

GLOBAL IFA TRAVELLING LECTURESHIP PROGRAMME 2024

INTERNATIONAL TAX DISPUTE RESOLUTION



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TOPIC: INTERNATIONAL TAX DISPUTE RESOLUTION

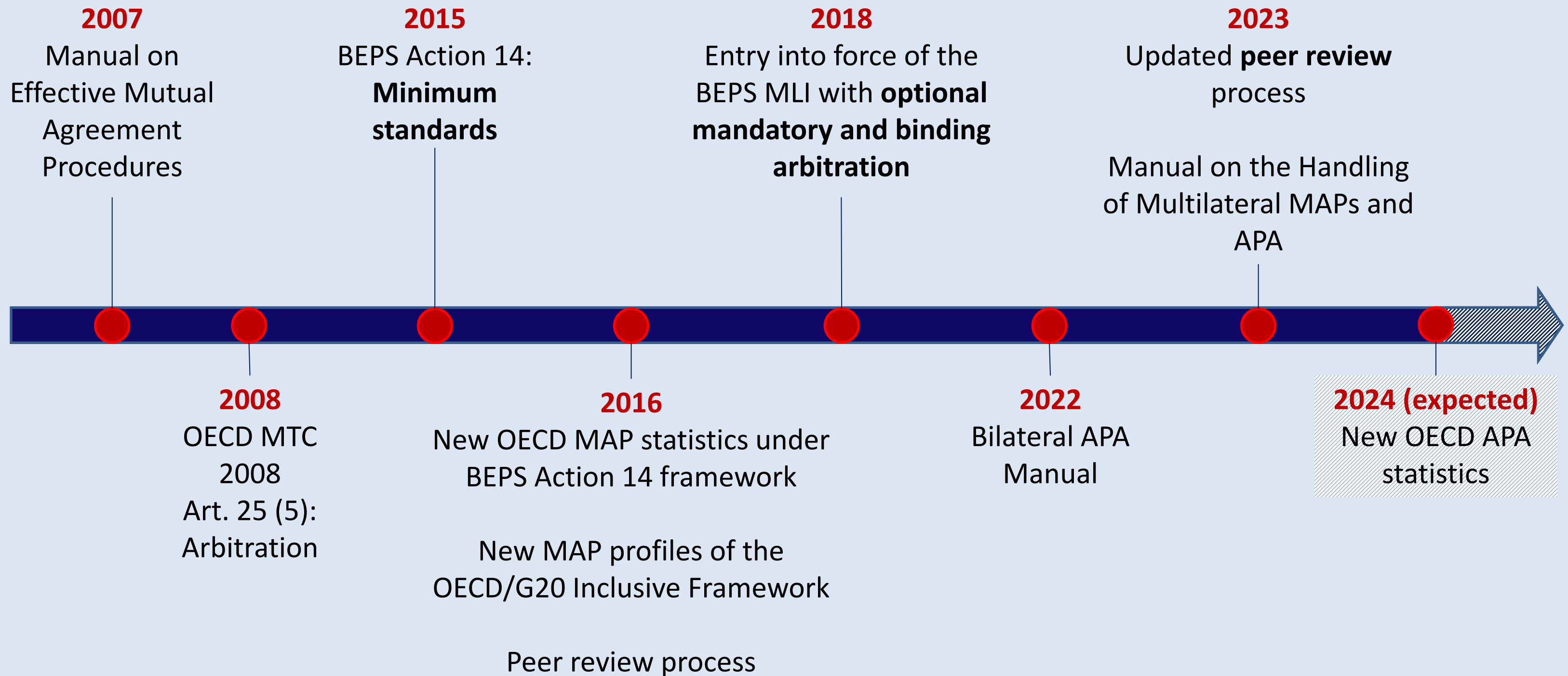
Making dispute resolution mechanisms more effective in the aftermath of OECD Action 14

Paris – 27 February 2024

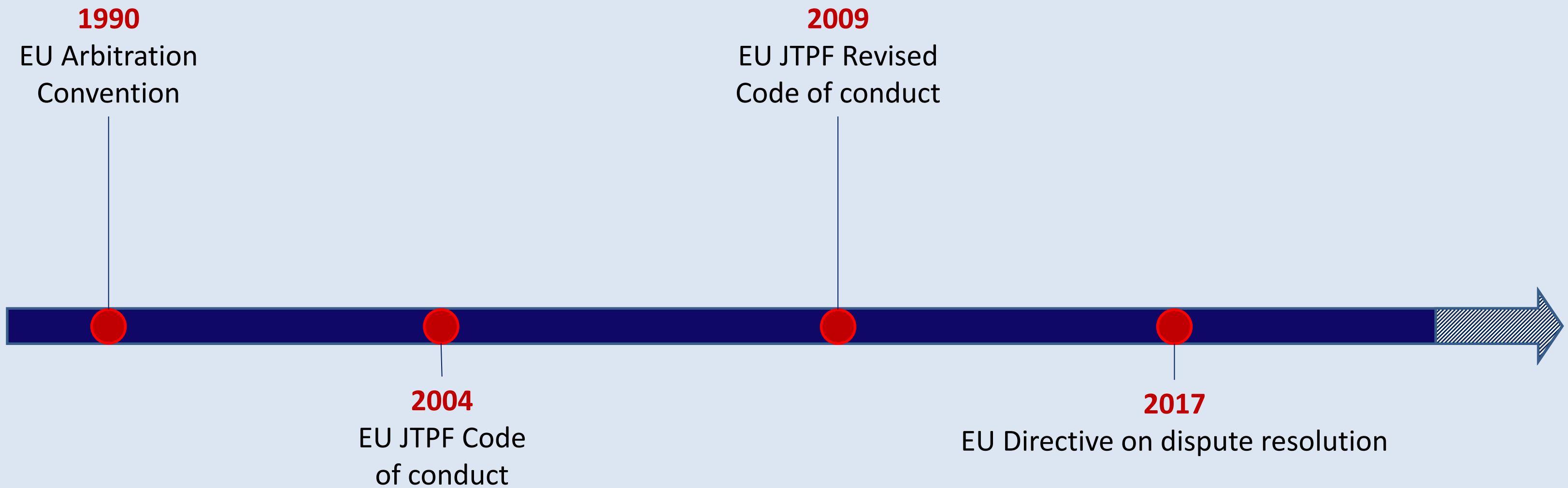
BRUNO GIBERT

1. Evolution and state of play of the dispute resolution mechanism

OECD: Making dispute resolution mechanisms more effective



EU: : Making dispute resolution mechanisms more effective



OECD Action 14: minimum standards

1

Full implementation in good faith of MAPs and timely resolution, incl.:

- Provide MAP access in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a **treaty anti-abuse** provision have been met or as to whether the application of a **domestic law anti-abuse** provision is in conflict with the provisions of a treaty.
- Commit to a **timely resolution** of MAP cases (within an average 24 months).
- Having the compliance with the minimum standard **reviewed by their peers**.

2

Administrative processes, incl.:

- Allocating sufficient **resources** to MAP functions.
- Clarifying in their MAP guidance that **audit settlements do not preclude access to MAP**.
If countries have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, countries **may limit access to the MAP with respect to the matters resolved through that process**.

3

Taxpayers' access to MAP, incl.:

- Implementation of any agreement reached **notwithstanding any domestic time limits**.

OECD Optional mandatory and binding arbitration: implementation through MLI (Art. 18 to 26)



The MLI remains optional, so that not all jurisdictions have ratified the MLI and the option for arbitration. The MLI is thus less effective than the Arbitration Convention which is binding on all EU countries.



2. A global view on some current and future issues

Access/denial to MAP requests



- **Timing/application:**
 - Deadline to apply for MAP
 - Deadline to move to arbitration phase where applicable
- **Scope:**
 - For recharacterization cases
 - For other domestic law provisions (e.g., documentation of management fees, limitation in deductible royalties or interest)
- **Serious penalties:**
 - Definition
 - Application
 - Available data
 - EU data (Arbitration Convention): No case rejected for serious penalty in 2020, 2021 and 2022
 - As a result, no issue?


MAP and other recourses

- Interaction between MAPs and audit settlements:
 - The Manual on Effective MAP published by the OECD (2007) recommends avoiding blocking MAP access via audit settlements (Best practice n°19)
 - How is this implemented in practice?
- Combination with litigation
 - OECD MAP: yes
 - MLI: restrictions
 - EU arbitration convention: restrictions
 - EU Directive: restrictions
- Interaction between MAPs / arbitration and domestic remedies / litigation
- Different types of arbitration (OECD Multilateral Instrument, CAN/USA, EU):
 - Baseball or last best offer
 - Independent opinion
- Interaction transfer pricing / customs valuation
- Improvements to the Commentary on Art. 25 ?
- What about P2 disputes? Art 25(3) ? Ad hoc Multilateral Convention ? Domestic reciprocal dispute resolution model ?

Multilateral MAP

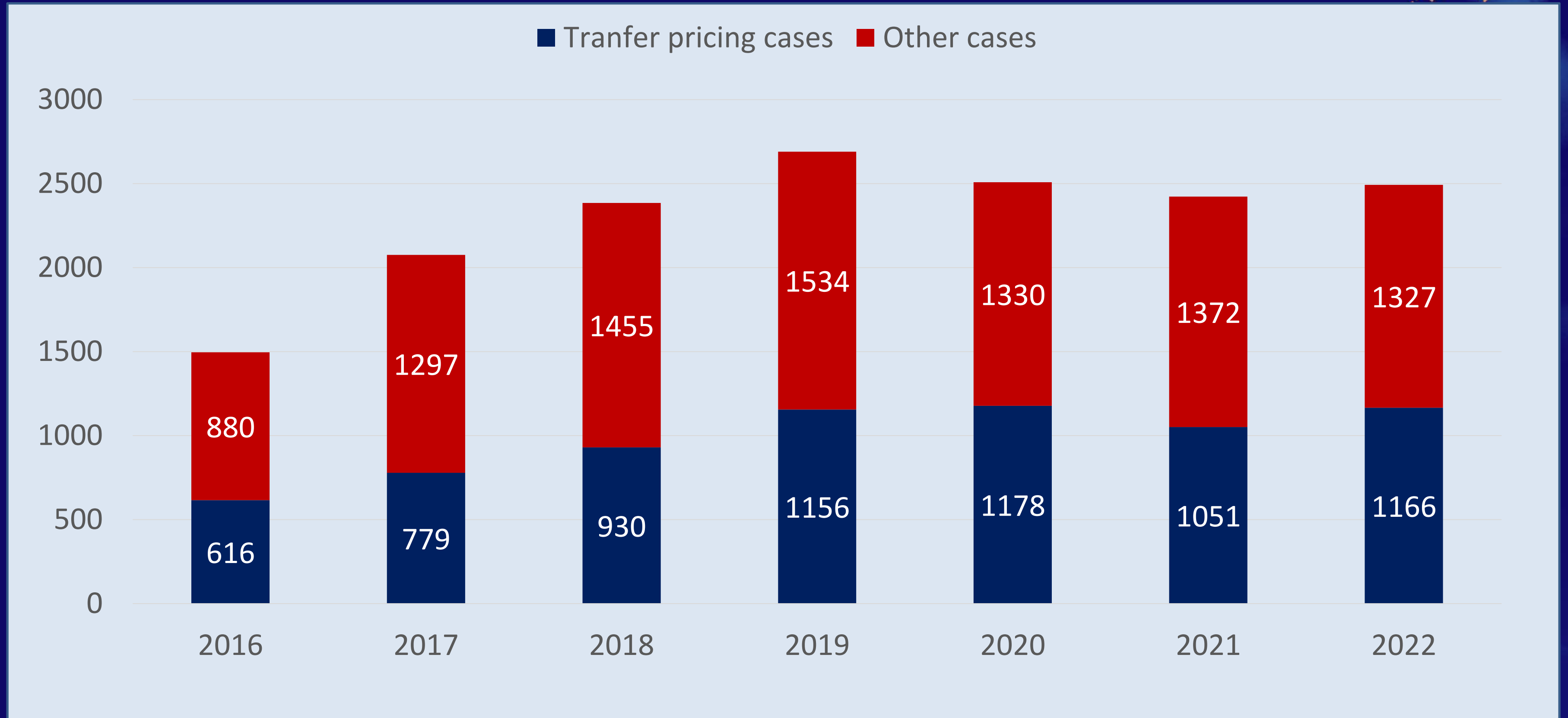
- For what kind of cases ?
- Practical experience, feasibility and timelines
- Key takeaways from the 2023 OECD Manual on the handling of Multilateral MAP and APA



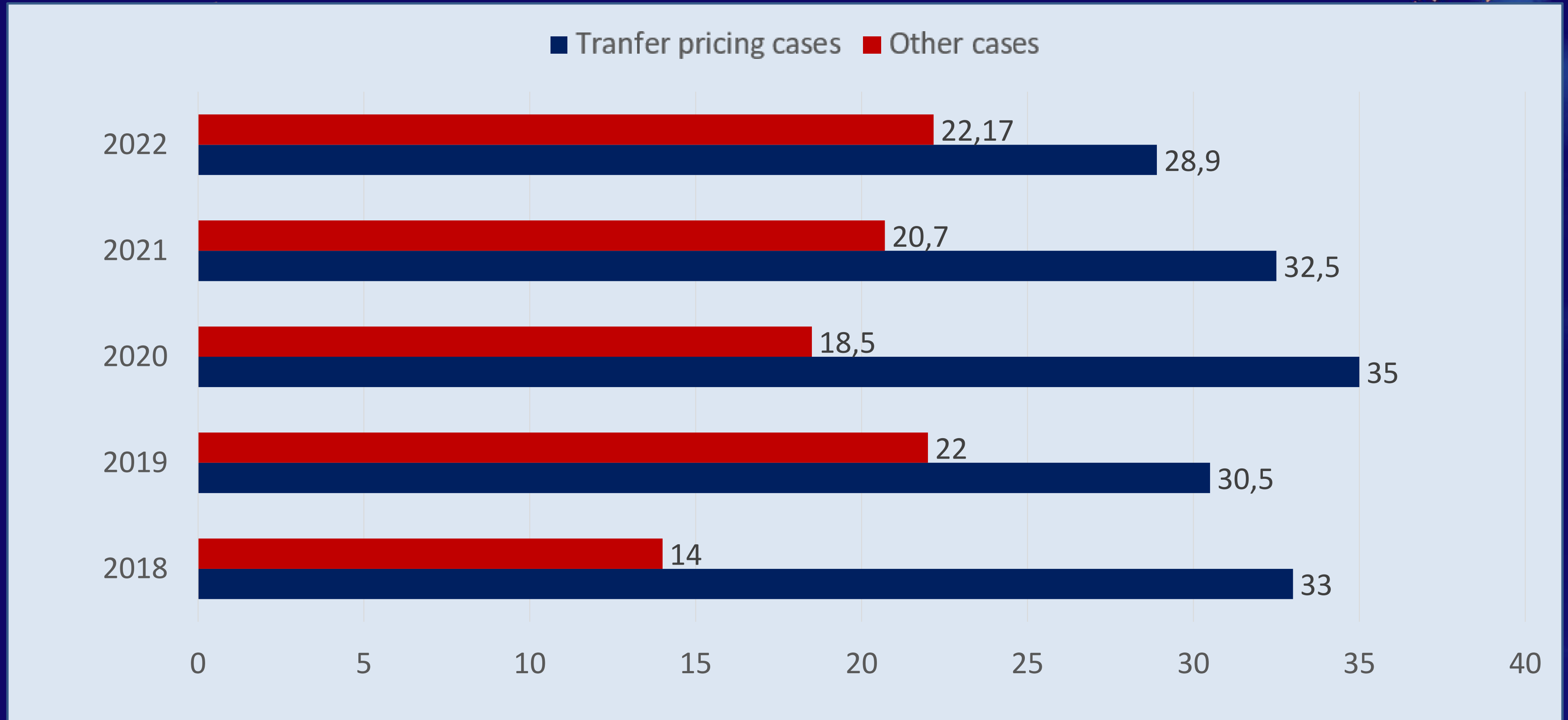


3. What do the numbers and peer review process tell us ?

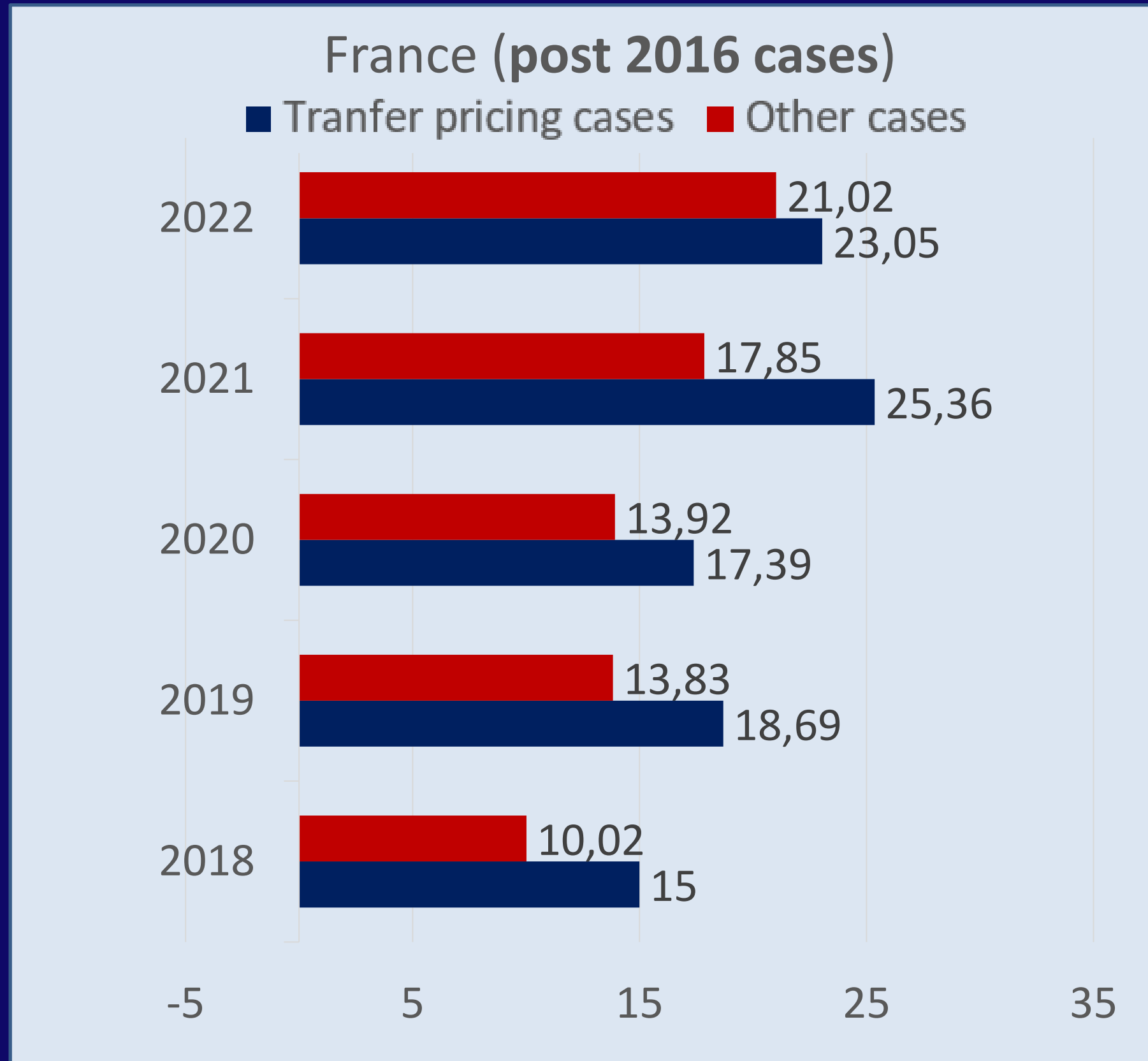
OECD Inclusive Framework MAP cases started



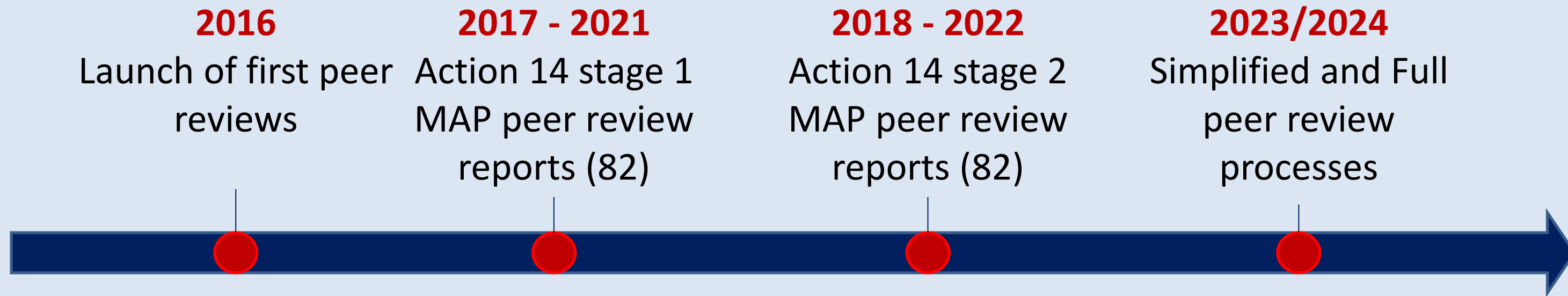
OECD Inclusive Framework: average time to close MAP



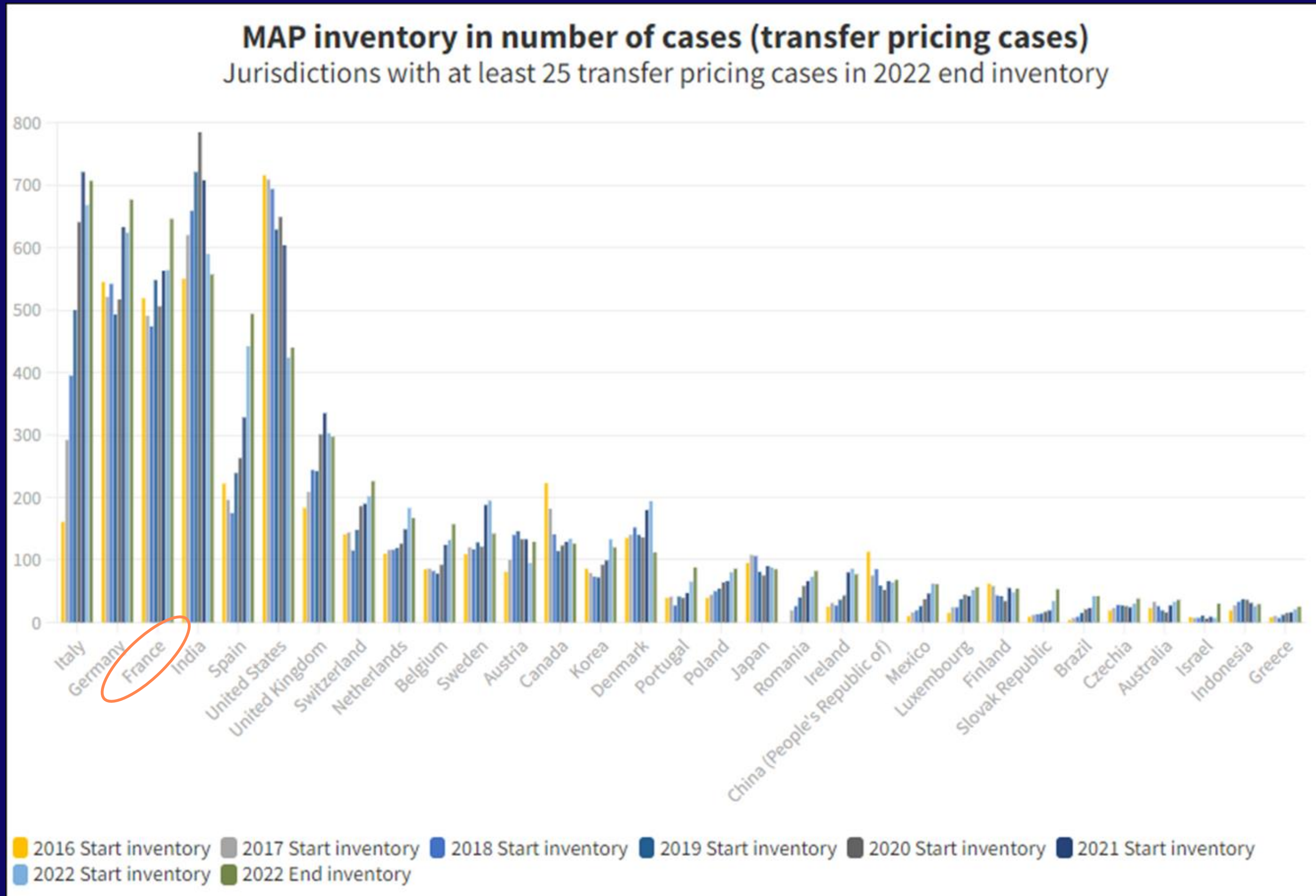
OECD Inclusive Framework: average time to close MAP (in months)



OECD Peer review process



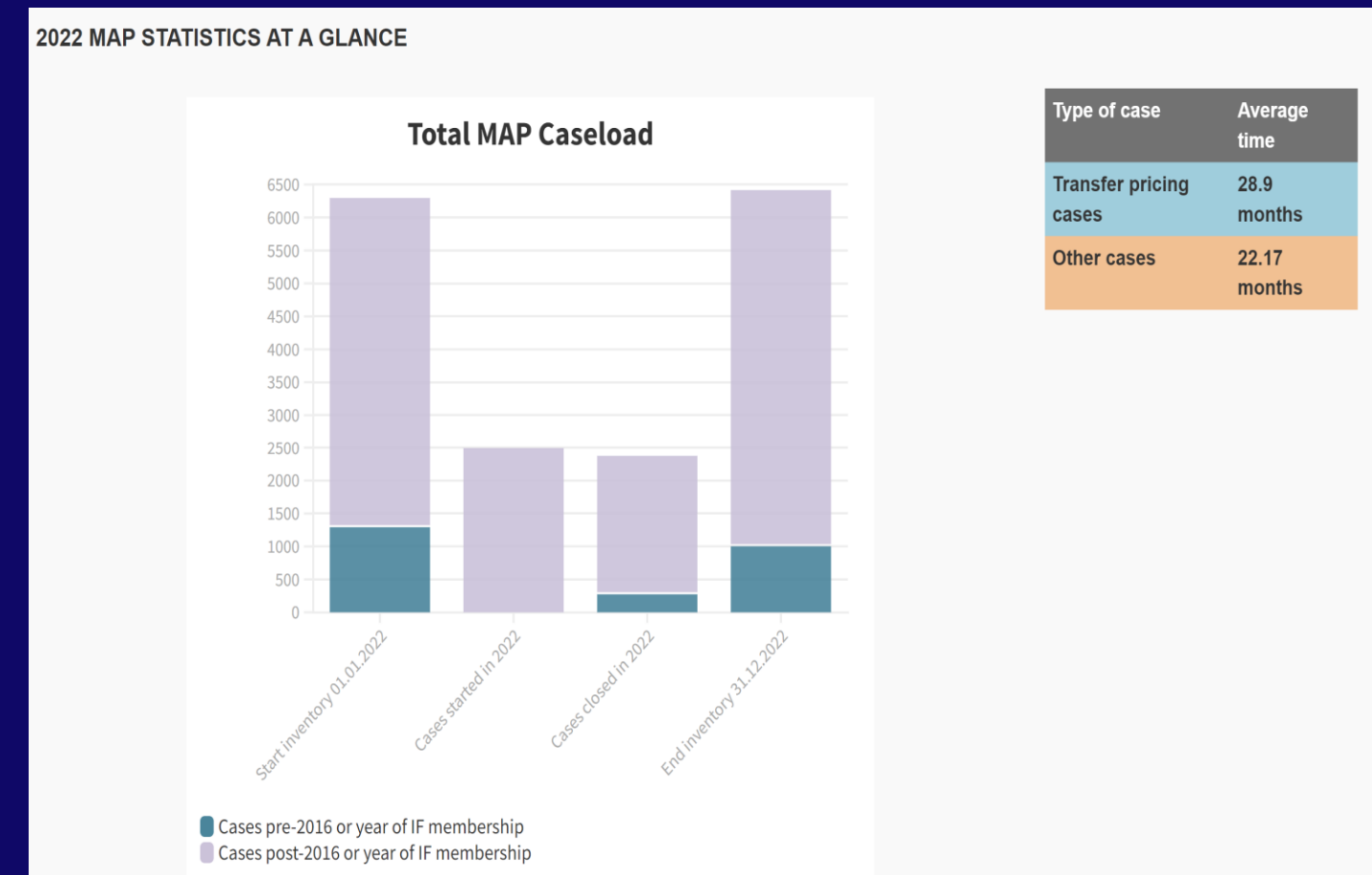
OECD MAP Cases by Jurisdiction



OECD MAP 2022 Main statistics



- MAP mechanism still concentrated in certain jurisdictions:
 - 90% of new proceedings initiated in 25 jurisdictions
 - Top 5 jurisdictions alone account for 44% of the new proceedings
- Approximately **4% less MAP cases were closed in 2022** than in 2021:
 - Transfer pricing cases: -0.5%
 - Other cases: almost -6.5%
- Around **73% of the MAPs concluded in 2022** fully resolved the issue both for transfer pricing and other cases. Approximately 2% of MAP cases were closed with no agreement. Both of these numbers remain similar to 2021
- On average, MAP cases closed in 2022 took **25.3 months** (i.e., 26 months in 2021):
 - Transfer pricing: 29 months (i.e., 32 months in 2021 and 35 months in 2020)
 - Other cases: 22 months (i.e., 20 months in 2021 and 18 months in 2020)

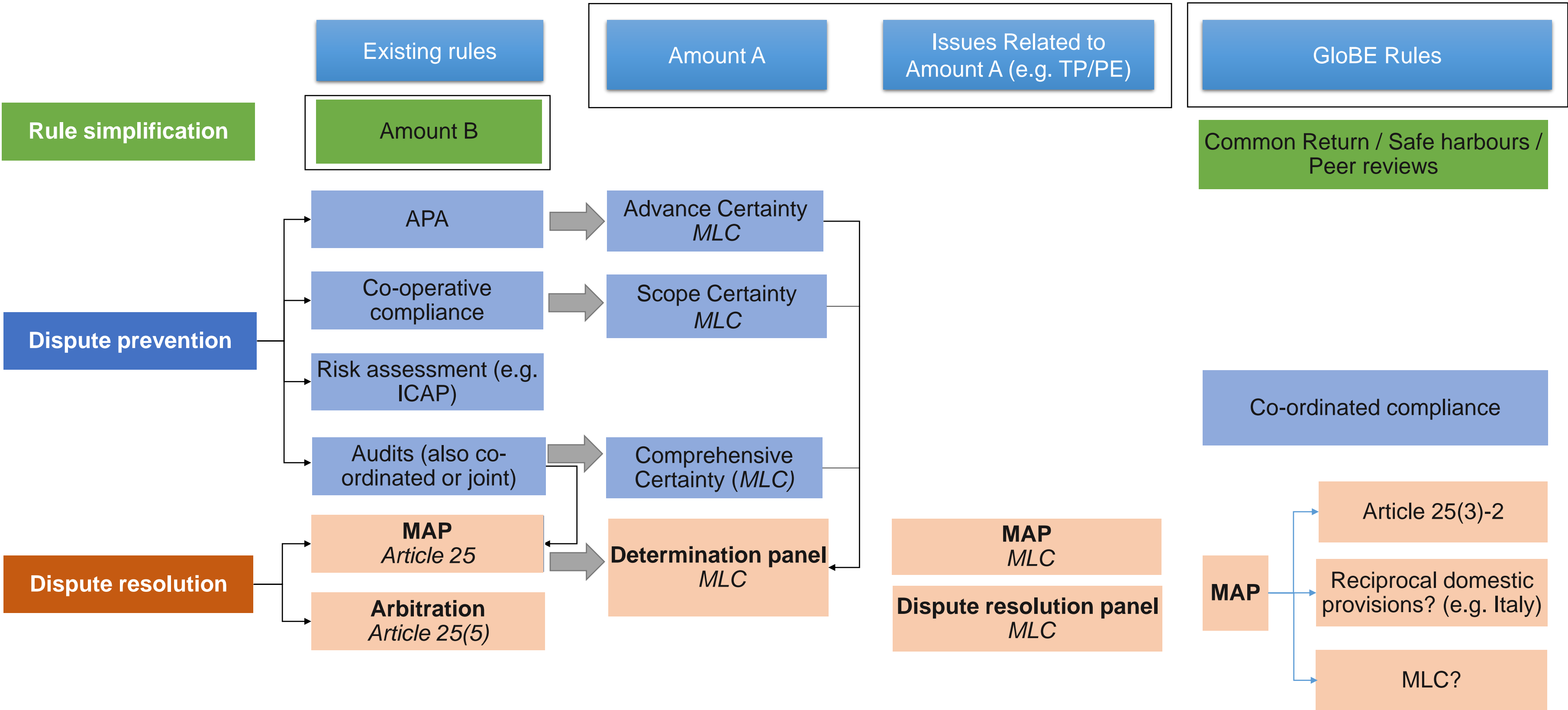


UE MAP 2022 Main statistics under the Arbitration Convention



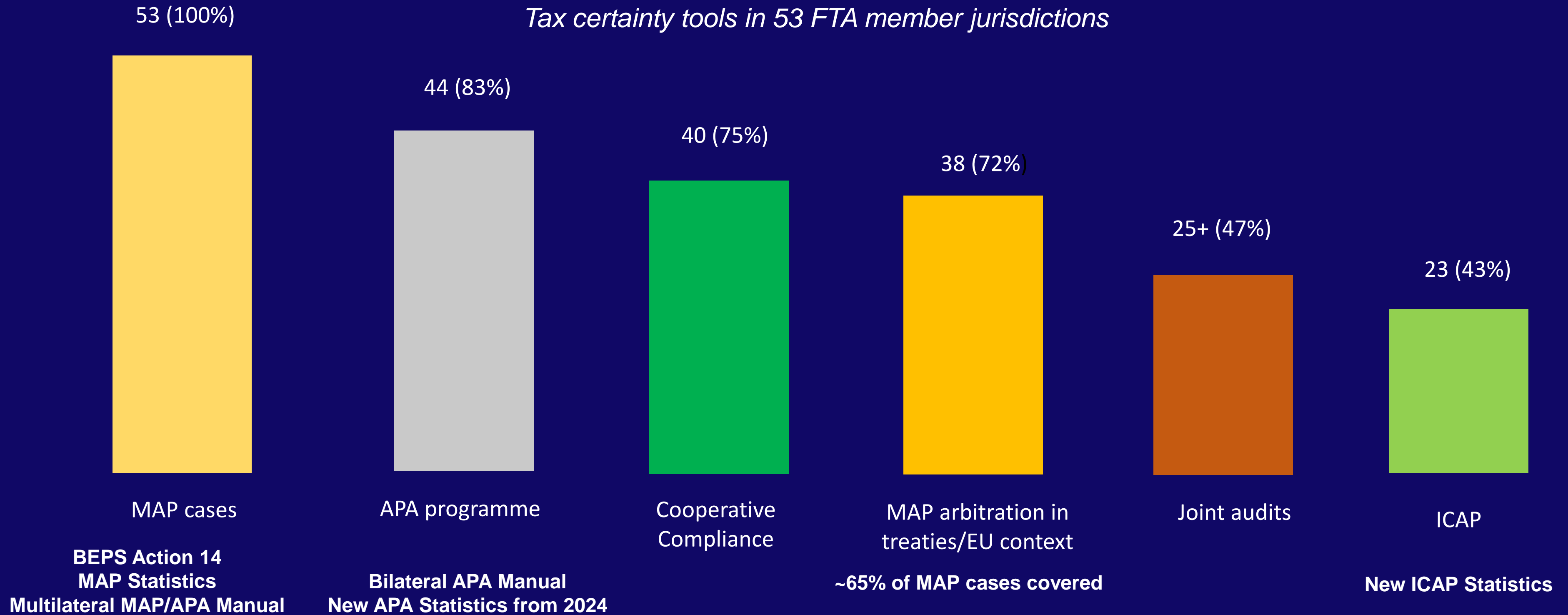
- New cases initiated in 2022: 829 (i.e., 803 in 2021 and 961 in 2020)
- Cases completed in 2022: 867 (i.e., 746 in 2021 and 637 in 2020)
- Ending inventory in 2022: 2233 (i.e., 2303 in 2021 and 2213 in 2020)
- Average months for cases completed in 2022: 23 months (i.e., 25 in 2021 and 32,5 in 2020)

TAX CERTAINTY: CURRENT AND FUTURE LANDSCAPE

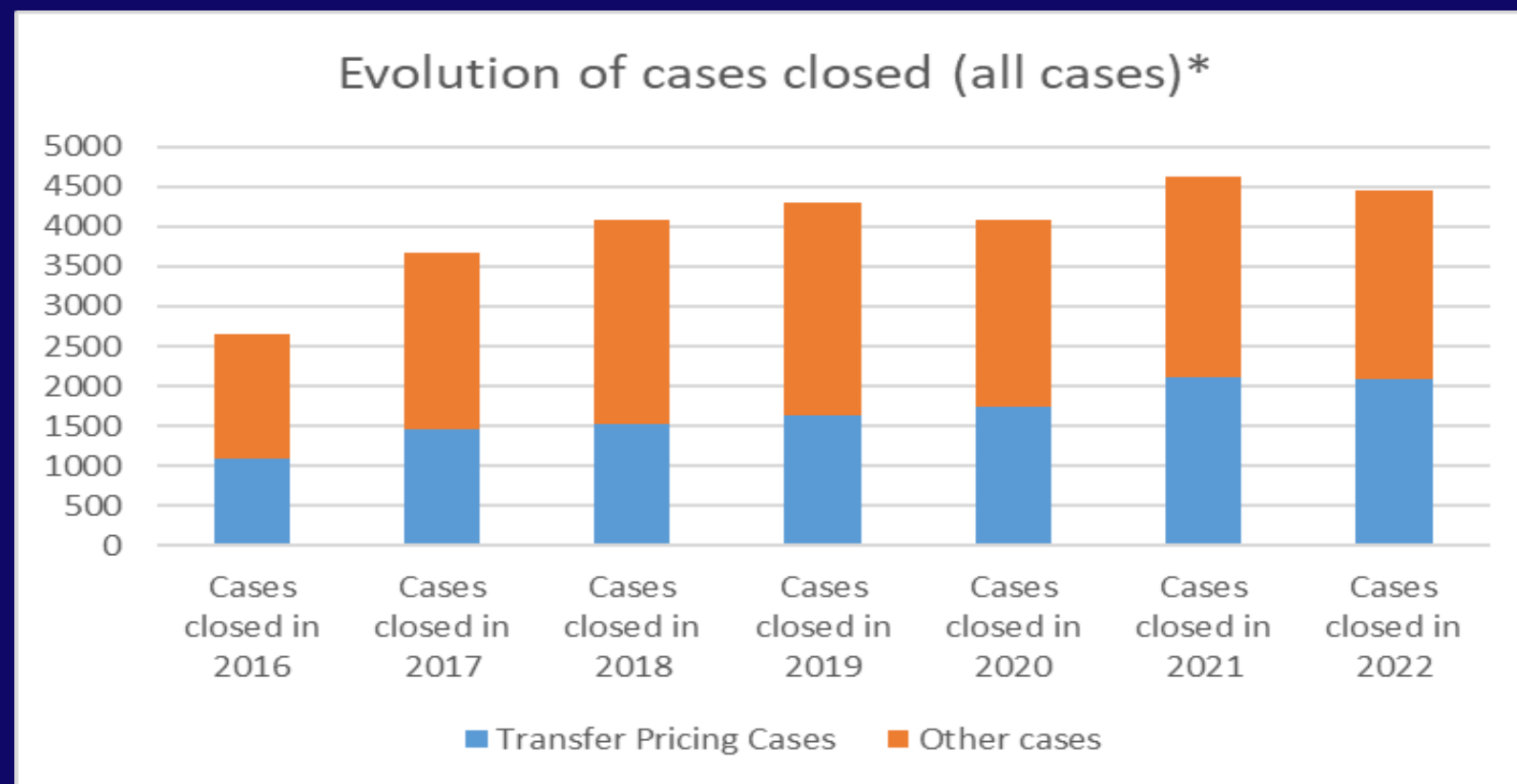
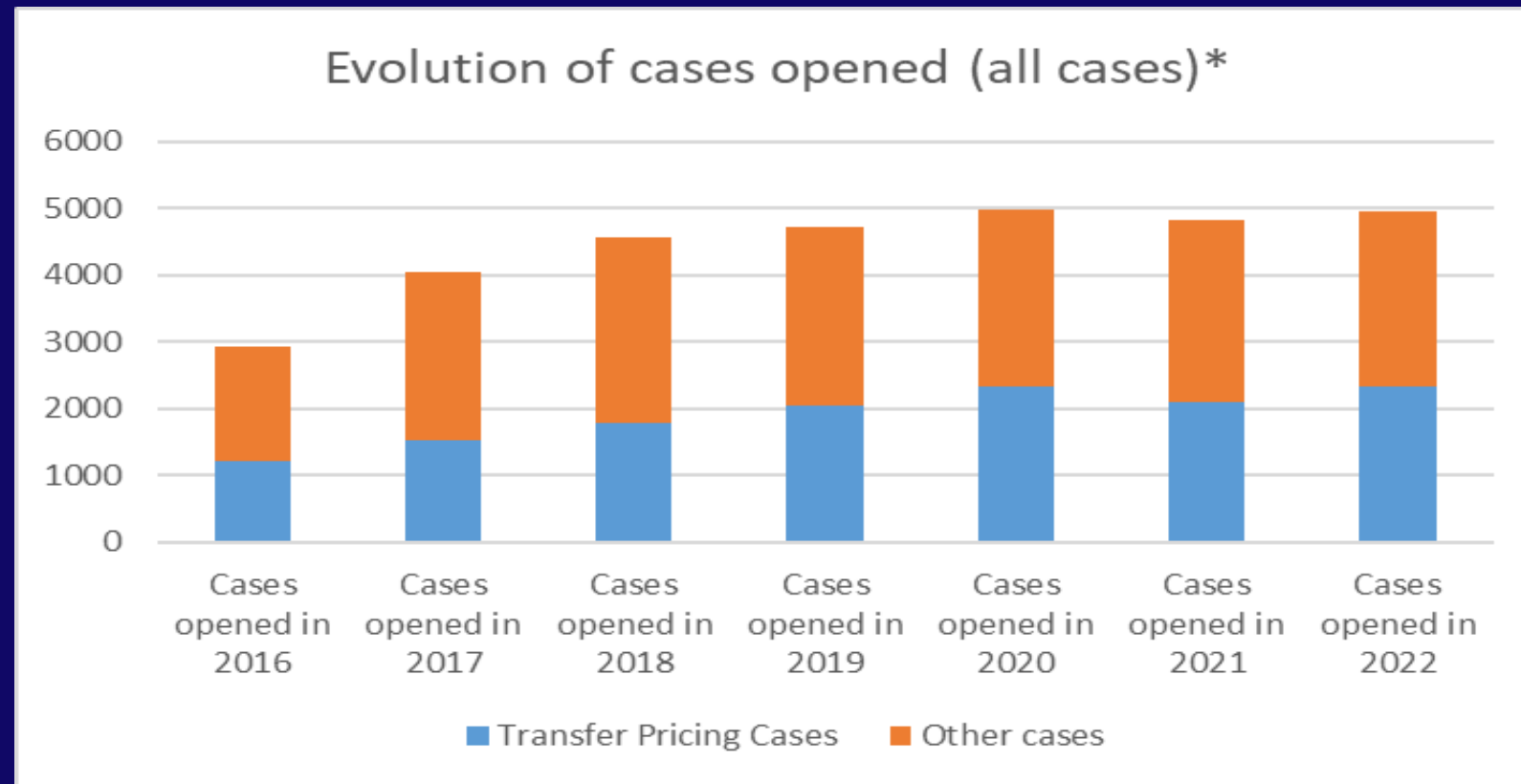


TAX CERTAINTY: CURRENT AND FUTURE LANDSCAPE

Tax certainty tools in 53 FTA member jurisdictions



FOCUS ON MAP: MAP IN NUMBERS



- Increase of ~70% in cases opened and closed
- Average time above 24 months & decreasing for TP cases; below 24 months for other cases
- Outcomes consistent – around 70-80% of cases fully resolved for taxpayer

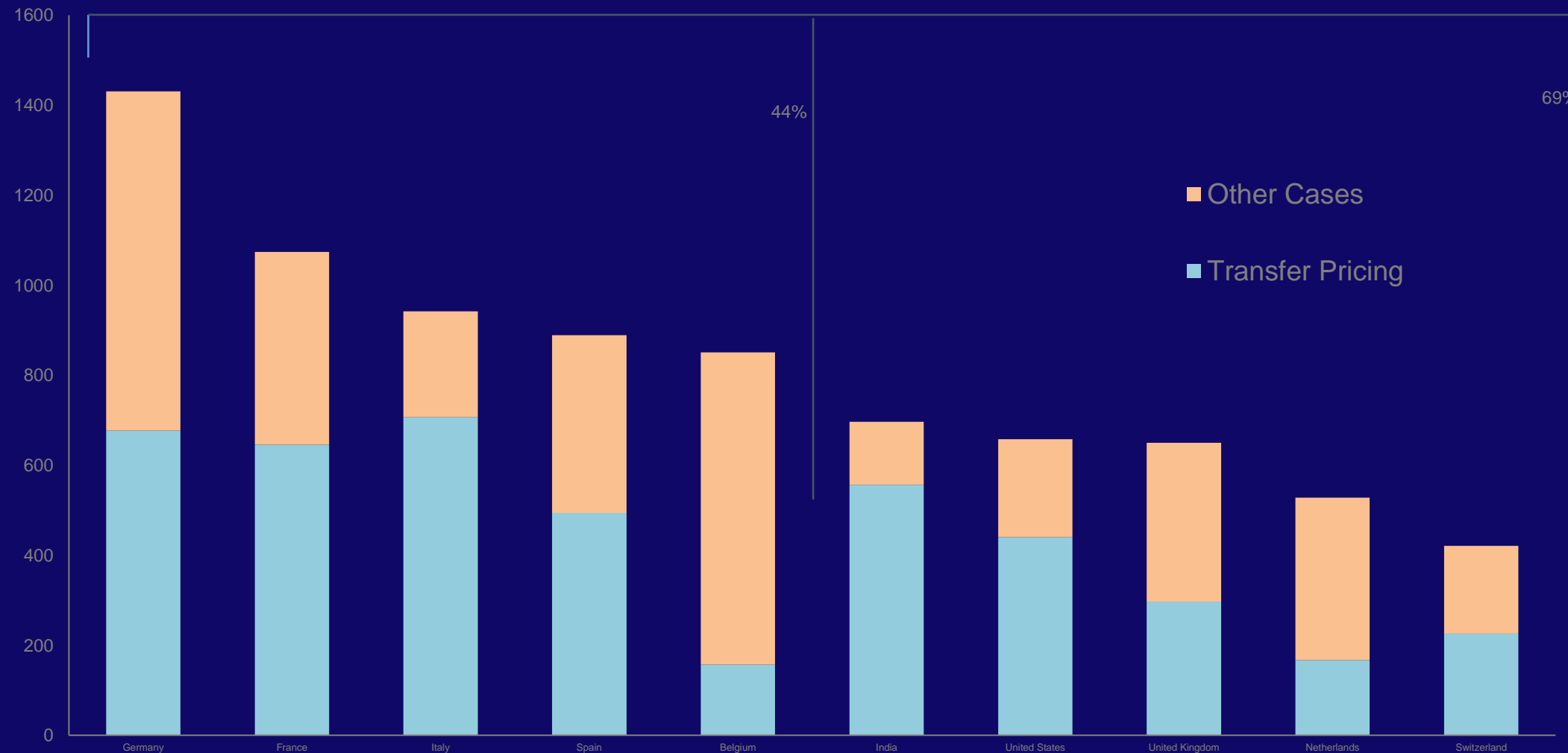
Average time to close MAP cases



* The sum of inventory of all cases & MAP cases opened / closed for all jurisdictions does not eliminate double counting

FOCUS ON MAP: GLOBAL COVERAGE

Cases started in 2022
Top 10 jurisdictions



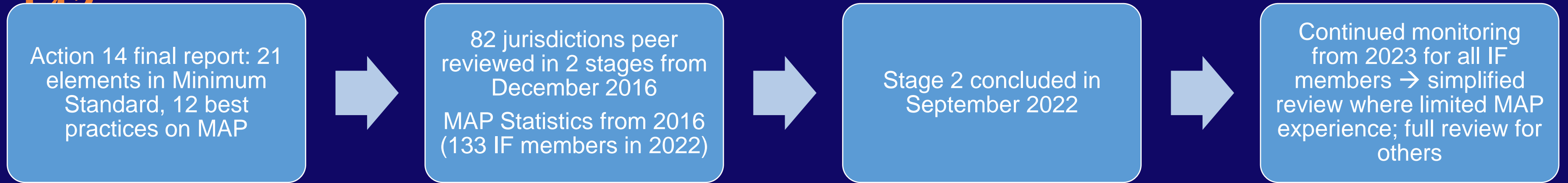
MAP remains concentrated, but 88 IF members have MAP cases now → work to cater to all

MAP Forum aims to:

- make MAP more available and accessed globally;
- ensure all jurisdictions are equipped to deal with MAP cases

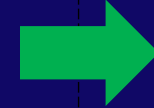
FOCUS ON MAP: WHERE ARE WE ON BEPS ACTION

142



Before BEPS Action 14

- Many treaties – no effective MAP provision
- Limited roll-back of bilateral APAs
- Access restrictions (TP, anti-abuse etc.)
Limited guidance/published info on MAP
- MAP time-consuming
Limited CA resources, independence issues
- Implementation issues (e.g. domestic time-limits)



Today

- > 500 treaties now also have MAP provisions via MLI
Others plan to do bilaterally
- APA Roll-back common practice now
- Access to MAP in most eligible cases
More published guidance, MAP profiles
- Better organised CA function, more resources
Statistics show closer to 24-month target average
- Timely implementation
Countries have taken measures to overcome domestic limits

FOCUS ON MAP: WHERE NEXT?

Dispute prevention: continued focus on ICAP, APAs, etc.

Dispute resolution: further improve MAP

- Remaining access issues, focus resources/timelines
- Improve practical aspects of MAP
- Review of 2007 MEMAP – survey through BIAC → inputs by 5 April 2024

Tax Certainty and the Two-Pillar Solution: ongoing focus on GloBE Rules, etc.

OECD Round Table on Tax Certainty (April/May 2024)

4. Focus on France

France - Structure of the Competent Authority Services Division (CASD)

Stephanie Prudent
Sous-directrice SJCF 4.
International

Pierre-Olivier Pollet
Chef du Bureau SJCF 4B.
Prévention et résolution des
différends internationaux

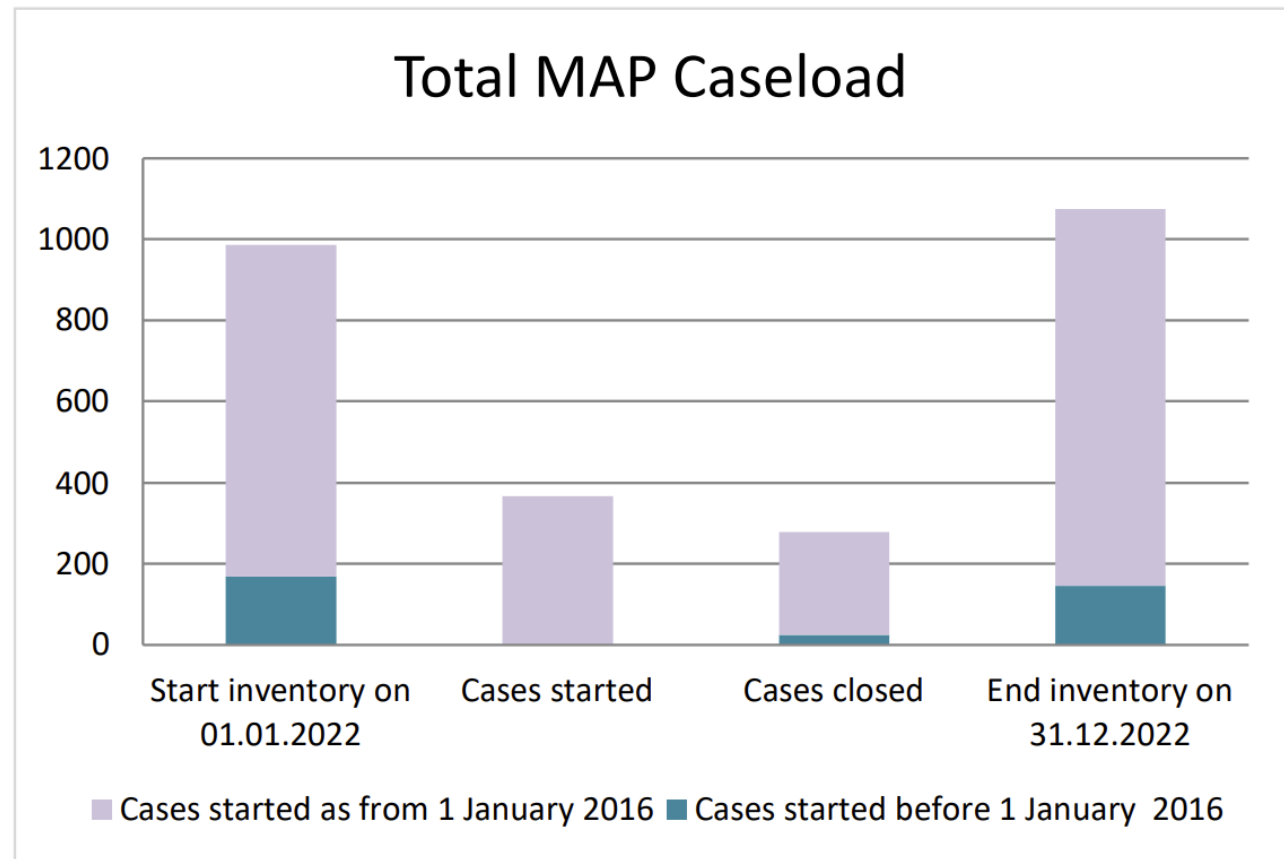
Guilhem Ressouche
Adjoint au Chef du Bureau

Imtiaz Mohammed
Chef de section

David Duquesne
Chef de section

Olivier de Wulf
Chef de section

France - MAP Caseload - 2022



Cases started before 1 January 2016	2022 Start inventory	Cases started	Cases closed	2022 End inventory
Transfer pricing cases	106	0	15	91
Other cases	63	0	9	54

Cases started as from 1 January 2016	2022 Start inventory	Cases started	Cases closed	2022 End inventory
Transfer pricing cases	458	234	137	555
Other cases	359	133	118	374

Average time needed to close MAP cases

Cases started as from 1 January 2016	Start to End	Receipt to Start	Start to Milestone 1	Milestone 1 to End
Transfer pricing cases	23.05	3.06	14.20	14.85
Other cases	21.02	2.48	10.84	16.11

Note: the average times to close MAP cases that started as from 1 January 2016 were computed according to the MAP statistics reporting framework available at <http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-reporting-framework.pdf>

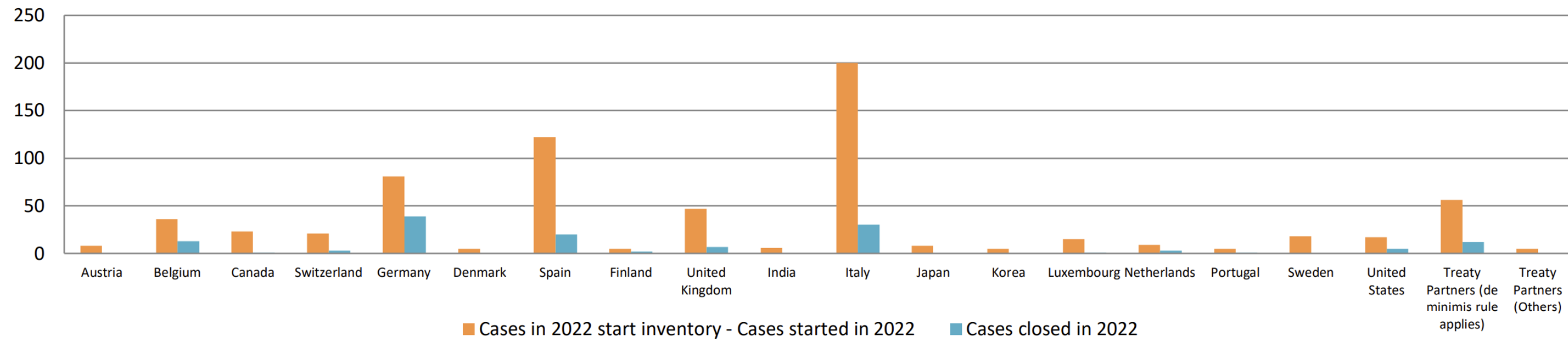
France Post-2016 MAP Cases by Country 2022



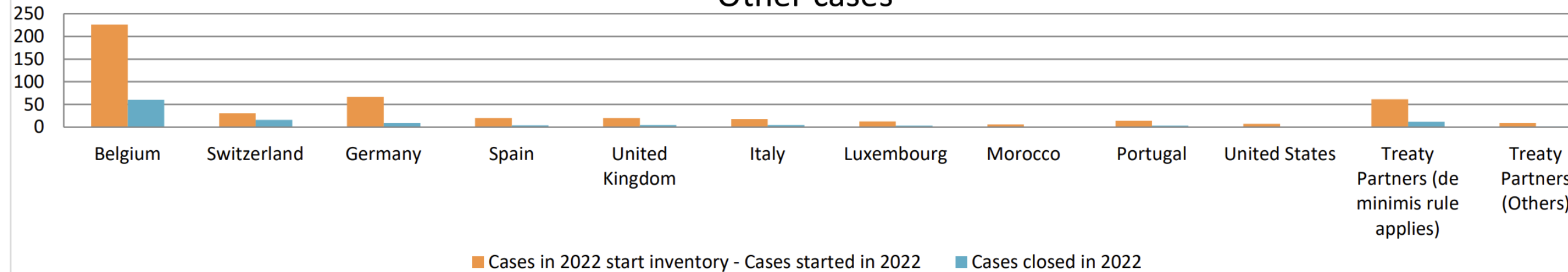
Overview of MAP partners (only for cases started as from 1 January 2016)

Note: the MAP cases started before 1 January 2016 and closed in 2022 are not shown in these graphs

Transfer Pricing Cases



Other cases



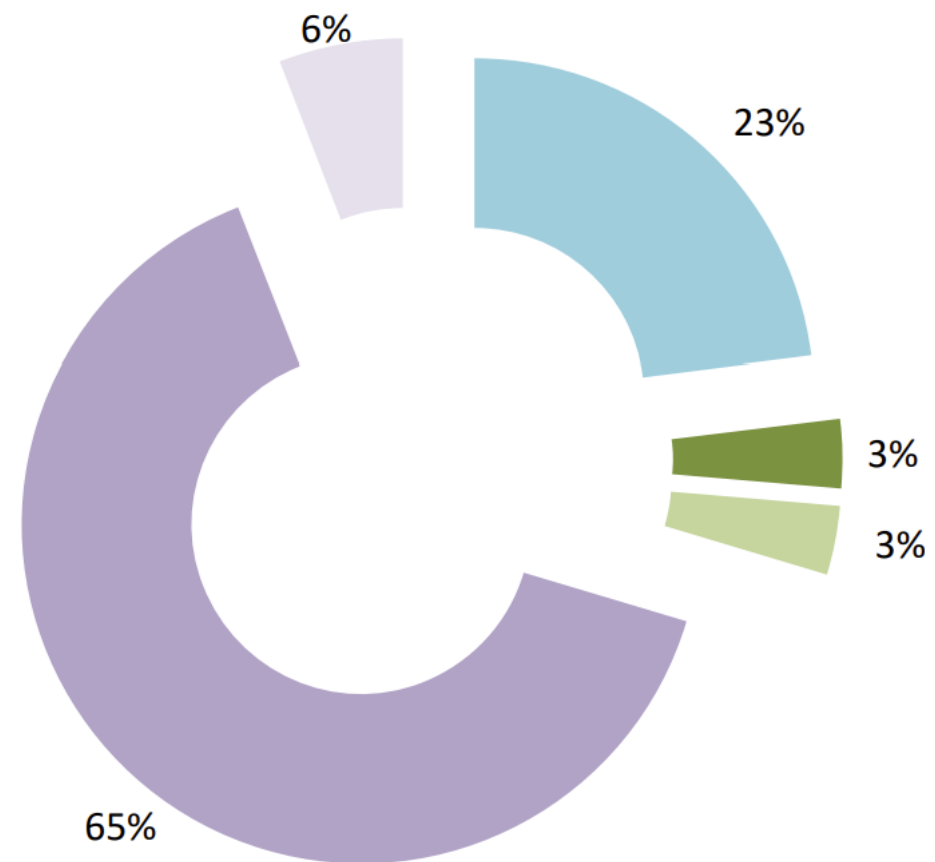
The label "Treaty Partners (de minimis rule applies)" applies to treaty partners with which the number of cases in start inventory plus the number of cases started is at least 5. The relevant MAP statistics are aggregated under this category.

The label "Treaty Partners (Others)" applies to treaty partners that are not reporting MAP statistics for the reporting period. The relevant MAP statistics are aggregated under this category.

France MAP Cases by Outcome – 2022

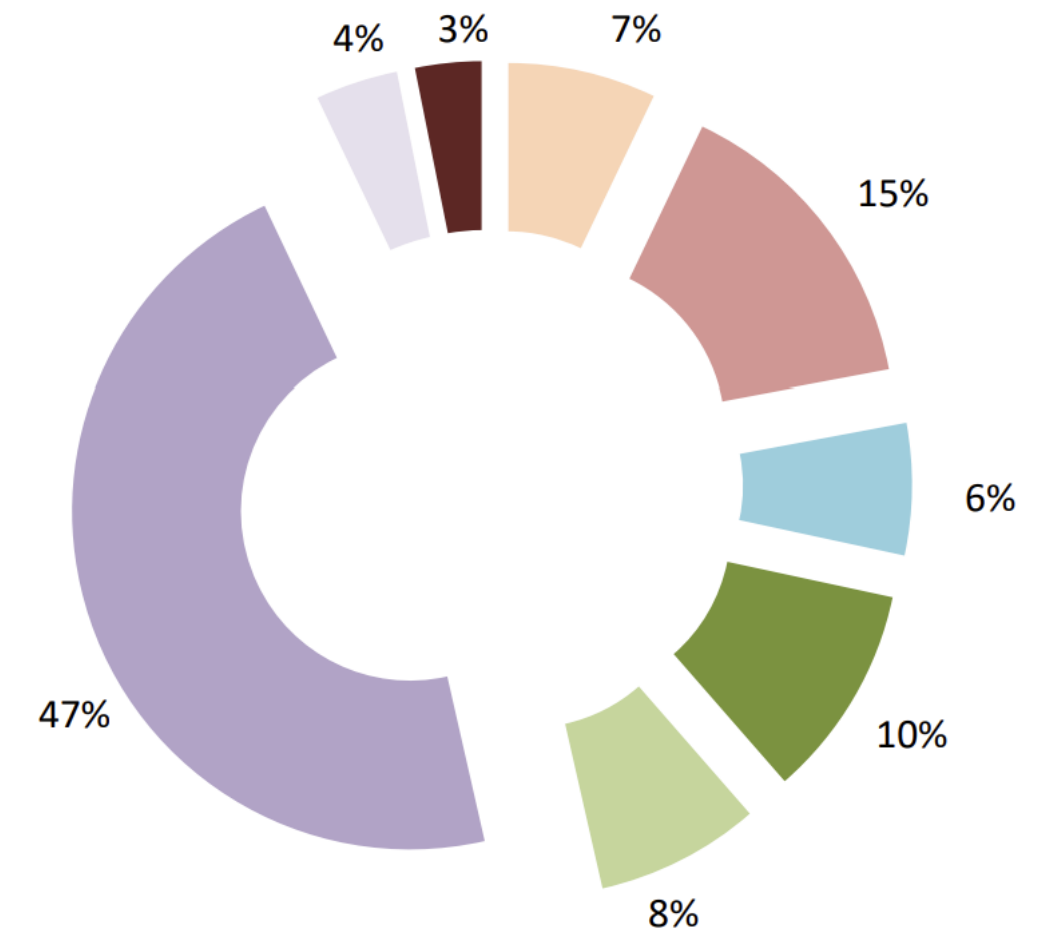


MAP Outcomes - TP cases



- denied MAP access
- objection is not justified
- withdrawn by taxpayer
- unilateral relief granted
- resolved via domestic remedy
- agreement fully eliminating double taxation eliminated / fully resolving taxation not in accordance with tax treaty
- agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty
- agreement that there is no taxation not in accordance with tax treaty
- no agreement including agreement to disagree
- any other outcome

MAP Outcomes - other cases



5. The views of business

Views of business- selected issues

1. Issues before the opening of the MAP
2. Issues on the opening of the MAP
3. Issues of communication during MAP process
4. Timing /length/cost of MAP process
5. Cash out consequences
6. MAP outcome

Q&A from the floor
&
Conclusion