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EU JOINT TRANSFER PRICING FORUM

Statistics on Pending Mutual Agreement Procedures (MAPs) under the Arbitration Convention at the End of 2014

Meeting of 22 October 2015

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TABLE 1: STATISTICS ON THE FUNCTIONING OF THE ARBITRATION CONVENTION FOR REFERENCE YEAR 2014

Summary

Member State	Opening inventory on 01/01/2014	Cases initiated in 2014	Cases completed in 2014	Ending inventory on 31/12/2014	Average cycle time for cases completed in 2014 (in months)
	B	C	D	E	F
BE [6)]	26	13	9	30	73
BG	2	0	0	2	
CZ	7	5	0	12	30
DK [1)]	33	17	14	36	25
DE [2)]	232	129	46	315	
EE	0	0	0	0	
IE	7	1	5	3	
EL	1	4	0	5	
ES	62	38	15	85	34
FR	185	63	56	192	
IT [3)]	178	86	1	263	10
CY[4]	0	0	0	0	
LV	0	1	0	1	
LT	1	1	0	2	
LU	8	0	0	8	
HU	5	2	0	7	
MT	0	0	0	0	
NL	32	28	11	50	30
AT	26	12	3	35	37
PL	11	6	2	14	
PT	17	7	0	24	
RO	2	1	2	1	
SI	1	0	0	1	
SK	2	3	0	5	
FI	41	36	15	62	14
SE	51	18	10	59	
UK	54	35	21	68	29
TOTAL	**984**	**506**	**210**	**1280**	

[1)] Remark by Denmark: 7 non-initiated AC requests, pertaining to one Danish initiated TP adjustment, have by mistake been included in last years statistics as initiated but were rejected during 2014. Please also refer to table 3.

[2)] Please note that the German competent authority (CA) internal case database does currently not allow to record “initiated” and “completed” dates following OECD and JTPF definitions. While for earlier reporting periods (up to 2010) considerable efforts were made to specifically prepare separate statistics for OECD purposes, the need for a streamlining of resources is currently not permitting to produce additional statistics based on OECD definitions. Therefore the German CA can currently only provide statistics based on the "initiated" and "completed" dates used for internal purposes. Consequently, the “initiated” standard used in the reported statistics differs from OECD and JTPF definitions. Under the definition applied by the German CA, a case is treated as open as soon as the German CA receives a request (regardless of whether it is a request that already contains the necessary minimum information or not, which is earlier than under the OECD and JTPF definition of “initiated”). The "completed" standard used is now largely in line with OECD and JTPF guidance. The deviating "initiated" definition results in a larger MAP case inventory and makes cases appear older than under OECD

This should be born in mind when comparing the German 2012-2014 figures with pre-2011 figures and statistics provided by other countries. Due to the same issue, reporting cycle times following OECD/JTPF definitions and thus suitable for direct comparison is currently not feasible.

[3)] Remark by Italy: Please, note that the Italian Competent Authority internal AC MAPs database does currently not allow to record “initiated” date following JTPF present definition.
The “initiated” date in the Italian database is:
a) the date when the Italian Competent Authority receives a request submitted by the taxpayer (regardless of whether it is a request that already contains the necessary minimum information - as stated under point 5a of the code of conduct - or not) or
b) the date when the Italian Competent Authority receives the letter by the other Competent Authority (this is in case the AC MAP request is presented to the other Competent Authority).
This definition makes cases appear older than under JTPF definition. The difference between the ending inventory 31.12.2013 (168) in doc. JTPF/008/2014/EN and the opening inventory 01.01.2014 (178) results from a correction of the 2013 figures which is not reflected in the published version

[(4)] Remark by Cyprus: A request for initiation of a MAP was received late 2014 from another MS regarding a case pending before the Court, in that MS. A decision regarding acceptance or otherwise under the AC shall be made after relevant information is provided in English

[(5)] Remark by Spain: there is a mismatch between 2014 and 2013 statistics regarding the opening inventory of cases initiated in 2008. We realized that one case had been closed before 01/01/2014 (agreed with the other CA but still pending acceptance from the taxpayer). That is why instead of the expected 1 case, there are none.there is a mismatch between 2014 and 2013 statistics regarding the opening inventory of cases initiated in 2013. We realized that one case was presented at the end of the year but the complete information requested was not answered until 2014, so it is a 2014 case. That is why instead of the expected 18 cases, there are 17 (for the rest of the difference, see next note).there is a mismatch between 2014 and 2013 statistics regarding the opening inventory of some years, due to new point 2 in the CoC proposed by the 2015 EU JTPF Report. AC Cases depending on a MAP under DTC will be included once the DTC case is solved.- Considering the latter, we have deleted 1 case and 2 cases to the cases initiated in 2012 and 2013.

[6] Remark by Belgium: the difference between the ending inventory 31.12.2013 (24) and the opening inventory 01.01.2014 (26) results from the fact that when preparing the 2013 statistics 2 cases were not conclusively considered as regards their acceptance under the AC

Explanatory note:

Column B / Opening inventory on 01/01/2014: Enter in this column the number of pending AC MAP cases as on the first day of the reference year for which data is being provided, i.e. 01/01/2014. (The figures in this column will duplicate the "ending inventory" figures included in the respective column for the previous reference year.) The total number of pending AC MAP cases should be broken down according to the year in which these pending cases were initiated and reported in the appropriate row of the template. (see Column A: Year MAP cases were initiated). The reference year cell is blacked out, as 2014 cases could have only been initiated during the actual reference year, not before. A Competent Authority's (CA's) inventory would include both cases arising from a request submitted directly to that CA and cases arising from a request submitted by the taxpayer to another CA and subsequently presented by the latter CA to the former CA. As this would otherwise lead to double counting of cases in the overall statistics (e.g. total number of cases) the actual number of cases for year 2014 will be calculated by way of dividing the resulting total number of cases by 2.

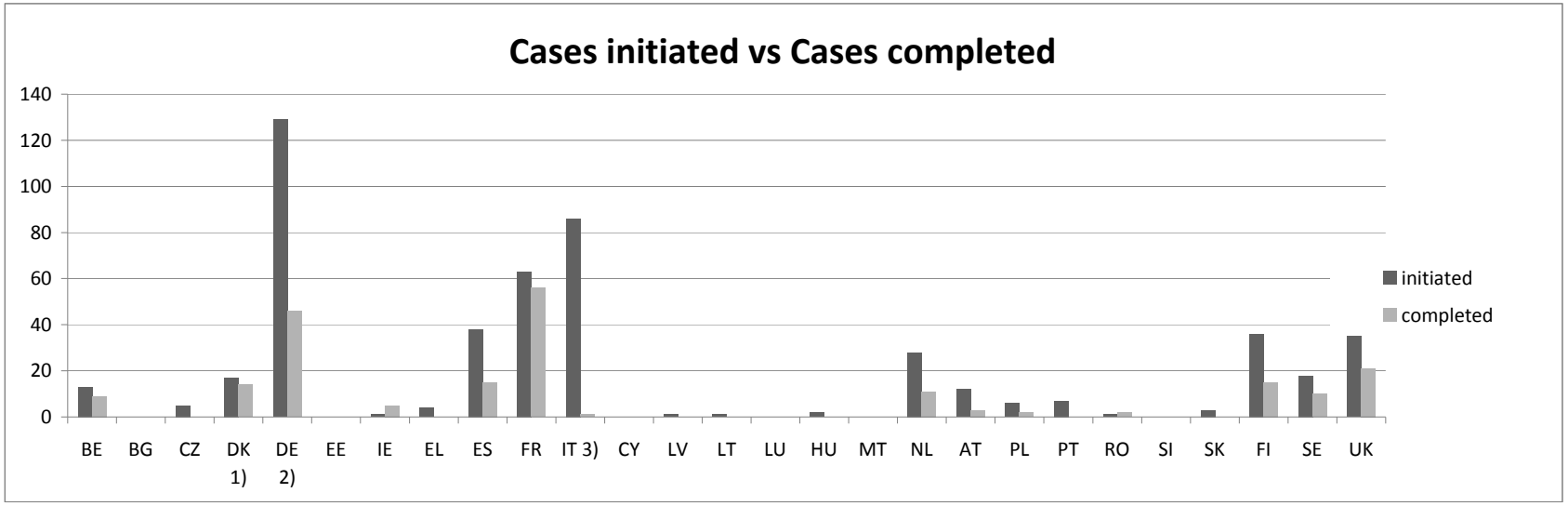
Column C / Cases initiated in 2014: Enter in this column the number of AC MAP cases initiated during the reference year. Note that it is only possible to enter data in this column in the row for the reference year for which statistics are being provided (the other rows in this column are blacked out), given that pending AC MAP cases initiated in earlier reference years should be reported in Column B. An “initiated” case is one that has been considered as well-founded by a competent authority on the basis of 6.3(g) of the CoC. By definition this column will include only cases initiated during the current reference year. A case initiated by the reporting CA, but rejected by the other CA has to be included in table 1. This column will include both cases arising from a request submitted directly to your CA and cases arising from a request submitted by the taxpayer to another CA and subsequently presented by the latter CA to the former CA.

Column D / Cases completed in 2014: Enter in this column the number of cases: (1) that have been resolved by mutual agreement (including arbitration) or by unilateral action on the part of the competent authority, where taxation not in accordance with Article 4 of the AC has been eliminated in line with Article 14 of the AC; (2) that have been withdrawn by the taxpayer; (3) that have been closed otherwise (e.g. final Court decision). A case shall be considered completed on the date the closing letters relating to the MAP have been exchanged or, in absence of closing letters, at the date the CAs closed the case during a bilateral meeting where there has been an agreement that the signed minutes close the case and no further closing letters will be exchanged. At this point, the only remaining action by the tax administration should be the processing of the result of the resolution, which should be accomplished fairly promptly (e.g. within 30 days).

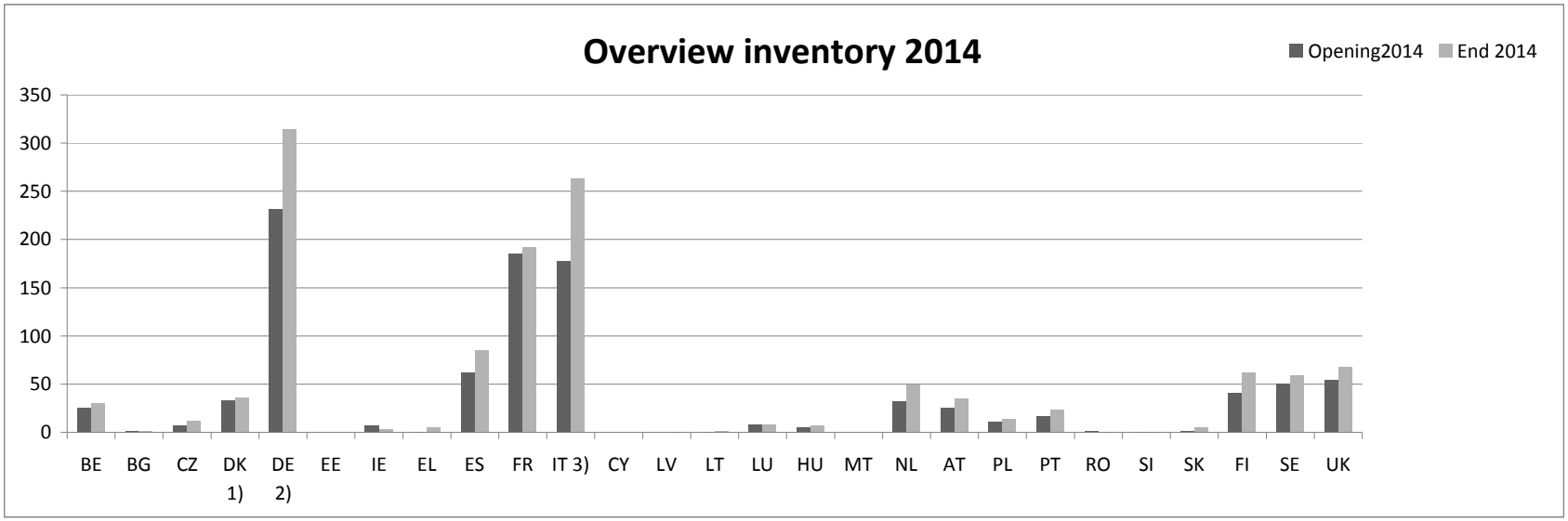
Column E / Ending inventory on 31/12/2014: Enter in this column the number of pending AC MAP cases as on 31/12/2014. The total number of pending MAP cases should be broken down according to the year in which these pending cases were initiated and reported in the appropriate row of the template. The figures presented here will be reported in the "opening inventory" column of the questionnaire for the next reference year. The figures in this column are obtained by adding the figures in columns B and C and by substracting the figures in column D.

Column F / Average cycle time for cases completed during the reference year (in months): Enter in this column the average time for AC MAP cases to be completed. This average is computed with reference to the year in which AC MAP cases were initiated (i.e. the cycle time is for AC MAP cases initiated in a particular year) and reported in the appropriate row of the template. The average is computed by aggregating the number of months it took to complete each AC MAP case during the reference year. The second step is to divide this aggregated number of months by the total number of such completed AC MAP cases. The result is the average cycle time of a MAP case in months – that is, the average number of months to complete an AC MAP case.

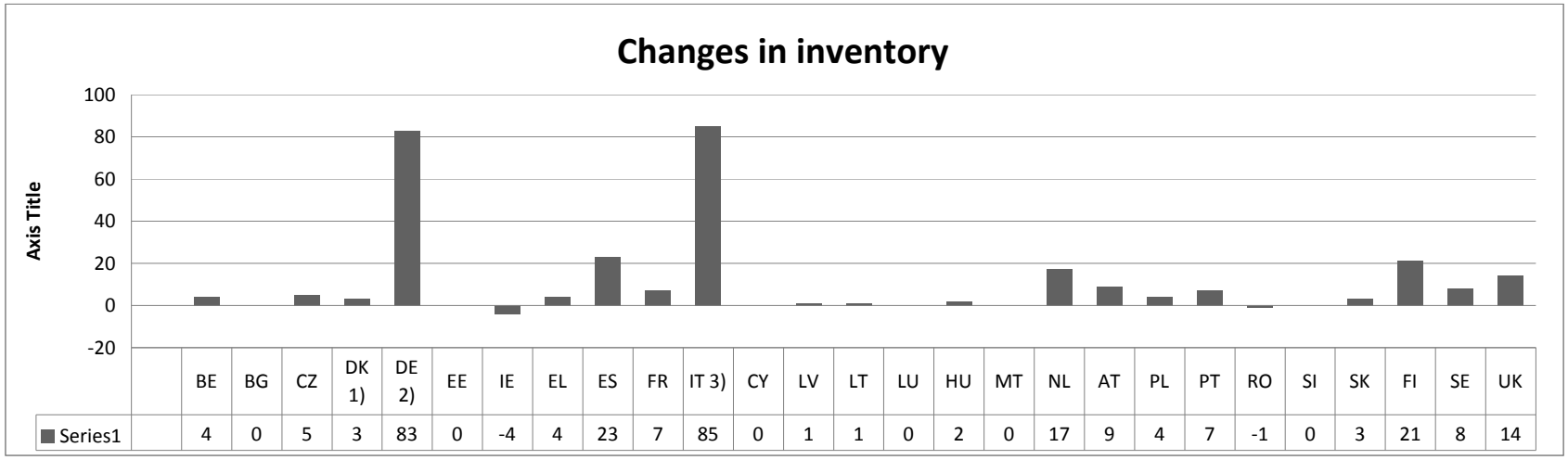
1. Overview - Cases initiated vs. Cases completed in 2014



2. Overview - inventory beginning vs. end 2014

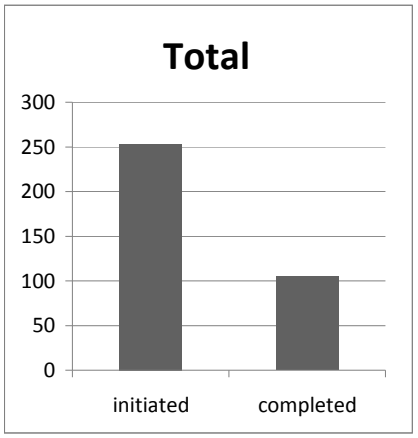


3. Overview - Changes in inventory (increase / decrease)



	BE	BG	CZ	DK 1)	DE 2)	EE	IE	EL	ES	FR	IT 3)	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
Series1	4	0	5	3	83	0	-4	4	23	7	85	0	1	1	0	2	0	17	9	4	7	-1	0	3	21	8	14

4. Global overview - Changes in inventory



5. Development initatied vs completed cases

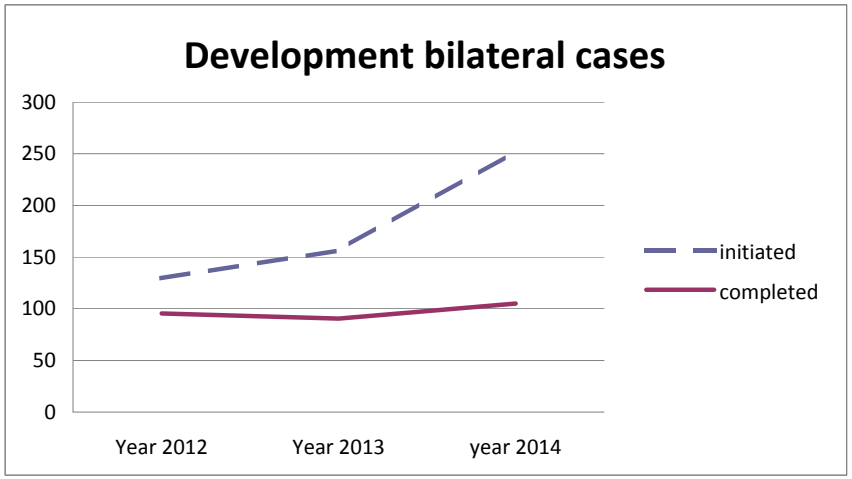


TABLE 2: ANALYSIS OF PENDING CASES 2 YEARS AFTER THE DATE A CASE WAS INITIATED AS AT 31/12/2014

Summary

Member State	Number of cases	Reasons why cases are pending 2 years after initiation						
		2-year point not reached due to Coc 5 (b) (i)	cases pending before court	Time limit waived with taxpayer's agreement	To be sent to Arbitration	In Arbitration	Settlement agreed in principle, awaiting exchange of closing letters for MAP	Other reasons
	B	C	D	E	F	G	H	I
BE	7	1	1	2	1	0	1	1
BG	0	0	0	0	0	0	0	0
CZ	1	1	0	0	0	0	0	0
DK	10	0	1	9	0	0	0	0
DE [1)]	137	6	26	2	0	0	15	88
EE	0	0	0	0	0	0	0	0
IE	1	0	0	1	0	0	0	0
EL	0	0	0	0	0	0	0	0
ES	35	0	10	2	0	0	8	15
FR	89	0	5	76	1	0	7	0
IT	107	4	32	9	1	0	0	61
CY	0	0	0	0	0	0	0	0
LV	0	0	0	0	0	0	0	0
LT	0	0	0	0	0	0	0	0
LU	3	2	1	0	0	0	0	0
HU	5	5	0	0	0	0	0	0
MT	0	0	0	0	0	0	0	0
NL	18	0	4	1	0	0	1	12
AT	15	0	0	0	0	0	0	15
PL	13	4	0	0	0	0	1	8
PT	16	3	3	0	0	0	0	10
RO	0	0	0	0	0	0	0	0
SI	0	0	0	0	0	0	0	0
SK	0	0	0	0	0	0	0	0
FI	14	2	7	0	0	0	0	5
SE	29	0	5	23	0	0	1	0
UK	20	1	3	0	0	0	0	16
TOTAL	**520**	**29**	**98**	**125**	**3**	**0**	**34**	**231**

[(1)] Remark by Germany: Please note that the German competent authority (CA) internal case database does currently not allow to record “initiated” and “completed” dates following OECD and JTPF definitions (see also the footnote below Table 1). The figures provided here are based on the “initiated” and “completed” dates used for internal purposes. Under the definition applied by the German CA, a case is treated as open as soon as the German CA receives a request (regardless of whether it already contains the necessary minimum information or not, which is earlier than under the OECD and JTPF definition of “initiated”). The "completed" standard used is now largely in line with OECD and JTPF guidance. The deviating "initiated" definition results in a larger MAP case inventory and makes cases appear older than under OECD/JTPF definitions. This should be born in mind when comparing the German 2014 figures with statistics provided by other countries.
Of the 88 cases reported under "other reasons", there are 10 cases for which the application was received in 2012 and for which the 2-year-period had not started yet in 2012 because the German CA requested addional information (2009 Code of Conduct point 5 (b) (ii)). In the remaining 78 cases, the 2-year-period had indeed expired on 31/12/2014. In 12 of the cases, settlement appeared imminent at the end of the year and was in fact reached in the meanwhile (i.e. before end of June 2015). In most of the other 66 cases, sending them to arbitration did not appear meaningful because there had not been an exchange of position papers yet. In roughly half of these cases, the German CA was either still waiting for the first position paper of the CA of the country where the primary adjustment had been made, or had received such first position paper only very recently. In other cases the German side (the CA and/or the local or regional office from which a statement was expected) appeared mainly or partly responsible for the delay, generally due to resources issues (leaving staff which could not immediately be replaced, longer illnesses etc).

Explanatory note:

Column B / Number of cases: please note that years 2013 and 2014 are blacked out because the 2-year period cannot have expired on 31/12/2014.

Column C / Two year point not reached due to CoC 5(b)(i): the 2-year period starts on the latest of the following dates: (i) the date of the tax assesment notice, i.e. a final decision of the tax administration on the additional income or equivalent; (ii) the date on which the competent authority receives the request and the minimum information as stated under point 5(a). Thus, if the tax assessment notice (as defined in 5(b)(i)) was not yet issued when the case was initiated, the 2-year period starts some time after initiation, at the day of the tax assessment notice.

Column D / Cases pending before Court: this column covers cases where 2-year period has not yet expired because of Article 7(1) (2nd sentence) of AC and Article 7(3) of AC.

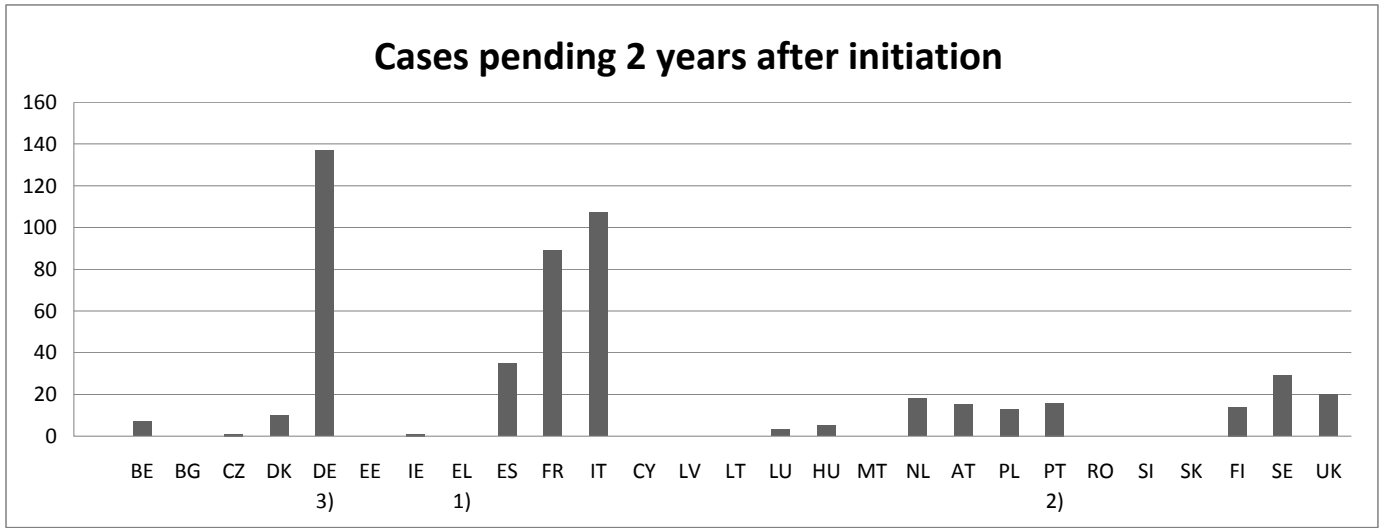
Column E / Time limit waived with agreement of the taxpayer: see Article 7(4) of AC.

Column F / To be sent to arbitration: to include cases for which the 2-year period has expired, but which have not been referred to an advisory commission.

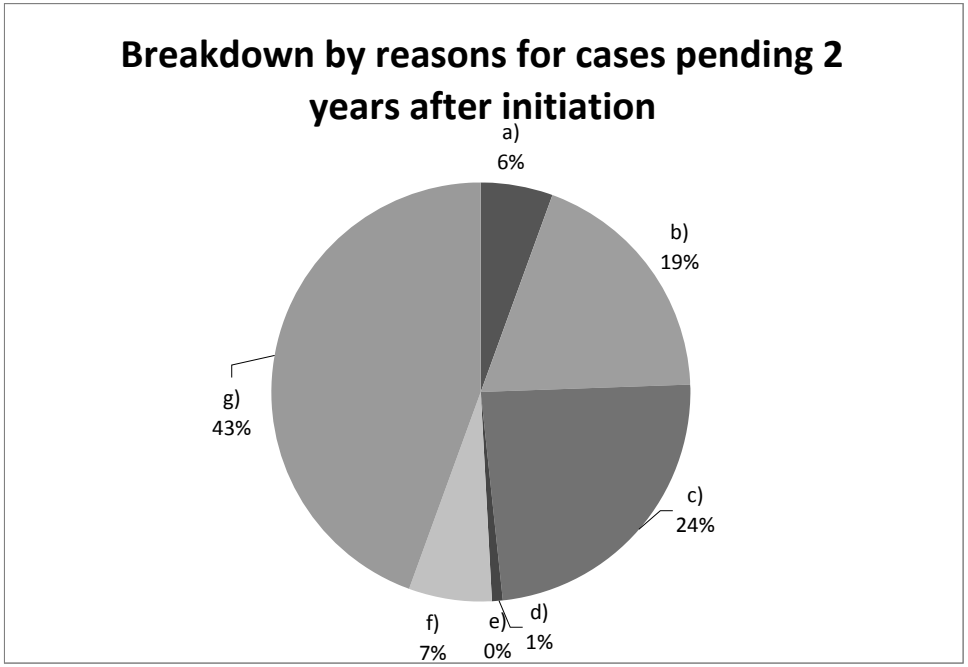
Column G / In arbitration: to include cases referred to an advisory commission and awaiting its opinion.

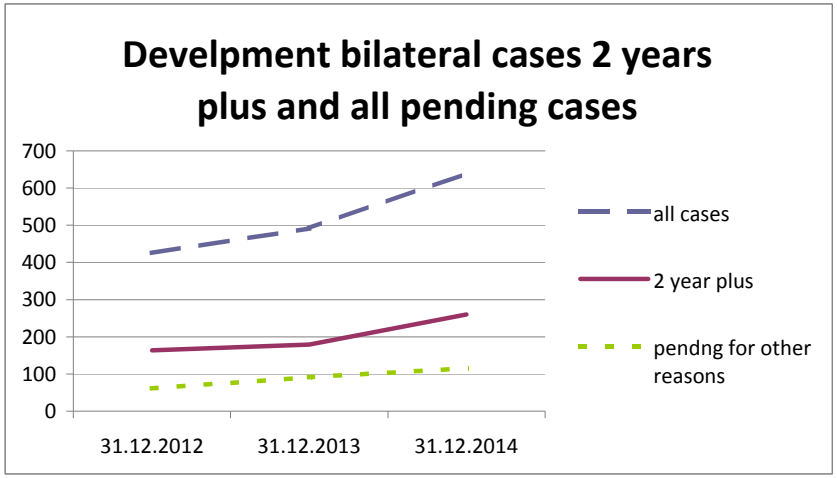
Column H / Settlement agreed in principle, awaiting exchange of closing letters for MAP (or, in absence of closing letters - signed minutes following a bilateral meeting between CAs where there has been an agreement that the signed minutes close the case and no further closing letters will be exchanged): to include cases (i) where CA have agreed MAP; (ii) where the advisory commission has delivered its opinion and the 6-month period where CA can deviate has not yet expired.

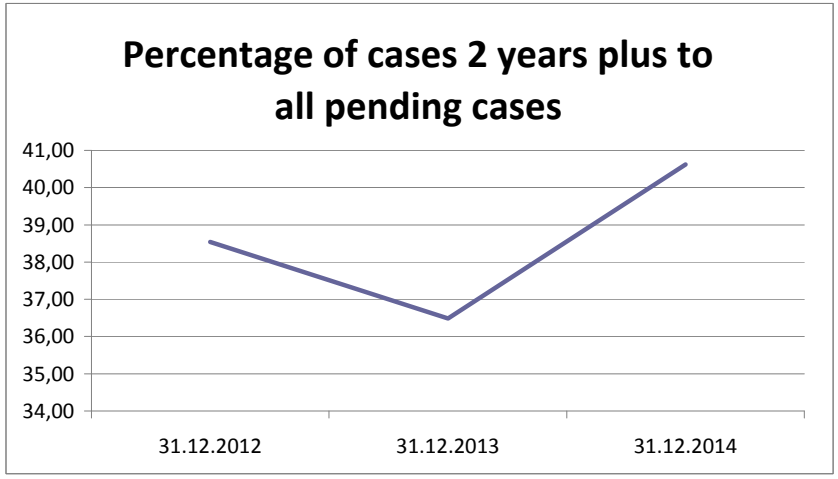
1. Overview of cases pending 2 years after initiation



2. Overview - breakdown by reasons for cases pending 2 years after initiation







a) 2-year point not reached due to Coc 5 (b) (i)
b) Cases pending before court
c) Time limit waived with taxpayer's agreement
d) To be sent to Arbitration
e) In Arbitration
f) Settlement agreed in principle,
awaiting exchange of closing letters for MAP
g) Other reasons

3. Overview cases pending 2 years after initiation

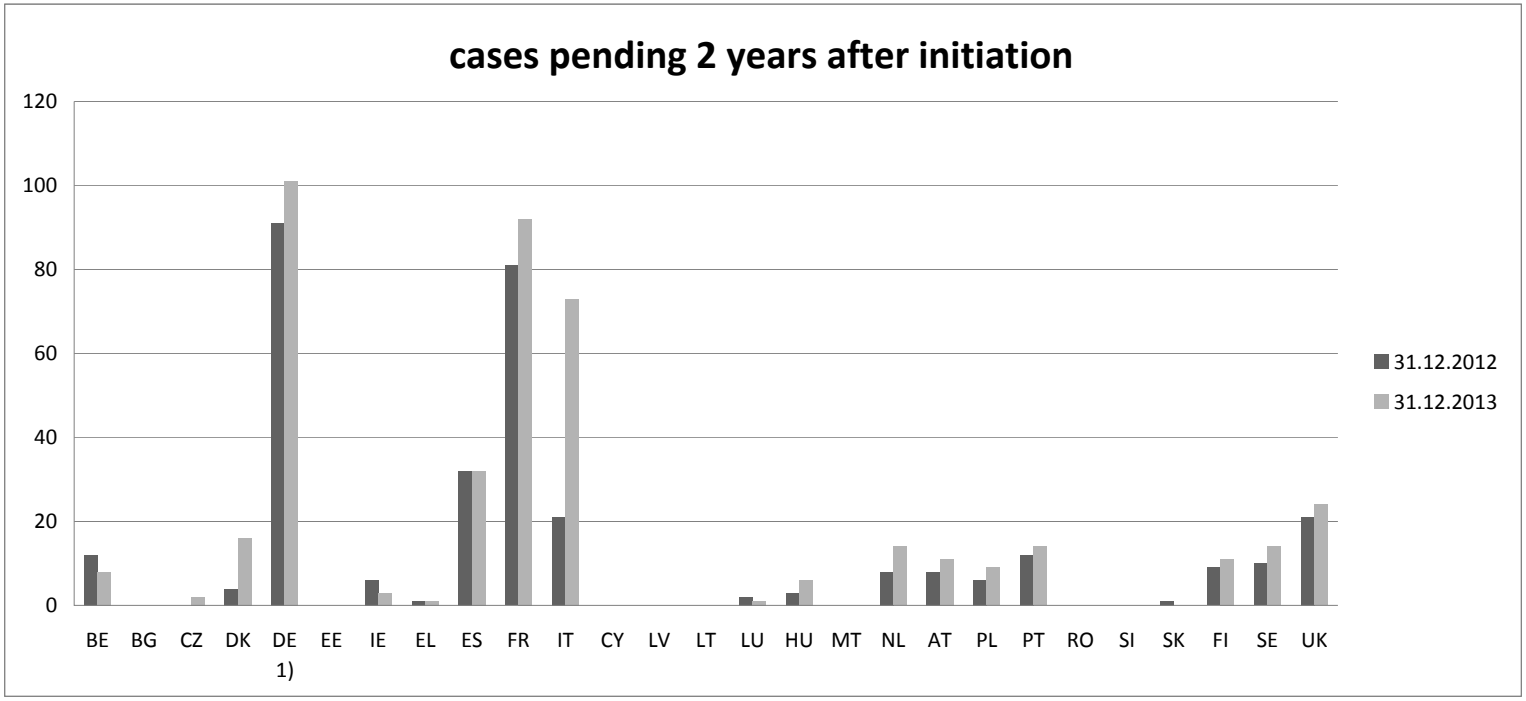


TABLE 3: REQUESTS REJECTED IN 2014

Summary
Rejected requests submitted to reporting CA

Member State	Reasons for rejection				TOTAL
	Cases not presented within 3-year period	Cases not within AC scope	Cases with serious penalty	Other reasons	
BE	1	0	0	0	1
BG	0	0	0	0	0
CZ	0	0	0	0	0
DK	7	0	0	0	7
DE	0	1	0	0	1
EE	0	0	0	0	0
IE	0	0	0	0	0
EL	0	0	0	0	0
ES	0	0	0	0	0
FR	0	1	0	1	2
IT	0	2	0	0	2
CY	0	0	0	0	0
LV	0	0	0	0	0
LT	0	0	0	0	0
LU	0	0	0	0	0
HU	0	0	0	0	0
MT	0	0	0	0	0
NL	0	0	0	0	0
AT	0	0	0	0	0
PL	0	0	0	0	0
PT	0	0	0	0	0
RO	0	0	0	0	0
SI	0	0	0	0	0
SK	0	0	0	0	0
FI	0	0	0	0	0
SE	0	0	0	0	0
UK	0	0	0	1	1
TOTAL	**8**	**4**	**0**	**2**	**14**

Summary

Cases accepted by the reporting CA which were rejected by other CAs

Member State	Reasons for rejection				TOTAL
	Cases not presented within 3-year period	Cases not within AC scope	Cases with serious penalty	Other reasons	
BE	0	0	0	0	0
BG	0	0	0	0	0
CZ	0	0	0	0	0
DK	0	0	0	0	0
DE	0	0	0	0	0
EE	0	0	0	0	0
IE	0	0	0	0	0
EL	0	0	0	0	0
ES	0	0	0	0	0
FR	0	0	0	0	0
IT	0	0	0	0	0
CY	0	0	0	0	0
LV	0	0	0	0	0
LT	0	0	0	0	0
LU	0	0	0	0	0
HU	0	0	0	0	0
MT	0	0	0	0	0
NL	0	0	0	0	0
AT	0	0	0	0	0
PL	0	0	0	0	0
PT	0	0	0	0	0
RO	0	0	0	0	0
SI	0	0	0	0	0
SK	0	0	0	0	0
FI	0	0	0	0	0
SE	0	0	0	0	0
UK	0	0	0	0	0
TOTAL	**0**	**0**	**0**	**0**	**0**

Explanatory note:

This table aims to collect information on the number of cases rejected and on the reasons for rejection. Cases to be reported are those rejected by the reporting CA (and therefore not initiated), as well as those accepted by the reporting CA but rejected by the other CA involved (thus initiated but not processed further). Cases initiated by another CA and rejected by the reporting CA are reported by the CA initiating the case.

TABLE 4: Time between submission of AC MAP request and initiation of the case

Summary

Member State	Number of cases	Time from the date of AC MAP submission to the date on which a case is initiated		
		0-6 months	6-12 months	>12 months
	B	C	D	E
BE	13	13	0	0
BG	0	0	0	0
CZ	4	3	1	0
DK	17	8	3	6
DE [1)]				
EE	0	0	0	0
IE	1	1	0	0
EL	0	0	0	0
ES	32	31	1	0
FR	63	43	16	4
IT [2)]	0	0	0	0
CY	0	0	0	0
LV	0	0	0	0
LT	0	0	0	0
LU	8	8	0	0
HU	1	1	0	0
MT	0	0	0	0
NL	28	28	0	0
AT	12	7	2	3
PL	4	2	0	2
PT	4	4	0	0
RO	1	1	0	0
SI	0	0	0	0
SK	0	0	0	0
FI	36	36	0	0
SE	18	14	4	0
UK	35	35	0	0
TOTAL	**277**	**235**	**27**	**15**

1) Remark by Germany: Important note: As explained in the footnote under Table 1, the German competent authority (CA) internal case database does currently not allow to record “initiated” and “completed” dates following OECD and JTPF definitions. Therefore the German CA can currently only provide statistics based on the "initiated" and "completed" dates used for internal purposes. Under the definition applied by the German CA, a case is treated as open as soon as the German CA receives a request (regardless of whether it is a request that already contains the necessary minimum information or not, which is earlier than under the OECD and JTPF definition of “initiated”). Consequently, currently, the submission date is identical with the date used as "initiated" date, so that the time between submission and initiation would always be zero.

2) Remark by Italy: As explained in the footnote under table 1, the Italian Competent Authority internal AC MAPs database does currently not allow to record “initiated” date following JTPF present definition. In the Italian database there is no difference between the date of “initiation” and the date of “submission”. As a consequence, for the time being, filling in Table 4 would imply to open each single file of the cases initiated in 2014, check the date of receipt of the request and calculate the time between receipt and initiation. This is the reason why table 4 has not been filled. For future statistics the problem could be overcome by adding new information to the current Competent Authority database.

E**xplanatory note:**

Columns C to E / Time from the date of AC MAP submission to the date on which a case is initiated (in months): the purpose is to collect data for the period between the date of submission by a taxpayer of a request for AC MAP and the date on which the case is initiated (i.e. the case has been considered as well-founded by a CA on the basis of 6.3(g) of CoC). The date of submission is the date the request is received by the tax administration. Cases are divided in three categories: period between 0 and 6 months; period between 6 and 12 months; period beyond 12 months. Only cases submitted in the reporting MS should be included. "Date of AC MAP submission" should be understood as the date on which the request was received by the tax administration regardless of whether it already contained the necessary minimum information. If the request did indeed contain the necessary minimum information, the case could be considered as well-founded and could be initiated immediately. Such cases would fall under coulumn C ("0-6 months").