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Conseil d'administration

Number:
CA/7/24

Original:
en

Date:
01.03.2024

Category:
Public

TITLE: **Management Report 2023**

SUBJECT: Management Report of the President of the Boards of Appeal for 2023

SUBMITTED BY: President of the Boards of Appeal

ADDRESSEES: Administrative Council (for information)

MAJORITY: Not applicable

LEGAL BASIS: Article 10(2)(e) EPC and Article 1 of the Act of Delegation (OJ EPO 2018, A63)

RECOMMENDATION: The Administrative Council is asked to note the Management Report of the President of the Boards of Appeal

SUMMARY: This document contains the Management Report of the President of the Boards of Appeal for 2023. It gives details of the activities of the President of the Boards of Appeal and developments in the Boards of Appeal in 2023. In particular, it addresses the completion of the first set of objectives to the end of 2023 and outlines those for 2024.

The present document corresponds to BOAC/3/24, which received a favourable opinion at the 17th meeting of the Boards of Appeal Committee on 8 February 2024. As foreseen in Article 3(b) of the Act of Delegation, the President of the European Patent Office was given the opportunity to comment on the Draft Management Report.

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1. Executive summary

2023 was a significant year in many respects.

For the Boards of Appeal (BoA), 2023 marked the end of the period for the first set of objectives set following the structural reform of the BoA. The strategic objectives are of utmost importance, not least because they embody the BoA's commitment to providing in a timely manner the public service mission they are entrusted with, as the judicial instance empowered by the European Patent Convention (EPC) to review decisions of the European Patent Office (the "Office") in the patent granting procedure.

The first objective, which was to reduce the number of pending cases below 7 000, was met about a year ahead of schedule. As to the second five-year objective set for 2023, the BoA are on track to reach the goal of settling 90% of cases within 30 months and will be in a position to improve on this by setting the bar even higher in future years. The productivity increase from 1 January 2017 to 31 December 2023 has been 29.7%. The productivity rate of 2023 – 2.05 cases per net technical member (TM) month – was the highest achieved at the BoA. Rounding off the first set of objectives for the BoA, as of 2024 a new set of objectives is applicable to further reduce pendency time towards 24 months.

To support this ambitious path, 2023 has also been a year of increased discussions with the user community. The upcoming objectives will require measures such as further adjustments to the Rules of Procedure of the Boards of Appeal (RPBA). To that end, the BoA were grateful to receive the useful remarks during the user consultation held in 2023, allowing for a revised proposal, which was approved by the Administrative Council (the Council) and entered into force on 1 January 2024. The most important change is that the boards are now able to summon parties to oral proceedings at an earlier stage of the proceedings.

Further developments for the BoA included the successful organisation of a series of internal workshops on quality-focused decision making and, importantly, providing a platform for colleagues across the boards to resume earnest and constructive dialogue and experience-sharing. At an institutional level, the Council approved the amendment to its Rules of Procedure (RoP AC) to further strengthen the participation and role of the President of the BoA (PBoA) in the the Council and subsidiary bodies.

Outside the BoA and in the context of the greater European patent system, 2023 was a landmark year. It not only celebrated 50 years of the EPC but also marked the launch of the Unitary Patent system, in particular creating the Unified Patent Court (UPC), which was the long-awaited realisation of a common European post-grant judiciary and will be key to further enhancing the crucial process of harmonisation of patent law in Europe. Although independent from each other as judicial bodies, the BoA and the UPC are establishing the channels for a fruitful dialogue, as the BoA have with the other national judiciaries. There is a joint responsibility for ensuring a harmonised application of the EPC and to closely follow the development in the case law in the various jurisdictions. The BoA are committed to the improved judicial structure for European patent law harmonisation, with deepening ties between all stakeholders, which will benefit the system as a whole.

Last but not least, all staff of the BoA should be commended for their efforts in the multitude of initiatives pursued within the BoA and towards the outside world.

2. Performance of the BoA

With the lifting of COVID-19 measures in February 2023, the BoA have settled into a post-pandemic rhythm, once again achieving excellent results.

2.1. 2023 in review: key metrics

2.1.1. Workload and production remain strong in 2023

As the first and final judicial instance in the procedures before the EPO, the BoA provide an independent review of decisions taken by the Receiving Section, examining divisions, opposition divisions and the Legal Division of the Office. The BoA workload and its fluctuations depend heavily on the output of these administrative departments.

In 2023, the number of both new and settled cases in the technical boards of appeal and in the Enlarged Board decreased slightly after a steady increase in the previous years. The Legal Board has seen an overall decrease in the number of cases since 2020 but has settled more cases than those coming in. Disciplinary Board of Appeal cases have fluctuated in this time period.

Table 1

Number of new and settled cases

	New cases				Settled cases			
	2020	2021	2022	2023	2020	2021	2022	2023
Technical boards of appeal	2 059	2 245	2 660	2 049	3 013	3 395	3 576	3 358
Enlarged Board of Appeal	14	17	27	19	6	15	9	17
Legal Board of Appeal	29	15	8	7	26	11	17	11
Disciplinary Board of Appeal	3	55	45	16	15	6	57	49
Total	2 105	2 332	2 740	2 091	3 060	3 427	3 659	3 435

2.1.2. Technical boards of appeal

In 2023, a total of 2 049 technical appeal cases were received, 23% fewer than in 2022, while 3 358 technical appeal cases were settled, a 6.1% decrease compared with 2022. Overall, this represents an increase of 50.7% in production since the entry into force of the structural reform on 1 January 2017.

Of said overall decrease in incoming workload, there has been a decrease of 17.9% in inter partes cases because, as foreseen, opposition divisions have eased production. However, ex parte cases have shown a decline of 37.7% (from 682 to 425), which had not been forecast.

As regards the technical areas, mechanics and chemistry have continued to see an increase in the share of new cases with electricity/physics both slightly decreasing. Combining the technical areas of electricity and physics has contributed to the workload being shared more effectively and to ensuring that the number of settled cases in the same timeframe has continued to increase.

Table 2

Number of new and settled cases by type of procedure and technical field

Technical boards of appeal (Type of procedure and technical field)	New cases				Settled cases			
	2020	2021	2022	2023	2020	2021	2022	2023
Ex parte (Examination procedure)	957	810	682	425	1 331	1 304	1 271	1 248
Inter partes (Opposition procedure)	1 102	1 435	1 978	1 624	1 682	2 091	2 305	2 110
Total	2 059	2 245	2 660	2 049	3 013	3 395	3 576	3 358
Mechanics	613	704	993	844	928	1 110	1 141	1 104
Chemistry	573	755	842	657	927	1 011	1 097	1 024
Electricity/Physics	873	786	825	548	1 158	1 274	1 338	1 230

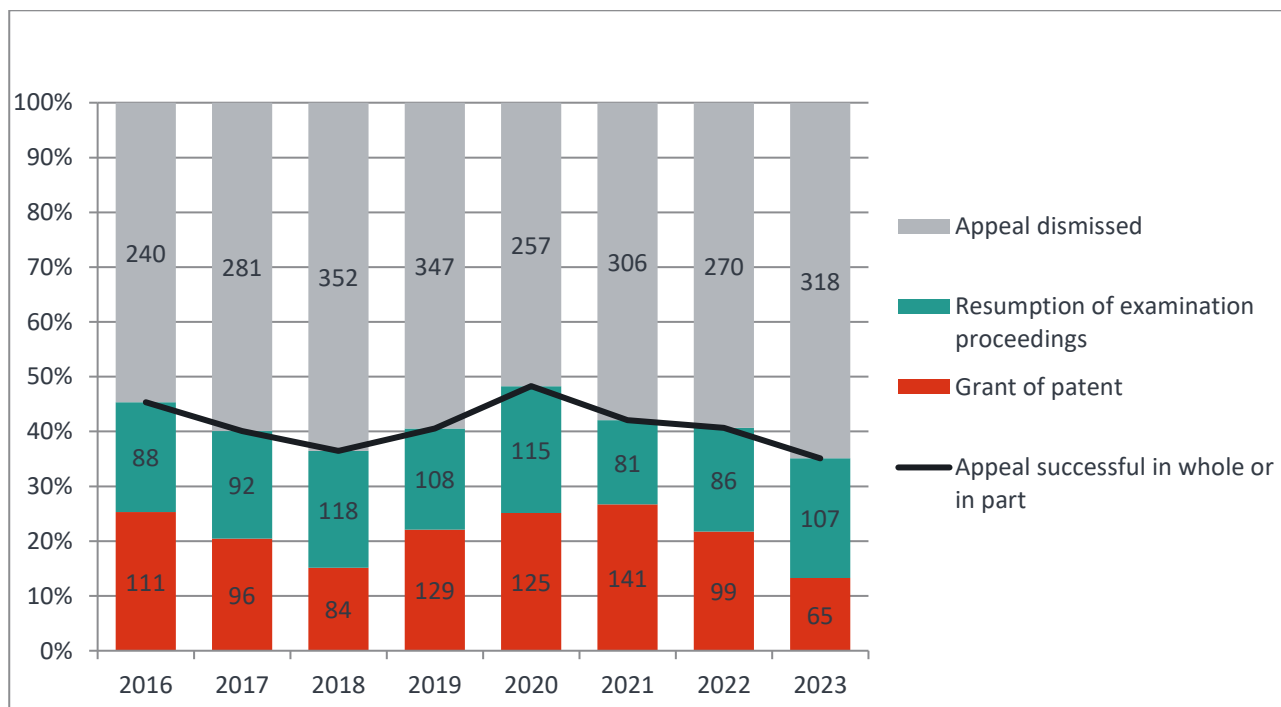
2.1.2.1. Outcome of proceedings before the technical boards of appeal

A total of 1 248 ex parte cases were settled in 2023 (2022: 1 271) maintaining the overall decrease from past years. Of these, 504 were settled by a decision. The remaining 744 were settled without a decision. In 611 of these (2022: 578), the appeal was withdrawn after a substantive communication by the board.

Of the ex parte cases, 490 (39.3%) were settled after a decision on the merits, i.e. not terminated as a result of rejection due to inadmissibility, because of withdrawal of the appeal or patent application, or for some other reason. The outcome of these 490 cases is shown below in Figure 1.

Figure 1

Ex parte cases settled after a decision on the merits



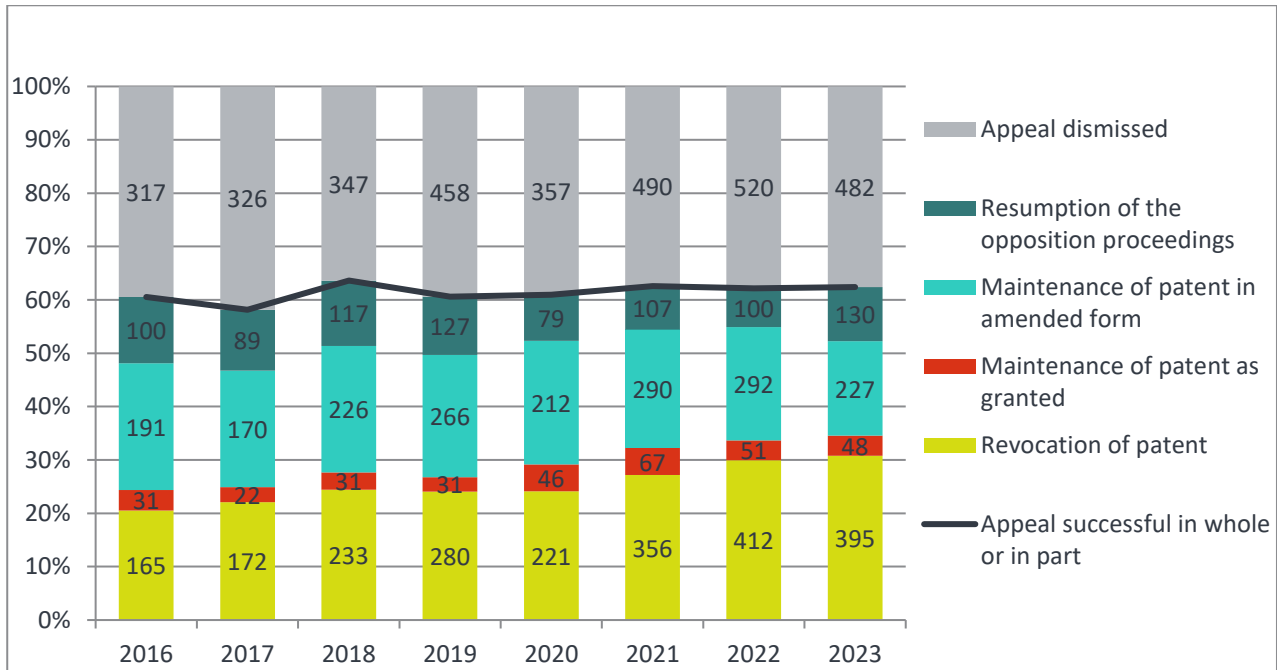
A total of 2 110 inter partes cases were settled in 2023 (2022: 2 305). Of these, 1 321 were settled by a decision.

The number of cases settled after a decision on the merits, i.e. not terminated as a result of rejection due to inadmissibility, because of withdrawal of the appeal, or for some other reason, was 1 282 (61%). The outcomes of these 1 282 cases are shown in the chart below (no distinction is drawn between appeals by patent proprietors and appeals by opponents; in any one case, there may be more than one appellant).

Of the 789 cases that were settled without a decision, the appeal was withdrawn after a substantive communication by the board in 459 (2022: 470).

Figure 2

Inter partes cases settled after a decision on the merits



In 2023, there were a total of 1 076 withdrawals, which is a slight increase of 2.4% compared with 2022 when there were 1 051 withdrawals. Following the large increase in the number of withdrawals in 2020 and 2021, the trend appears to have stabilised at this higher level. The 1 076 withdrawals in 2023 represents an increase of 66.8% compared with the 645 withdrawals in 2019.

2.1.2.2. Language of proceedings

The proportion of oral proceedings held in German increased during the COVID-19 pandemic but returned to a similar level as in 2019 by 2023. Overall the balance between the languages remains fairly stable.

Table 3

Breakdown by language of proceedings (2019-2023)

	English					German					French				
	2019	2020	2021	2022	2023	2019	2020	2021	2022	2023	2019	2020	2021	2022	2023
Appeals filed before the technical boards	74.1%	73.6%	75.5%	74.1%	72.2%	21.9%	22.1%	20.1%	21.1%	23.3%	3.9%	4.3%	4.4%	4.8%	4.5%
Oral proceedings scheduled by technical boards	72.1%	71.2%	71.6%	73.7%	74.8%	23.9%	25.3%	24.3%	22.1%	21.2%	4.0%	3.5%	4.1%	4.2%	4.0%
Oral proceedings held by technical boards	69.3%	66.8%	67.9%	69.9%	71.5%	26.3%	30.2%	27.4%	24.9%	24.1%	4.4%	3.0%	4.7%	5.2%	4.4%

2.1.3. Enlarged Board of Appeal

The main task of the Enlarged Board is to ensure the uniform application of the EPC. It decides on points of law of fundamental importance referred to it by either a board or the President of the Office under Article 112 EPC. It is also competent to decide on petitions for review of BoA decisions under Article 112a EPC.

The number of new referrals remains relatively stable as in the past years, as do the number of settled cases. Petitions for review are filed more frequently than referrals, as any party to appeal proceedings adversely affected by the decision of the BoA may file one in line with the grounds set out in Article 112a(2)(a)-(e) EPC.

Table 4

Proceedings before the Enlarged Board of Appeal

	New cases				Settled cases			
	2020	2021	2022	2023	2020	2021	2022	2023
Referrals	0	2	2	1	1	3	0	3
Petitions for review	14	15	25	18	5	12	9	14
Total	14	17	27	19	6	15	9	17

2.1.3.1. Referrals under Article 112 EPC

In 2023, the Enlarged Board decided on three referrals under Article 112 EPC.

On 23 March 2023, the Enlarged Board issued decision [G 2/21](#) on whether (and if so, under what conditions) post-published evidence can be taken into consideration in the assessment of inventive step. The decision was issued in response to questions referred to the Enlarged Board by the board in case T 116/18. The Enlarged Board answered the points of law as follows.

1. Evidence submitted by a patent applicant or proprietor to prove a technical effect relied upon for acknowledgement of inventive step of the claimed subject-matter may not be disregarded solely on the ground that such evidence, on which the effect rests, had not been public before the filing date of the patent in suit and was filed after that date.
2. A patent applicant or proprietor may rely upon a technical effect for inventive step if the skilled person, having the common general knowledge in mind, and based on the application as originally filed, would derive said effect as being encompassed by the technical teaching and embodied by the same originally disclosed invention.

On 10 October 2023, the Enlarged Board issued its decision in consolidated cases [G 1/22](#) and [G 2/22](#) dealing with entitlement to priority. The decision was issued in response to questions referred to the Enlarged Board by the board in cases T 1513/17 and T 2719/19.

The Enlarged Board answered the points of law as follows.

- I. The European Patent Office is competent to assess whether a party is entitled to claim priority under Article 87(1) EPC.

There is a rebuttable presumption under the autonomous law of the EPC that the applicant claiming priority in accordance with Article 88(1) EPC and the corresponding Implementing Regulations is entitled to claim priority.

- II. The rebuttable presumption also applies in situations where the European patent application derives from a PCT application and/or where the priority applicant(s) are not identical with the subsequent applicant(s).

In a situation where a PCT application is jointly filed by parties A and B, (i) designating party A for one or more designated States and party B for one or more other designated States, and (ii) claiming priority from an earlier patent application designating party A as the applicant, the joint filing implies an agreement between parties A and B allowing party B to rely on the priority, unless there are substantial factual indications to the contrary.

In 2023, the Enlarged Board received one new referral under Article 112 EPC, which is currently the only pending referral before the Enlarged Board. Technical Board of Appeal 3.3.03 has by interlocutory decision T 438/19 referred the following questions to the Enlarged Board (referral pending under G 1/23 "solar cell", [OJ EPO 2023, A113](#)):

1. Is a product put on the market before the date of filing of a European patent application to be excluded from the state of the art within the meaning of Article 54(2) EPC for the sole reason that its composition or internal structure could not be analysed and reproduced without undue burden by the skilled person before that date?
2. If the answer to question 1 is no, is technical information about said product which was made available to the public before the filing date (e.g. by publication of technical brochure, non-patent or patent literature) state of the art within the meaning of Article 54(2) EPC, irrespective of whether the composition or internal structure of the product could be analysed and reproduced without undue burden by the skilled person before that date?
3. If the answer to question 1 is yes or the answer to question 2 is no, which criteria are to be applied in order to determine whether or not the composition or internal structure of the product could be analysed and reproduced without undue burden within the meaning of opinion G 1/92? In particular, is it required that the composition and internal structure of the product be fully analysable and identically reproducible?

2.1.3.2. Petitions for review under Article 112a EPC

In 2023, the Enlarged Board received 18 petitions for review. It settled 14 petitions for review and a total of 43 are currently pending.

The most frequent ground the petitioners relied upon when filing their petitions for review was Article 112a(2)(c) EPC, a fundamental violation of the right to be heard.

When hearing petitions for review in its five-member composition under Rule 109(2)(b) EPC, an external legally qualified member of the Enlarged Board may be appointed to participate in the panel. This possibility was included in the Business Distribution Scheme in 2020 and first made use of in 2022. This has become established practice in 2023.

2.1.4. Legal Board of Appeal

The Legal Board is responsible for reviewing decisions of the administrative departments of the Office on issues of an essentially procedural nature. It is competent to hear appeals from decisions of the Receiving Section and the Legal Division. In certain cases, it also decides on appeals against decisions of the examining divisions, provided that the decision under appeal does not concern the refusal of a European patent application or the grant, limitation or revocation of a European patent.

In 2023, the Legal Board received seven new cases, continuing the trend of the past three years of decreasing cases. In the meantime, the Legal Board settled cases throughout 2023, ensuring a decrease in the number of pending cases to seven.

Table 5

Proceedings before the Legal Board of Appeal

	New cases				Settled cases			
	2020	2021	2022	2023	2020	2021	2022	2023
Legal Board of Appeal	29	15	8	7	26	11	17	11

2.1.5. Disciplinary Board of Appeal

The Disciplinary Board of Appeal decides on appeals in cases relating to the European qualifying examination for professional representatives before the EPO (EQE) and in cases concerning breaches of their rules of professional conduct.

In EQE cases, the Disciplinary Board is composed of two legally qualified members of the BoA and one European professional representative; in disciplinary cases, it is composed of three legally qualified members of the BoA and two European professional representatives.

The Disciplinary Board of Appeal received 16 new cases in 2023, less than half compared with 2022. As in previous years, most are EQE cases.

Table 6

Proceedings before the Disciplinary Board of Appeal

	2019	2020	2021	2022	2023
New cases	19	3	55	45	16
EQE	15	1	53	44	15
Professional representatives code of conduct	4	2	2	1	1
Settled cases	12	15	6	57	49
EQE	10	15	5	52	47
Professional representatives code of conduct	2	0	1	5	2
Pending cases	23	11	60	48	15
EQE	19	5	53	45	13
Professional representatives code of conduct	4	6	7	3	2

2.2. Format of oral proceedings

2.2.1. Alternative modes available in 2023

The pandemic triggered the option of holding oral proceedings by videoconference (VICO). Article 15a RPBA, which entered into force on 1 April 2021, states that the BoA may hold oral proceedings pursuant to Article 116 EPC by VICO. Whether oral proceedings may be held by VICO without the parties' consent was the subject of the referral G 1/21 to the Enlarged Board.

Further improvements regarding the technical framework for oral proceedings by VICO have been implemented, including remote interpretation for mixed-mode oral proceedings. Members of the public may always follow oral proceedings held by VICO remotely and, since autumn 2023, remotely in mixed mode as well, upon giving prior notice by email to the reception at the BoA premises. This is reflected on the corresponding [webpage](#) for the users.

The BoA currently provide for several modes of oral proceedings. The distribution of the various options for 2023 was as follows:

Table 7

Modes of oral proceedings

Format	Description	Number	%
Oral proceedings by videoconference	All members, representatives and/or accompanying persons attend by videoconference.	928	57%
Oral proceedings in-person	Board members, representatives and parties attend in-person	666	41%
Mixed-mode oral proceedings	Some parties, representatives and/or accompanying persons attend by videoconference while others are physically present in the oral proceedings room together with board members. Exceptionally, one or more of the board members may also attend by videoconference.	35	2%
Total		1 629	100%

2.2.2. User consultation on videoconferencing in oral proceedings before the BoA

Following the intention of the Boards of Appeal Committee (BOAC) to evaluate the experience gained from using videoconferencing technology in oral proceedings before the BoA, between 16 January and 31 March 2023 an online user consultation took place. Questions covered the overall user experience, the type of communication prior to and during oral proceedings, the use of collaboration tools and the technical implementation of videoconferencing in oral proceedings.

A total of 711 responses were received from user associations, users from industry, patent attorneys and private individuals, with an overall positive user experience regarding the efficiency of oral proceedings by VICO of around 71%. Users commended the technical implementation of VICO technology in oral proceedings and praised their structured conduct. Positive side-effects such as time and cost savings as well as reduced environmental impact were noted. Only a few users considered that interactions with the boards and with parties were more challenging than at in-person oral proceedings.

The overall results of the user consultation support the BoA's assumption that oral proceedings by VICO have been implemented efficiently and at the highest level of quality. The BoA will continue to liaise closely with the Office on the smooth running and continual improvement of the technical framework in this area.

3. Strategic objectives of the BoA

One of the aims adopted by the Council with the reform of the BoA in 2016 was to "increase their efficiency". As outlined in [BOAC/2/17](#), efficiency is understood in terms of judicial efficiency, i.e. a court's ability to settle cases within a reasonable time in compliance with Article 6 ECHR.

3.1. Achievement of 2018-2023 objectives

In [BOAC/2/17](#), a two-part general objective was formulated on the basis of the results of a study on judicial efficiency:

- a. by 2022 to settle 90% of cases within 30 months [...] and
- b. to reduce the number of pending cases below 7 000 cases

The BOAC supported the objectives, stressing that efficiency and timeliness had to be improved without any material effect on the quality of the decision making and the independence – and the perception of the independence – of the BoA. The objectives were later extended to end in 2023 (see [BOAC/11/18](#) and point 18 of [BOAC/13/18](#)).

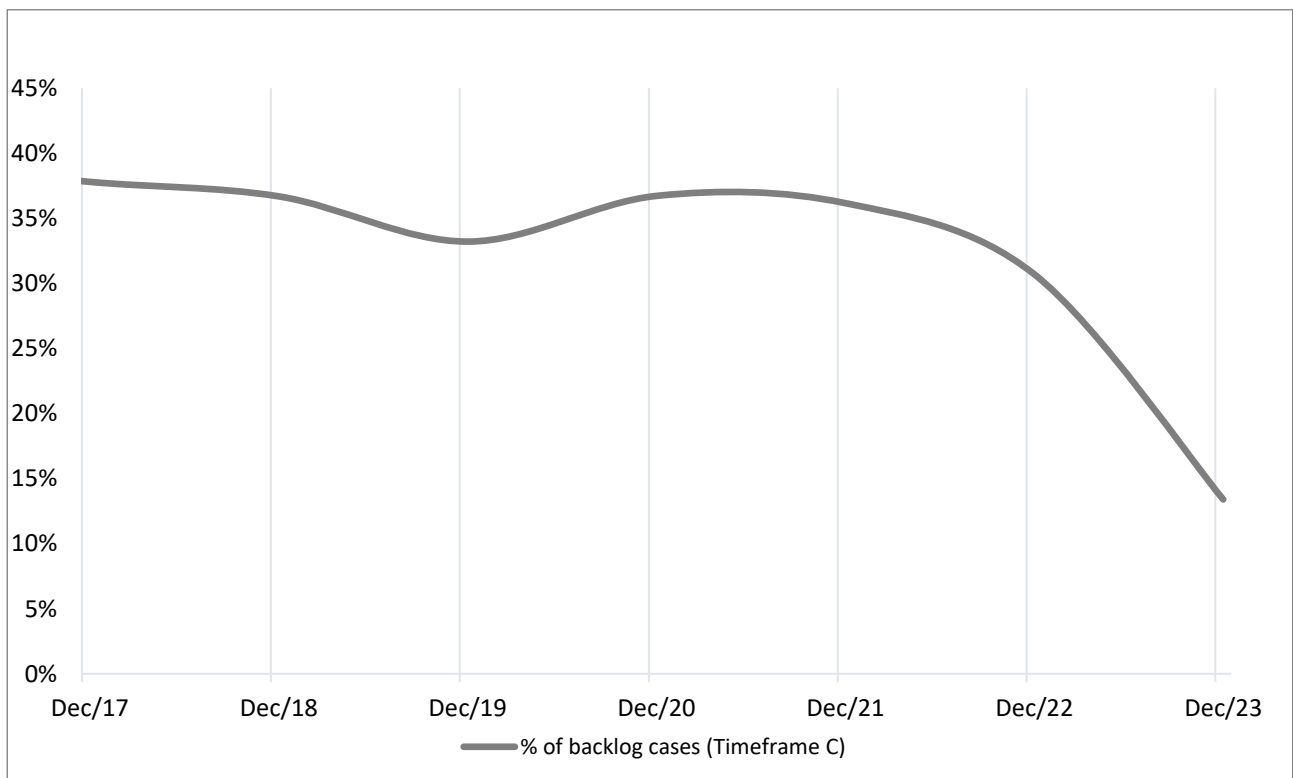
3.1.1. Settle 90% of cases within 30 months

As set out in [BOAC/2/17](#) (General objectives being part of the budget of the BoA) and [BOAC/6/17](#) (Boards of Appeal budget 2018), the current timeliness objective (based on CEPEJ timeframe C) is defined as "settling 90% of cases within 30 months". Cases pending before the BoA for more than 30 months are defined as "backlog".

Figure 3 shows the development from 2017 to 2023 in the percentage of stock older than 30 months, and thus in backlog status, according to timeframe C based on the CEPEJ definition. The compliant way of measuring the achievement of the general objective formulated in BOAC/2/17 is that no more than 10% of the pending cases are in backlog status. As at 31 December 2023, the overall percentage of backlog cases was 13.4%.

Figure 3

Percentage of pending cases older than 30 months



Two of the three technical fields, namely mechanics and chemistry, achieved the first objective of settling 90% of cases within 30 months at the end of 2023, i.e. reducing their backlog cases to less than 10%. Due to larger concentrations of older stock in a small number of boards, the objective has not yet been able to be achieved across all technical fields. However, the BoA are on track to meet this objective in the first half of 2024. Table 8 shows a more detailed breakdown of the age of stock, both overall and by technical field.

Table 8

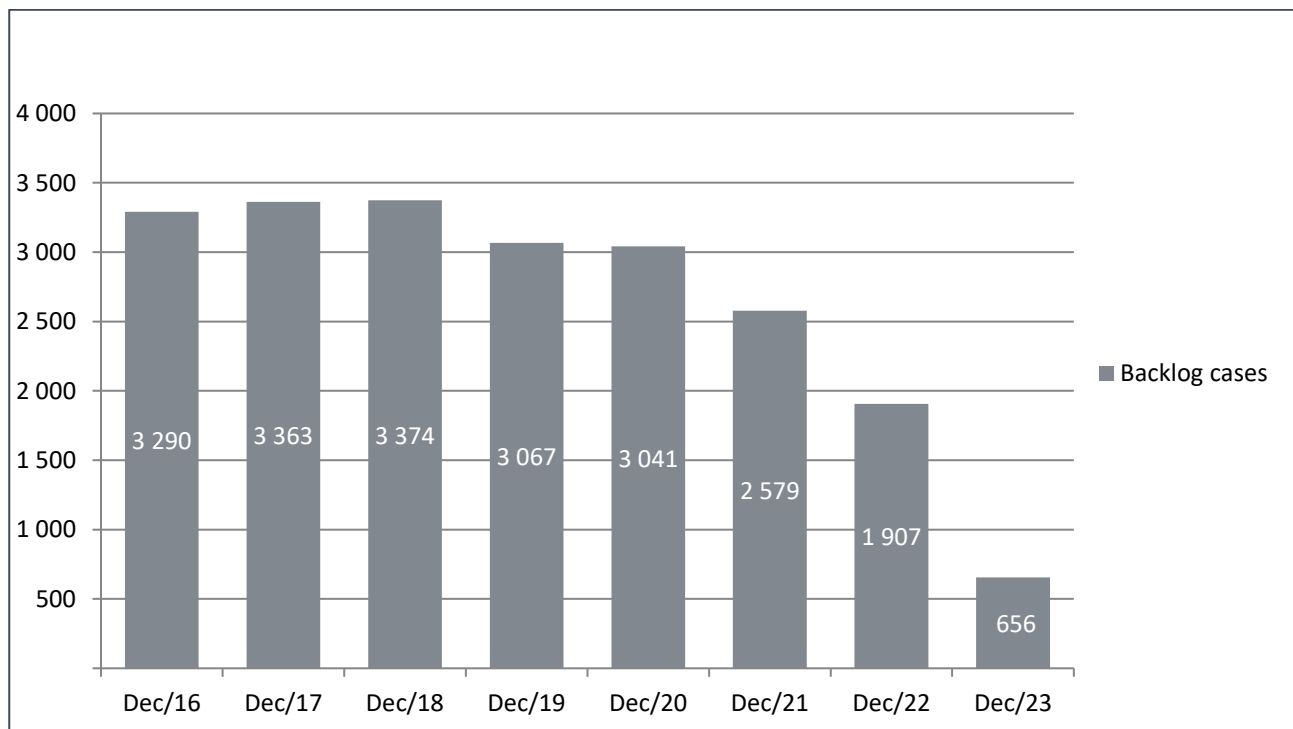
Pending cases per age group

		0-12 months	13-18 months	19-24 months	25-30 months	Backlog over 30 months	Total pending
2022	Pending cases	2 251	1 013	710	335	1 907	6 216
	Percentage	36.2%	16.3%	11.4%	5.4%	30.7%	100%
2023	Pending cases	1 750	817	1 120	564	656	4 907
	Percentage	35.7%	16.6%	22.8%	11.5%	13.4%	100%
	Mechanics	42.7%	17.9%	23.3%	10.3%	5.9%	100%
	Chemistry	37.8%	15.5%	25.2%	13.2%	8.3%	100%
	Physics/Electricity	27.0%	16.5%	20.2%	11.1%	25.2%	100%

As at 31 December 2023, 656 backlog cases were pending, which is 66% fewer than at 31 December 2022.

Figure 4

Backlog cases (= pending cases over 30 months)



3.1.2. Reduce the number of pending cases below 7 000 cases

The second general objective to reduce the number of pending cases below 7 000 was achieved in March 2022.

In 2023, the number of pending cases was reduced by 1 309. As at 31 December 2023, 4 907 technical appeal cases were pending, which is 21.1% fewer than at 31 December 2022.

Figure 5

Number of pending cases

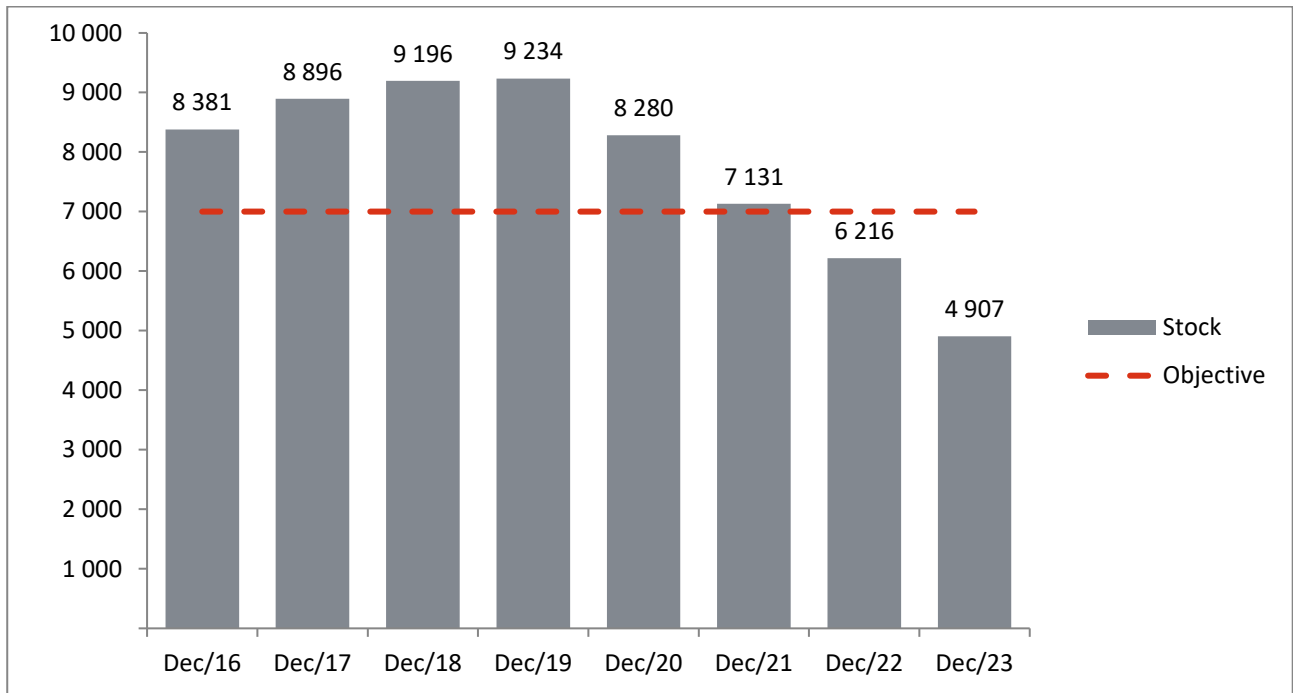
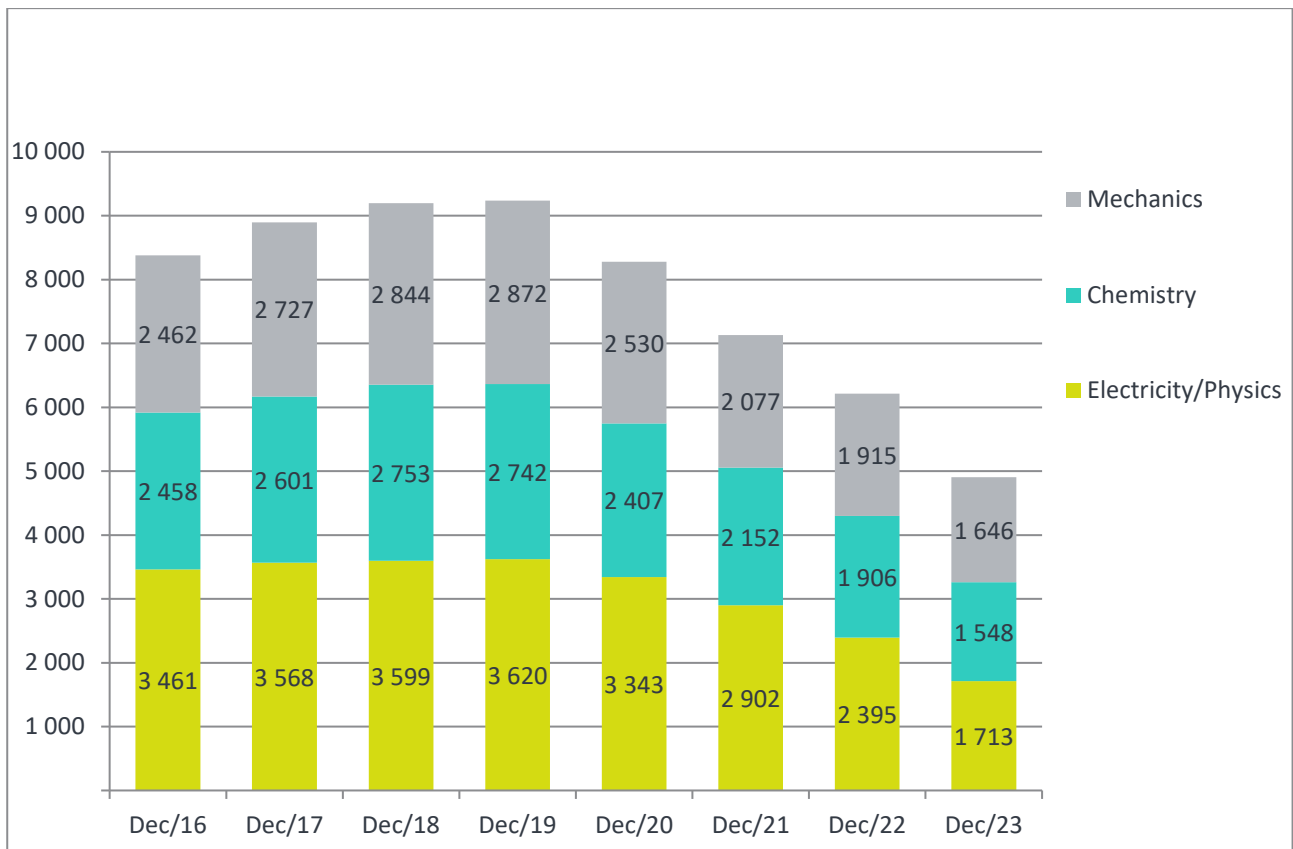


Figure 6

Number of pending cases per technical field



3.1.3. Increasing productivity

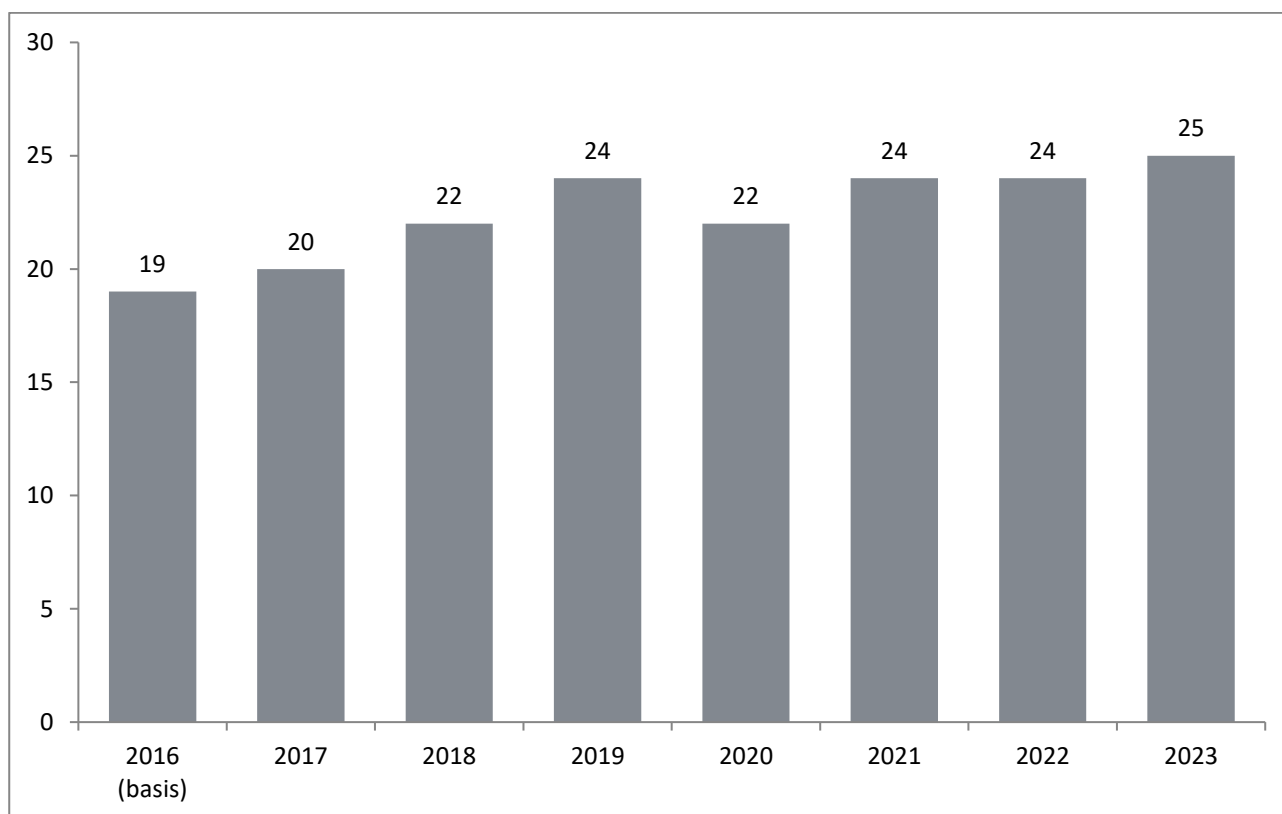
When calculating productivity, only cases settled "with action" are taken into account. These are cases settled by a decision or after a communication has been issued and/or after oral proceedings have taken place.

In 2023, the BoA settled 2 898 cases with action, requiring 1 413 net TM months. This represents a productivity rate of 2.05 cases per net TM month, the highest productivity achieved at the BoA. In 2022, the corresponding figure was 2.02. In 2023, productivity thus increased by 1.5%. The productivity increase from 1 January 2017 to 31 December 2023 was 29.7%.

The increase in productivity since 2017 is the combined effect of improved planning, the introduction of oral proceedings by VICO, the positive effects of the revised RPBA and the options for staggered reimbursement of the appeal fee. These are further described below.

Figure 7

Cases settled with an action per net TM year



3.1.4. Measures contributing to the increase in productivity, efficiency and achievement of objectives

Changes have been made to working methods and regulatory frameworks, with periodic review and so as to optimise and improve the forecasting of the incoming workload and achievement of the objectives. A broad range of measures taken by the PBoA to increase efficiency, such as better planning, objective-setting and the harmonisation and streamlining of working methods, include:

- a. Allocating additional resources for a limited period of time

The Council approved a total of 39 additional posts – 23 posts in 2018 and 16 further posts in 2019. The highest number of these posts that were occupied was 23 in 2020. Since then and in response to the output of DG1 as well as opposition and appeal rates, the number of additional posts in use was reduced to six. It is planned that by 2027 no additional posts will appear in the budget. The BoA will then have 117 TM posts and 30 legal member posts in the budget. The total number of 147 board members is forecast to also be sufficient in a mid- or long-term perspective of a yet again increasing workload ([BOAC/12/23](#)). This will be reviewed annually.

- b. Improved planning

As part of operational planning, the production figures and filing trends of the departments of first instance are continuously analysed. The results of these analyses are used to achieve an even distribution of work among the boards and their members. Ultimately, this is reflected in the Business Distribution Scheme of the technical boards of appeal (BDS-TBA).

The results of the analyses are also used for recruitment planning and objective-setting. The total stock has been reduced by 40.7% in the last three years (from 8 280 cases to 4 907 cases) and as this trend continues it will be increasingly important to balance the smaller amount of stock among the boards. In particular, relatively large volumes of older stock should be prevented from accumulating in boards.

c. Increased flexibility in the BDS-TBA

As mentioned in 3.1.1. above, the new provision Article 1(2)(b) was introduced in the BDS-TBA in 2023. Under this provision, for the purpose of balancing out the workload of the boards, chairs may agree to allocate an appeal or a group of appeals otherwise than as provided by the regular arrangements for allocating appeals under the BDS-TBA. By requiring the agreement of the chairs, who are familiar with the technical expertise of the members of their boards, the provision guarantees the technical expertise needed to decide the reallocated appeals. Transparency is likewise ensured, as parties are informed in writing of the reallocation and of the legal basis for it.

Since Article 1(2)(b) BDS-TBA entered into force on 1 January 2023, it has been applied in the transfer of about 200 cases. It has contributed to enhancing timeliness and will play an important role in the objectives from 2024 onwards.

d. Amendments to the RPBA

The revised version of the RPBA ([CA/3/19](#)) entered into force on 1 January 2020. The RPBA has simplified and accelerated procedures of the boards of appeal, allowing for swifter resolution of cases.

For instance, the improved quality of communications by the boards brought in by Article 15(1) RPBA has played a key role in the increase of withdrawals after first communication from 20% in 2017 to 38% at the end of 2023.

Figure 8

Withdrawal rate 2018-2023

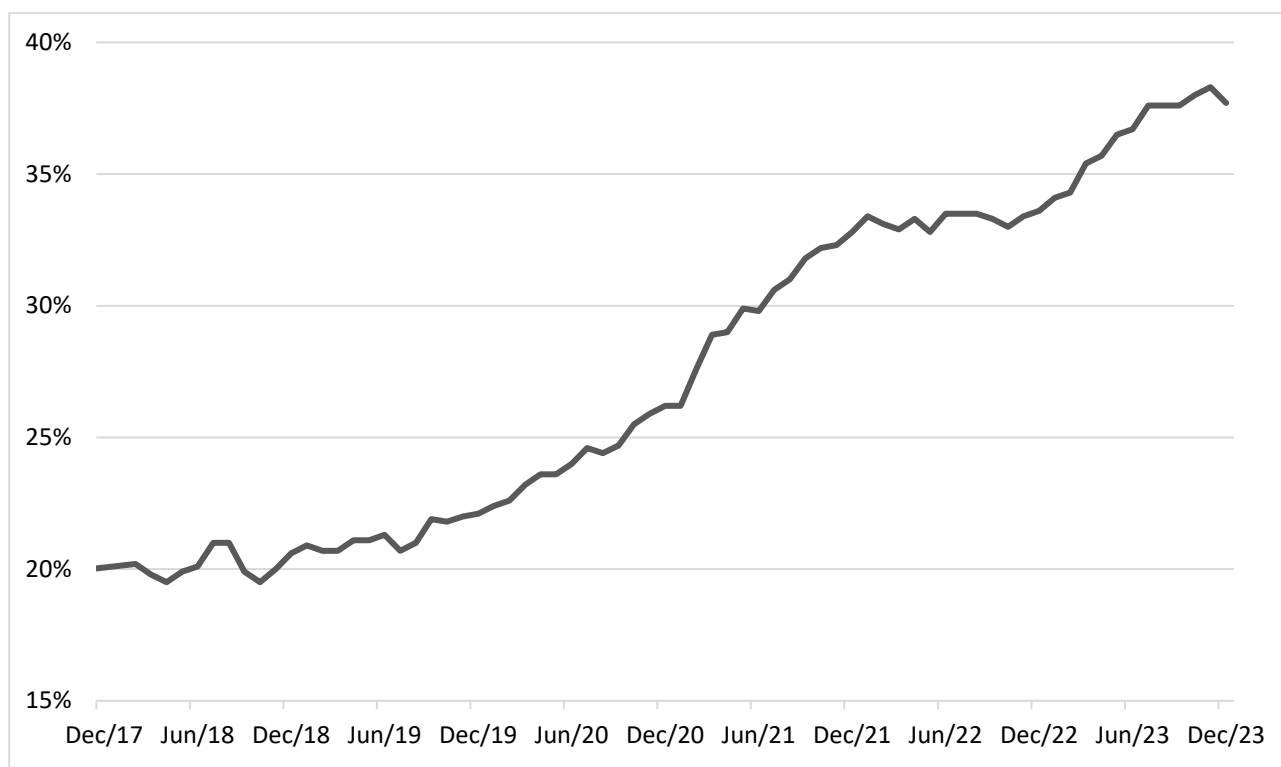


Figure 8 shows the withdrawals within 12 months of first communications issued in the previous year.

The RPBA also provides that where the decision on the appeal is announced orally, under Article 15(9)(a) RPBA the written decision is to be issued within three months of the date of the oral proceedings. If the board is unable to do so, it must inform the parties and the PBoA of when the decision will be despatched. In 2023, the minutes of oral proceedings were issued within seven calendar days in 93% of cases, and the written decision was despatched within three months in 88% of cases.

The revised Article 11 of the RPBA, which entered into force in 2020, aims at reducing the likelihood of a "ping-pong" effect between the boards and the administrative departments of the Office, and a consequent undue prolongation of the entire proceedings before the EPO. Between 2017 and 2023 a small decrease in remittals for further prosecution from 8% to 7% of total decisions can be observed.

To increase efficiency and make the work of the BoA more transparent and predictable, the RPBA introduced a provision for the annual list of cases – a list identifying cases for which the BoA are likely to hold oral proceedings or issue a communication or a decision in written proceedings in the following working year. The list for 2024 was published on the BoA website in October 2023.

During the pandemic, Article 15a RPBA was enacted and entered into force on 1 April 2021, clarifying the option for boards to hold oral proceedings by VICO. Together with the increased flexibility and improvement in the technology, the boards may hold oral proceedings in a variety of formats (see 2.2.1 for further information).

Further important amendments to the RPBA entered into force on 1 January 2024. These are described below in 3.2.2. and are expected to further support the new timeliness objectives.

e. Reimbursement of the appeal fee

The introduction of the option for staggered reimbursement of the appeal fee, in accordance with amended Rule 103 EPC, which entered into force on 1 April 2020, contributed a further measure supporting withdrawals. The 25% and 75% refunds were introduced in addition to the existing 50% and 100% refunds. While the 25% refund may have caused a drop in the number of 50% refunds, the combined number of withdrawals has increased considerably. In 2019, there were 681 withdrawals with a 50% refund, but the combined number of 50% and 25% refunds has been over 1 000 every year since. In 2023 the number was 1 218, of which 668 with a 25% refund and 550 with a 50% refund. The 75% refund has occurred less than 50 times per year.

Figure 9

Total partial refunds 2019-2023

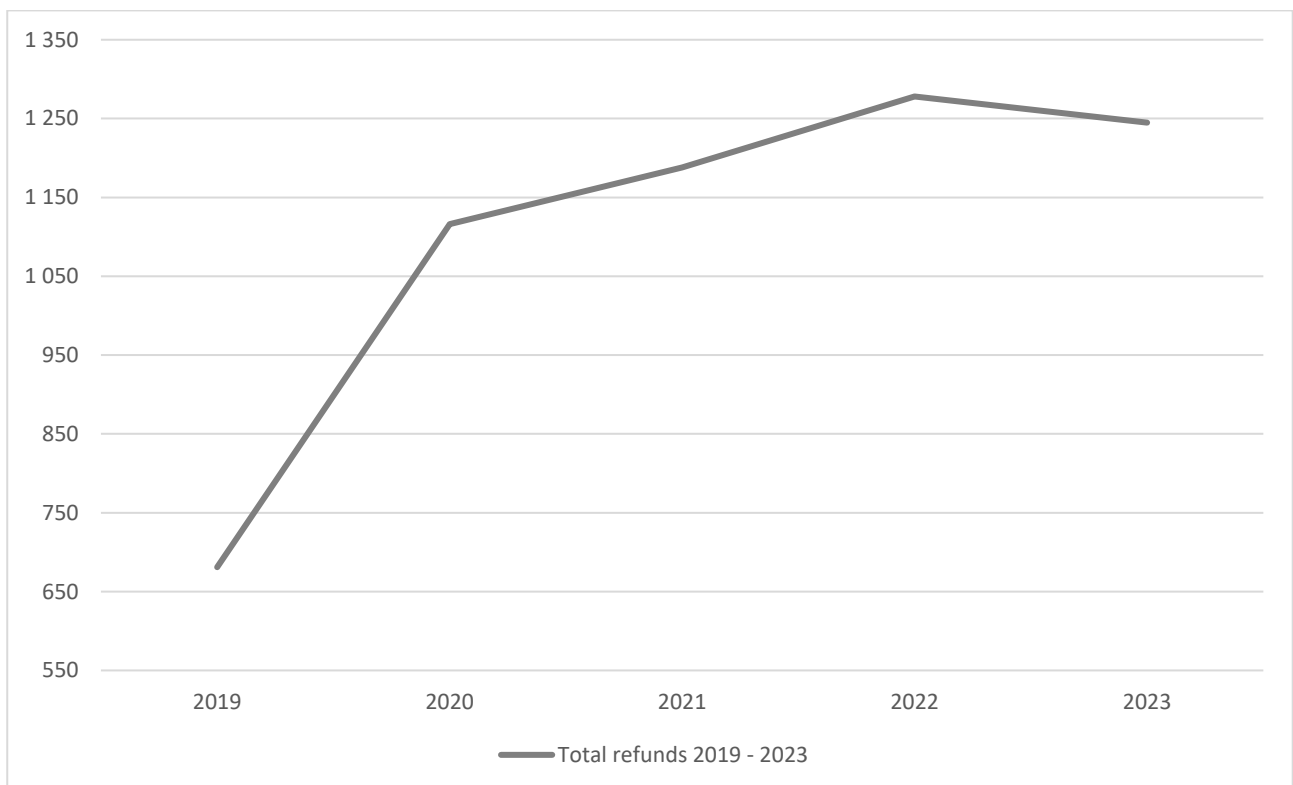
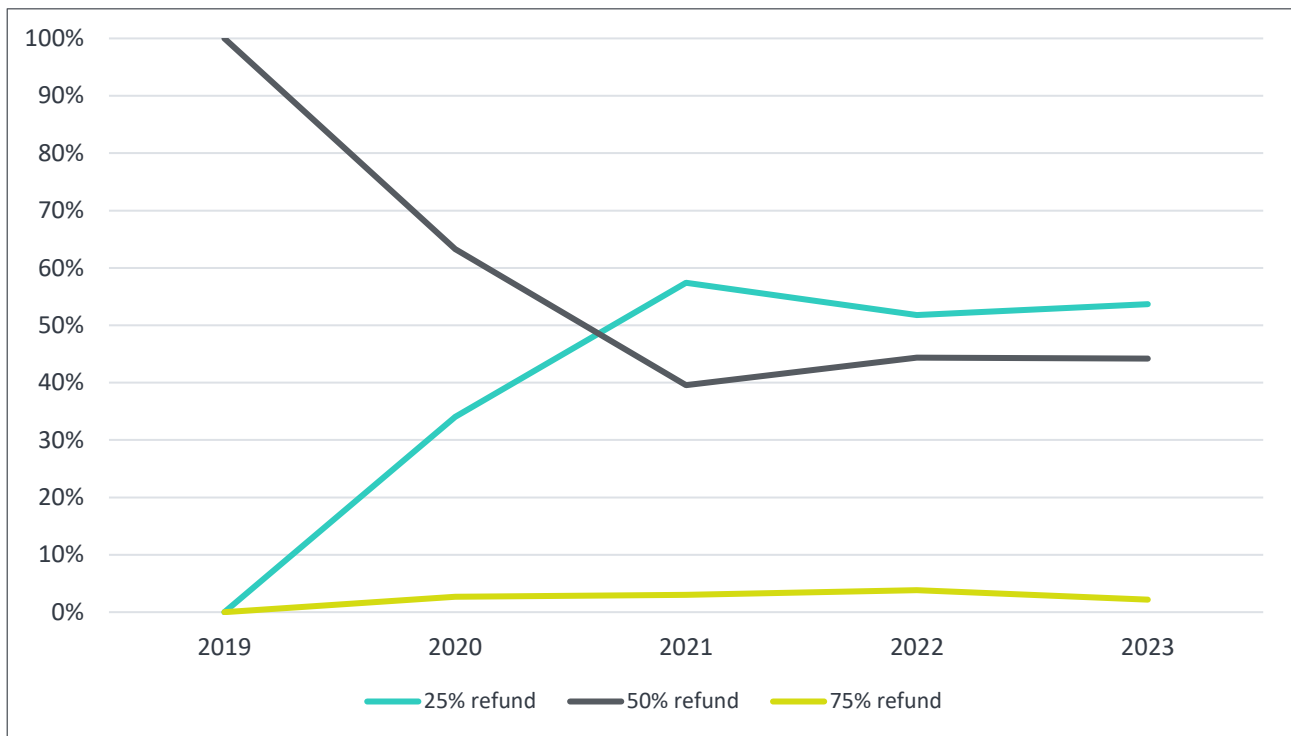


Figure 10

Breakdown of partial refunds 2019-2023



f. Performance management

Setting annual objectives on settled cases with action for each technical board as well as individual objectives and performance assessment for chairs and members, along with the streamlining of procedures by setting standard timescales for key procedural steps, has been a further step to complement the framework for increasing efficiency and leading to increased accountability.

3.1.5. Concluding the 2023 objectives

The framework in which the BoA are working currently represents a substantial improvement on that of the BoA at the beginning of the reform and has paved the way and laid the foundation for the next set of objectives from 2024 onwards. The required modernisation of the IT landscape in the BoA has also played an important role. Above all, however, the concerted effort by all members of the boards and their support staff has been decisive for achieving this result.

Continuing on this path of eliminating the stock of backlog cases will eventually put the BoA in the position, as in national courts, to deal with cases as they come in. While this will constitute a marked improvement in service delivery, it will also pose organisational challenges which will require flexibility and agility in a transitional phase for the BoA.

3.2. Looking ahead: objectives from 2024 onwards

As explained above, with the achievement of objectives set in 2017, the BoA will gradually start dealing with appeals as soon as they are pending before them. This will allow the BoA to pursue more ambitious timeliness objectives, supported by further adjustments provided by the framework of the RPBA.

3.2.1. Focusing on timeliness

In view of new objectives to be set as from 1 January 2024, a Task Force (TF) was asked by the PBoA:

"(...) to define timeliness objectives. It is expected to analyse the different aspects of our procedures, e.g. the differences between ex- and inter-partes procedures. The task force should also give consideration to how the workload can be best organised within the technical fields. The task force may also make proposals relating to amending time limits in the RPBA 2020 and give ideas on the further development of planning and monitoring tools." ([BOAC/7/23](#)).

In view of forecast figures and contingent on the underlying assumptions, the TF cautiously concluded that CEPEJ timeframe B for civil contentious and administrative cases – 90% of cases in stock not older than 24 months (i.e. no more than 10% of cases older than 24 months) – is achievable by the end of 2025, while CEPEJ timeframe A – 90% of cases in stock not older than 18 months (i.e. no more than 10% of cases older than 18 months) – is achievable by the end of 2027. The TF therefore recommended setting CEPEJ timeframe B (90% of cases not older than 24 months) as an initial objective for 2025.

The Presidium of the BoA was consulted on the TF's suggestions and expressed reservations on the achievability of timeframe A. Contingent on the achievement of the initial objective for 2025 and updated planning figures from DG1, and following a further evaluation by the Presidium of the BoA, the chairs and the BOAC, even more ambitious timeliness objectives could potentially be set for 2028. This follows the general approach recommended by CEPEJ of achieving its timeframes progressively step by step.

In adopting the objective of timeframe C – achieving no more than 10% of cases in backlog status (older than 30 months) – the starting point for measuring the age was when the appeal was received by the BoA. Formally, however, an appeal is filed with the Office, which, after interlocutory revision under Article 109 EPC in ex parte cases, forwards it to the BoA. In inter partes cases, this – in principle – corresponds to the filing of the notice of appeal, but for ex parte cases this is much later (some five months). To better align the BoA approach with that of CEPEJ, the age of both ex parte and inter partes cases should be counted from receipt of the notice of appeal by the Office. This starting point is also more predictable for users of the patent system.

The BOAC gave a unanimous favourable opinion (see point 10 of [BOAC/16/23](#)).

3.2.2. Further amendments to the RPBA – enhancing the timeliness of appeal proceedings

To allow the BoA to pursue more ambitious timeliness objectives, amendments to the RPBA were required. In particular, further amendments were needed to increase flexibility in case management while ensuring that the parties' rights were duly safeguarded.

At its 15th meeting, the BOAC endorsed the proposals of the PBoA to work on possible amendments to the RPBA and hold a related user consultation.

An online user consultation on the initial English version of the proposed amendments was held from 16 June to 11 September 2023. Users submitted a total of 60 responses, 19 of which by user associations. Furthermore, in the framework of the annual meeting with epi and BusinessEurope, the BOAC took the opportunity to receive further feedback from the user representatives. On the basis of all the comments received, the proposed amendments were revised by the PBoA and adopted by the BOAC.

Amendments to Articles 13(2), 15(1) and 15(9)(b) RPBA were proposed to the BOAC (see [BOAC/18/23](#)). In a written procedure, the BOAC adopted the amendments on 23 November 2023. The Council approved the proposed amendments at its 177th meeting (see [CA/D 24/23](#)). The amendments entered into force on 1 January 2024.

The amendments are as follows:

- Amended Article 13(2) RPBA replaces notification of a summons to oral proceedings with notification of a communication under Article 15(1) as a trigger for the third level of the convergent approach.
- Amended Article 15(1) RPBA addresses the change in Article 13(2) RPBA by deleting one sentence of the former version ("In cases where there is more than one party, the Board shall endeavour to issue the summons no earlier than two months after receipt of the written reply or replies referred to in Article 12, paragraph 1(c).") and by introducing a new sentence stating that "In cases where there is more than one party, the Board shall issue the communication no earlier than one month after receipt of the written reply or replies referred to in Article 12, paragraph 1(c)."
- Amended Article 15(9)(b) RPBA harmonises the text of both alternatives of Article 15(9) RPBA, laying down that the PBoA is to be informed if a board is unable to despatch the decision on the appeal by the date initially indicated to the parties.

An initially envisaged amendment to Article 12(1)(c) RPBA, reducing the default period for submitting the reply to the statement of grounds from currently four months to two months was not pursued for the time being. Such an amendment will be reconsidered once experience with the new timeliness objective for the BoA (90% of cases in stock not older than 24 months by the end of 2025, i.e. no more than 10% of cases older than 24 months) is evaluated.

3.2.3. Further measures to achieve the objectives

As mentioned above in 3.1.4.c. a new provision of the BDS-TBA states that chairs may agree to allocate an appeal or a group of appeals otherwise than as provided by the regular arrangements for allocating appeals under the BDS-TBA. By requiring the agreement of the chairs, who are familiar with the technical expertise of the members of their boards, the provision guarantees the technical expertise needed to decide on the reallocated appeals. Transparency is likewise ensured, as parties are informed in writing of the reallocation and of the legal basis for it. The application of the provision will be followed up closely.

Furthermore, the new objectives will require enhanced co-operation between boards on rebalancing the workload. Whereas until now the backlog was such that a board would focus on reducing the number of pending cases allocated to it, the incoming workload will require close monitoring in future, establishing the technical fields in which timeliness objectives are not yet met or are at risk and reallocating workload in such situations to boards which have overlapping technical expertise. This will require chairs to regularly review the planning figures in their technical field and to discuss how to best meet the timeliness objective even more so than in the past. It is intended that the Field Chair, i.e. the chair serving as co-ordinator for their particular technical field (Mechanics, Chemistry and Physics/Electricity), will, as *primus inter pares*, co-ordinate the workload rebalancing in the technical field in close co-operation with the chairs of the respective boards.

4. People

4.1. Staff of the BoA in 2023

The BoA had 269 budget posts in 2023.

As at 31 December 2023, the headcount of chairs and members of the BoA was 180. The 27 chairs, 122 technically qualified and 31 legally qualified members are divided among 26 technical boards and the Legal Board. There are 59 staff members in the support services. The total number of BoA staff, including the PBoA, is 240.

4.2. Recruitment

Taking into account the updated planning figures from the Office, and in light of the BoA being on track to achieve their five-year objectives in the first half of 2024, not all member posts vacated in 2022 and 2023 needed to be filled.

In 2023, following the departure of nine members and chairs as well as two support staff, the BoA recruited one new chair for a technical board (mechanics), the chair of the Legal Board of Appeal and three legally qualified members. Additionally, three support staff were recruited to fill vacant posts – two for the Legal Research Service, the other in BoA Administration. The eight colleagues recruited in 2023 have the following nationalities: German, French, Austrian, Belgian, Italian and Slovak. Five were female and three were male.

The BoA published four vacancy notices in 2023 – one for a chair in the field of mechanics, one for legally qualified members and two for support services.

The proportion of female applicants for the posts of legally qualified members was 46%, with 83% of applicants being external. The three other vacancies were published internally only.

4.3. Evolution of gender balance in the BoA

Since 2017 there has been an increase in the proportion of female BoA staff across all roles.

Table 9

Evolution of gender balance

Role	Gender	2017	2018	2019	2020	2021	2022	2023
Chairpersons	Female	14.3%	10.7%	10.7%	10.7%	13.8%	17.9%	14.8%
	Male	85.7%	89.3%	89.3%	89.3%	86.2%	82.1%	85.2%
Legally qualified members	Female	37.0%	37.0%	35.7%	36.7%	35.5%	38.7%	45.2%
	Male	63.0%	63.0%	64.3%	63.3%	64.5%	61.3%	54.8%
Technically qualified members	Female	14.7%	17.1%	17.8%	19.6%	18.4%	17.7%	18.0%
	Male	85.3%	82.9%	82.2%	80.4%	81.6%	82.3%	82.0%
Support staff	Female	63.2%	67.2%	68.4%	69.5%	70.7%	72.6%	71.2%
	Male	36.8%	32.8%	31.6%	30.5%	29.3%	27.4%	28.8%
All BoA staff	Female	30.8%	31.6%	30.9%	32.0%	31.8%	33.7%	34.2%
	Male	69.2%	68.4%	69.1%	68.0%	68.2%	66.3%	65.8%

4.4. Nationality

As at 31 December 2023, BoA staff came from 22 member states. Chairs and members came from 19 different member states. Out of these 35% were German, 13% French, 10% Italian and 8% Spanish and British. Support staff came from 18 different member states.

Table 10

Breakdown of BoA staff by nationality and gender

Role	Gender	AT	BE	BG	CH	CY	DE	ES	FR	GB	GR	HU	IE	IT	LU	NL	PL	PT	RO	SE	SI	SK	TR	Total	
President of the BoA	Male																			1				1	
Chairpersons	Female	1	1											1				1							4
	Male	3					6		4	4				4		2									23
Legally qualified members	Female	1	1			1	6	1	2		1			1											14
	Male	3	1		2		6			1		1		1		1				1					17
Technically qualified members	Female		1	1			10	1	3	1				1				3		1					22
	Male	4	4	1	1		34	11	16	6	1		1	12	3	2	1	1	1	1					100
Support Staff	Female		1		1		18	6	5	5				1			1		1	1	1	1			42
	Male		1				4		2	1	2		1	2	1	1		1					1		17
Total		12	10	2	4	1	84	19	32	18	4	1	2	23	4	6	2	6	2	4	1	1	1	240	

4.5. Breakdown of staff by job group and grade

In 2023, 181 staff were in job groups 2 and 3, primarily being members and chairs.

Table 11

Breakdown of staff by job group, grade and gender

Job Group	1		2		3		4					5			6			Total	
Grade	G17	G16	G14	G15	G07	G09	G10	G11	G12	G13	G08	G09	G10	G06	G07	G08	G09		
Female		4	19	17		1	2	3	4				1	1	4	8	8	10	82
Male	1	23	48	70	1	4				3	1	1	1	1		3	1		158
All BoA staff	1	27	67	87	1	5	2	3	4	3	1	2	2	5	8	11	11	240	

4.6. Promotions and non-promotions of members

Upon recommendation of the PBoA and decision by the Council, board members who have completed at least five years in their previous grade and step may be promoted to grade G 15 step 1. The accumulated non-promotion rate 2018-2023 is 16%.

4.7. Career reform

The career reform, which was unanimously approved by the Council at its 175th meeting, introduces an additional opportunity for advancement within the EPO's salary grade system for both members and chairs of the BoA. It entered into force on 1 January 2024.

Under the new system, members will be able to reach the end of the career path of job group 3 by being promoted to grade G 15, step 1, with advancement possible to grade G 15, step 4. Chairs will be able to reach the end of the career path of job group 2 with advancement possible to grade G 16, step 4. Members and chairs will be able to progress in their career outside the five-year reappointment interval, thereby increasing the system's flexibility and its effectiveness. Career progression will continue to be subject to (i) the PBoA's express recommendation and (ii) the decision of the Council as the competent appointing authority.

The reform maintains its performance-based approach while strengthening the sustainability, transparency and productivity of the BoA and enhancing staff motivation by providing for professional development.

4.8. New ways of working

The PBoA's Communiqué 1/22 on the application of the Office's new ways of working (NWoW), entered into force on 1 June 2022. It provides that the scheduling and conduct of oral proceedings before the boards of appeal takes precedence over teleworking. Teleworking of board members and chairs must not affect their availability for the conduct of oral proceedings, including those which are rescheduled or for which the composition of the board is changed.

The NWoW were fully established in the BoA in the first half of 2023, with the COVID-19 measures lifted in February 2023. More staff progressively returned to the BoA premises in Haar, also encouraged by the PBoA to rebuild a sense of belonging and to enhance interaction between colleagues. Events now take place face to face, in hybrid mode or online, depending on their nature and technical feasibility. The boards have adapted well to the NWoW and the chairs had the opportunity to share their experiences during the Chairpersons' Day in October.

Following the 2022 staff engagement survey, efforts are also being made to improve communication, staff engagement and a feedback culture to foster communication to and among colleagues. A feedback culture is encouraged by asking BoA staff to express their views at any possible opportunity. To address the issue of social connectedness, several initiatives have been introduced in 2023 to promote opportunities to meet face to face, such as training workshops or get-togethers for all BoA staff.

The BoA aligns itself with the Office's eco-friendly travel policy to optimise missions and make use of eco-friendly means of transport whenever possible.

4.9. Diversity and inclusion

In March 2021, the BoA's Working Party on Diversity and Inclusion (D&I) was created by the PBoA to advise on how the BoA can create a more diverse and inclusive culture to help build a modern judiciary. The PBoA submitted his D&I strategy for the period 2022-2027 to the BOAC for opinion ([BOAC/4/22](#)), which received positive feedback and much attention.

The D&I awareness training ran from October 2022 to February 2023, with a total of 26 sessions, divided into two modules, attended by 139 staff members. These workshops stimulated interesting discussions to help shape the future of the BoA in terms of D&I. It was considered that the BoA are diverse in terms of language, nationality and culture, and that there is mutual respect and care for each other. It was, however, felt that there should be more awareness of the BoA's strategy and direction on D&I issues and that an even greater range of diversity could be brought into the BoA. Giving and soliciting feedback could be further strengthened as part of workplace interactions to ensure that everyone's voice is heard.

To complement the awareness training, thematic presentation sessions were organised for BoA staff. The first one, in June, focused on "special needs", given that disability had been identified as one of the most important aspects in the results of the 2021 D&I survey. The session not only provided information on statistics on special needs at both European and EPO level and on the support available from the Office, but also gave an insight into personal experiences and testimonials. The event was highly praised and created a sense of togetherness among BoA staff that can only be described as unique. In November 2023, a second information session was held on "generational differences".

Further sessions are planned for 2024, alongside other initiatives that will take place next year as a follow-up to the results of the D&I awareness training and the BoA's D&I strategy.

4.10. External and after-service activities

Under Article 8 of the "Code of Conduct for Members of the Boards of Appeal and of the Enlarged Board of Appeal" (Code of Conduct), members may engage in external activities only if they are compatible with their judicial duties under this Code. The PBoA, assisted by the Advisory Committee on the Code of Conduct (ACCOC), is responsible for ensuring the proper application of the Code of Conduct.

Publications or paid external activities require prior authorisation by the PBoA and must take place outside working hours and without affecting normal duties. In the case of paid external activities, those related to the core business of the BoA will not be approved but may be considered as acting as a representative of the BoA, if so authorised. Unpaid external activities are subject to disclosure.

On average, there are up to 30 requests per year, mainly for activities such as publishing or lecturing, either at conferences or universities.

After-service activities fall within the scope of Article 20a(2) of the Service Regulations, which requires board members who intend to engage in any occupational activity, whether gainful or not, within two years of leaving the service, to inform the Council. Requesters are required to declare that they will not engage in any activity that would adversely affect the integrity of the EPO's appeal system. Before taking a decision, the Council receives an opinion from the PBoA on the impact of the activity on the integrity of the EPO's appeal system and the public perception of the member's independence and impartiality during their term of office as a board member.

Requests mainly regard consultancy work, either on a freelance basis or for a law firm, or to act as a trainer or lecturer. Recently, there have also been requests to join the UPC as a technically qualified judge.

5. Quality

The legal and technical quality of the decisions taken by the BoA has been a central priority since the beginning of the BoA's activity. Users, and the public in general, rightfully expect the highest quality from a judicial authority whose decisions are final.

The BoA published a paper in 2020 on "[Quality-focused decision making](#)" ("Quality paper"). The paper outlines the most important factors which contribute to the quality of decisions and describes the most important elements which a board should consider in its decisions.

Remaining a fundamental guide and springboard, the BoA continue to launch initiatives and opportunities to support the elements outlined in this paper which impact the quality of decisions.

5.1. Approach to quality at BoA



The elements that are referred to are interrelated and all contribute to quality decision making. They can be grouped into three areas: knowledge, oral proceedings and performance evaluation.

"Knowledge" combines *inter alia* training for members, dialogue with internal and external counterparts and the information and resources available to support their drafting of decisions. The basis of these initiatives forms an important element affecting the professionalism of the judge and contributes to the overall procedure and fair hearings.

Awareness and support feed into aspects concerning oral proceedings, including the entire procedure from the case management stage to the written decision. Being a judicial body, the outcome of a high-quality decision to be accepted by the parties and by society at large is that the procedure must be seen to be clear, transparent and satisfy the right to a fair hearing. Aspects such as the quality of the reasons and reasoning in the decision and the evaluation of central arguments are key.

Finally, performance evaluation focuses on the quality of the work of the members and provides structured annual feedback on the core work of members and chairs. It is also an opportunity, as with any performance management system, to discuss areas for further professional development. These discussions lead back to the knowledge aspects and opportunities provided by the boards.

In 2023, the BoA undertook several initiatives to foster and support quality at the BoA.

5.2. Member workshops

Throughout 2023, the efforts of the working group commissioned by the PBoA to explore the key elements that contribute to the quality of BoA decisions focused on organising and facilitating a series of internal workshops.

The purpose of these workshops was twofold: firstly, to present the content of the Quality paper and an internal aid on decision drafting, and secondly, to provide a forum for discussion and sharing of experience, with the ultimate aim of promoting harmonisation of the boards' decision-drafting practices.

The first workshop was held in June 2023, using materials and case studies prepared by the working group followed by ample time for discussion and debate. It focused on the "facts and submissions" and the "reasons" of decisions. At the heart of the discussions was how to draft decisions in a concise manner without compromising their readability and comprehensiveness.

With the success of the first workshop, further sessions were held in the second half of 2023. They were attended by 87 volunteer participants consisting of chairs and technically and legally qualified members of all technical fields and levels of seniority, who actively engaged in constructive dialogue.

5.3. Internal professional development opportunities

Professional development activities, a key contributor to the high quality of the work performed by the BoA, continued in 2023. The Professional Development Committee (PDC) again organised several successful talks and presentations in the form of webinars and in hybrid mode, held by both internal staff and external professionals. They covered a wide range of topics, including understanding the psychology of judicial decision making and a presentation by the President of the Court of Appeal of the UPC.

Regarding the introductory training for new members, an online learning pathway was introduced. It is designed as a self-study course, with a BoA colleague available for each topic to answer any questions the new members may have or to give a presentation in face-to-face, online or hybrid mode. The learning pathway complements the induction training program and replaces group training in years when there are few new members.

Further rounds of the highly popular "English advanced legal drafting" course took place in April and December 2023. In addition, for the first time, introductory legal drafting courses were held in French and German and were very well attended, and more courses are planned for 2024.

The Chairpersons' Day events, which regularly bring together all chairs and the PBoA, took place in May and October. The first event focused on timeliness objectives and discussions with regard to the book "Noise: A Flaw in Human Judgement". The second event began with a get-together in the evening and the next day revolved around timeliness objectives, experiences with the NWoW and efficient ways of conducting oral proceedings as a chair.

5.4. External dialogue with judicial counterparts and stakeholders

Discussions and contact with national courts, users and representatives continued throughout 2023. These meetings are an important means of strengthening interaction between national judges, users and the BoA, and of deepening knowledge of the respective legal and appeal systems. As the COVID-19 measures had been lifted, many of these meetings took place in person.

Judicial dialogue remains a cornerstone for the BoA, which maintain and highly value interaction with other national courts. There are already a number of established judicial platforms in place, for example the BoA Expert Judges Workshop, the Venice Forum and the WIPO IP Judges Forum. These give the BoA a unique opportunity to share experience on practice and procedures with judicial counterparts. The Judicial Internships programme resumed in 2023 after the pandemic. Six judges from Portugal, Croatia, Spain, Germany and Slovenia spent two weeks at the BoA. They were hosted by different technical boards and followed oral proceedings.

2023 marked a major milestone for the European patent system – the start of the UPC. Being a court with competence in, as from the outset, 17 EU member states, the UPC will be an important judicial partner. Awareness, experience-sharing and trust among the courts and judicial bodies is crucial. The BoA is committed to ensuring that it does its part to foster the dialogue with the UPC as it does with other national courts. The BoA will continue to explore further possibilities of sharing experience to enhance and strengthen the dialogue.

The BoA also interact regularly with institutional counterparts, such as the IP5 Trial and Appeal Boards, Bundespatentgericht (Federal Patent Court of Germany), CNIPA and EUIPO. The BoA was invited to participate at conferences organised or supported by national patent offices in Helsinki, Stockholm and Luxembourg.

In a larger forum, and teaming up with the European Patent Academy, the BoA organised the annual "Boards of Appeal and key decisions" conference, one of the pillars of the BoA's outreach and dialogue with the user community, showcasing recent case law of the boards.

Every year, the PBoA and members of the boards hold meetings with delegations from the user community, namely from the patent profession (epi), industry (BusinessEurope) and the International Federation of IP Attorneys (FICPI). These meetings give the boards valuable insight into the views and expectations of the user community on a variety of issues, such as online hearings, topics of substantive patent law and quality issues (such as those mentioned above). After a pause during the pandemic, the US Bar-EPO Liaison Council met with the BoA to discuss recent case law.

The BoA are also regularly invited to attend and participate at conferences for practitioners such as Fordham, UNION-IP and those organised by GRUR and other leading IP institutes. Specific topics arising in recent decisions, for example decisions of the Enlarged Board or artificial intelligence, are discussed. Additionally, at the request of the European Patent Academy, board members and members of the Legal Research Service of the BoA gave 11 virtual talks and presentations at conferences, seminars and workshops organised by the Office.

5.5. Increased availability of legal resources

To support members and chairs in drafting their decisions, the Legal Research Service of the BoA has continued to regularly provide *inter alia* summaries of the most important BoA decisions, carry out legal studies and research and ensure that board members have up-to-date access to the library and any technical books they require.

In 2023, the formerly internal publication "Abstracts of decisions" was made available on the BoA web section. This monthly publication is a collection of summaries of key aspects of selected BoA decisions. Each summary is in the particular decision's language of proceedings. This synopsis gives users an easy-access snapshot of the highlights of a curated selection of recently published decisions.

5.6. Performance evaluation and objective-setting

The fifth full performance evaluation cycle, for 2022, ended in mid-2023. As with the fourth cycle, the BOAC was provided with a report on the practical implementation of the new performance evaluation system (see [BOAC/11/23](#) and [BOAC/11/23 Corr. 1](#)). The report found that, after five years of operation, the system is now well established and, thanks to training, new chairs have quickly become familiar with setting objectives and conducting performance evaluations. Chairs are in the best position to provide constructive feedback to help new members achieve and maintain the level of performance expected of an experienced member.

During the 2023 performance evaluation cycle, the PBoA reviewed and assessed approximately 245 individual written opinions and issued 156 individual member evaluation reports, in addition to those of the chairs.

Objective-setting for the evaluation year 2024 began in June 2023, with a particular focus on timeliness and supported, where appropriate, by a collaborative objective which requires chairs to co-operate actively by transferring or accepting transfers of cases where needed and technically appropriate.

6. Institutional developments

6.1. Institutional role of the PBoA

In the course of the exercise "Modernisation of the EPO's external governance", the role of the PBoA before the Council and its subsidiary bodies was codified in 2023, strengthening the organisational autonomy of the BoA.

The RoP AC have been amended to this effect. First, a new paragraph in Article 7 RoP AC was introduced to address the participation of the PBoA in the Council (see [CA/31/23](#) and [CA/D 6/23](#)). In addition, Article 18 RoP AC was revised to more accurately reflect the PBoA's role in the proceedings concerning the settlement of disputes relating to the Council's decisions (see [CA/65/23](#) and [CA/D 18/23](#)).

Finally, the participation of the PBoA at the Board of the Council (so-called "Board 28") was also codified. [CA/D 4/03](#) was amended to enable the participation of the PBoA "in the Board's discussions relating to the Boards of Appeal Unit" (see [CA/31/23](#) and [CA/D 6/23](#)).

The introduced amendments better reflect the organisational autonomy of the BoA. As such, the amendments also contribute to enhancing the perception of the independence of the BoA.

6.2. Budget of the BoA and implementation

The PBoA presented the BoA substantiated budget request 2024 under Rule 12a(3) EPC to the BOAC at its 16th meeting ([BOAC/12/23](#)). In view of the forecast of incoming workload based on the new DG 1 Medium Term Business Plan, which foresees lower levels of opposition production and refusals in the period 2024-2028, the BOAC welcomed the sensible approach for 2024 and gave a unanimous favourable opinion on the BoA budget 2024. The BoA budget was subsequently adopted by the Council at its 177th meeting as part of the Office's overall budget request 2024.

The budget implementation for 2023 has run smoothly. The budget credits approved in [BOAC/10/22](#) have proven sufficient and the co-operation with the DG4 services has been excellent.

7. Other organisational initiatives

7.1. Data protection

Under the Data Protection Rules (DPR), data protection at the BoA involves three pillars. With regard to administrative tasks, the President of the Office acts as the controller for activities not delegated to the PBoA under the Act of Delegation (AoD) and the PBoA acts as the delegated controller. Another pillar concerns administrative activities which are delegated under the AoD and where the PBoA acts as the controller. The third pillar encompasses the BoA acting in their judicial capacity, with the PBoA acting as the controller and the DPR laying down that an independent oversight mechanism must be established.

A decision of the PBoA on the processing of personal data in appeal proceedings was finalised and published in the Official Journal (see [OJ EPO 2023, A73](#)). Additionally, a proposal on the independent oversight mechanism for the BoA acting in their judicial capacity is being prepared.

Data protection records and statements either have already been published or are to be published soon. Further records will be finalised and published once the rules on the independent oversight mechanism for the BoA acting in their judicial capacity are enacted.

7.2. Modernising and consolidating the digital environment of the BoA

7.2.1. Digital Roadmap

Following an in-depth user consultation, the PBoA has endorsed the BoA Digital Roadmap. The roadmap provides a high-level vision of the future automation and digitisation requirements of the BoA. Further analysis and preparation of IT projects to implement these automation requirements are progressing in collaboration with the Office.

By enabling external users to file the notice of appeal via Online Filing 2.0, a first concrete deliverable was implemented in October 2023.

7.2.2. New BoA web section

The Office revamped the website in 2023, and this included the BoA web section (www.epo.org/appeals). The new web section features a carousel of the latest news available from the BoA and provides easy access to the most frequently used webpages, in particular recent decisions and the Case Law of the BoA publication.

7.3. Paperless working and paper consumption

With the Office's move to make use of cloud-based solutions, digital working is now fully consolidated in the BoA working practices.

iPads allow board members to work on digital copies of the appeal case, which has been further facilitated by several improvements to Digital File Repository (DFR), making it possible to customise contents and features of the electronic file.

The transition from traditional ways of working to digital ones has been facilitated by contact persons representing each board. This group of contact persons continued to share experiences and specify requirements for improvement. Training has been provided online and the group allowed for peer-to-peer training.

All these efforts have resulted in an impressive reduction in paper consumption. No figures are available for the year 2019 to compare with pre-COVID times. Paper consumption notably decreased during the COVID-19 pandemic and continued to do so afterwards, from 1 133 000 sheets in 2021 to 670 000 sheets in 2023, representing a decrease of 41%.

Despite the wealth of experience gained, there is still potential for improving software solutions; the BoA are working closely with the Office on this. Discussions also continue on best practices.

7.4. Building

During the 169th meeting of the Council, the PBoA announced that, together with the President of the Office, they would be making a joint proposal to relocate the BoA to a building that was part of the PschorrHöfe complex. With the move envisaged for 2025, the location at "Building VII" in the PschorrHöfe complex will facilitate access to the BoA for its users (parties and representatives), the public and the majority of BoA staff.

A structure has been set up between the Office and the BoA to define the requirements for the customisation of the building.