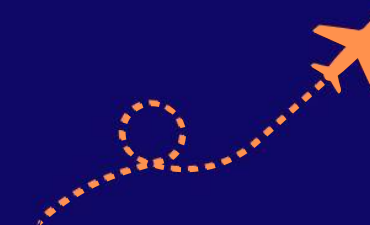


GLOBAL IFA TRAVELLING LECTURESHIP PROGRAMME 2024

INTERNATIONAL TAX DISPUTE RESOLUTION



GUGLIELMO MAISTO
MAISTO E ASSOCIATI, PARTNER
President of Global IFA



PHILIP BAKER
TAX KC & VISITING PROFESSOR
President of IFA UK



ROBERT DANON
DANON, PARTNER
Chairman of IFA's PSC



BRUNO GIBERT (FRANCE)
CMS FRANCIS LEFEBVRE AVOCATS
PARTNER



SARAH BLAKELOCK
INDEPENDENT TAX CONSULTANT



JOHN CONNORS
GLOBAL HEAD OF TAX AND TAX
COUNSEL, VODAFONE GROUP



CATHERINE HARLOW
HEAD OF TRANSFER
PRICING, ASTRAZENECA

LONDON, UK
28 February,
WEDNESDAY



Lenz & Staehelin



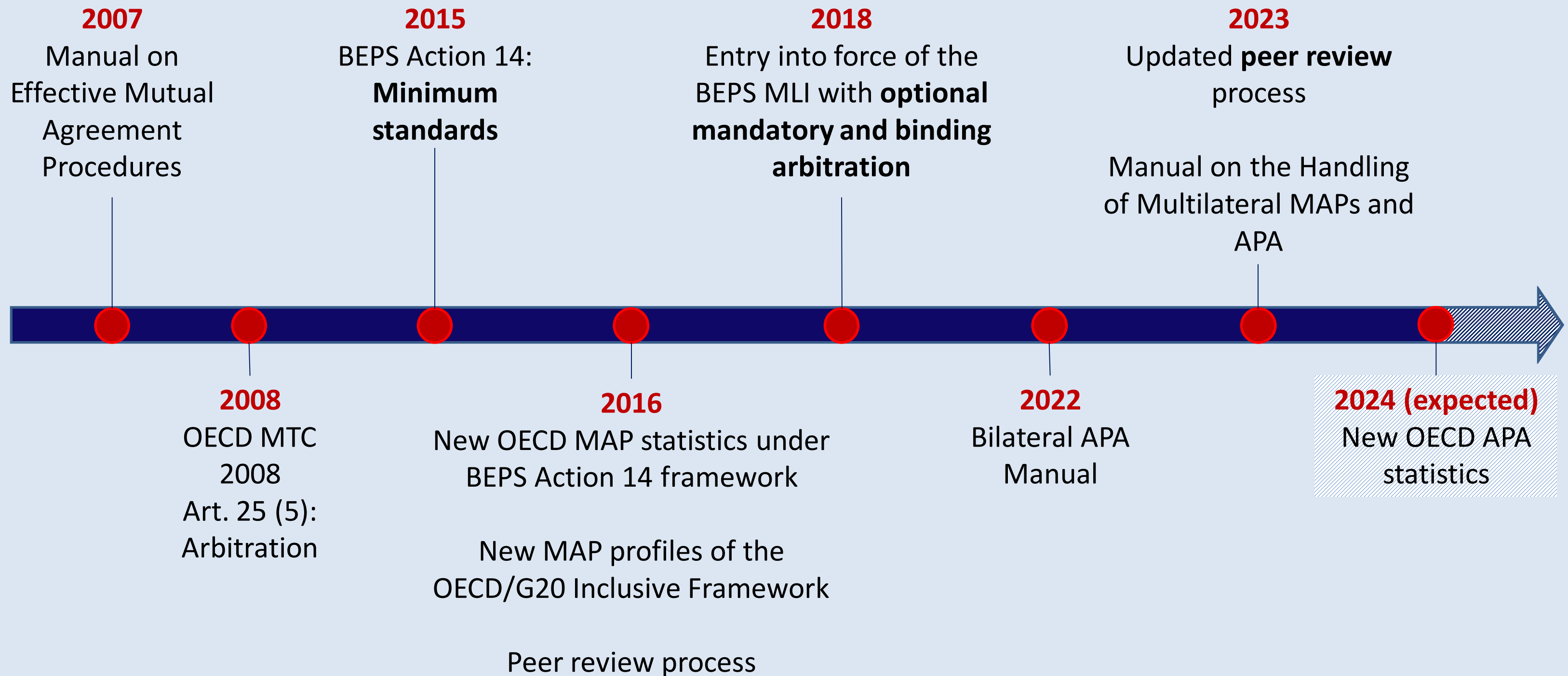
TOPIC: INTERNATIONAL TAX DISPUTE RESOLUTION

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

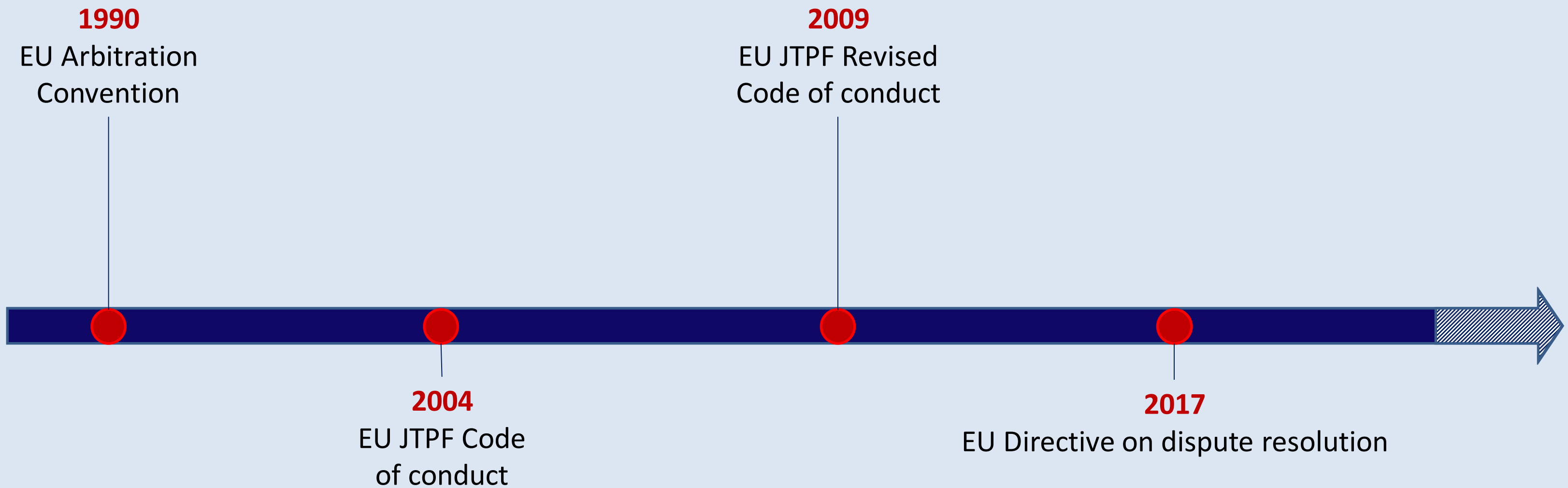
London – 28 February 2024

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)
 - What 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

Multilateral MAP

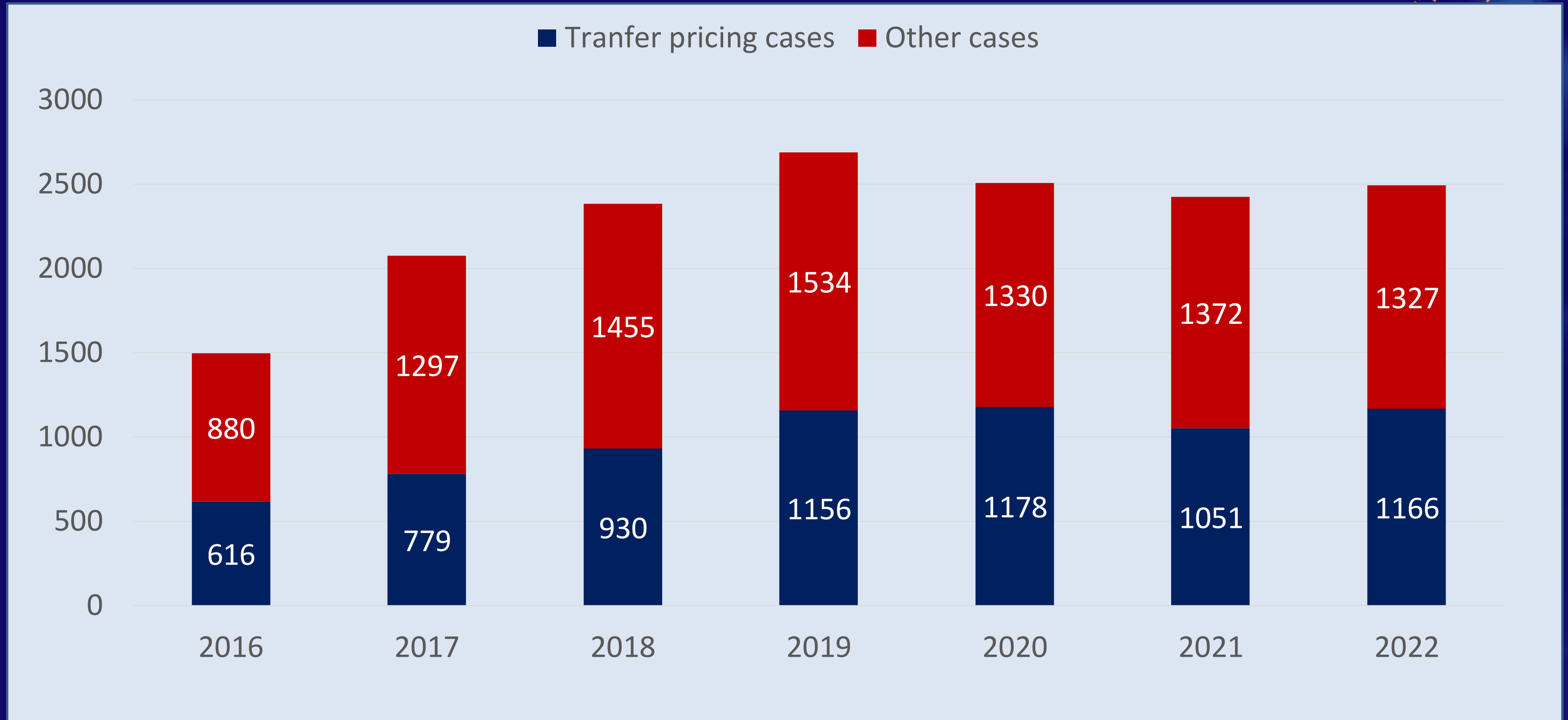
- For what kind of cases ?
- Practical experience, feasibility and timelines
- Key takeaways from the 2023 OECD Manual on the handling of Multilateral MAP and APA



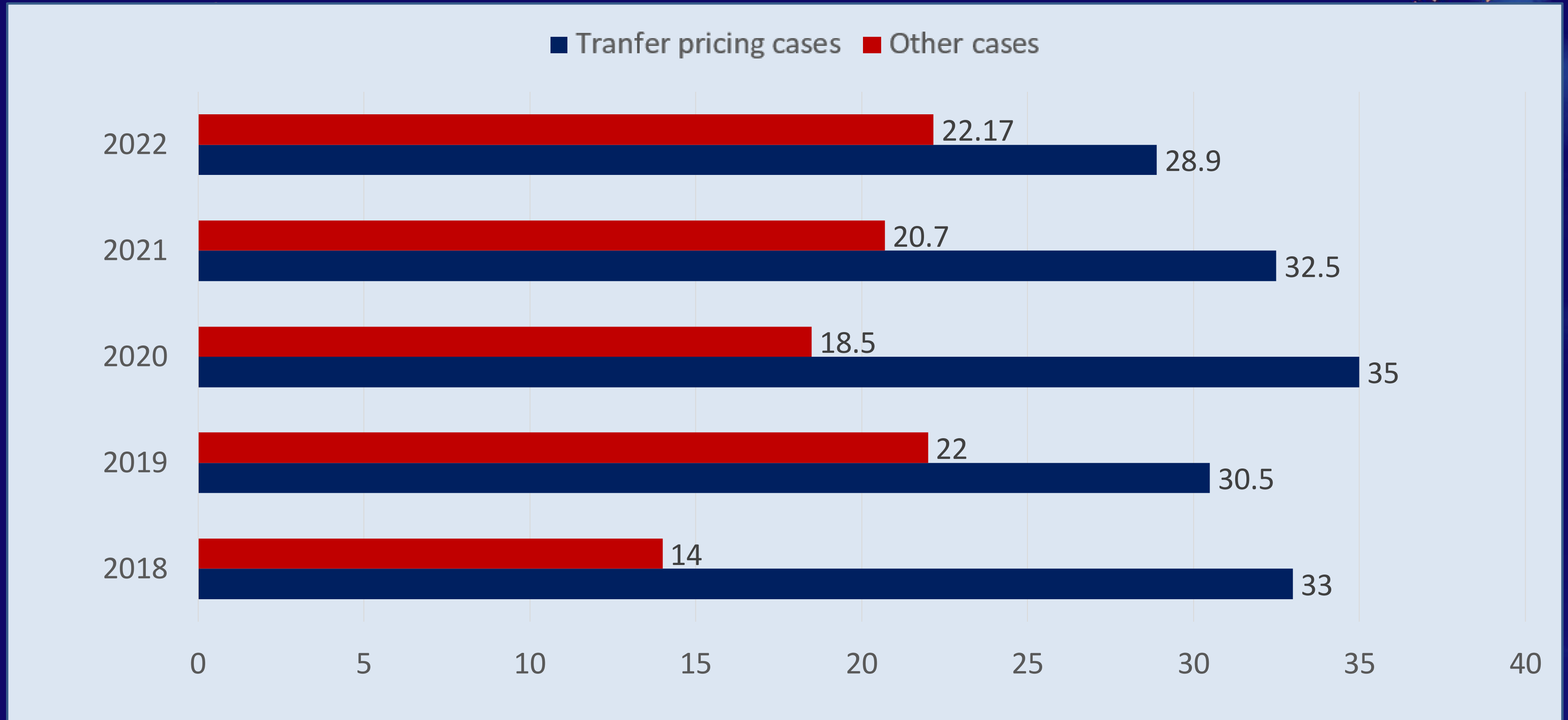


3. What do the numbers and peer review process tell us ?

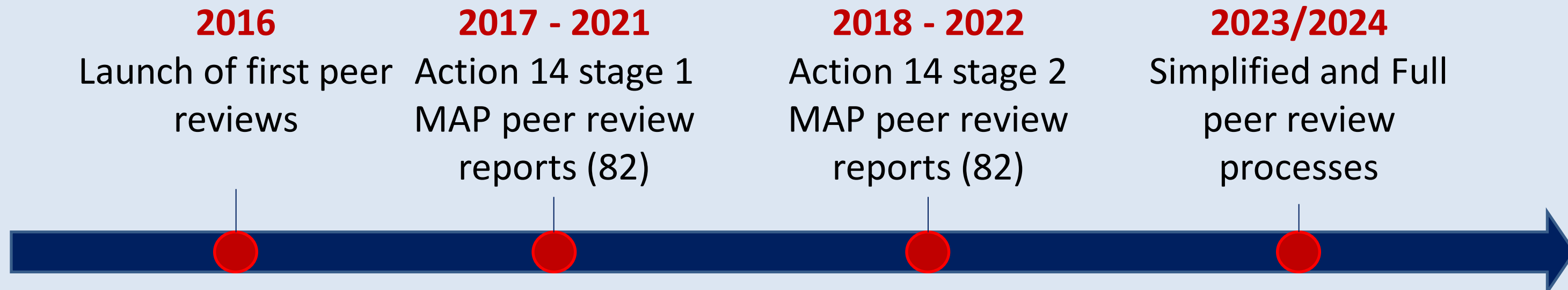
OECD Inclusive Framework MAP cases started



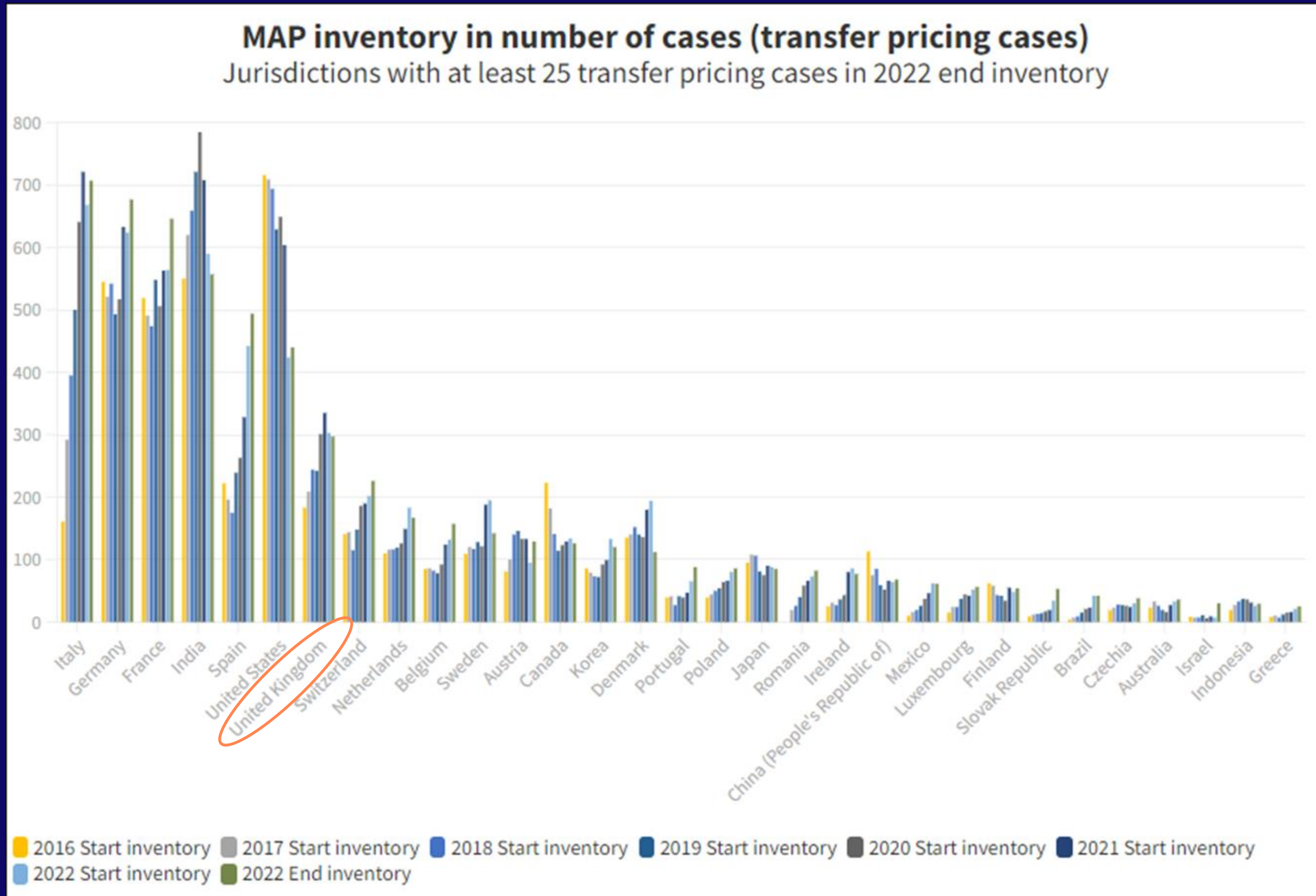
OECD Inclusive Framework: average time to close MAP



OECD Peer review process



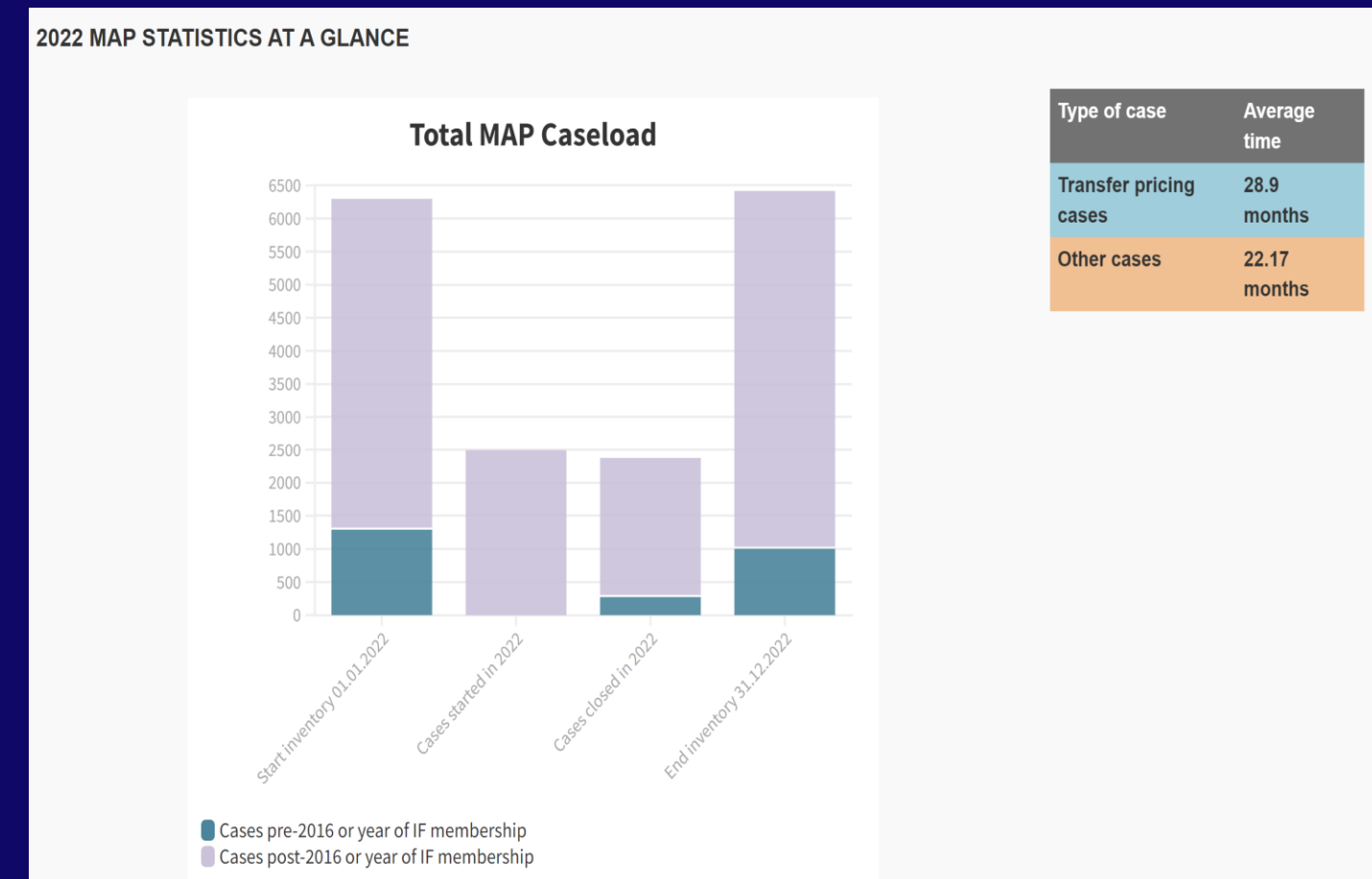
OECD MAP Cases by Jurisdiction



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)



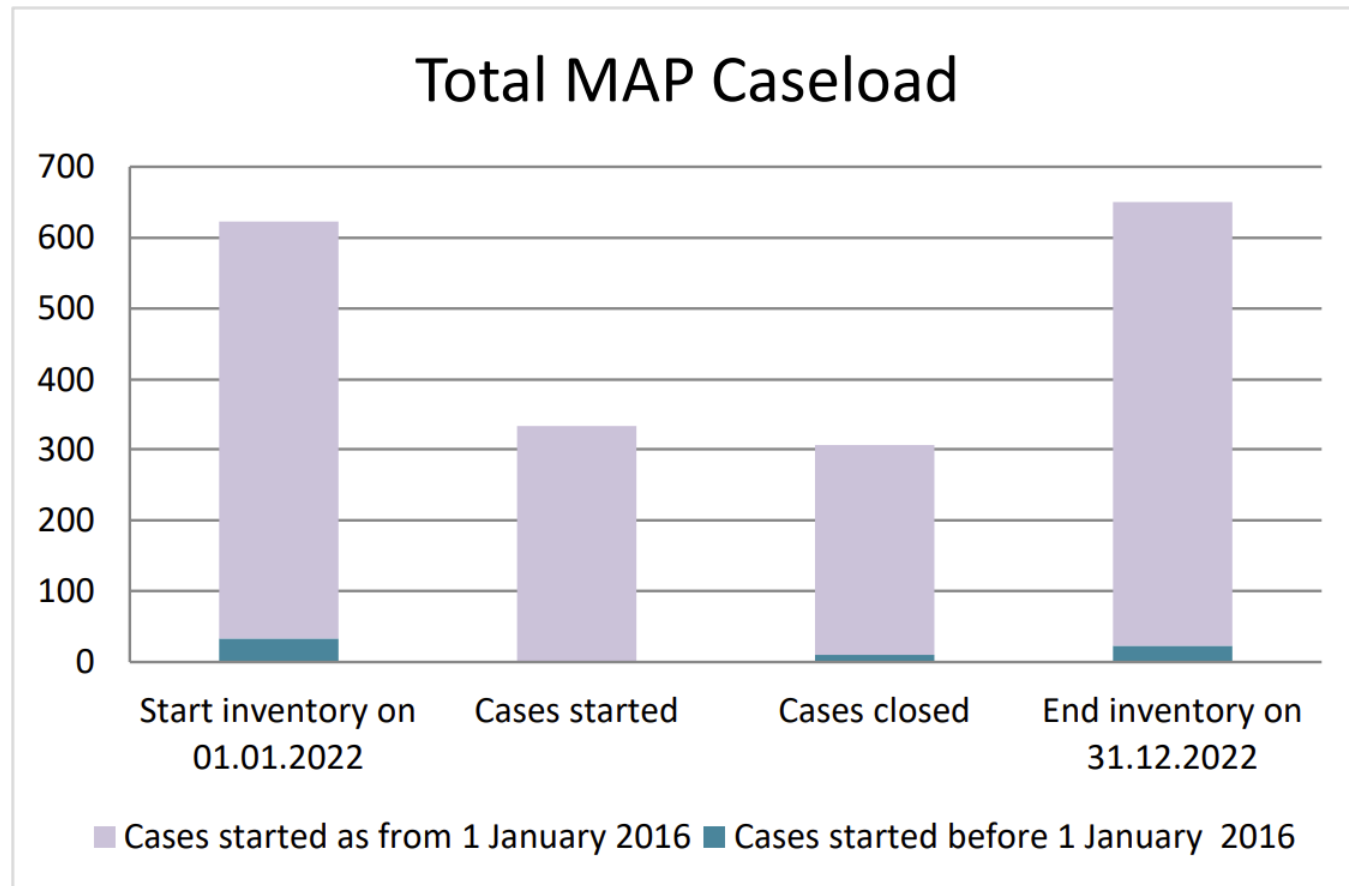
UE MAP 2022 Main statistics under the Arbitration Convention



- 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)

4. Focus on the United Kingdom

United Kingdom - MAP Caseload - 2022



Cases started before 1 January 2016	2022 Start inventory	Cases started	Cases closed	2022 End inventory
Transfer pricing cases	13	0	9	4
Other cases	20	0	1	19

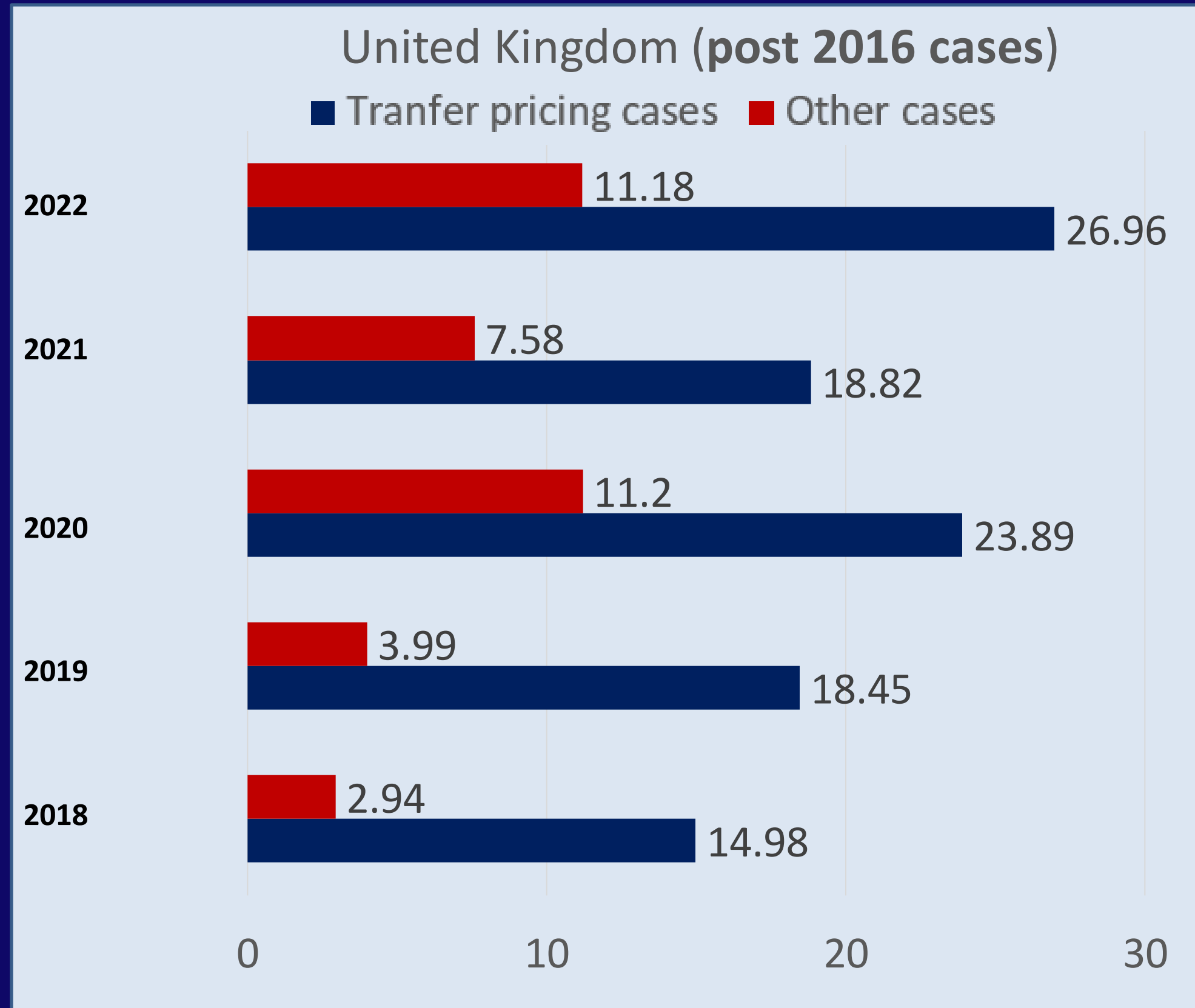
Cases started as from 1 January 2016	2022 Start inventory	Cases started	Cases closed	2022 End inventory
Transfer pricing cases	290	120	117	293
Other cases	300	213	179	334

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	26.96	1.95	12.84	15.64
Other cases	11.18	2.45	5.23	8.23

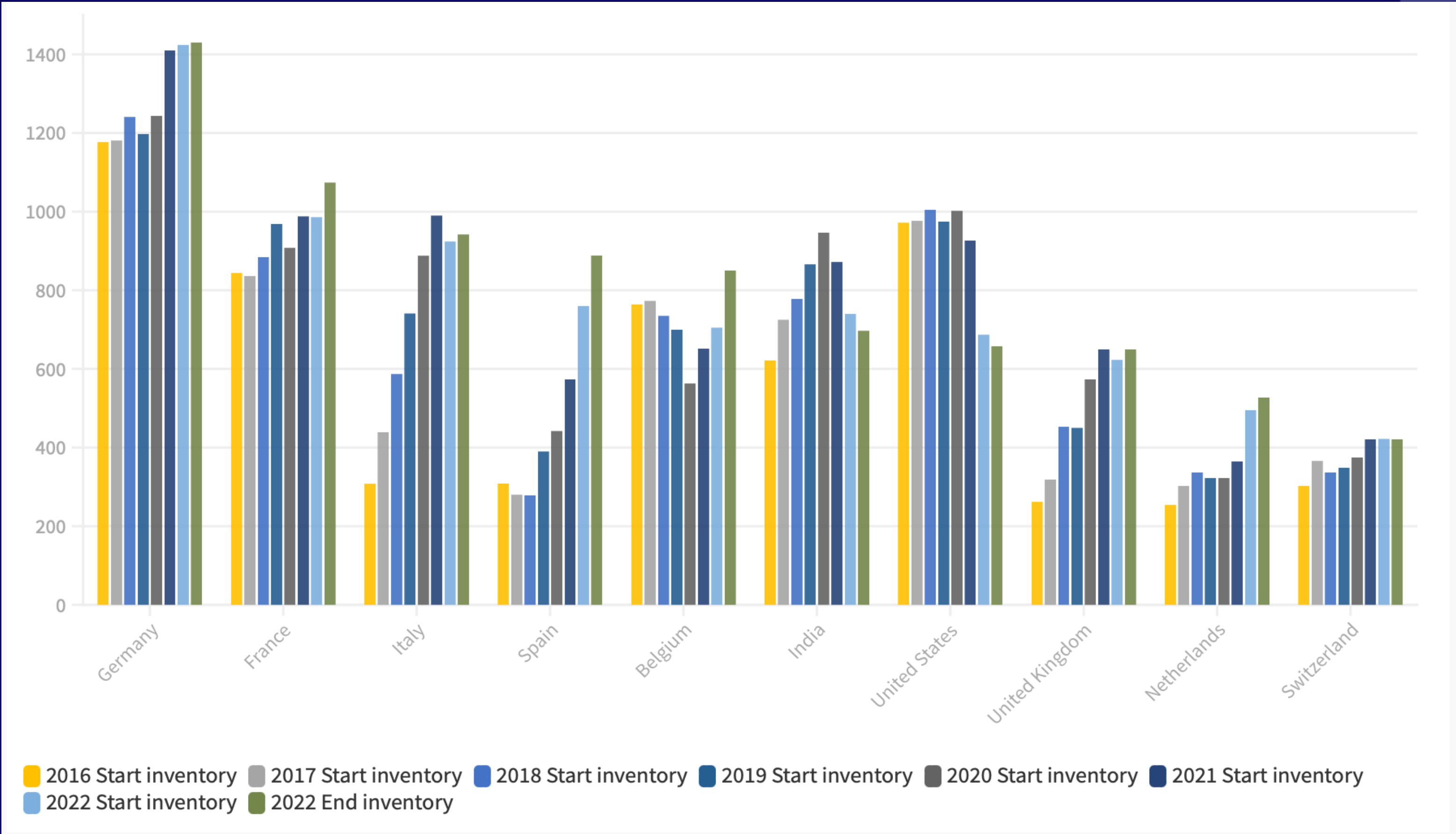
Note: the average times to close MAP cases that started as from 1 January 2016 were computed according to the MAP statistics reporting framework available at <http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-reporting-framework.pdf>

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



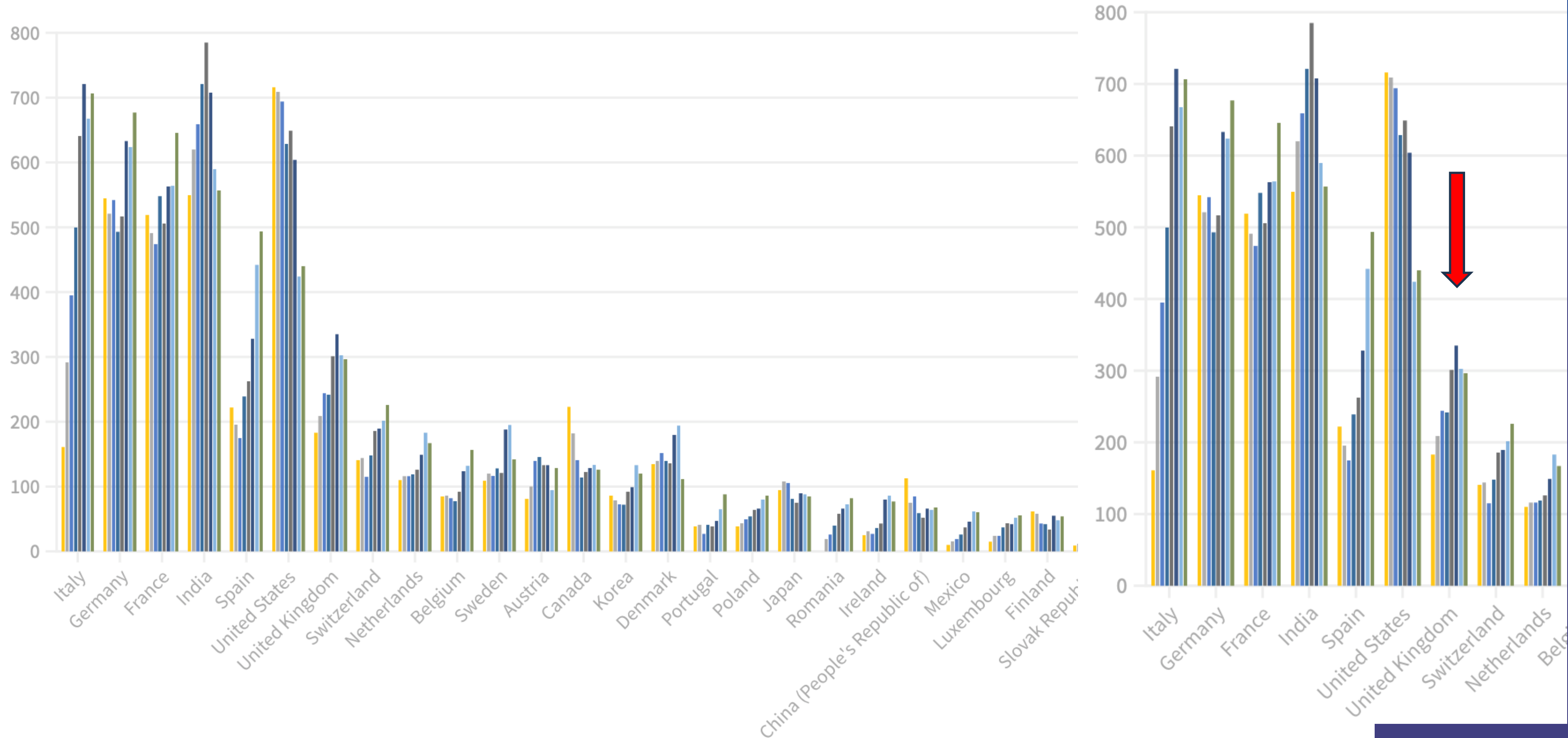
MAP INVENTORY IN NUMBER OF CASES (ALL CASES)

TOP-10 JURISDICTIONS



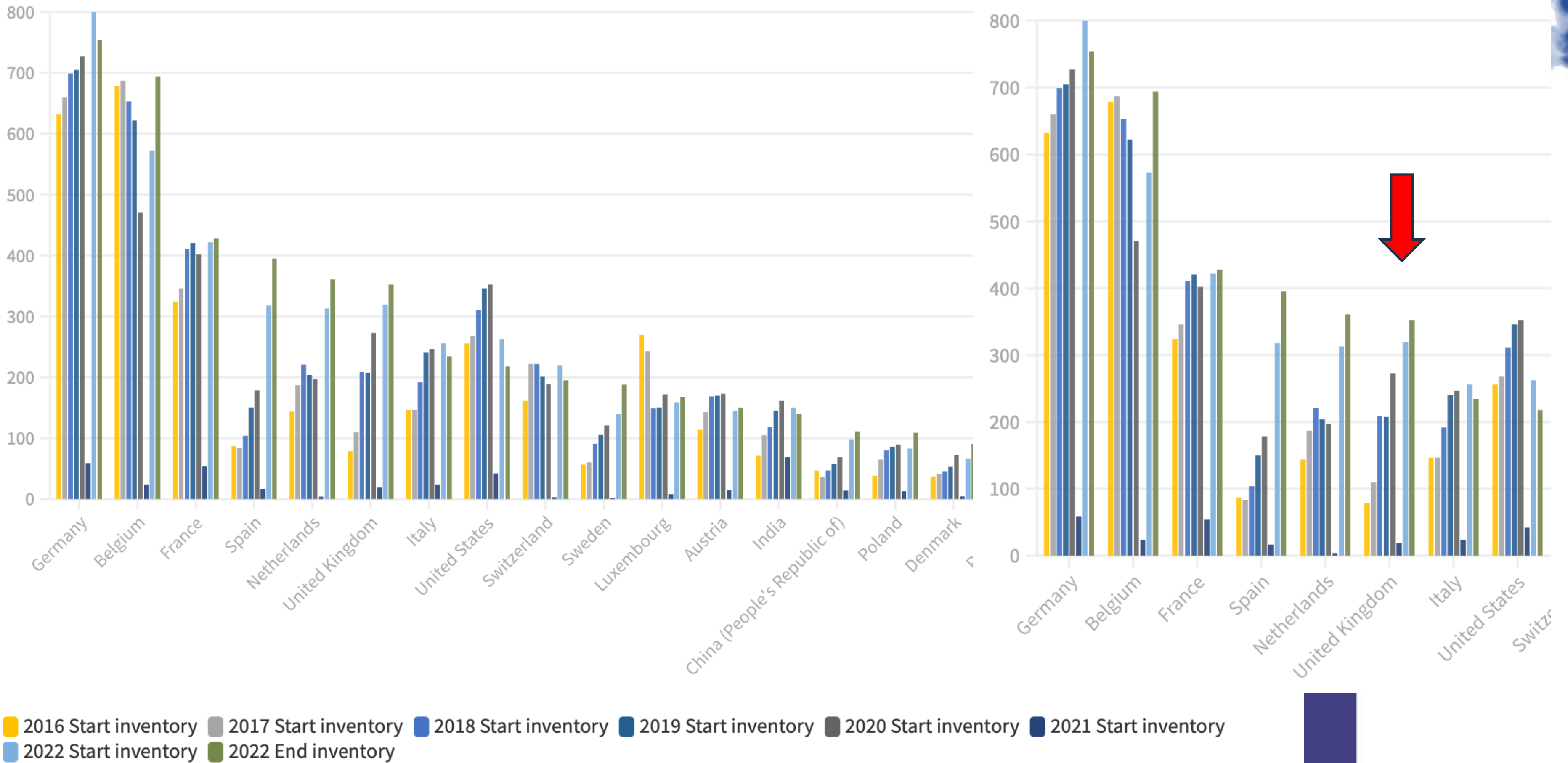
MAP inventory in number of cases (transfer pricing cases)

Jurisdictions with at least 25 transfer pricing cases in 2022 end inventory



MAP inventory in number of cases (other cases)

Jurisdictions with at least 50 other cases in 2022 end inventory

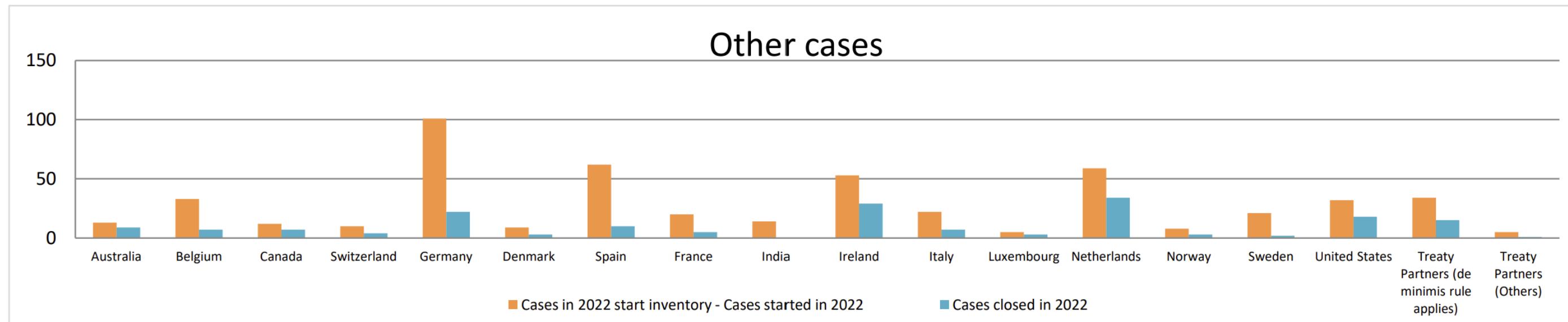
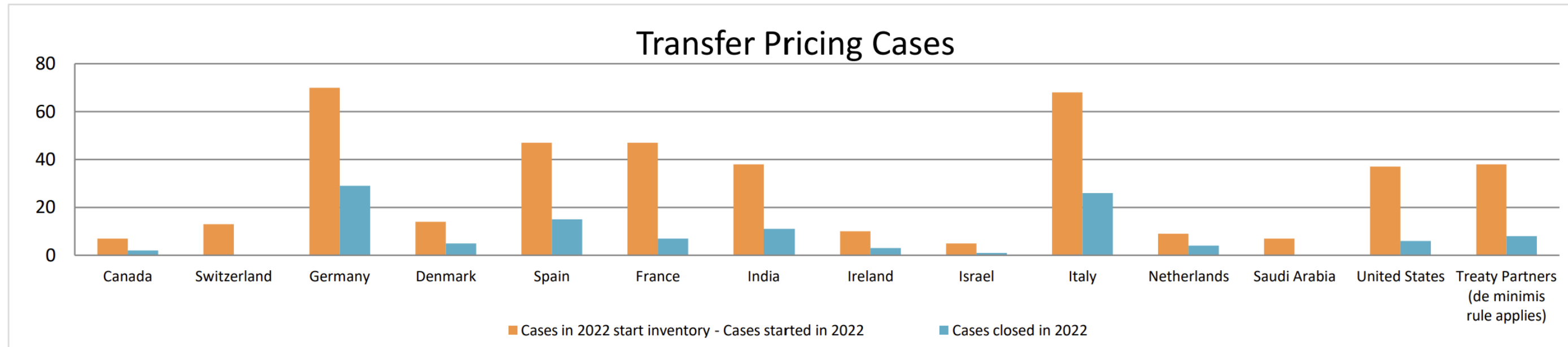


United Kingdom Post-2016 MAP Cases by Country 2022



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



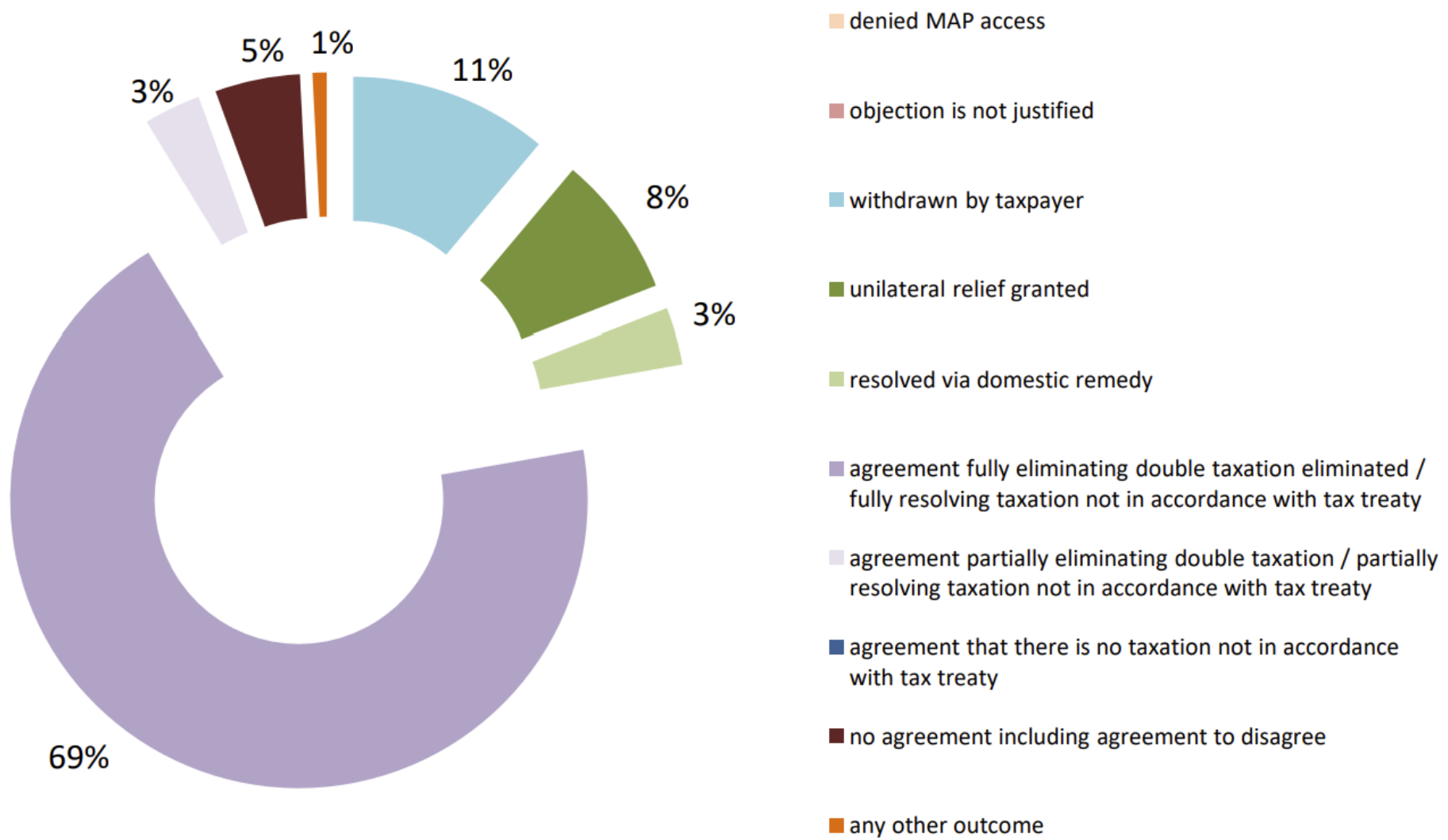
The label "Treaty Partners (de minimis rule applies)" applies to treaty partners with which the number of cases in start inventory plus the number of cases started is at least 5. The relevant MAP statistics are aggregated under this category.

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.

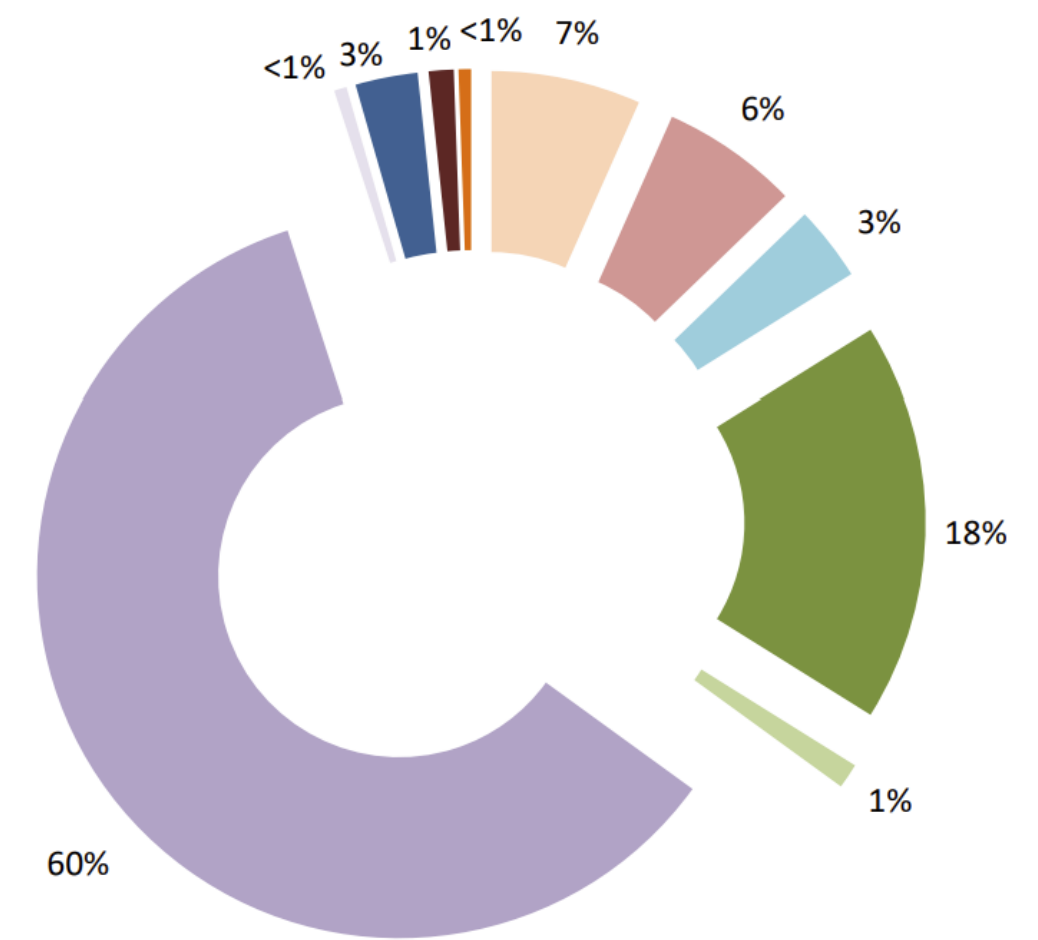
United Kingdom MAP Cases by Outcome – 2022



MAP Outcomes - TP cases



MAP Outcomes - other cases



UK and tax treaty arbitration

UK and other forms of arbitration concerning tax

UK: Pillar 2 disputes – potential disputation and resolution

Conclusion

What works ?

What does not work ?

What can be improved ?

Q&A