



Development of the Multilateral Instrument (BEPS Action 15) & Next Steps

***WHAT ARE THE CHALLENGES
AND OPPORTUNITIES FROM THE
PUBLIC INTERNATIONAL LAW
PERSPECTIVE?***



PURPOSE OF THE MULTILATERAL INSTRUMENT



BEPS ACTION PLAN – Sept. 2013

Possible development
of a multilateral
instrument to
implement tax treaty
related BEPS measures



*“to enable jurisdictions
that wish to do so to
implement measures
developed in the
course of the work on
BEPS and amend
bilateral tax treaties”*



Tax Treaty Related Measures

Action 2 –
Hybrid
Mismatches

Action 6 –
Prevention of
Treaty Abuse
(*Minimum
Standard*)

Action 7 –
Avoidance of
Permanent
Establishment
Status

Action 14 –
Improving
Dispute
Resolution
(*Minimum
Standard*)



BEPS Action 15 Report – Nov. 2015

Multilateral instrument to swiftly modify bilateral tax treaties to implement BEPS tax treaty related measures is **desirable and feasible**

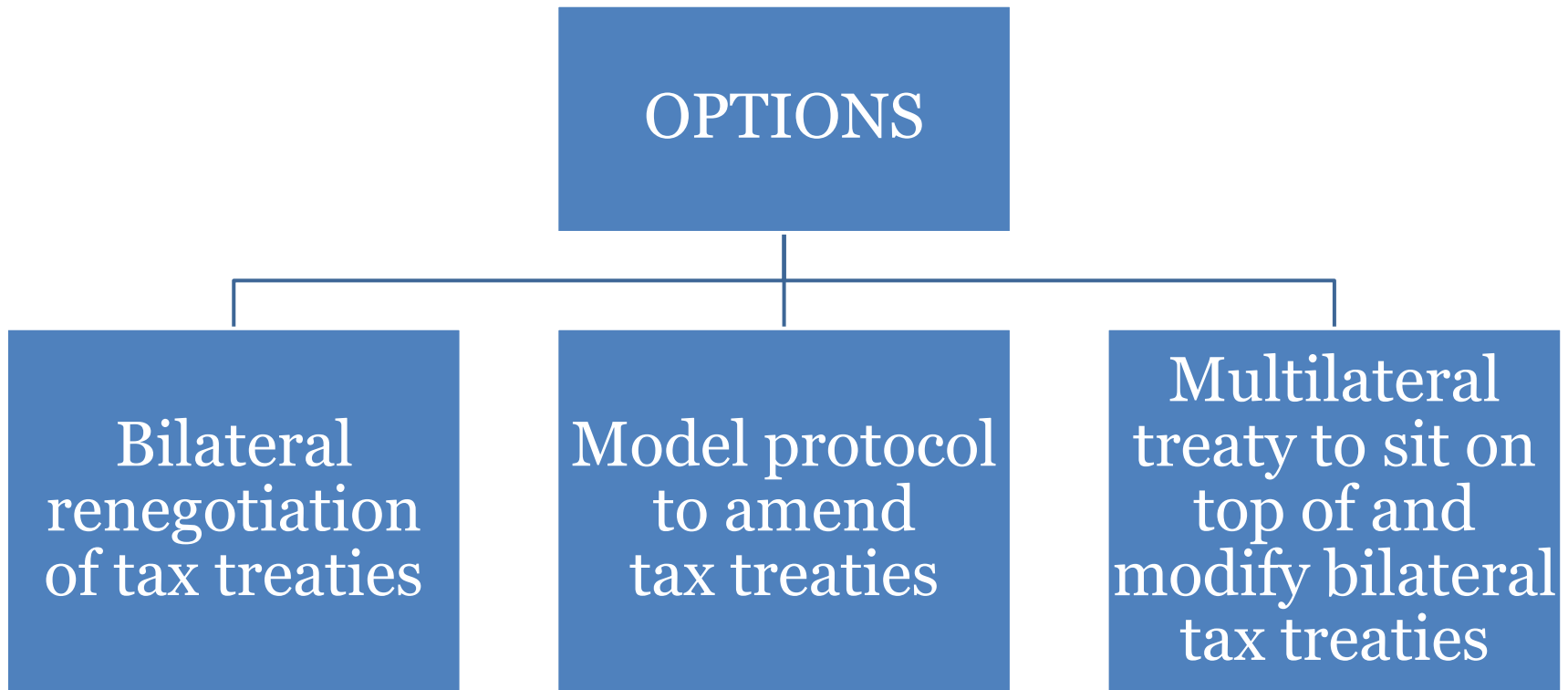
Negotiations should be convened **quickly**



WHY A MULTILATERAL TREATY?



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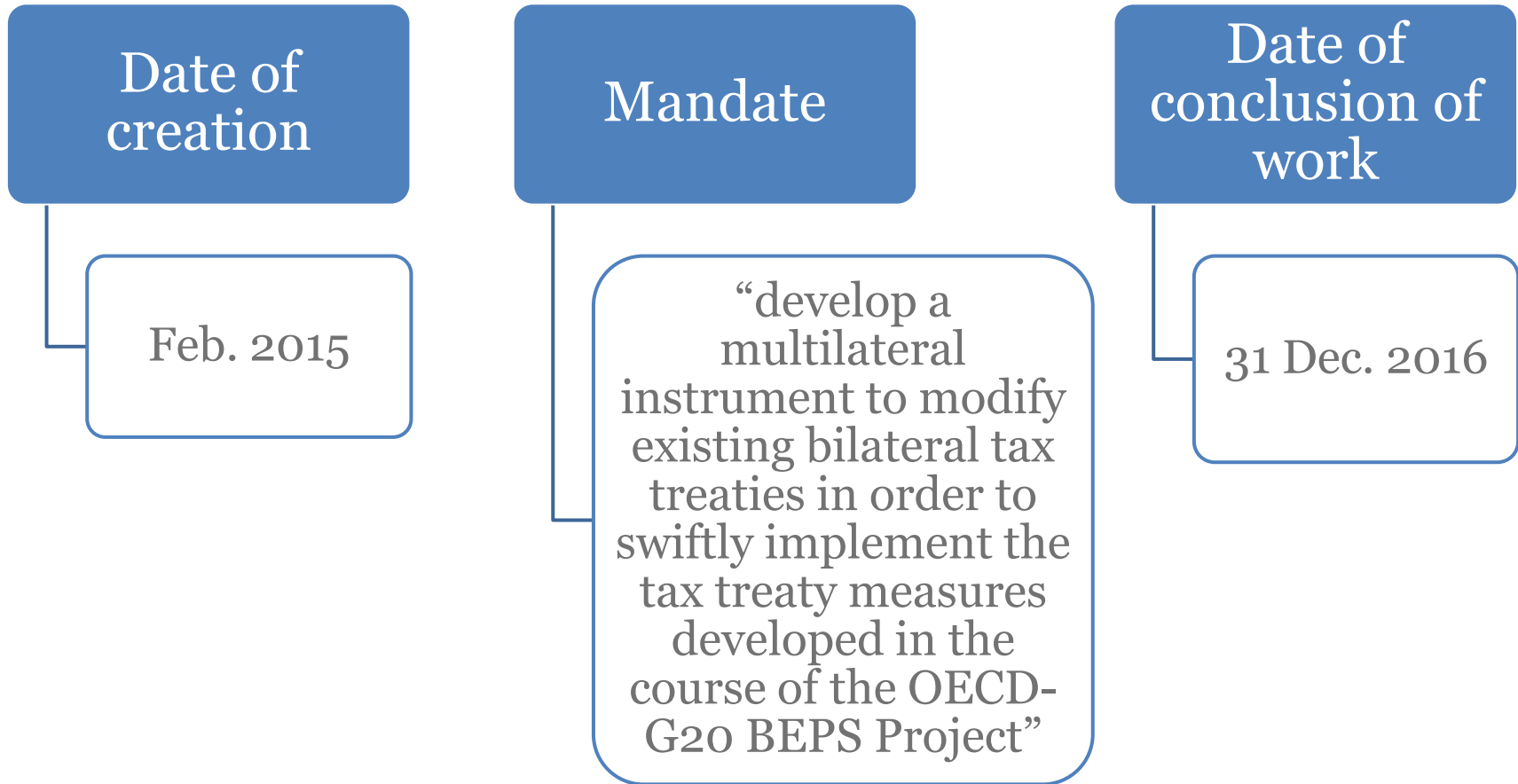




HOW WAS THE MLI DEVELOPED?



Ad hoc Group on the Multilateral instrument





Ad hoc Group on the Multilateral instrument

Open to all interested countries on an equal footing

Over 100 countries and jurisdictions participated in the negotiation

The Group had six negotiation sessions between May 2015 and November 2016



Role of the *Ad hoc* Group

Substance of tax treaty related BEPS measures was agreed in the BEPS Package

Ad Hoc Group focused on how the MLI should modify tax treaties in order to implement the measures

Exception for the development of the provision on mandatory binding MAP arbitration



HOW DOES THE MLI WORK?



Functioning of the MLI

Modifies tax treaties between two Parties to the MLI

Sits on top of bilateral treaties, modifying their application – “later in time” rule in Article 30(3) of the VCLT

System of opt-outs, opt-ins and choices



5 types of flexibility

Excluding specified tax treaties

Meeting a minimum standard in another way

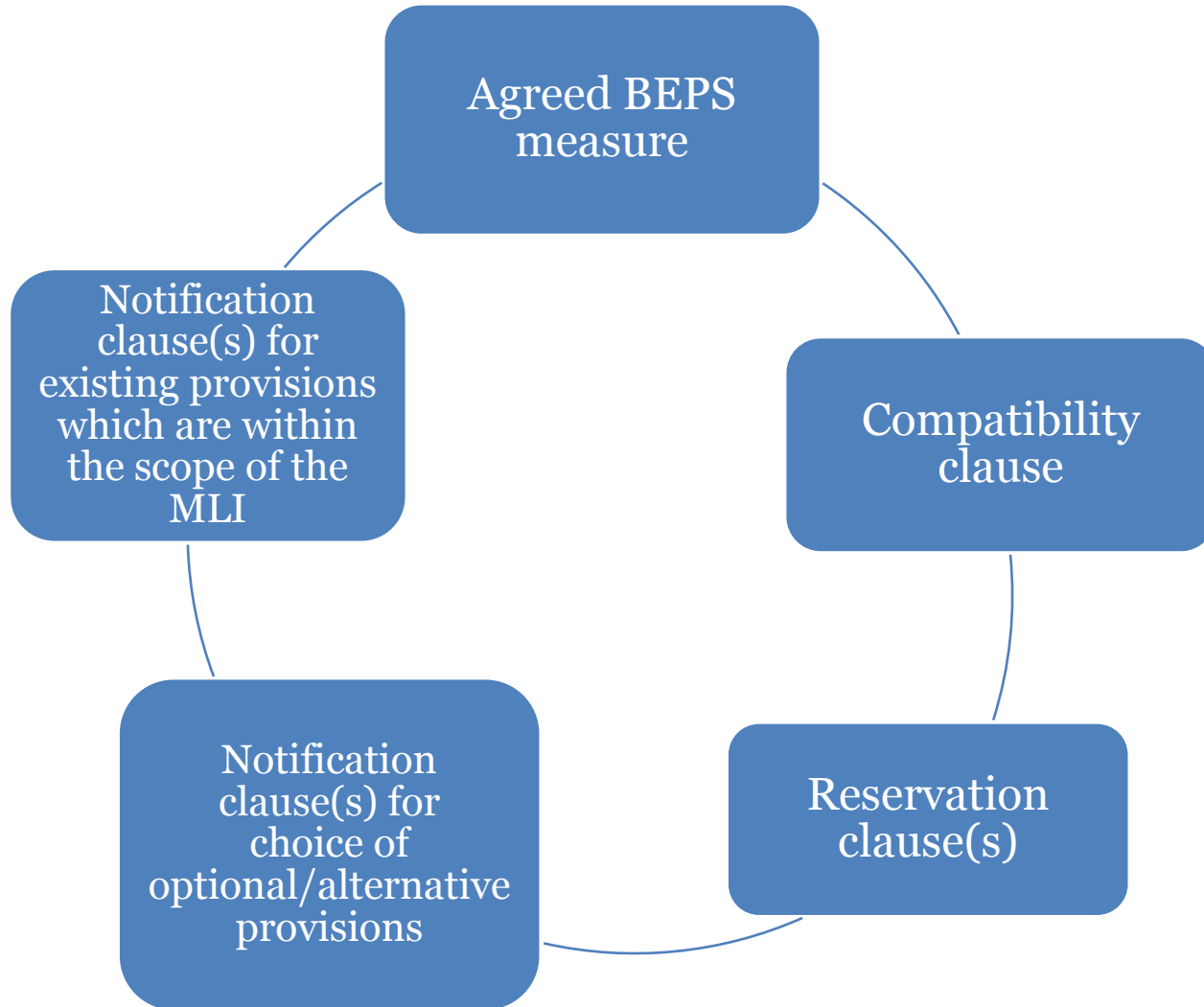
Opting out of non-minimum standard provisions

Opting out of provisions for treaties with specific characteristics

Choices to apply optional and alternative provisions (including opting in to Part VI on Arbitration)



Structure of the MLI Provisions





3 CHALLENGES FACED IN DEVELOPING THE MLI



FLEXIBILITY V. EFFICIENCY

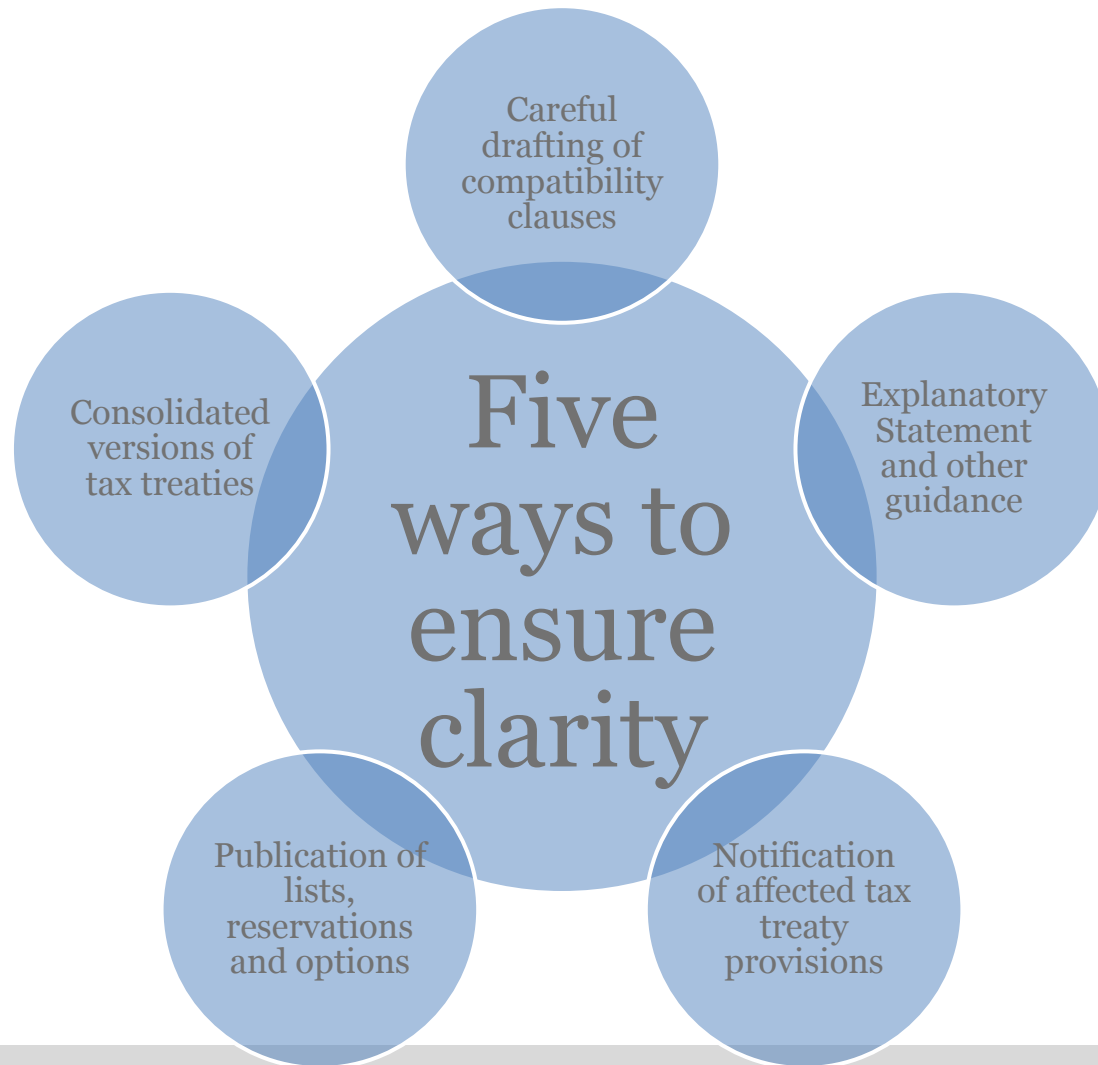
FINDING A BALANCE

Need for flexibility to reflect
i) variations in tax treaties and
ii) country preferences (to allow
maximum number of countries to join)

Need for efficiency to ensure that
i) the operation of the MLI and
ratification procedures are efficient and
ii) the changes made by the MLI are
easy to understand



NEED FOR CLARITY & TRANSPARENCY





NEED FOR CLARITY & TRANSPARENCY

Sharing of tentative lists of Covered Tax Agreements, reservations and options

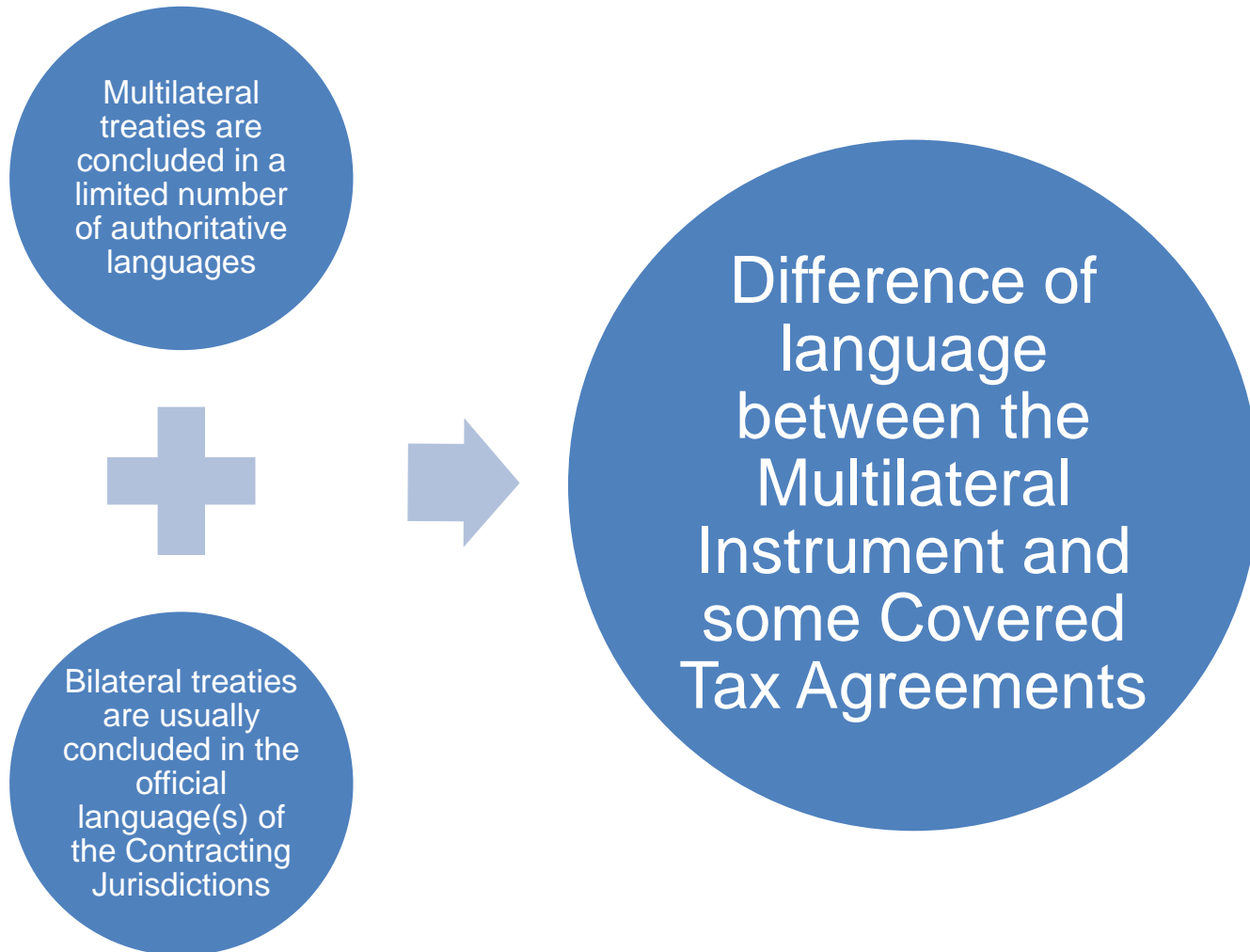
Facilitation of bilateral discussions between treaty partners to discuss their respective lists and how their treaty would be modified

The provision of a list of reservations and options upon signature (either definitive or to be confirmed upon ratification)

Further bilateral contacts can take place at any time before signature and between signature and ratification



LANGUAGE VERSIONS





LANGUAGE VERSIONS

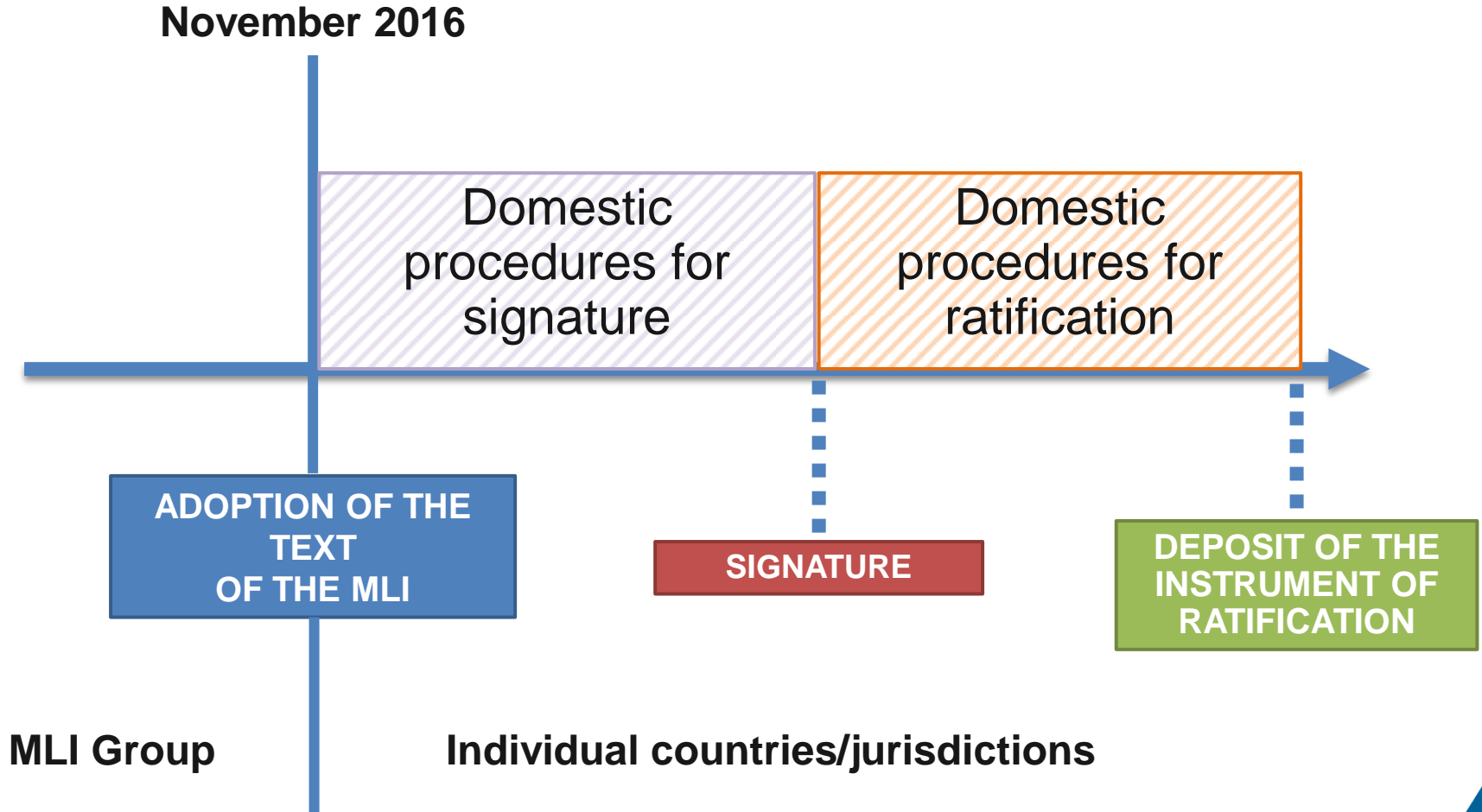
Shared Language	Number of Members	Members
SPANISH	9	Argentina, Chile, Colombia, Costa Rica, Dominican Republic, Guatemala, Mexico, Spain, Uruguay
ARABIC	6	Lebanon, Mauritania, Morocco, Qatar, Saudi Arabia, Tunisia
GERMAN	6	Austria, Belgium, Germany, Lichtenstein, Luxembourg, Switzerland
ITALIAN	3	Italy, San Marino, Switzerland
DUTCH	2	Belgium, Netherlands
PORTUGUESE	2	Brazil, Portugal
GREEK	2	Cyprus, Greece
SWEDISH	2	Finland and Sweden
RUSSIAN	3	Kazakhstan, Moldova, Russia
ROMANIAN	2	Romania, Moldova



NEXT STEPS FOR THE MLI

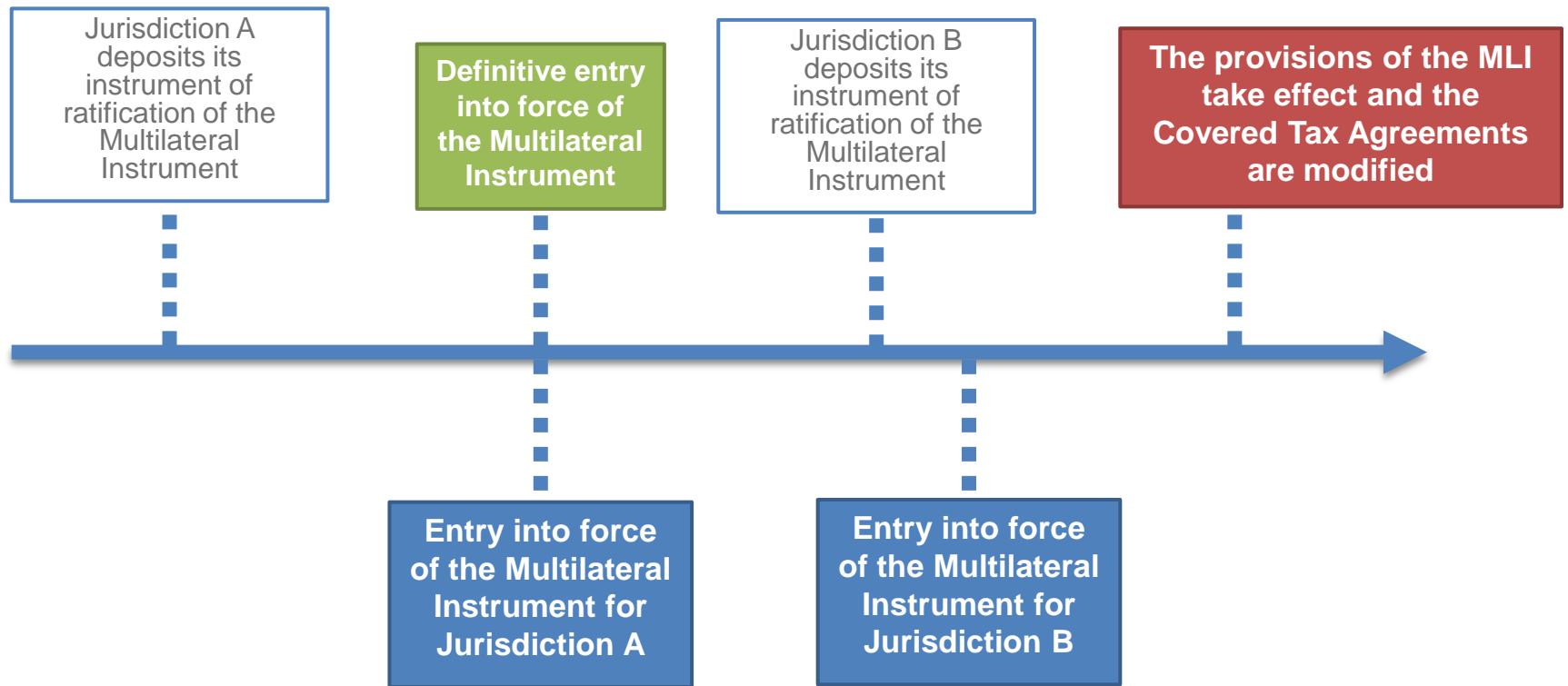


FROM ADOPTION TO DEPOSIT OF THE INSTRUMENT OF RATIFICATION



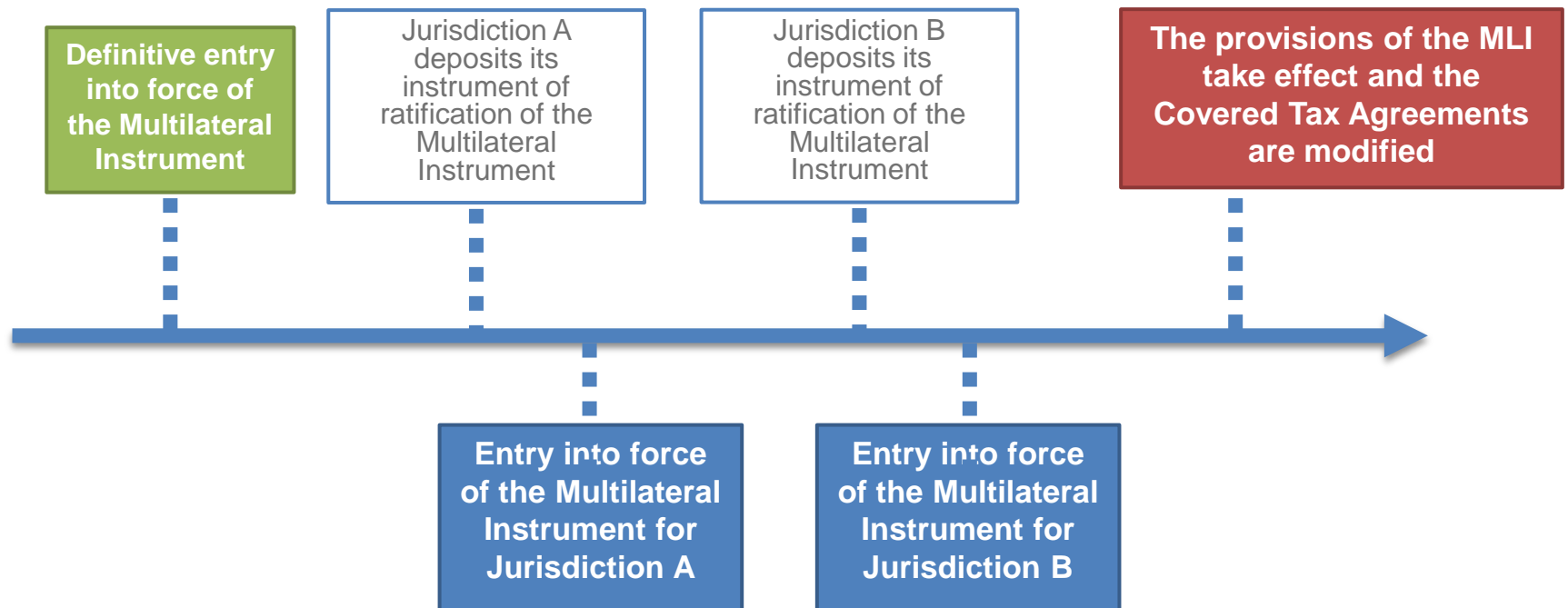


FROM DEPOSIT OF THE INSTRUMENT OF RATIFICATION TO THE ENTRY INTO EFFECT OF THE MLI – SCENARIO 1





FROM DEPOSIT OF THE INSTRUMENT OF RATIFICATION TO THE ENTRY INTO EFFECT OF THE MLI – SCENARIO 2





THANK YOU!