclusive Framework from an advocacy point of view, and is the author of the *Proposal for a UN Convention on Tax* (Ryding, 2022b) and the policy brief *Who is really at the table when the global tax rules get decided* (Ryding, 2021).

### **Chenai Mukumba – 12.04.2022**

Chenai Mukumba works for the civil society organization Tax Justice Network Africa (TJNA), where she is the Policy Research and Advocacy Manager. The work of the organization includes undertaking research and advocacy, capacity building, awareness raising and public mobilization. Under TJNA's 'Tax and the International Financial Architecture (TIFA)' pillar of work, TJNA does work on the international tax structure. Mukumba is, therefore, a relevant participant in the project. By being one of four thematic programs, the organization emphasizes the need to look at the forums and governance structures regulating international taxations, and they explicitly write about the OECD BEPS and its weaknesses as a motivation for reforming the current system (TJNA, n.d.).

### **Martin Hearson – 22.04.2022**

Martin Hearson is a Research Fellow at the Institute of Development Studies, and a Research Director at the International Centre for Tax and Development, where he studies the politics of global tax governance, particularly focusing on emerging powers and lower-income countries. He also has background from civil society. He is the author of the book *Imposing Standards: The North-South Dimension to Global Tax Politics* (Hearson, 2021), and one of the researchers on a research project specifically looking at lower-income countries in the Inclusive framework, presented in the working paper *At the Table, Off the Menu? Assessing the Participation of Lower-Income Countries in Global Tax Negotiations* (Christensen et al., 2020).

### **Alex Cobham – 03.05.2022**

Alex Cobham is an economist and currently the chief executive of the organization Tax Justice Network. The organization brings together experts of different sorts and emphasizes the social justice aspect of tax. He is the co-author of the book *Estimating Illicit Financial Flows: A Critical Guide to the Data, Methodologies, and Findings* (Cobham & Janský, 2020), and has written more specifically about the Inclusive Framework for example in the blogpost '*Power concedes nothing without a demand*': the OECD, the G77 and a UN framework convention tax proposal (Cobham, 2021).

## **Pooja Rangaprasad – 19.05.2022**

Pooja Rangaprasad works with the Society for International Development and SID coordinates the Civil Society’s Financing for Development Group. The Group is an open platform of several hundreds of organizations and networks that work on economic justice issues and focuses on UN processes related to economic justice. The work includes coordinating the comments from the civil society into the ongoing processes, and one relevant example is their input to the Financing for Development follow-up where they *inter alia* called for the establishment of “*a universal, UN intergovernmental tax body and negotiate a UN Tax Convention*” (Rangaprasad, 2022a).

### 4.1.4 Conducting the Interviews

This section will outline how the interviews were conducted, to be transparent about the execution of the data collection.

In the preliminary work to develop a research question and studying the existing literature on the topic, some key topics that had to be explored in the interviews to be able to answer the research questions were identified.

These topics can briefly be described as:

1. Context about the work of the participant and how it related to international cooperation on tax and the Inclusive Framework.
2. Context about the current state of the international tax structure, including how OECD and the Inclusive Framework play into that
3. Characteristics of the Inclusive Framework, and how it affects the inclusion of developing countries.
4. The potential of Inclusive Framework to improve its inclusivity, and what changes needed to be made in order to achieve this.
5. Questions more specifically related to their work/publications/ positions

As mentioned, the interviews were semi-structured, meaning that they “*are based on an interview guide, but the questions, themes and order might vary*” (Johannessen et al., 2021, p. 108). The five topics outlined above were used to develop the interview guides for each of the interviews (Appendix 1). However, some of the questions varied, and to some extent the order

of the questions also varied based on what the participants would respond. This allowed for flexibility for both the researcher and the participant and encouraged the researcher to follow up on what the participants said, clearing up inconsistencies or things that were unclear, while still having an interview guide to ensure that one acquired data on the topics one wished to gather (Bryman, 2012, p. 487). The number of questions in the interview guides varied between 12 and 20 guiding questions, based on whether there were concrete questions regarding some elements of their work. A part of making an interview guide when conducting interviews with experts is to read up on the experts' context, stance and previous work in order to create questions that can provide the best/most knowledgeable questions from them, and allowing them to talk about their specific knowledge (Hochschild, 2009). The participants were therefore asked questions where they were encouraged to talk about how their work and position might offer valuable insights. Some of the participants answered several questions in one answer, meaning there was no need to ask all the questions in the interview guide, whereas others provided more direct answers and the interview guide was used more actively. During all the interviews, the participants were all asked follow-up questions based on their responses, as encouraged when using semi-structured interviews.

The interviews were conducted on Zoom. There are some benefits to having digital interviews, such as them being "*extremely cheap to conduct compared to comparable face-to-face equivalents*", and that "*Interviewees or focus group participants who would otherwise normally be inaccessible (for example, because they are located in another country) or hard to involve in research (for example, very senior executives, people with almost no time for participation) can more easily be involved.*" (Bryman, 2012, p. 666). This is also something that became evident in this project. Conducting the interviews online allowed for the participation of highly relevant participants, despite some of the participants being based in three different continents. Given the limited time and budget of this project, it would not have been possible to arrange these interviews in-person and conducting them online also removed the uncertainties connected to travel that has been present the last few years. According to Johannessen et al. (2021, p. 122), the acquired data through online interviews is approximately as good as the data acquired through face-to-face interviews. However, there were also some challenges of conducting digital interviews, namely that unstable connection during two of the interviews led to disturbance of the flow of the interview at times, as well as short sections of unclear recordings. To limit the effects of the disturbances on the data, the participants were asked to repeat what they were saying during the disturbance, and they were sent the citations



used in the interview to verify that data withdrawn from the interview. However, even with these disturbances, the possibility to talk to such relevant experts which otherwise would have been inaccessible, makes the online interviews an appropriate and fruitful data collection method for this project. On average, the interviews lasted 45-50 minutes, but some were longer, and some were shorter.

All the interviews were recorded and later described in their entirety. The participants were made aware of the use of a recorder in the consent form, and it was also explicitly asked about consent to record at the beginning of the interview. All the interviews were conducted in English.

#### 4.1.5 Ethical Considerations

When conducting research, it is important to ensure that one makes ethical considerations. Before beginning the process of data collection, the research project, its plan for gathering informed consent, and the storage and processing of the data was approved by the Norwegian Centre for Research Data (NSD), and ethical aspects of the research were considered. The purpose of making ethical considerations is to ensure that there is no harm to the participants, that one gathers informed consent, make sure that there is no invasion of privacy, and that there is no deception involved (Bryman, 2012, p. 135).

Prior to the interview, the participants received a Zoom link with all the information needed to log on for the interview, as well as a consent form that they were asked to sign (Appendix 2). The consent form 1) gave more detailed information about the purpose of the project, why they had been asked to participate and how the data collected through the interviews would be used; 2) made it clear that the interview would be audio-recorded and that these recordings would be deleted once the project was completed; 3) that their participation was voluntary and that they at any point prior, during, or after project could withdraw from the project; 4) asked them to sign if they agreed to participate according to what was included in the form. The consent form also included the contact information of the supervisor of the project, as well as the faculty, in case they preferred contacting them. The content of the consent form was repeated orally prior to the interview, including asking for their consent to record the interview for transcribing purposes prior to the interview, which all the participants agreed to. Furthermore, all the

participants were encouraged to get in touch if they had any questions, comments, or other inquiries following the interview.

One aspect of this project that should be given special attention when it comes to ethical considerations is the choice of not to anonymize the participants of the project. As stated in the sampling section of this chapter, the participants were sampled because of their specialized knowledge and positions in the field. It was therefore considered more transparent and necessary to contextualize the data, by including the names, backgrounds, and positions of the data. This is something the participants were made aware of during the interview. Towards the end of the project, the participants were sent an email with an attached document including the citations and arguments from their interviews that was planned to be attributed to them in the thesis, as well as one or two sentences about the context they would be used. The email stated that as their participation would not be anonymous in the thesis, they had the right to access, correct, delete, or restrict the data from their interview that would be attributed to them, as emphasized in the approval of the project by NSD. They were also given the opportunity to be anonymous if they had changed their mind, or to anonymize their data which then would have meant that their name would be in the list of interviews, but the data from their interview would not be attributed to them personally.

Allowing the participants to come with corrections and clarifications to the data taken from their interviews can be both a strength, but also a weakness. When asking for feedback on the transcripts, or on parts of the transcripts, the participants may want to make alterations that could potentially change the meaning of the citations or arguments, or delete data that the findings are based on (Mero-Jaffe, 2011). However, it also gives the participants the chance to clarify or correct any misunderstandings or mishearings that might have taken place during transcription (Mero-Jaffe, 2011)<sup>4</sup>. Given the nature of the study and its focus on the knowledge and information provided by the participants, it was seen as a strength that the participants could come up with clarifications or enrich the data gathered in their interviews. Four of the participants used this opportunity to suggest corrections and clarification. The corrections and clarifications were thus altered in the thesis and consisted of predominantly small alterations in language or mishearing. The feedback from the participants was therefore not considered as having any significant impact on the meaning of the data.

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<sup>4</sup> Mero-Jaffe looks at ethical and research considerations that arise when participants are asked to review transcripts.

## 4.2 Data Analysis

This section will outline the data analysis process. When conducting interviews, the focus of the analysis should be on thematic units, and that “*what gains importance is the institutional-organizational context within which the expert’s position is embedded and which provides the actor with guiding principles*” (Meuser & Nagel, 2009, p. 35). Thus, this study used a semantic thematic analysis to analyze the data. Semantic thematic analysis is a type of thematic analysis that focuses “*on the surface meaning of the data, the things that are explicitly stated*” (Clarke et al., 2003, p. 225). A goal of semantic analysis and coding is to stay as close to the meaning of the participants as possible (Clarke et al., 2003, p. 225).

The first part of the data analysis was transcribing the interviews. The transcription was done quickly after the interviews were conducted, in order to ensure the accuracy and authenticity of the transcriptions. Since the interviews were recorded, it was possible to replay sections to ensure that the transcripts were as precise as possible. When conducting expert interviews, it is not necessary that the transcripts include all *prosodic and paralinguistic elements* because you are focusing on the information provided through the interviews and not the way it is said (Meuser & Nagel, 2009, p. 23). However, it was included when the tone or intonation changed the meaning of what was being said, for example by using irony or by talking *as if* they were someone else.

Next, the data was coded. Coding is the “*systematic process of identifying and labelling relevant features of the data (in relation to the research question)*” (Clarke et al., 2003, p. 230). The codes were then clustered together into overarching themes, such as context about the participants; limitations for inclusivity; outcome of the limitations; the future of the Inclusive Framework, then themes and sub-themes were created under each of these. This was firstly done through color coding, followed by plotting the different codes and themes onto mind-maps in order to visualize connections between different codes and themes. These themes and sub-themes were then reorganized and revisited, by going back to the data to see if the themes were still relevant when looking at the data in its entirety, and not only the codes extracted previously (as suggested by Braun & Clarke, 2006, p. 91). The theory was also revisited, and further research on the literature was done to help conceptualize and understand some of the data from the interviews. Finally, the research question was finalized, with minor alterations, and thus

three themes of limitations, which ended up being the main focus of the thesis, were finalized into formal limitations, with four sub-themes, limitations of the OECD, two of the sub-themes, other limitations, which were the other two sub-themes. These are the three themes under which my findings will be presented. As demonstrated below, theory and other research was then used to complement and discuss the findings, and as well as to provide them with more meaning.

### 4.3 Study Limitations and Trustworthiness

This section of the thesis will look at the limitations and trustworthiness of the study, and include both measures taken to strengthen the credibility, transferability, dependability, and confirmability of the study, as well as limitations and weaknesses. In quantitative studies there is an emphasis on validity and reliability, referring to whether a study is measuring what it is supposed to study and the study's consistency of measures (Bryman, 2012, p. 168-174). Bryman (2012, p. 390) suggests that given the different nature of quantitative and qualitative studies, it might make more sense to look at the trustworthiness of the study, by looking at credibility, transferability, dependability, and confirmability. There are many commonalities between these aspects of trustworthiness and validity and reliability, but the concept of trustworthiness allows for the "*multiple accounts of social reality*" studied in the social sciences (Bryman, 2012, p. 390).

Credibility is concerned with the 'truth value' of the data, analysis, findings, and conclusions (Bryman, 2012, p. 390). Two of the main challenges regarding the credibility of this study was the difficulty of verifying or refuting some of the data points due to the lack of transparency in the OECD, as well as the small and interconnected group of experts in the field, causing the possibility that the knowledge of one participant is building on or retrieved from other participants knowledge, or the same sources of knowledge. Two ways of establishing credibility of the findings is *respondent validation* and *triangulation* (Bryman, 2012, p. 390), which were actively used to strengthen credibility. This includes the citation approval sent to the participants, allowing the participants to come with corrections or comment on potential misunderstandings, strengthening the credibility of the analysis and conclusions. Triangulation, which refers to "*using more than one method or source of data in the study of social phenomena*", was used by cross-checking the "objective information", such as characterizations of Inclusive Framework, procedural rules, timelines, events, and an attempt

to verified them by other sources, such as OECD publications or public statements by governments or organizations, and cross-checking between the data from the participants.

Dependability refers to the consistency and reliability of the data (Bryman, 2012, p. 390). All the steps in the data collection process and analysis have been thoroughly described above, to ensure transparency about the process. The transcripts were used actively during the analysis to strive towards presenting the voices and views of the participants as accurately as possible and used actively in the presentation of findings to illustrate on which basis the claims are made.

Confirmability refers to neutrality or “unbiasedness” of the study and should demonstrate that the researcher *“has not overtly allowed personal values or theoretical inclinations manifestly to sway the conduct of the research and the findings deriving from it”* (Bryman, 2012, p. 392-393). The motivation for conducting this research was based on personal interest concerning matters on international taxation and focused particularly on the development perspective and international economic justice. Thus, the entire research design and the research questions were shaped by a genuine curiosity of whether the Inclusive Framework is currently, or has the potential to, designing a fair and effective international tax system. As a way to overcome the influence of any bias, I have throughout the project strived to question how my biases might be affecting the analysis and conclusions, although complete objectivity is impossible to achieve. Further, I have attempted to make clear distinctions in the findings about which arguments and conclusions are mine, and which ones are drawn from the interviews or other sources. Efforts have been made to ensure transparency, through thorough descriptions of considerations made during the data collection and the analysis. Another aspect that should be highlighted is that given that the experts I have interviewed were recruited due to prior work on the Inclusive Framework and international development, this might suggest that they have a bias of being critical towards the Inclusive Framework or the OECD. It was attempted to recruit participants from the OECD to gain information about the procedural processes and the measures taken to better ensure the equal participation of developing countries, but as mentioned, they continuously declined. Because of this, changes were made to the research design and the research question, delineating the focus of the thesis to explore the limitations and barriers for the participation of developing countries.

The last aspect of trustworthiness outlined by Bryan is transferability (Bryman, 2012, p. 390-392). The findings of this thesis are predominantly focused on the specific limitations of the Inclusive Framework for developing countries to participate on an equal footing and is based on the specialized knowledge on the Inclusive Framework and international negotiations on tax.

The findings in themselves might therefore not be transferable to other settings and context. However, the discussions are based on more extensive literature and theory, and the larger discussions might therefore be relevant.

## 5. Findings and Discussion

This part of the thesis will present and discuss the data collected through this project. Based on the existing literature and the interviews with experts on the topic, I will attempt to answer the research question: To what extent does the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting enable the equal participation of developing countries in the negotiations?

This will be done by first looking at formal and procedural challenges for the equal participation of developing countries, then the potential institutional limitation for the equal participation, and finally, limitations, arguably, beyond the Inclusive Framework and the OECD.

### 5.1 Formal and Procedural Limitations

The negotiation theory claimed that one important aspect that should be studied when looking at negotiations are the rules and procedures of the negotiations. This includes looking at who takes part in the decision-making, how does the decision making happen, who decides what will be discussed, and what are the rules for the negotiations? This part of the findings will attempt to outline some of the formal rules of the Inclusive Framework, and supplement the findings by using theory to discuss how that might affect the inclusion of developing countries and their interests in the negotiations.

#### 5.1.1 Members

Given that this section explores whether there are formal barriers to the inclusion of developing countries, it should be addressed that there are still many developing countries who are not members of the Inclusive Framework. The countries who are not members of the Inclusive Framework has no formal way of influencing the negotiations and its outcome.

Mukumba, Ryding and Rangaprasad addressed that one major limitation of the Inclusive Framework is that there are still many countries that are not present in the negotiations. There are currently 141 countries and jurisdictions that are members of the Framework, and only one-third of the Least Developed Countries are present in the negotiations, as well as just a bit more than half of the African countries (Ryding, 2022a). They particularly problematize this regarding the creation of global norms:

*“When you look at the issues the Inclusive Framework is supposed to tackle, yes, it is global, but the most negative effects of illicit financial flows, profit shifting, etc. are disproportionately felt by developing countries. So, to have conversations about these issues and then not include, or allow for the lack of inclusion of these countries, is a big concern.”*

Mukumba (2022)

It should be noted that the OECD welcomes every interested jurisdiction, thus suggesting that all countries could be members. Given the assumed importance of the Inclusive Framework for the international standard-setting on tax, it might be interesting to explore why there are still many countries that have not joined the framework. One potential limitation of becoming a member, perhaps particularly for countries with limited economic capacity, might be the membership fee: *“[W]ith the OECD, you need to pay to participate, and not all countries, not all African countries, have the resources to pay to participate to be a part of that forum”* (Mukumba, 2022). Another explanation suggested by Ryding is that it might be because countries’ need to sign up to implement the initial BEPS package already negotiated by the OECD and the G20 (Ryding, 2022a).

As the main research question of this thesis sets out to discuss whether the Inclusive Framework incorporates developing countries’ interests in their efforts to combat tax avoidance and evasion, it seems relevant to point out that not all developing countries are members of the Inclusive Framework. The countries who are not taking part in the negotiations have no formal way to influence the outcomes of the negotiations, something that must be regarded as a limitation for the inclusion of developing countries interests.

### 5.1.2 Decisions by Consensus

The Inclusive Framework states that all members are there to participate on “equal footing”, suggesting that within the framework there should be no distinction between members of the OECD or G20 and non-members. However, there seems to be a difference in decision-making. According to the OECD, decisions in the framework are made on consensus, suggesting that for a decision to be made, all countries must agree to it (OECD, n.d.-a). Yet, there are reasons to question whether this consensus applies to all members, or just the OECD/G20 countries.

As mentioned in the introduction and background chapter, the Inclusive Framework published a statement in October 2021 which stated that the Inclusive Framework “*has agreed to a two-pillar solution to address the tax challenges arising from the digitalization of the economy*” (OECD, 2021b). However, four countries did not sign this statement, namely Nigeria, Kenya, Sri Lanka, and Pakistan. This is something Ryding addressed in her interview: “*For me, I thought consensus meant that if four countries refused to sign on, there is not a decision made. I was surprised in October*” (Ryding, 2022a). The fact that four countries did not sign onto the statement demonstrates that there was a lack of consensus amongst all countries.

Hearson (2022) suggested that the consensus referred to by the OECD means consensus among the G20 and OECD countries. When discussing political pressure that different countries experienced, he suggested that the negotiations “*cannot proceed without all the G20 onboard, so you know, India and Brazil are critical, whereas they can proceed without Nigeria and Kenya, Pakistan, and Sri Lanka, none of them are critical in the same way*” (Hearson, 2022). Supporting this, though not in the context of decision-making processes, Ryding remarked that Ireland had been hesitant to the agreement prior to the signing, and that there seemed like “*Ireland had special consultation*” (Ryding, 2022a). After the interview, Ryding sent a follow-up email which included a statement by the Irish minister of finance, Paschal Donohoe, which inter alia confirmed that there had been engagement between himself and the OECD to find an agreement they can take part in (Donohoe, 2021)<sup>5</sup>. The statement demonstrates that there have been extensive talks between Ireland and the OECD but does not confirm whether this has been possible for developing countries. However, the statements, the points raised by the participants, and the fact that four countries did not sign the October statement, suggests that

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<sup>5</sup> The statement is long, but includes: “*Since July, I have been engaging with the OECD and our international partners to arrive at an equitable agreement which can bring long term stability and certainty in the international tax framework. We have now reached that point.*” (Donohoe, 2021).



consensus might refer to consensus amongst the OECD/G20 countries, and that the secretariat are more concerned with ensuring the participation and agreement of these countries rather than the non-members.

How might this affect the inclusion of developing countries in the Inclusive Framework? This finding suggests that the member states of OECD and G20 and the 'rest' does not participate on 'equal footing' when it comes to the decision-making processes. The finding suggests that there is a need for consensus among the OECD and G20 countries to proceed the negotiations within the Inclusive Framework, whereas the agreement of the other members of the Inclusive Framework is not as important. One implication of this is that the work and negotiations will continue without their agreement, such as in the case of the October Statement.

Another way it could affect developing countries is through weakening their bargaining power. If we revisit the liberalists argument of 'asymmetric interdependence', which suggests that a country that has more to lose by ending the negotiations has less bargaining power, this very much apply to the non-OECD and non-G20 countries. If the countries that are not members of the OECD or the G20 suggests a need for alterations or changes to be made for them to agree, the Inclusive Framework can apparently continue the negotiations without them. Assuming that there is no will within the Inclusive Framework to incorporate the preferences, their options will then be to either sign the agreement or opt-out and let the work continue without them. However, if a country that is a member of the OECD or G20 comes with the same ultimatum, the Inclusive Framework must make alterations to proceed, and thus the Inclusive Framework is more dependent on pleasing these countries. This implies that the OECD and G20 countries has more bargaining power, as their disapproval of an agreement assumingly means that there will not be an agreement.

Both the analytical framework provided by Woolcock and the first 'face' of power suggests that studying decision-making processes is important to understand how decisions are made. This section has outlined how there is a difference between the countries that are members of the OECD and G20 and the 'rest' of the members of the Inclusive Framework in decision-making processes. I have suggested that this is a limitation for the equal participation of developing countries, as it allows for the continuance of negotiations without them, as well as arguably weakens their bargaining power.

### 5.1.3 Shaping the Agenda

A procedural barrier to the inclusion of developing countries, could be their restricted ability to shape the agenda of the Inclusive Framework. According to the second ‘face’ of power, there is a power in deciding what should be discussed and what should not be discussed, and my research suggests that developing countries have a limited chance shape the agenda of the Inclusive Framework. The interviews and relevant OECD documents suggest the foundational work of the Inclusive Framework is built on the initial OECD/G20 BEPS Action Plan, thus implying that the primary agenda was shaped exclusively by the interests of the members of the OECD and the G20.

Ryding and Rangaprasad both underlined that the implementation of the BEPS package was the initial goal of the framework, and that the requirement to commit to implementing many of the decisions they were not part of negotiating is why the Inclusive Framework was never built on the principle of ‘equal footing’.

*“So, the first problem is that the BEPS package was negotiated in a forum that was even less inclusive, and many developing countries were not invited when the BEPS package was negotiated. But they were then invited afterward to come and follow the BEPS rules through the Inclusive Framework, and then take part in whichever decision would be made.”*

Ryding (2022a)

*“The Inclusive Framework was established to implement those 2000 pages of decisions that was already made. To implement those decisions and then for whatever they had left to still decide, that will be the role for the Inclusive Framework. So already there, it was not very much of an equal footing, because you had to sign up to those decisions if you wanted to join.”*

Rangaprasad (2022b)

As Rangaprasad and Ryding argues, the non-OECD and non-G20 countries had no formal influence of shaping the agenda of the initial BEPS project leading to the BEPS Action Plan.

One of the goals of the Inclusive Framework is to implement the Action Plan and countries must commit to the implementation of four of the action points to become a member of the Inclusive Framework. It seems like the initial Action Plan continues to shape the negotiations and directions of the Inclusive Framework.

As previously addressed in the background chapter, the BEPS 2.0 negotiations falls under the first action point of the BEPS Action Plan, which addressed issues with the digital economy. With the finalization of the action plan in 2015, the OECD published reports alongside with each of the actions, which defined and explored the issue and suggested how to solve it, which in this case meant looking at the current system and the characteristics that allow for BEPS in the digital economy (OECD, 2015) According to the OECD's timeline within Action 1 of BEPS, this was the first milestone (OECD, n.d.-a). Following that, an interim report was published in March 2018, and was a follow-up from the previous report focusing on implementation, which "*sets out the Inclusive Framework's agreed direction of work on digitalisation and the international tax rules through to 2020*" (OECD, 2018). The later report seems to be heavily based in the work from the prior report, suggesting that the preliminary work for the initial BEPS project played a large part in shaping the agenda of the Inclusive Framework. However, the Inclusive Framework appears to support it.

In January 2019 a policy note "*approved by the Inclusive Framework*" was published, which proposed the way forward for the Inclusive Framework's work on Addressing the Tax Challenges of the Digitalization of the Economy (OECD, 2019). The Inclusive Framework then assigned the secretariat (the Steering Group) the task to "*elaborate a detailed programme of work together with detailed instructions to subsidiary bodies to which the Inclusive Framework could agree at its May meeting*" (OECD, 2019, p. 3). Cobham (2022) explained in his interview that at this point, the Inclusive Framework had adopted three proposals, of which one was put forward by G-24, which essentially were the ones that the secretariat were asked to assess and bring back to the Inclusive Framework, so that they could make an informed decision based on the assessment of the secretariat. Following this, the OECD organized public consultations where other interested stakeholders could comment on the work outlined in the policy note (OECD, n.d.-a).

Based on the interviews and reviewing relevant documents from the OECD there is nothing that indicates a formal distinction where some members are able to forward proposal and others are not. The research suggests that a lot of the work consisted of technocratic work conducted

by the OECD with input from the members of the Inclusive Framework and proposals by various stakeholders. One might still claim that since a lot of this work were conducted by the organization, the countries that are members of the OECD *actually had* more influence over the agenda. However, given that one of the adopted proposals were from G-24, one might understand it as an “equal” opportunity for all members to bring proposals to the table.

More importantly, some of the participants suggested that the “real negotiations” began during the spring of 2019, and that the agenda of the negotiations changed from what was outlined in the policy brief, to something that was closer to the interests of the OECD and some of its’ members:

*“So, by June 2019, the OECD secretariat has decided that they should rip up the work plan of the inclusive forum. So, it is literally, they just said that “we are not doing this”. (...) “Instead, look, here is this thing”, which by September 2019 they call the unified proposal, which is nothing to do with the three original proposals, though it has a bit of the US and a bit of the UK. It has nothing of the G24. And it is based on a bilateral negotiation between the US and France”*

Cobham (2022)

Ryding also suggested that the real negotiations began in 2019, and that the motivations were heavily concerned with the conflict of interests between the US and France:

*“The bias in the negotiations goes back to the very beginning of the negotiations. The negotiations started for real in 2019. (...) France, were really upset that the IT giants, Apple, Amazon, Google, were not paying tax, or in France’s opinion, and we would support that point, they were paying very little tax. The US were angry, saying that France was only looking at American companies; “So, you were only targeting the US companies, and European companies won’t be hit by your proposals”. So that was the fight. And there the OECD negotiations basically started with pillar 1.”*

Ryding (2022a)

These two quotes emphasize that there was a change in agenda for the negotiations. The negotiations were still happening within the two-pillar approach as outlined in the policy brief, but Cobham and Ryding proposed that the new agenda for the negotiations were based on the interests and conflicts between the US and France.

Mukumba highlighted another factor which limits developing countries' equal role in shaping the agenda. She addressed the difference of capacity and suggested that the Inclusive Framework fails to make contextual adjustments to strive for more of an equal playing field. She explained how when the Inclusive Framework are asking for input from their members, it is done in a way that does not allow for all countries to give substantive feedback (Mukumba, 2022). She explains how some African countries (she emphasizes that she speaks about African countries because those are the countries she works with) *“just do not have the capacity and resources to respond and contribute meaningfully to requests that they receive at shorty notice”* (Mukumba, 2022). She continues:

*“So really, what you are seeing is what the ATAF Executive Secretary has called an almost the de facto exclusion of African voices. It speaks to a lack of understanding of the context of limited resources, that these countries operate within. So, perhaps OECD countries are able to respond as quickly as they need, but the fact that they think that it is workable for countries that have limited resources, speaks to the insufficient understanding of context they have.”*

Mukumba (2022)

In other words, Mukumba addresses difference of capacity between countries, while also arguing that the OECD does not sufficiently adjust to the different contexts of the members of the Inclusive Framework. The example she provided regarding how countries do not have the resources to contribute meaningfully due to limited resources further support the notion that developing countries have limited impact on shaping the agenda of the negotiations.

The theories on power and negotiation argue that there is a power in being able decide the agenda. As addressed by Ryding and Rangaprasad, given that the foundational work and

negotiations leading to the Inclusive Framework were done between the OECD and the G20 countries, the main agenda was already decided upon before the Inclusive Framework opened for other members, implying that other countries, including developing countries, did not have any formal way of influencing the agenda. Further, as addressed by Mukumba, countries with limited resources might not have the ability to contribute with meaningful inputs, suggesting that the lack of understanding and adaptations to consider contextual differences and differences in capacity, limits developing countries' opportunities to shape the agenda and content of the negotiations. Finally, I have suggested that although here seems to be an opportunity for all members to bring forward proposals or suggestions of what can be discussed, developing countries does not have the power to set the agenda. As exemplified by Cobham and Ryding, the OECD secretariat decided to move away from it in favor of a proposal reflecting the interests of France and the US. This demonstrates that the OECD secretariat has the power to decide what should, but also what should not, be discussed.

This section has outlined how there are some formal and procedural limitations for the equal participation of developing countries in the negotiations within the Inclusive Framework. The first limitation argued that the fact that many developing countries are not members of the Inclusive Framework limits their ability to influence the decisions and the outcomes of the negotiations. The second limitation suggests that the decision-making process is not equal between the countries who are members of the OECD and the G20, and the members of the Inclusive Framework that are not. The third limitation relates to the limited opportunity for developing countries shape the agenda of the negotiations.

## 5.2 Institutional Aspects

Whereas the section above focuses on formal and procedural barriers that arguably limits the equal participation of developing countries, this part attempts to outline and discuss the suggested institutional barriers which relates to the characteristics of the OECD as an organization. There are clear overlaps between the different limitations that are outlined throughout entire chapter 5, but whereas the section 5.1 to a larger extend attempts to describe and discuss how the rules and aspects of the negotiations, this part focuses more on the OECD.

### 5.2.1 Lack of Transparency

One characteristic which potentially influence developing countries' role in the Inclusive Framework is the lack of transparency. The participants focused on various aspects of this characteristic, and some discussed specifically how this might influence the negotiation dynamics.

Hearson suggested that it could be favorable for smaller economies that the negotiations are happening "behind closed doors", and how participants and negotiators might prefer the confidentiality:

*"Some negotiations just do have to happen privately. If what has to happen is that the negotiator from a smaller economy, from a less powerful country, needs to dig their heels in and be difficult, it might be easier for them to do that in private. If they do that in public, then everybody, they are more exposed maybe."*

Hearson (2022)

Supplementary, he described how people have made comments to him saying it is "quite impressive how the general shape of consensus doesn't leak until they actually want it to be out." (Hearson, 2022). He suggested that the fact that you must wait for official statements and press releases by the organization to find out what countries are agreeing on might indicate that "the participants, including those from developing countries, want to keep it confidential" (Hearson, 2022).

Ryding, on the other hand, believed that these secretive negotiations allow for the potential affect the less powerful countries negatively

*"I do believe that the risk of these developing countries getting run over is lower if citizens, journalists, and the world can watch what is going on. There will always be a higher risk of arm-wrestling and dirty tricks if the negotiations are behind closed doors. That is my opinion."*

Ryding (2022a)

The two quotes outlined above suggests that the lack of transparency is a characteristic of the OECD that might influence negotiations dynamics, although they disagree about how it affects the negotiations.

### 5.2.3 The Role of the Secretariat

Another barrier to the inclusion of the equal participation of developing countries might be the role of the OECD Secretariat. Several of the participants expressed concern towards the biased role of the secretariat. They suggested that the OECD secretariat “*will always naturally be biased towards the OECD members. These are the countries that have established this organization and have the power in the organization*” (Ryding, 2022a), and that “*the OECD Inclusive Framework is biased towards the interests of the OECD. That is its main constituency*” (Mukumba, 2022).

Two of the participants came with examples that suggested that the Secretariat play an active role in affecting the negotiations. The first point is the one already outlined above, where Cobham described how the OECD Secretariat changed the course of directions of the Inclusive Framework, by throwing away inter alia the G-24 proposal in favor of a proposal more in line with the interests of two powerful states and OECD members, the US and France.

Hearson brought up another aspect of how the secretariat plays an active role in the negotiations and influences the outcomes. When talking about the political pressure to move forward with the processes in the Inclusive Framework and the pressure to sign the political agreement (further discussed below), he states that the OECD secretariat takes part in applying this pressure:

*“[T]he people at the top of the OECD secretariat, so that would be the director of the center for tax policy and administration, and also the secretary-general, they use their direct political access to political principals. And this is a new thing. In the past, that kind of going over the heads of the technic technocrats to their political masters wasn’t something that the OECD was thought to do. That is a new thing that kind of characterizes the Pascal Saint-Amans era. And so, I think sometimes that pressure is from the secretariat.”*

Hearson (2022)



Hearson thus addressed another way that the OECD secretariat played an active role in the negotiations. Whereas the example provided by Cobham demonstrates that the secretariat takes a role in influencing the agenda and what is being discussed and worked on by the Inclusive Framework, Hearson suggested that they also play a role in influencing the decision-making by applying pressure on political principals.

The research of the role of secretariats and institutions outlined in the theory chapter, suggested that they might influence international negotiations through different measures ranging from the procedures and formal rules, which has been explored in the previous sections, to playing an active role in capacity building and shaping the agenda behind the scenes. Similarly, the examples provided by Cobham and Hearson suggests that the OECD secretariat plays an active role in setting the agenda, as well as in influencing the decision-making process. One could argue that the example by Cobham supports the realist claim that institutions “*are simply tools of the great powers*” (Mearsheimer, 2019, p. 11). The fact that the OECD secretariat threw away the proposals they were asked to assess and steered the negotiations to reflect the interests of France and the US supports this notion. The examples provided indicated that the OECD secretariat acts in favor of the OECD members, thus indicating that the active role of the secretariat might be a barrier for the equal participation and influence of all members of the Inclusive Framework.

### 5.3 Limitations Beyond the Inclusive Framework and the OECD

Whereas the two sections above focus on the limitations for development countries’ equal participation due to characteristics and processes of the Inclusive Framework and the OECD, there are also limitations addressed by the participants that go beyond the institutions. The gap in negotiations capacity and political pressure would arguably have been factors nevertheless the forum or framework of the negotiations. Yet, my findings suggest that there might be institutional characteristics which enhances the differences between developing and developed countries within the OECD and the Inclusive Framework.

### 5.3.1 Negotiation Capacity

Both in the preliminary research and in several of the interviews, difference in negotiation capacity was brought up as an aspect which might amplify the differences between developing countries and the OECD countries.

Hearson addressed the difference in capacity, and suggested that the main challenge of ensuring the interests of lower income countries in the negotiations was not the Inclusive Framework, but rather the negotiation capacities:

*“I think the problem is not about the Inclusive Framework, the problem here is about a mismatch in negotiating capabilities between developed and developing countries, which would exist in any forum. You find it in the UN Tax Committee, you find it in the inclusive framework, you find it in other areas of international cooperation.”*

Hearson (2022)

He remarked that *“there are aspects to the way that the inclusive framework operates and is designed that makes it a particularly challenging environment”*, but further explained that there seems to be a consensus in the OECD trying to solve that (Hearson, 2022). However, he demonstrated a disbelief in the effect of these solutions solving the problem and stated that *“you still wouldn’t have a fully level playing field because countries aren’t starting from the same place, and that is the problem”* (Hearson, 2022).

Hearson further explains that the difference of negotiation capacity is not only between developing and developed countries, and elaborates how one of the findings of their research suggests that there are also smaller OECD countries that does not feel heard:

*“There are instances in which, the African countries have been more able to achieve their goals in the inclusive framework than smaller OECD countries. You know, there is one particular example that we talk about where some OECD countries had wanted to overturn a decision, but they hadn’t. I think they probably could have if they really wanted and invested a lot of political capital into it. But they didn’t. They chose not to. And the African countries did. And I found that very interesting. A lot of people said this, including people at the OECD secretariat, that the distinction between developed and developing countries, or between OECD members and non-OECD members was*

*important up to a point, but actually there are some smaller capital-importing OECD countries which also feel like they are rule-takers in that sense.”*

Hearson (2022)

In other words, Hearson suggested that one of the key challenges for the equal participation of developing countries is the difference in negotiation capacity. He further elaborated how this also applies to smaller countries within the OECD but argued that the gap of capacity would be present nevertheless which forum.

As an indirect response, Rangaprasad disagreed to the suggestions that mismatch of negotiation capacity is the reason why lower-income countries are not heard in the negotiations. Firstly, she emphasized that the lack of access to the negotiations due to lack of transparency (previously outlined) makes it difficult to make an independent assessment of negotiation capacity and dynamics in the inclusive framework negotiations. Further, she remarked that the UN, compared to the OECD, has built up an institution that (better) takes the gap into account:

*“I also find it interesting, because in the UN you have several negotiation groupings of developing countries. So, there is G77 which is the biggest one, but you also have the Africa Group, you have the Asia-Pacific Group, the Group of Latin America and the Caribbean (GRULAC), you have LDC group, you have the small-island developing states, and you have land-locked developing countries group. So, you have so many. These are groupings that have been built over decades of cooperation, with every single country, no matter how small, has really invested resources into this kind of international cooperation, and you can’t just replicate that in a vacuum. I mean, it has taken decades for them to build that, so when they say “we have to build negotiation capacity” I am like, but maybe it is already there? Why are we pulling countries out of the UN and then trying to bring them somewhere else? They are already there in the UN. They are already cooperating with each other, there are already negotiation groupings that have been built over decades. So, this idea that we need to do something else in parallel, with countries that especially have limited resources, it just makes no sense for me as an argument.”*

Rangaprasad (2022b)

Rangaprasad thus addressed that there is a difference in negotiation capacity between countries, but argued that there are better forums, namely the UN, which institutionally attempts to consider their differences in capacity. Similarly, as addressed under section 5.1.3, Mukumba also addressed the lack of contextual understanding and failure to adjust bridge the gap in capacity and the implications that follows.

Although Rangaprasad, Mukumba, and Hearson all claim that difference in negotiations capacity is a factor which might influence the negotiations, Rangaprasad and Mukumba emphasized that the institutional failure and lack of experience to handle this gap in capacity might enhance the difference of negotiation capacity.

### 5.3.2 Political Pressure

Another finding which might impact the developing countries' influence within the Inclusive Framework, could be the use of political pressure. Political pressure has been categorized as a non-specific OECD and Inclusive Framework limitation because it is arguably something that happens outside the negotiations and the institutions.

Several participants brought up that there exists political pressure to agree to what is negotiated under the Inclusive Framework. Nigeria, Sri Lanka, Kenya, and Pakistan decided not to approve the political outcome from October. Three of the participants brought up that they were aware of several other countries that were hesitant to sign the October agreement, but that had experienced political pressure to sign on.

*“We would have conversations with revenue authorities where they would say that this is a bad deal for them, it really would have been better had the rule remained the same, because now they have an added level of complexity to deal with. However, the revenue authorities would then indicate that they got instructions from the top and so they did not have a choice. So, there was a political dimension to all of this, where countries that knew that this was probably not in their best interests, still went and signed because they were getting phone calls from higher powers to do this”*

Mukumba (2022)

Mukumba addresses that there was a political dimension and that there was pressure to agree to the deal. She suggests that it is likely that the four countries who chose to opt-out of the agreement also experienced pressure, and states that she *“applaud the countries that were still able to stand their ground.”* (Mukumba, 2022).

Hearson also addresses that the four countries who withdrew experienced political pressure, but claims that there seems to be a difference in the sense that the political principles fully supported their negotiators:

*“And they [Nigeria] experienced a lot of pressure to sign up. And I think one of the main strengths of the Nigerians was that the negotiating officials got their political principles to fully support the position they adopted. So, when the phone call came to the finance minister, the finance minister said, “I support my negotiators”.*

Hearson (2022)

Hearson and Mukumba, thus, address that several countries experience political pressure to sign the negotiations. Hearson argue that one of the reasons as of why Nigeria did not fold to the pressure was due the support by politicians higher up in the ministries. He thereby demonstrates how domestic decision-making processes and institutions might influence international negotiations on economic relations, as argued by Woolcock (2011).

As a follow up, Hearson was asked where this political pressure came from. He responded that it is important for him to address that he has not conducted interviews to study how the final consensus was pinned down, but that he had *“a little bit of an insight”* (Hearson, 2022). He suggests that this political pressure comes from both the OECD secretariat: *“so that would be the director of the center for tax policy and administration, and also the secretary-general, they have direct political access to political principles”*, but that he has the impression that the pressure was applied by other member states: *“So my feeling is, who is it that would have been putting pressure on the Indian Finance Minister? Maybe it was the US treasury secretary, but I don’t know that”* (Hearson, 2022).

This section has presented some limitations that arguably are not specific to the OECD and/or the Inclusive Framework. It has suggested that a gap in negotiation capacity and the utilization of political pressure limits the equal participation of developing countries.

## 6. Conclusion

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting is one of the most prominent initiatives attempting to find a solution on the issue of tax avoidance and evasion. The initiative started as a project between the OECD and the G20 but opened up for non-OECD and non-G20 countries in 2016, with the establishment of the Inclusive Framework. Although the OECD emphasizes that all members of the Inclusive Framework participate on an 'equal footing', the Inclusive Framework has received criticism for not sufficiently including developing countries and their interests. This study wished to examine the criticisms of the Inclusive Framework, and the role of developing countries within the framework. The research question of this thesis was therefore: To what extent does the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting enable the equal participation of developing countries in the negotiations? The findings of this study outlines in total seven limitations to the equal participation of developing countries.

The first three findings have been labelled as *formal and procedural limitations*, and looks at who are members, how decisions are made, and who sets the agenda. Based on the interviews, I argued that one major limitation to the inclusion of developing countries and their interests is that a significant number of developing countries are not members of the Inclusive Framework, and thus have no formal way of influencing the negotiations. The second finding questions whether the notion of 'decisions by consensus' *only* applies to the members of OECD and G20, and argues that if so, the decision-making process of the Inclusive Framework significantly limits the equal participation of developing countries. The final finding of the formal and procedural limitations suggested that developing countries have limited opportunities to influence the agenda of the negotiations, because: the foundational agreement that the Inclusive Framework is built on was exclusively negotiated by OECD and G20 countries; because the OECD fails to make contextual adjustments so that all countries can contribute meaningfully; and because although all countries might come with proposals and inputs, the OECD secretariat has the power to decide not to include certain aspects.

The next two findings can be described as *institutional aspects*, which was more concerned with the characteristics of the OECD. Based on the interviews, I suggested that the lack of transparency might affect the negotiations dynamics and outlined the different views on the

impact this might have on development countries' role in the negotiations. The next finding suggested that the role of the secretariat might be a limitation for the equal participation of developing countries. By proposing that the secretariat takes on an active role in shaping the agenda of the negotiations, as well as actively applying pressure to countries, I suggested that it might be considered a barrier for the inclusion of developing countries and their interests in the negotiations.

Finally, the last two findings were labelled as *limitations beyond the Inclusive Framework and the OECD*, suggesting that there might be some limitations which are not specific to the OECD and/or the Inclusive Framework. Here, I outlined that the gap in negotiation capacity might influence international negotiations. However, some of the participants argued that there were certain aspects of the OECD that enhanced this gap, or at least failed to limit the effect of this gap in capacity. Further, the last finding demonstrated how there has been a lot of political pressure for states to agree. Even though this is something that is not specific to developing countries, developing countries are those members that has expressed the most dissatisfaction with the agreement, thus, suggesting that their interests were not represented in the agreement.

In total, my findings suggests that there are some major limitations to the equal participation of developing countries under the OECD/G20 Inclusive Framework on BEPS.

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## 8. Appendix

### Appendix 1: Example of Interview Guide

#### **INTERVIEW GUIDE - Martin Hearson**

**Main Research Question:** How and to what effect does the OECD/G20 Inclusive Framework on BEPS attempt to incorporate low- and middle-income countries' interests into its efforts to combat international tax avoidance and evasion?

**Through this thesis, I wish to look at the OECD/G20 Inclusive Framework on BEPS and the challenges that particularly low- and middle-income countries might face in these negotiations, as well as different views on whether the framework is/can become a framework where all parts truly participate on equal footing.**

The aim of the study is to gain insight into both strengths and weaknesses of the framework, potential improvements that could be made to the framework, and the benefits and challenges with strengthening tax cooperation within the United Nations compared to the Inclusive Framework.

#### **Context about participant:**

- Could you say a little about your work and how it is related to international cooperation on tax and the Inclusive Framework?

#### **Context about the current state of the international tax structure, including OECD and the Inclusive Framework**

- What would you say are the biggest challenges with today's tax system?
  - What would you say are the largest challenges particularly for low- and middle-income countries?
- How would you describe the Inclusive Framework on BEPS and its role in international cooperation on tax?
  - How does it differ from other initiatives?
  - How does it view the issue of tax avoidance and evasion?

#### **Inclusivity in Inclusive Framework on BEPS**

- You took part in writing a working paper looking at the inclusivity of the inclusive framework. To what extent would you say that the Inclusive Framework is inclusive?
  - main ways it is not? Concrete examples?
  - main ways it is?
  - What is the effect of this inclusivity/lack of inclusivity?
  
- How would you say the extent of this inclusivity affects the outcomes of negotiations?
- What do you see as the main limitations to today's inclusive framework?
- Any strengths with the IF/having tax cooperation under the OECD?

**Potential for Inclusivity:**

- It seems to me like a lot of work both academically and in civil society, and also within the OECD, is done to assess the strengths and weaknesses of the Framework, some of them with explicit recommendations on improvements that could be done.  
*What are your views on the potential of inclusivity of the inclusive framework?*  
 → *are there changes that could be made to make the framework (more) inclusive?*

**More specifically about his work:**

- Your working paper also came with some clear recommendations on changes that should be made. What have the responses been to the working paper and these recommendations?
- What is your experience of accessibility at the OECD as an academic researching the IF?
- When specifically studying the Inclusive Framework and the inclusion of developing countries, were there any findings that surprised you?

**ETC:**

- Do you have any last comments or questions you think would be relevant for this project?
- Any names that you might think would be relevant to talk to for me?

## Appendix 2: Consent Form

### **Participating in the Research Project**

#### ***“Inclusivity of the Inclusive Framework”***

#### **Purpose**

This research will explore the different views on the influence of low- and middle-income countries on the negotiations under the OECD/G20 Inclusive Framework on BEPS. By conducting interviews with academics and people working in civil society organizations specialized on matters of tax justice and economic inequality, the research wishes to gain insight on the challenges particularly low- and middle- incomes face during negotiations under the Inclusive Framework and the views of the participants on how to best ensure equal participation of all countries, including low- and middle income countries, in international cooperation against tax avoidance and evasion.

The research is conducted for a master thesis, and the data collected from the interviews will be analyzed and used in the thesis.

#### **Responsible for the research project**

The research is conducted for a master thesis, at the Norwegian University of Life Sciences.

#### **Why are you asked to participate?**

The data will be collected through interviews with academics and representatives from civil society working with tax justice and economic justice. It would therefore be greatly appreciated if you would participate, to gain insight from your point of view.

#### **What does it mean for you to participate?**

If you agree to participate in the project, it will be done through a 45-minute-long individual interview. Through the interview you will be asked questions regarding your views on the inclusivity of the Inclusive Framework, the strengths and weaknesses of the framework, improvements that can/should be done, and challenges and strengths of strengthening tax cooperation under the United Nations compared to the Inclusive Framework. The interview will be audio-recorded for analysis and transcribing purposes.

#### **Participating in this study is voluntary**

Participating in this study is voluntary. If you as a participant at any point prior/during/after the study want to withdraw, you have the full right to do so without giving any reason. The recordings will then be deleted, and the answers provided in the interview will not be included further in the study. There will be no negative consequences of withdrawing from the study.

#### **Your privacy - how we store and use your information**

We will only use the information about you for the purposes described in this consent form. We treat the information confidentially and in accordance with the privacy regulations. Only the student, the supervisor, and potentially the examiner will have access to the recorded material. During the analyses, the recording will be stored in my private drive, where only I have access, and the recordings will be deleted once the study is done.

### **What happens to your information when we end the research project?**

The information is anonymized when the project is completed / the assignment is approved, which according to the plan is August 2022. The recordings will be deleted once the project is completed.

### **Your rights?**

As long as you can be identified in the data material, you have the right to:

- Access to which personal information is registered about you, and to receive a copy of the information,
- To have personal information about you corrected,
- To have personal information about you deleted, and
- To send a complaint to Datatilsynet about the processing of your personal data.

### **What gives us the right to process personal data about you?**

We process information about you based on your consent.

On behalf of Norwegian University of Life Sciences, NSD - Norwegian Center for Research Data AS has assessed that the processing of personal data in this project is in accordance with the privacy regulations.

### **Where can I find out more?**

If you have questions about the study, or want to exercise your rights, please contact:

Fanny Løvholm (student): +4740248743 or [fanny.elisabeth.ostfoss.lovholm@nmbu.no](mailto:fanny.elisabeth.ostfoss.lovholm@nmbu.no)

Or

Morten Jerven (supervisor): +4767231375 or [morten.jerven@nmbu.no](mailto:morten.jerven@nmbu.no)

If you have questions related to NSD's assessment of the project, you can contact:

- NSD - Norwegian Center for Research Data AS by email ([personverntjenester@nsd.no](mailto:personverntjenester@nsd.no)) or by phone: 55 58 21 17.

Kind regards

Morten Jeven

Fanny Løvholm

## Consent

I have received and understood information about the project “Inclusivity of the Inclusive Framework” and have had the opportunity to ask questions. I consent to:

- To participate in a semi-structured interview

I agree that my information will be processed until the project is completed

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(Signed by project participant, date)





**Norges miljø- og biovitenskapelige universitet**  
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