

## OPERATIONAL GUIDELINES CONCERNING COUNTRY-BY-COUNTRY REPORTING

### 1. INTRODUCTION

With reference to the preparation and submission of country-by-country reports (hereinafter “CbCR”, as used in international practice), whose obligations were introduced into our legal system by Delegated Decree no. 68 of 25 April 2019, (hereunder “Delegated Decree”), hereinafter are the operational indications on general aspects and instructions for filling in the applicable forms, in addition to what has already been illustrated in the Guidelines issued by the Ministry of Finance and Budget of the Republic of San Marino, in April 2019.

For anything not specifically mentioned hereunder, please refer to the document “*Guidance on the Implementation of Country-by-Country Reporting BEPS ACTION 13*”<sup>1</sup>, issued by the OECD in November 2019, to be integrated with any new indications or updates that may subsequently be published by the OECD.

### 2. GENERAL INDICATIONS

With reference to the obligation to prepare the CbCR, hereunder are the relevant general indications.

#### 2.1. Reporting period

As established in Article 2 of the Delegated Decree, the reporting period corresponds to the tax period whose data must be taken as a reference for the purposes of the preparation of the CbCR by an entity required to submit a report that belongs to a multinational group.

To this end, it should be noted that the tax period to be considered coincides with the tax period of the ultimate parent entity, corresponding in most cases to the calendar year for companies having their registered office in the Republic of San Marino. With reference to the data of the other entities belonging to the multinational group, if the relevant tax period does not coincide with the calendar year, the following data should be optionally considered, according to an approach to be adopted in a consistent manner:

- The data relating to the tax period ending on the same day as the ultimate parent entity's tax period ends; or
- The data relating to the time period corresponding to the tax period of the ultimate parent entity.

#### 2.2 Submission deadline

The CbCR is transmitted by the entities required to submit the reports, pursuant to Article 3 of the Delegated Decree, by 31 December of the year following the reporting period of the multinational group.

If the specific requirements are met, the first reporting period to which the obligation in question is applicable according to the aforementioned San Marino legislation corresponds to the 2019 calendar year. In this regard, it should be noted that the group accounting data to be considered for the purposes of verifying that the threshold has been exceeded are those relating to 2018.

Consequently, for the entities required to submit the reports in question, the obligation to transmit them to the Tax Office must be fulfilled by and no later than 31 December 2020, while the related exchange of information with the other tax jurisdictions involved must be carried out by the competent administration (CLO) by 30 June 2021. It should be noted that, when fully operational, this requirement must be met on 31 March of the second year following the reference year.

A specific example is given in paragraph 4.

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<sup>1</sup> The document “*Guidance on the Implementation of Country-by-Country Reporting BEPS ACTION 13*” is available at the following link: <https://www.oecd.org/tax/beps/guidance-on-country-by-country-reporting-beps-action-13.htm>.

### **2.3 Language**

With reference to the way the report is compiled, any information or explanations to be provided in a descriptive manner in the CbCR, in particular in Table 3, must be both in Italian and in English.

### **2.4 Data sources**

For the purposes of compiling the CbCR, the data sources for the preparation of the CbCR must be adopted in a homogeneous manner within the multinational group, as well as in continuity from one financial year to the next.

The reporting entity has the right to choose the data sources it refers to, such as, for example: reports drafted for the purposes of preparing the consolidated financial statements, data that can be inferred from the financial statements of entities belonging to the multinational group, data that can be inferred from any specific reports required by the legislation, or data deriving from management accounting.

In this regard, the data source(s) used to compile the CbCR must be indicated in Table 3. If, during subsequent financial years, it is necessary to refer to sources other than those previously used, an express indication of this change must be provided in Table 3, adequately explaining the relevant reasons.

With regard to the data to be used in the preparation of the CbCR, it is not required that the accounting data be reconciled with the consolidated financial statement of the group, nor that adjustments or corrections be made as a result of different accounting principles adopted in different countries.

### **2.5 Currency**

The amounts reported are in the currency used by the reporting entity in its consolidated or separate financial statement.

The entities belonging to the multinational group, other than the ultimate parent entity, that report in accordance with Article 3, paragraph 2 of the Delegated Decree, may use the currency used by the ultimate parent entity in order to provide the necessary information to fulfil the obligation in question.

If the financial statements of the entities belonging to the group are used, the amounts must be converted into the currency of the reporting entity's financial statements at the average exchange rate for the year. This information must be specifically indicated in Table 3.

### **2.6 Permanent establishments**

Unless expressly indicated otherwise, where there are entities with permanent establishments within the multinational group, the data of such permanent establishments must be reported taking into account the tax jurisdiction in which they are located and not the tax jurisdiction of the entity from which they derive.

On the basis of the foregoing, for the purpose of compiling Table 1, with reference to the entity from which the permanent establishment derives, the relevant amounts must be reported net of those attributable to the permanent establishment.

### **2.7 Data reporting modality**

Resident entities that are required, pursuant to Article 3 of the Delegated Decree, to submit the CbCR, must transmit the data referred to in Article 5 of the Delegated Decree by sending them in XML format, in accordance with the latest version of the OECD document "*Country-by-Country Reporting XML Schema: User Guide for Tax Administrations*"<sup>2</sup>.

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<sup>2</sup> The document "*Country-by-Country Reporting XML Schema: User Guide for Tax Administrations*" is available at the following link: <https://www.oecd.org/ctp/exchange-of-tax-information/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations.htm>.

The duly encrypted XML file must be transmitted to the Tax Office by means of a non-rewritable digital storage medium within the deadline provided for in Article 6 of the Delegated Decree.

Upon acknowledgement of the formal correctness of what has been received, the Tax Office will, within 30 days, issue the appropriate transmission receipt, which will constitute proof of the fulfilment of the submission obligation; otherwise a notice of rejection will be given and the submission will be considered as failing.

In the event that the transmission receipt is issued, following a positive acknowledgement of the formal correctness of the document received, the submission is considered validly made on the day on which the document is received by the Tax Office.

The Tax Office reserves the right to carry out controls on the completeness and truthfulness of what is reported in the CbCR transmitted to it, within the time-limits and in the manner provided for by the legislation in force.

### **2.8 Entities included in the CbCR**

For the purposes of preparing the CbCR referred to in Article 5 of the Delegated Decree, the entities belonging to the multinational group according to the consolidated financial statement prepared by the ultimate parent entity are intended as included.

In accordance with the Guidelines of April 2019, pending the introduction of the legislation on consolidated financial statements, or in the case of an ultimate parent entity resident in a country where the consolidated financial statements are not required to be prepared, reference will be made to the corresponding criteria provided by the relevant internationally recognised and accepted accounting standards, as well as to the interpretations provided by the OECD insofar as applicable.

### **3. SUBJECT OF THE CBCR**

As provided for by the provisions of Articles 5 and 6 of the Delegated Decree, the CbCR must be submitted, alternatively:

- By the ultimate parent entity resident in the Republic of San Marino as the parent entity of a multinational group;
- By another entity belonging to a multinational group, which is obliged to submit said report in the cases provided for in Article 3, paragraph 2 of the Delegated Decree.

The CbCR must also contain the data and information expressly requested with reference to the multinational group in accordance with the models set out in Annex A to the Delegated Decree.

With reference to the data and information to be reported in the CbCR, the following clarifications are made.

#### **3.1 Table 1 - "Summary of the distribution of income, taxes and assets by tax jurisdiction"**

Table 1 of the CbCR model, called "*Summary of the distribution of income, taxes and assets by tax jurisdiction*" must contain, in addition to the data indicated in the title, the following information for each of the lines included therein:

##### Column 1: Tax jurisdiction

This column must include the tax jurisdictions in which the entities belonging to the group are resident for tax purposes, or in the case of permanent establishments, the tax jurisdictions in which they are located, by reporting separately one for each line.

A tax jurisdiction is defined as a jurisdiction having tax autonomy, whether or not corresponding to a State. A special line must be provided for all entities belonging to the group, which the reporting entity does not consider to be resident in any tax jurisdiction. If an entity belonging to the group is resident in more than

one tax jurisdiction, the relevant rules of the applicable double taxation convention must be applied to determine the jurisdiction of tax residence. If no convention is applicable, the entity belonging to the group must be reported as resident in the tax jurisdiction where the place of effective management is located. The place of effective management must be determined in accordance with the principles set out in the OECD Model Convention and the related Commentary.

Columns 2-4: Revenues

The following sub-items must be separately reported in this item, which includes the following three columns of the table under examination:

- i) The sum of the revenues of all entities belonging to the group that are resident for tax purposes in the individual tax jurisdiction, if they derive from transactions carried out with parties **not belonging** to the group during the reporting period under examination;
- ii) The sum of the revenues of all entities belonging to the group that are resident for tax purposes in the individual tax jurisdiction, if they derive from transactions carried out with parties **belonging** to the group during the reporting period under examination;
- iii) The total revenues, given by the sum of sub-items i) and ii).

The above sub-items relative to revenues include revenues from the sale of goods such as semi-finished goods, finished goods and products, as well as raw materials and/or consumables, from the provision of services, from fees, interests, royalties and premiums, as well as any other amounts of a similar nature. Revenues from extraordinary management and capital gains from the sale of assets are also considered.

Revenues do not include payments received from other entities belonging to the group if they are considered dividends in the tax jurisdiction of the party paying them.

Any revaluations or unrealised capital gains relating to asset items entered as equity must not be considered for the purposes of this item.

If reference is made to the data of the financial statements of the entities belonging to the group, the amounts relating to revenues that are relevant for the purposes under examination must be considered; such amounts must be quantified according to correct accounting principles.

Any net amounts reported as such in the financial statements do not need to be considered for the gross of the amount.

If several entities are resident for tax purposes in the same tax jurisdiction and transactions have been carried out among them during the reporting period, the relevant amounts do not require any adjustments or other consolidation eliminations and should be reported on a simple aggregation basis.

Column 5: Profit (loss) before income taxes

This item represents the sum of what has been reported in the profit and loss account item "Profit (loss) before tax" by all entities belonging to the group that are resident for tax purposes in the individual tax jurisdiction.

Profit (loss) before income taxes must include all items related to extraordinary revenues and expenditures.

This item must not include payments of sums by other entities belonging to the multinational group if they are considered dividends under the legislation of the tax jurisdiction to which the paying entity belongs.

Column 6: Income taxes paid (on a cash basis)

This item must include the total income taxes actually paid during the relevant tax period by all entities belonging to the group that are resident for tax purposes in the tax jurisdiction indicated in column 1.

This item includes income taxes paid by any entity belonging to the multinational group that is resident for tax purposes in the individual tax jurisdiction to such tax jurisdiction and to any other tax jurisdiction.

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– Instructions by the Tax Office of the Republic of San Marino –

Income taxes paid include advance payments made, income taxes paid in respect of previous years, also following assessments, as well as taxes withheld by other parties (either belonging to the group or independent) on payments to the entity belonging to the group. Therefore, if company A, which is resident in tax jurisdiction A, accrues interest in tax jurisdiction B, the tax withheld in tax jurisdiction B must be reported by company A.

Any refunds of income taxes previously paid are deducted from the taxes paid in the tax period in which they are collected, unless they are considered as revenues according to correct accounting principles. In this case, this amount can be qualified as revenue and reported in Table 1 according to this qualification, by providing a note in Table 3.

Income taxes paid, in relation to any dividends paid by entities belonging to the group, must be reported only if the dividends to which they refer are indicated in column 5.

Column 7: Income taxes accrued (current year)

This item includes the total current taxes accrued on the taxable income or on the loss for the reporting period of all entities belonging to the group, which are resident for tax purposes in the individual tax jurisdiction, regardless of their payment.

Current taxes accrued must take into account only transactions relating to the tax period; therefore this item must not take into account the effect of temporary tax changes, either upwards or downwards. Moreover, this item does not include provisions for uncertain tax liabilities.

Income taxes accrued, in relation to any dividends paid by entities belonging to the group, must be reported only if the dividends to which they refer are indicated in column 5.

Column 8: Stated capital

This item includes the sum of the share capital and capital reserves of all entities belonging to the group that are resident for tax purposes in the relevant tax jurisdiction.

In the case of permanent establishments, the stated capital must be reported by the legal entity to which these permanent establishments belong, unless there is a specific capital requirement for regulatory purposes in the tax jurisdiction of the permanent establishment.

Column 9: Retained earnings

This item must include the total sum of retained earnings, resulting in equity at the end of the reporting period, of all entities belonging to the group that are resident for tax purposes in the individual tax jurisdiction.

If the amount of retained earnings is negative, this negative value must be reported without making any adjustments. If there are several parties in the same tax jurisdiction and some of them have positive values while others have negative values, their algebraic sum must be reported with the relevant sign. An appropriate indication must be provided in Table 3.

Column 10: Number of employees

This item must include the total number of employees, on a full-time equivalent (FTE) basis, of all entities belonging to the group that are resident for tax purposes in the individual tax jurisdiction.

The number of employees may refer, alternatively, to the number of employees at the end of the year, or to the number calculated on the basis of average employment levels for the year, or in any other way that is applied consistently among the different tax jurisdictions involved and from one reporting period to another.

To this end, external collaborators who participate in the ordinary operating activities of the entity belonging to the group may be indicated as employees. Rounding or reasonable approximation of the

number of employees is permitted, provided that this does not significantly distort their distribution among the different tax jurisdictions. The criteria adopted must be applied consistently from one year to the next and among the different entities belonging to the group.

Column 11: Tangible fixed assets other than cash and cash equivalents

This item is the sum of the net book values of tangible fixed assets resulting from the balance sheet of all entities belonging to the group that are resident for tax purposes in the individual tax jurisdiction.

However, this item, related to tangible fixed assets, does not include cash or cash equivalents, intangible assets or financial assets.

**3.2 Table 2 - "List of all entities belonging to the multinational group that are included in each aggregation by tax jurisdiction"**

Table 2 of the CbCR model, entitled "*List of all entities belonging to the multinational group that are included in each aggregation by tax jurisdiction*", must contain the following information specific to each entity of the multinational group, by grouping them according to the tax jurisdiction to which they belong, as shown in Table 1:

Column 1: Tax jurisdiction

This column must contain each tax jurisdiction in which the entities belonging to the group are resident for tax purposes, as shown in Table 1.

Permanent establishments must be listed by reference to the tax jurisdiction in which they are located.

Columns 2-3-4: Entities belonging to the group that are resident in the tax jurisdiction

For each of the tax jurisdictions indicated in column 1, the individual entities belonging to the multinational group that are resident therein must be reported. In this regard, for each entity the following must be indicated:

- i) Business name;
- ii) Registered office;
- iii) T.I.N. (Tax Identification Number) issued by the relevant tax jurisdiction.

For each permanent establishment, the legal entity from which the same establishment derives must be specified (e.g. in the column referring to the business name, the following must be indicated for the permanent establishment located of Company X in Country Y: "Company X – Tax Jurisdiction Y PE").

Column 5: Tax jurisdiction of incorporation or establishment, if different from the jurisdiction of residence for tax purposes

This item must include the name of the tax jurisdiction under whose law the entity belonging to the group has been incorporated, if different from the jurisdiction of tax residence.

Columns 6 to 18: Main activities

The nature of the main activity or activities carried out by each entity belonging to the group must be reported for each entity by compiling the relevant columns.

One or more boxes may be ticked for each line, depending on the activities to be indicated. If the column "Other" relating to activities not otherwise classifiable is selected, the nature of the activity carried out must be specified in Table 3.

### **3.3 Table 3 - "Additional Information"**

Table 3 of the CbCR model entitled "Additional Information" must contain, in addition to the name of the group and the tax period concerned, any additional information or summary explanation that is deemed necessary or may facilitate the understanding of the mandatory information provided in the CbCR.

Moreover, the information required by these instructions must be reported as indicated in the previous paragraphs, or in accordance with the *"Guidance on the Implementation of Country-by-Country Reporting BEPS ACTION 13"* issued by the OECD and its updates.

## **4. EXAMPLES OF THE MAIN ANNUAL OPERATIONAL PHASES RELATED TO CBCR**

As an example, hereunder are the fulfilments required in relation to the above, with reference to a given reporting period.

### **4.1 Notifications, as provided for in Article 4 of the Delegated Decree, to be sent to the Tax Office by economic operators qualifying as entities belonging to multinational groups**

Within the deadline for the submission of the IGR-P model (currently corresponding to 30 June of the year following the tax period in question), relating to the reporting tax period, the entities that are resident for tax purposes in the Republic of San Marino and belong to multinational groups must notify the following to the Tax Office by using the appropriate "Schedule F" of the tax return, if the relevant consolidated financial statement for the tax period preceding that of reference shows total revenues of not less than € 750 million:

- A) In case of an entity required to report as an ultimate parent entity, or as a designated entity or surrogate parent entity, or required to fulfil such obligation pursuant to Article 3, paragraph 2 of the Delegated Decree, its status as an entity required to report;
- B) In case of an entity belonging to a multinational group, other than those mentioned in the cases under A and therefore not required to report, the identity and tax residence of the entity that is the ultimate parent company and of the entity, if different, that is required to submit the CbCR.

### **4.2 Submission of the CbCR, in accordance with Article 6 of the Delegated Decree, to be sent to the Tax Office if the relevant requirement must be fulfilled.**

By 31 December of the year following the reporting tax period, the entity required to report must transmit to the Tax Office the data relating to the CbCR, as reported in Tables 1, 2 and 3 in Annex A to the Delegated Decree.

Such data must be transmitted according to the procedures indicated in paragraph 2.7 of these Operational Guidelines.

The Tax Office must forward the information received to the Competent Authority, i.e. CLO, no later than the end of February of the second year following the reporting period, in time for the transmission referred to in the following paragraph.

### **4.3 "Exchange of information", pursuant to Article 7 of the Delegated Decree, between the tax jurisdictions involved**

To this end, any automatic exchange of information on CbCR must take place with respect to any other jurisdiction with which a qualifying agreement is in force, pursuant to Article 2, paragraph 1, letter o) of the Delegated Decree, by the CLO, as the Competent Authority.

Such exchange must take place:

- By 31 March of the second year following the reporting period;
- By 30 June 2021, only for the first period of application of the legislation (i.e. 2019).

The CLO exchanges information with other tax jurisdictions in respect of all entities belonging to multinational groups, whether resident or having a permanent establishment in the relevant jurisdiction.

## EXAMPLES

Considering that the Delegated Decree will be effective as of 1 January 2019, the following two cases may occur.

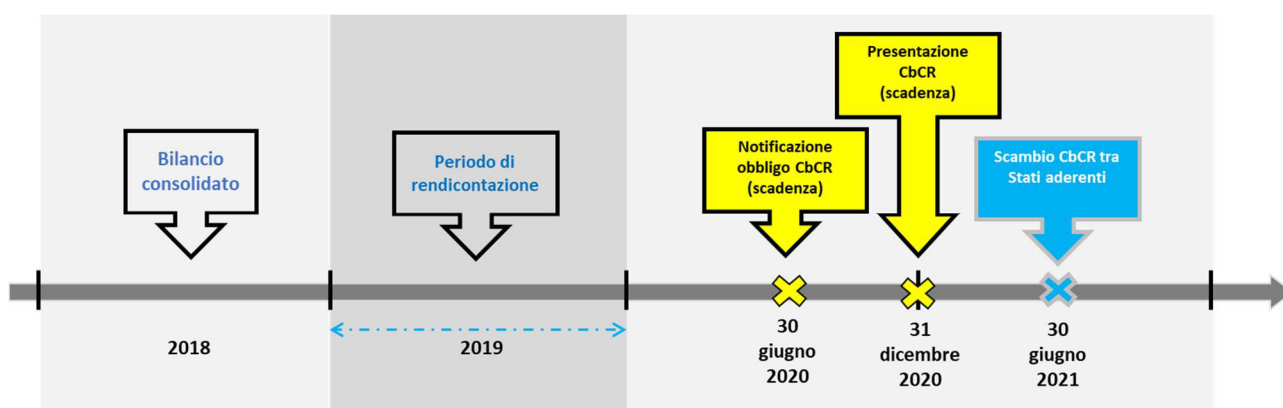
### CASE 1 – First reporting period: 2019

During 2019 (first period of application), the multinational group belonging to the ultimate parent entity X (having at least one entity resident in the Republic of San Marino, e.g. the subsidiary Y) finds that in the previous financial year 2018 it exceeded the total revenue threshold set forth in the legislation applicable in the country of the ultimate parent entity, corresponding to €750 million, or other corresponding value foreseen.

Therefore, group X is required to submit the CbCR with reference to 2019 in the country of residence of the ultimate parent entity.

Consequently:

- by 30 June 2020, company Y, a subsidiary belonging to the multinational group, must send its notification to the Tax Office according to the procedures envisaged, in order to provide the data of the ultimate parent entity and of the other entity, if different, which will submit the report;
- By 31 December 2020, the ultimate parent entity transmits the required data to the respective tax jurisdiction. For the sake of completeness, if the ultimate parent entity is not required to report for other reasons, even though its volume of revenues exceeds the threshold, or there is no adequate agreement for the exchange of data between the two jurisdictions involved (San Marino and the foreign country of X), or there is a systemic failure to meet the requirement by the relevant tax jurisdiction, such requirement should be met by the resident subsidiary Y, unless a surrogate parent entity or a designated entity has been appointed, under the conditions provided for in Article 3, paragraphs 2 and following, of the Delegated Decree;
- By 30 June 2021, the CLO will send to the respective foreign jurisdictions the CbCRs received from the San Marino Tax Office (completed by the respective resident obliged entities), and, in turn, in the example above, it will receive the CbCR submitted by the foreign ultimate parent entity of Group X to the respective tax jurisdiction.



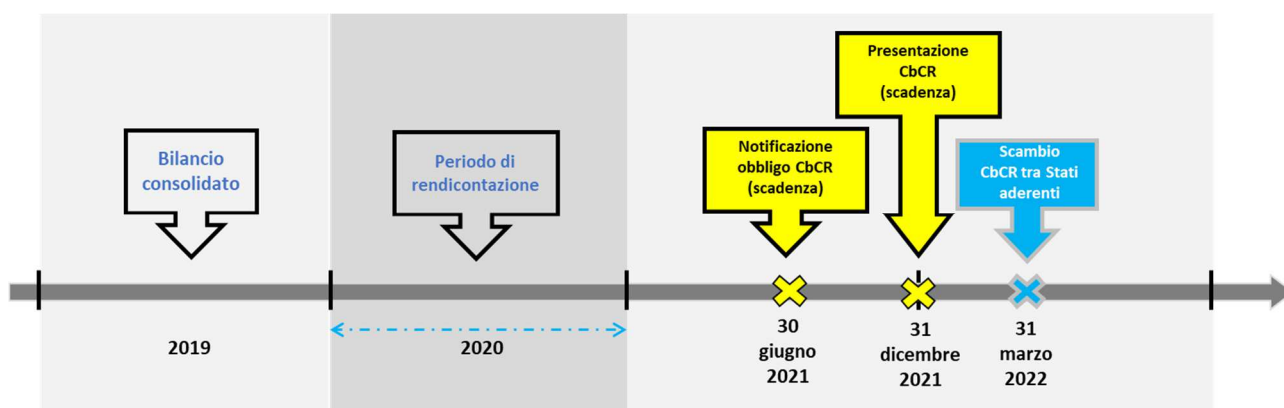


CASE 2 – From 2020, second reporting period

During 2020, the multinational group referred to in Case 1 verifies that in 2019 it exceeded the relevant revenue threshold for the first time. Therefore, the multinational group is required to submit the report for 2020.

Consequently:

- By 30 June 2021, each entity belonging to the group which is resident in San Marino must notify that it is required to submit a CbCR as envisaged above;
- By 31 December 2021, the CbCR must be transmitted by the ultimate parent entity X to the respective tax jurisdiction (as indicated above);
- By 31 March 2022, the CLO will send the CbCRs received from the San Marino Tax Office (completed by resident obliged entities) to the corresponding foreign Authorities and, in turn, it will receive the CbCR submitted, in the example above, by the foreign ultimate parent entity of Group X to the respective tax jurisdiction.



In cases 1 and 2, if company X, acting as the ultimate parent entity, is resident for tax purposes in San Marino, besides notifying the Tax Office of its CbCR requirement through the appropriate schedule in the tax return, it must also submit the actual report according to the procedures and within the deadlines indicated above. Subsequently, the CLO will transmit such information to the competent foreign authorities within the respective deadlines as indicated above.

**KEY:**

*Bilancio consolidato: consolidated financial statement*

*Periodo di redicontazione: reporting period*

*Notificazione obbligo CbCR (scadenza): CbCR obligation notification (deadline)*

*Presentazione CbCR (scadenza): CbCR submission (deadline)*

*Scambio CbCR tra Stati aderenti: CbCR exchange between States Parties to the Convention*

*30 giugno 2020: 30 June 2020*

*31 dicembre 2020: 31 December 2020*

*30 giugno 2021: 30 June 2021*

*31 dicembre 2021: 31 December 2021*

*31 marzo 2022: 31 March 2022*