



# Annual Report of the Boards of Appeal

2023

May 2024

# Foreword

By the end of 2023, the Boards of Appeal had reduced their backlog – the number of pending cases older than 30 months – to a mere 656 (13.4%). The total number of pending cases was reduced to below 5 000.

Marking a major milestone following the structural reform of the Boards of Appeal, 2023 saw the conclusion of the Boards' 2018-2023 strategic objectives. The achievements reached in respect of objectives met on reduced stock and improved timeliness have paved the way for new timeliness objectives: by the end of 2025, no more than 10% of pending cases should be older than 24 months.

The more ambitious timeliness objectives require a few amendments to our Rules of Procedure. These have been developed in fruitful dialogue with our user community.

During 2023, the Boards of Appeal remained active in the efforts on quality, driving, on the one hand, internal training as well as dialogue platforms to promote experience sharing and discourse, and, on the other hand, external initiatives to foster discussion with our user community as well as the judiciary. These activities will continue to be an integral part of our work.

Our progress towards further improving and ensuring a modern judiciary continued in several respects throughout 2023. The implementation of the Boards of Appeal Digital Roadmap, aiming at improving business processes and supporting IT application systems,

contributed to our digital transformation. As part of the Boards of Appeal Diversity and Inclusion strategy 2022 – 2027, thematic presentation sessions were organised for Boards of Appeal staff.

Beyond the Boards of Appeal and in the context of the greater European patent system, 2023 was a landmark year. It not only celebrated 50 years of the European Patent Convention but also marked the launch of the Unitary Patent system, in particular creating the Unified Patent Court, 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, we, together with the Unified Patent Court, are establishing the channels for fruitful dialogue. We are committed to an improved judicial structure for the harmonisation of European patent law, which will deepen ties between all stakeholders and benefit the system as a whole.

All these developments would not be possible without the commitment and engagement of the entire staff, who I commend for their efforts in the multitude of initiatives pursued within the Boards of Appeal and beyond.

*Carl Josefsson*  
*President of the Boards of Appeal*



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# 1. Executive summary

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 first objective, which was to reduce the number of pending cases below 7 000, was met about a year ahead of schedule— at the end of 2023 the number of pending cases was below 5 000. 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. 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 by the end of 2025.

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.

At an institutional level, with a view to further strengthening the participation and role of the President of the BoA (PBoA) in the Council and subsidiary bodies, the Council approved the amendment to its Rules of Procedure (RoP AC).

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While 2023 marked the end of the first set of BoA objectives, a new set of objectives was already in the pipeline.



## 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 European Patent Office** (the Office), the BoA provide an **independent review of decisions** taken by the Receiving Section, examining divisions, opposition divisions and the Legal Division of the Office.

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 while settling 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
<b>Total</b>	<b>2 105</b>	<b>2 332</b>	<b>2 740</b>	<b>2 091</b>	<b>3 060</b>	<b>3 427</b>	<b>3 659</b>	<b>3 435</b>

## 2.1.2. Technical boards of appeal

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

There has been a decrease of 17.9% in *inter partes* cases due to an ease in the production of the opposition divisions. *Ex parte* cases have shown a decline of 37.7% (from 682 to 425).

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
<b>Total</b>	<b>2 059</b>	<b>2 245</b>	<b>2 660</b>	<b>2 049</b>	<b>3 013</b>	<b>3 395</b>	<b>3 576</b>	<b>3 358</b>
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

In 2023, 3 358 technical appeal cases were settled, representing an increase of 50.7% in production since the entry into force of the structural reform on 1 January 2017.



### Outcome of proceedings before the technical boards of appeal

A total of **1 248 *ex parte*** cases were **settled in 2023** maintaining the overall decrease from past years. Of these, 504 were settled by a decision. The remaining 744 were settled without a decision, i.e. closed by other means, in particular by withdrawal.

A total of **2 110 *inter partes*** cases were **settled in 2023**. Of these, 1 321 were settled by a decision.

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



### Language of proceedings

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

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%



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
<b>Total</b>	<b>14</b>	<b>17</b>	<b>27</b>	<b>19</b>	<b>6</b>	<b>15</b>	<b>9</b>	<b>17</b>

In 2023, the Enlarged Board gave a decision on three referrals under Article 112 EPC: [G 2/21](#), [G 1/22](#) and [G 2/22](#).

### 2.1.3. Enlarged Board of Appeal

The **main task of the Enlarged Board** is to **ensure the uniform application of the European Patent Convention (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.

#### 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?



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In 2023, 18 petitions for review under Article 112a EPC were received, 14 petitions for review were settled.

### 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 in particular 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
<b>New cases</b>	<b>19</b>	<b>3</b>	<b>55</b>	<b>45</b>	<b>16</b>
EQE	15	1	53	44	15
Professional representatives code of conduct	4	2	2	1	1
<b>Settled cases</b>	<b>12</b>	<b>15</b>	<b>6</b>	<b>57</b>	<b>49</b>
EQE	10	15	5	52	47
Professional representatives code of conduct	2	0	1	5	2
<b>Pending cases</b>	<b>23</b>	<b>11</b>	<b>60</b>	<b>48</b>	<b>15</b>
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

Further improvements regarding the technical framework for oral proceedings by videoconference (VICO) have been implemented since the introduction of the option to hold oral proceedings by VICO (Article 15a RPBA), 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: oral proceedings by VICO, in-person oral proceedings and mixed-mode oral proceedings.

Table 7

#### Modes of oral proceedings

Format	Description	Number	%
Oral proceedings by VICO	All members, representatives and/or accompanying persons attend by VICO.	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 VICO.	35	2%
<b>Total</b>		<b>1 629</b>	<b>100%</b>

The user consultation on videoconferencing in oral proceedings before the BoA confirmed the widespread acceptance of this format and its implementation at the highest quality level.

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

An online user consultation on videoconferencing in oral proceedings took place in the first quarter of 2023. 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.

The user experience regarding the efficiency of oral proceedings by VICO was rated positively overall. 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.

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. Smooth operation and continual improvement of the technical framework in this area remain highly important, and the BoA will continue to liaise closely with the Office in this respect.



## 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”. 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 European Convention on Human Rights (ECHR).

### 3.1. Achievement of 2018-2023 objectives

On the basis of the results of a study on judicial efficiency provided by the European Commission for the Efficiency of Justice (CEPEJ)<sup>1</sup>, a **two-part general objective** was formulated:

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

The Boards of Appeal Committee (BOAC) supported the objectives, stressing that efficiency and timeliness had to be improved without any material effect on the quality of decision making and the independence – and the perception of the independence – of the BoA.

<sup>1</sup> Towards European Timeframes for Judicial Proceedings – Implementation Guide; as adopted at the 28th plenary meeting of the CEPEJ on 7 December 2016.

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The objectives embody the Boards of Appeal's commitment to providing, in a timely manner, the public service mission they are entrusted with.





### 3.1.1. Settle 90% of cases within 30 months

The 2023 timeliness objective 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 1 shows the development from 2017 to 2023 in the percentage of stock older than 30 months, and thus in backlog status. The first part of the general objective is achieved if 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 1

Percentage of pending cases older than 30 months

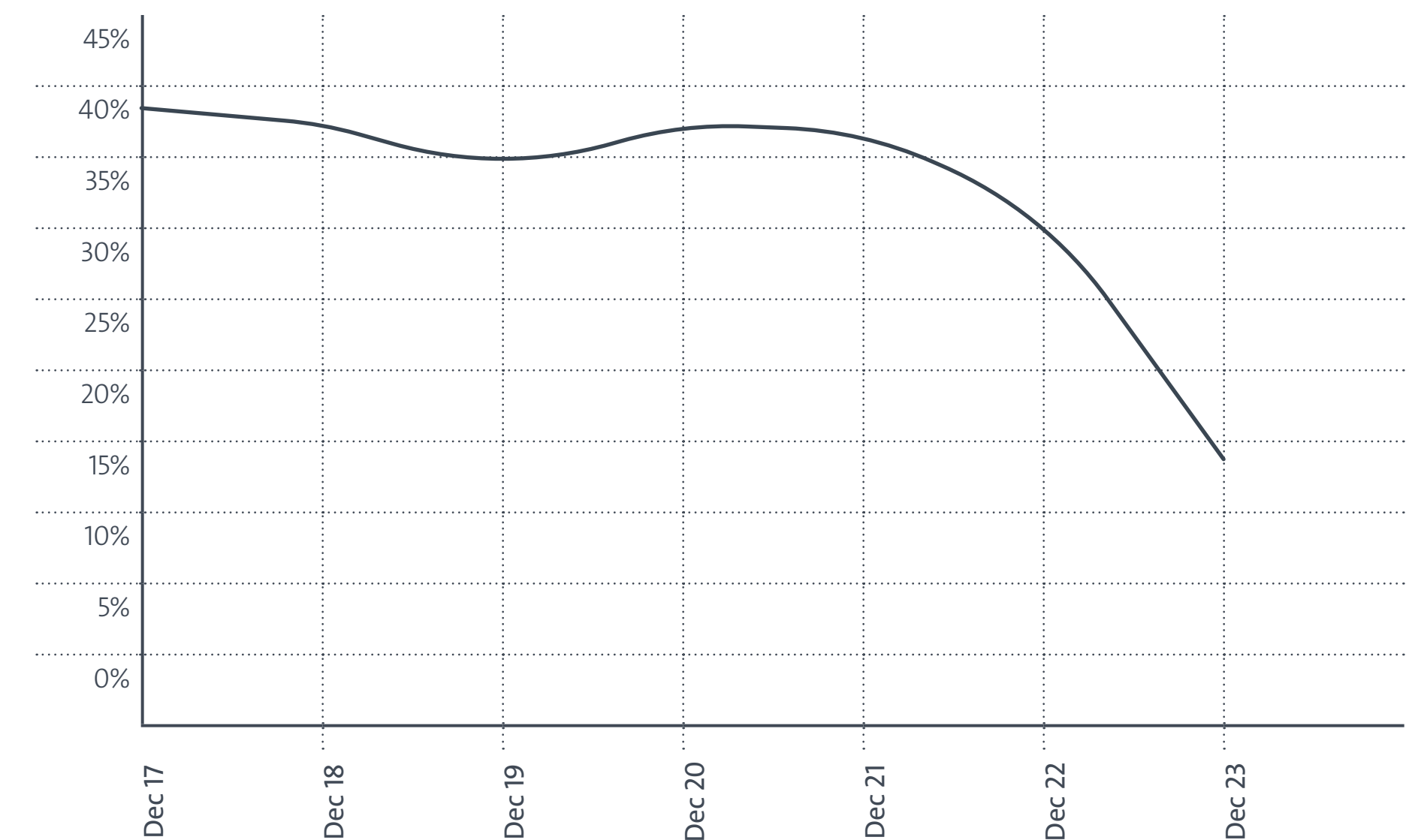


Table 8

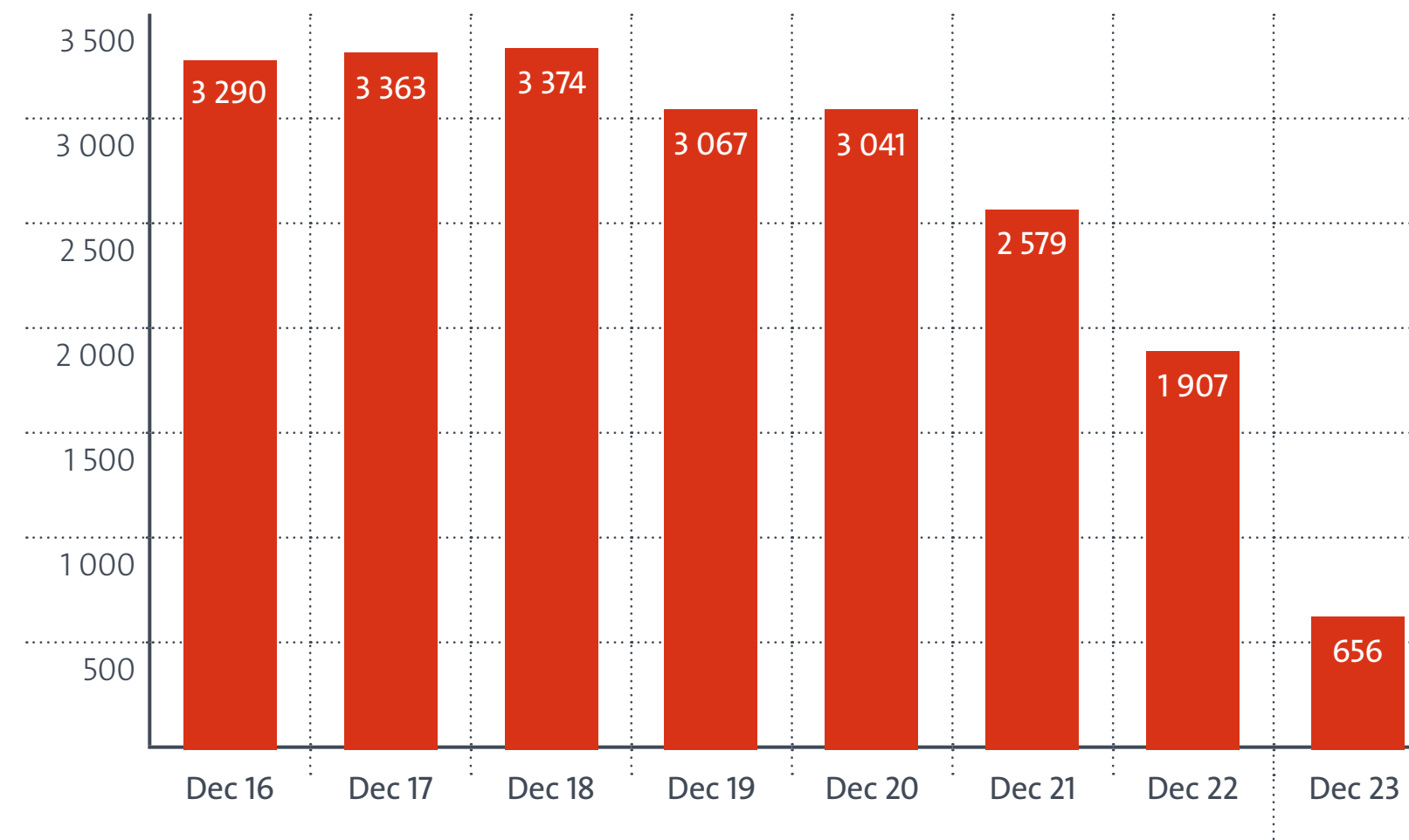
Pending cases per age group

		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%

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

Figure 2

Backlog cases (= pending cases over 30 months)

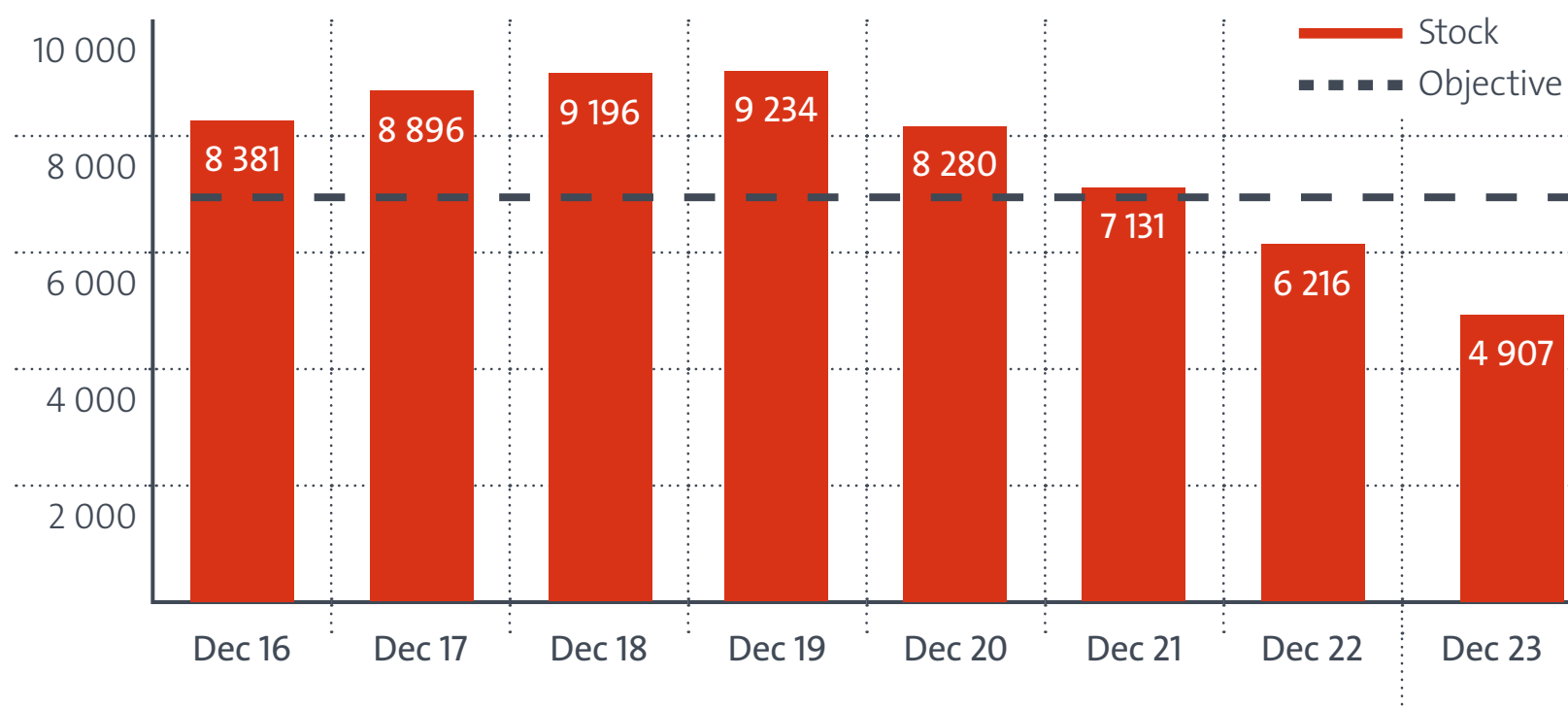


### 3.1.2. Reduce the number of pending cases below 7 000 cases

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 3  
Number of pending cases



In 2023, the number of pending cases was substantially reduced from 6 216 in 2022 to 4 907.



In 2023, the Boards of Appeal achieved the highest productivity level ever.

### 3.1.3. Increasing productivity

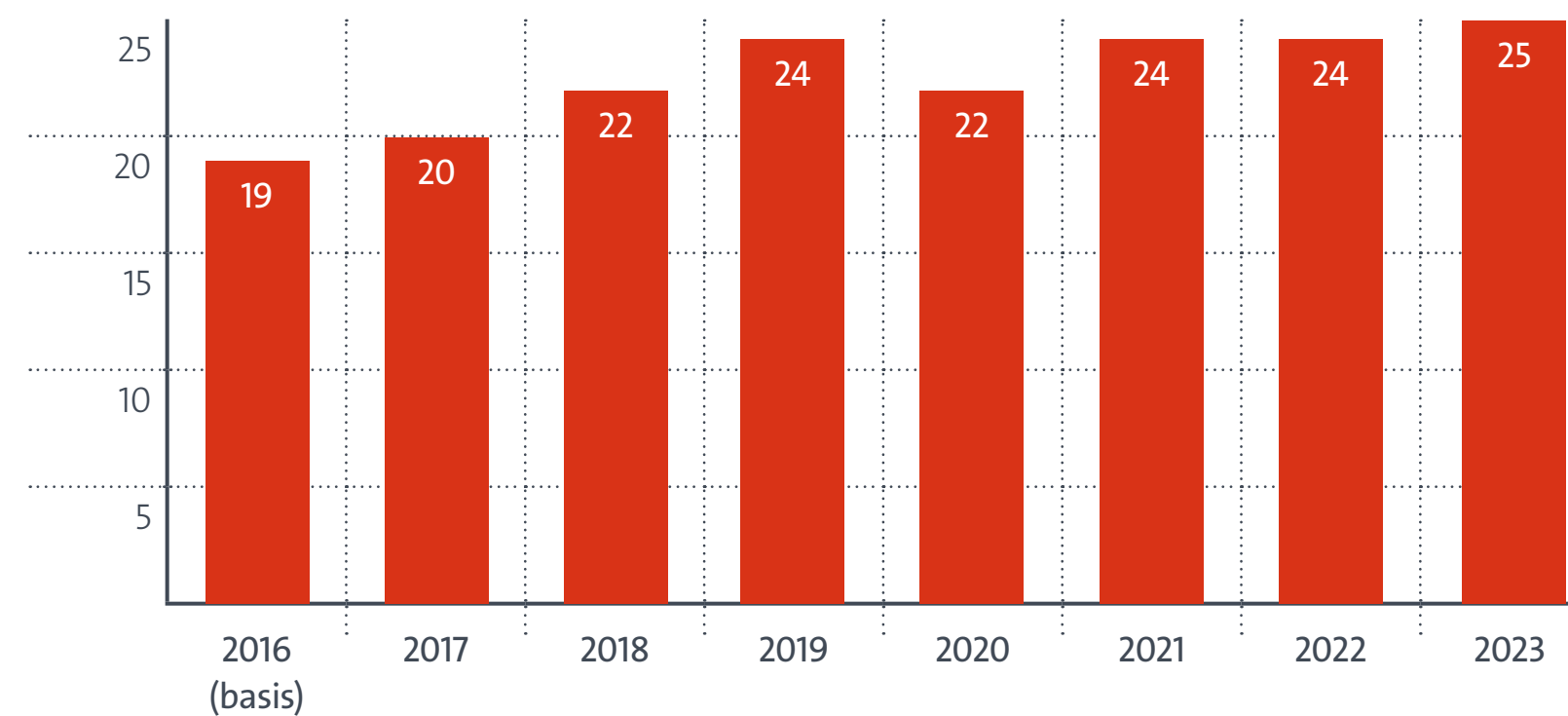
When calculating productivity, only cases settled “with action” are taken into account. These are cases settled by a decision or after a communication has been issued and/or after oral proceedings have taken place.

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 per month**, the **highest productivity achieved at the BoA**. 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 4

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. In this respect, the PBoA took a broad range of measures to increase efficiency. They include **improved planning and forecasting** based on an in-depth analysis of the production figures and filing trends of the departments of first instance and providing for **increased flexibility in the Business Distribution Scheme (BDS)** of the technical boards of appeal (TBA) with a view to balancing out the workload of the boards. **Performance management**, including objective setting for boards and individual members and chairs, continues to contribute to increasing efficiency. The 2020 **amendments to the RPBA** have also simplified and accelerated BoA procedures, allowing for swifter resolution of cases. In addition, the improved quality of communications by the boards brought in by Article 15(1) RPBA, which was introduced in 2020, has played a key role in the increase of withdrawals after first communication from 20% in 2017 to 38% at the end of 2023.

The RPBA also provide 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. 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.

Together with the increased flexibility provided for by Article 15a RPBA and the improvement in the technology over the past few years, the boards hold oral proceedings in a variety of formats (see 2.2.1 for further information), making use of all options available.

Further **important amendments to the RPBA** entered into force on **1 January 2024** with a view to further supporting the new timeliness objectives (see below 3.2.2.).

The introduction of the option for staggered reimbursement of the appeal fee, in accordance with amended Rule 103 EPC, entered into force on 1 April 2020. In addition to the existing 50% and 100% refunds, 25% and 75% refunds were introduced. In 2023, the combined number of 50% and 25% refunds was 1 218. Of those, 668 received a 25% refund and 550 a 50% refund. The 75% refund has occurred less than 50 times per year.

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The number of withdrawals increased considerably from 1 051 in 2022 to 1 218 in 2023.

### 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

With the achievement of the 2023 objectives, 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 forecast figures and contingent on the underlying assumptions, after having received the Presidium's advice and consulted the BOAC, the PBoA concluded that the objective of **90% of cases in stock not older than 24 months** (i.e. no more than 10% of cases older than 24 months) **could be achieved by the end of 2025**. Contingent on the achievement of the initial objective for 2025 and updated planning figures from the Office, 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 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. Therefore, and also with a view to **better aligning 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.

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New objectives on timeliness  
will continue to progress  
step by step.

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

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

The BOAC endorsed the proposals of the PBoA to work on possible amendments to the RPBA and hold a related user consultation.

To this end, an online user consultation was conducted on the proposed amendments and a meeting was held with user representatives for additional feedback. Taking into account all comments received, the proposed amendments were revised, subsequently adopted by the BOAC and finally approved by the Council 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 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. 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, and by informing parties in writing of a reallocation and its legal basis, the provision guarantees the technical expertise needed to decide on the reallocated appeals as well as transparency.

Furthermore, the new objectives will require enhanced co-operation between boards on rebalancing the workload. Even more so than in the past, chairs will regularly review the planning figures in their technical field and discuss how to best meet the timeliness objective. 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

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. They are complemented by 59 staff members in the support services. The total number of BoA staff, including the PBoA, is 240.

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Ever since the structural reform of the BoA, the proportion of women among BoA staff has steadily increased.



## 4.2. 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%

## 4.3. 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
<b>Total</b>		<b>12</b>	<b>10</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>84</b>	<b>19</b>	<b>32</b>	<b>18</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>23</b>	<b>4</b>	<b>6</b>	<b>2</b>	<b>6</b>	<b>2</b>	<b>5</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>240</b>

## 4.4. New ways of working

The PBoA provided guidelines on the application of the Office's new ways of working (NWoW), which entered into force on 1 June 2022. They provide that the scheduling and conduct of oral proceedings before the boards of appeal take precedence over teleworking.

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, rebuilding a sense of belonging and enhancing interaction between colleagues. Events now take place face to face, in hybrid mode or online.

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.



## 4.5. 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 and develop a BoA D&I strategy for the period 2022-2027. The PBoA submitted the strategy to the BOAC for opinion and received positive feedback and much attention for it.

D&I awareness training was held by way of workshops over the course of several months and attended by the majority of BoA staff members. The workshops provided a basis to shape the future of BoA in terms of D&I, and highlighted the BoA's diversity in terms of language, nationality and culture. Mutual respect amongst colleagues was particularly recognised and appreciated.

The awareness training was complemented by a series of thematic presentation sessions, with topics including special needs and generational differences. The BoA will continue to organise further initiatives to implement its D&I strategy through 2024.





## 4.6. 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 is responsible for ensuring the proper application of the Code of Conduct and is assisted by the Advisory Committee on the Code of Conduct (ACCOC) in this respect.

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.

Requests mainly regard consultancy work, either on a freelance basis or for a law firm, or to act as a trainer or lecturer.

## 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"), which outlines the most important factors contributing 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.

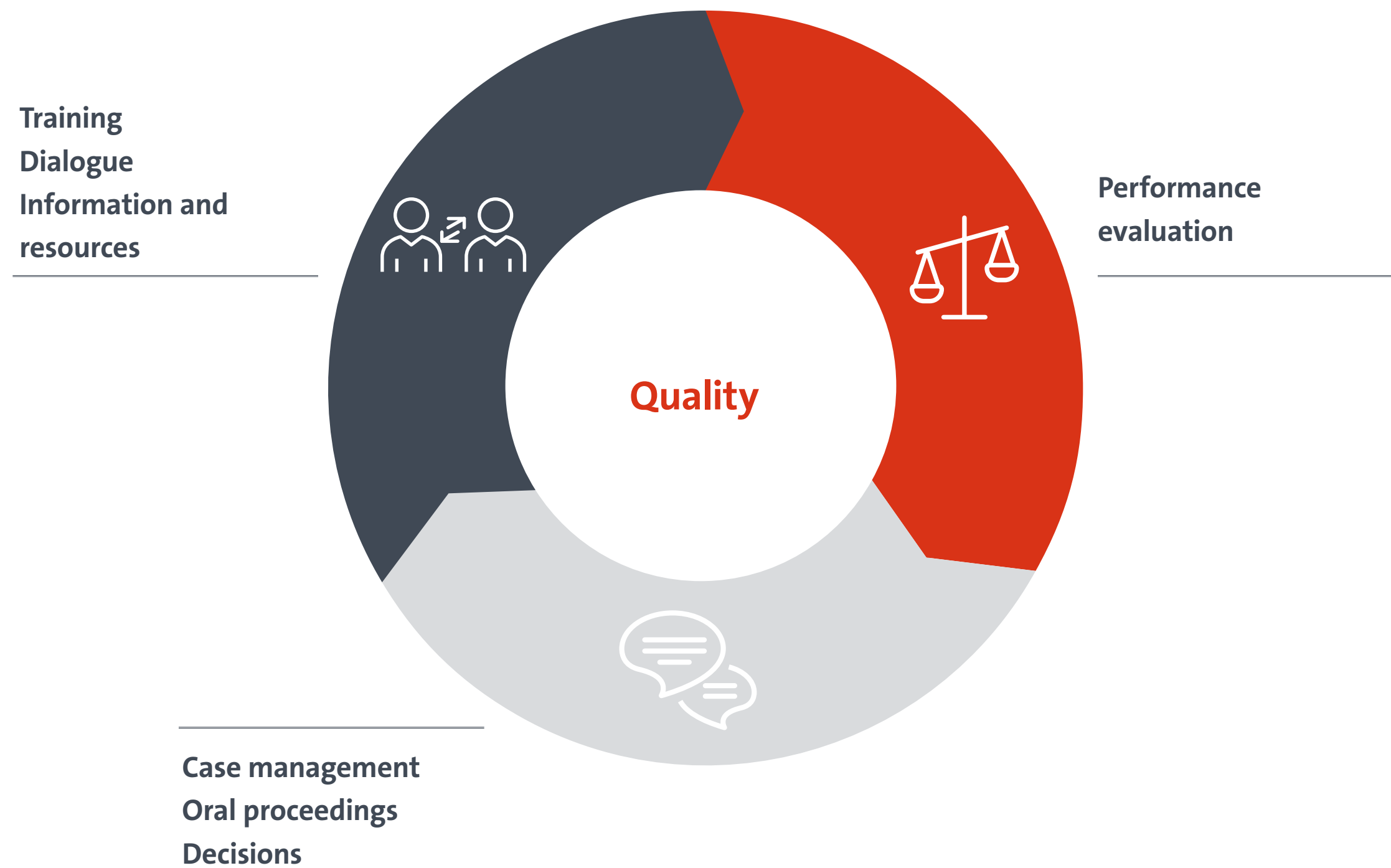
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Quality remains a central  
priority for the Boards of  
Appeal.





## 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.

**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, a series of internal member workshops took place with the aim of contributing to the quality of BoA decisions.

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. Each workshop focused on a specific section of decisions, e.g. the facts and submissions and the reasons.



## 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) 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.

An online learning pathway was developed to support the introductory training for new members. 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.

Furthermore, legal drafting courses were offered in English, French and German and will continue throughout 2024.

As part of the professional development activities, Chairpersons' Day events took place, bringing together all chairs and the PBoA. In 2023, these events provided a forum for discussing issues such as working modalities, timeliness objectives and efficient ways of conducting oral proceedings.

## 5.4. External dialogue with judicial counterparts and stakeholders

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Judicial dialogue remains a unique opportunity to share best practices and deepen knowledge of different legal and appeal systems.

Discussions and contact with national courts, users and representatives continued throughout 2023, mainly taking place in person after the COVID-19 measures had been lifted. 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.

Judicial dialogue remains essential for the BoA, which maintain and highly value interaction with other national courts. With a number of established judicial platforms in place, for example the BoA Expert Judges Workshop, the Venice Forum and the WIPO IP Judges Forum, the BoA have a unique opportunity to share experience on practice and procedures with judicial counterparts.

The Judicial Internships programme, which resumed in 2023 after the pandemic, is also an important means towards strengthening judicial dialogue. 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 are 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 were invited to participate at conferences organised or supported by national patent offices in Helsinki, Stockholm and Luxembourg.

## 5.5. Increased availability of legal resources

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.

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. The user community has already expressed its appreciation for the now publicly accessible abstracts.

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**Abstracts of decisions are now publicly available in the BoA's web section.**

## 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. In addition, the PBoA’s participation on the Board of the Council (known as Board 28) was also codified with a view to enabling the participation of the PBoA “in the Board’s discussions relating to the Boards of Appeal Unit”.

These introduced amendments better reflect the organisational autonomy of the BoA and 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. After the BOAC’s 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 2022 have proven sufficient and the co-operation with the Office’s units has been excellent.

# 7. Other organisational initiatives

## 7.1. Data protection

In 2023, 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. A first concrete deliverable, i.e. the filing of the notice of appeal via [Online Filing 2.0](#), 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](http://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 peer-to-peer training and experience sharing across boards.

These efforts have resulted in an **impressive reduction in paper consumption**. 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%**.

The BoA are working closely with the Office on further improving software solutions. Discussions also continue on best practices.





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