

## **SUMMARY OF RESPONSES TO THE USER CONSULTATION ON PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE OF THE BOARDS OF APPEAL TO FURTHER ENHANCE THE TIMELINESS OF APPEAL PROCEEDINGS**

The online user consultation on the proposed amendments to the Rules of Procedure of the Boards of Appeal (RPBA) was carried out between 16 June and 11 September 2023. Users were specifically asked to comment on the initial English version of the proposed amendments to Articles 12(1)(c), 12(7), 13(2), 15(1) and 15(9)(b) and to the proposed insertion of Article 25(4) RPBA.

The consultation attracted 60 responses from user associations, users from industry, patent attorneys and private individuals. Following careful consideration of these submissions, a [modified version](#) of the proposed amendments was adopted by the Boards of Appeal Committee on 23 November 2023 and approved by the Administrative Council at its 177th meeting (see CA/D 24/23, [OJ EPO 2023, A103](#)). The amendments to Articles 13(2), 15(1) and 15(9)(b) entered into force on 1 January 2024.

The amendment initially envisaged for Article 12(1)(c) RPBA was not pursued in 2023. It will be reconsidered once experience with the new timeliness objective (settling of 90% of cases within 24 months by the end of 2025) of the Boards of Appeal (BoA) has been evaluated.

The main points raised in the user responses are summarised below.

### **General**

Users were pleased that the BoA had achieved its first general objective (reducing the number of pending cases to below 7 000) and made substantial progress towards achieving its second objective (settling 90% of cases within 30 months). They also welcomed the BoA's aim of further increasing the timeliness of appeal proceedings.

Some users compared the procedure before the BoA with procedures in other jurisdictions.

### **Article 12(1)(c) – period for replying to the statement of grounds of appeal**

This proposed provision attracted the highest number of responses. The user community criticised the proposed reduction of the default period for replying to the statement of grounds of appeal.

Users considered that under the framework laid down by the RPBA, in particular Article 12(3), both the statement of grounds of appeal and the reply are of key importance for appeal proceedings. Referring to procedural fairness, appellants and respondents should in principle have the same amount of time to prepare to the above-mentioned documents. The proposed amendment would upset the balance between respondents and appellants.

Many users considered that a two-month time limit for preparing the reply would not be in line with the general framework for periods within the EPC system. Two months would not suffice for preparing the reply to the statement of grounds of appeal, in particular if interactions with (overseas) parties via another firm were necessary or if translations or experiments were needed.

Users considered that the two-month reduction of the default time limit would have a limited effect on the overall length of proceedings.

### **Articles 12(7) – request for extension of the period**

A limited number of responses addressed the proposed amendment to Article 12(1)(7) RPBA. These responses noted that a higher number of requests for extension would be expected due to the reduction of the default time for filing the reply. This would increase the burden for the parties and the workload for the boards.

### **Articles 13(2) – trigger for the third level of the convergent approach**

Users strongly supported the proposed amendment to Article 13(2) RPBA. The explanation provided in the explanatory notes was welcomed.

### **Article 15(1) – safeguards for the second level of the convergent approach**

Many users commented on the proposal for amending Article 15(1) RPBA. There was broad support for the possibility of issuing summonses to oral proceedings very early in proceedings. It was agreed that this would reduce the number of requests for changing the date fixed for oral proceedings.

Assuming the adoption of the proposed amendment to Article 13(2) RPBA, there was unconditional support for the proposed deletion of the current second sentence of Article 15(1) RPBA. Likewise, the proposed mandatory nature of the proposed new final sentence of Article 15(1) RPBA received unconditional support.

Reaction to the time limit of one month set in the proposed new final sentence of Article 15(1) RPBA was mixed. Some users expressly supported the proposed amendment, while others criticised it, asserting that one month was an excessively short period. In opposing this time limit, a number of users referred to the arguments against the proposed amendment of Article 12(1)(c) RPBA.

Users also suggested alternative amendments. A number of users were in favour of the parties being given a clear date for the start of the third stage of the convergent approach. They, thus, advocated for a provision laying down that the board would set a date for the transition from the second stage to the third stage of the convergent approach.

#### **Article 15(9)(b) – information of the President of the Boards of Appeal**

The proposed amendment to Article 15(9)(b) RPBA attracted a few comments from users. The user responses on this provision expressly supported the proposed amendment or noted that it was a matter of internal organisation for the BoA.

#### **Article 25(4) – new transitional provision**

The proposed new Article 25(4) attracted a limited number of responses. Some users noted that if Article 12(1)(c) RPBA were not amended, there would not be a need for a new transitional provision. A very limited number of users advocated for situations dealing with the transitional phase of the proposed Article 13(2) RPBA being addressed in a provision and not only in the explanatory notes.