

# THE RELATIONSHIP BETWEEN THE EPO BOARDS OF APPEAL AND THE NATIONAL AND INTERNATIONAL COURTS

INGO BECKEDORF | DEPUTY OF THE PRESIDENT OF THE BOARDS OF APPEAL | 25 OCTOBER 2024

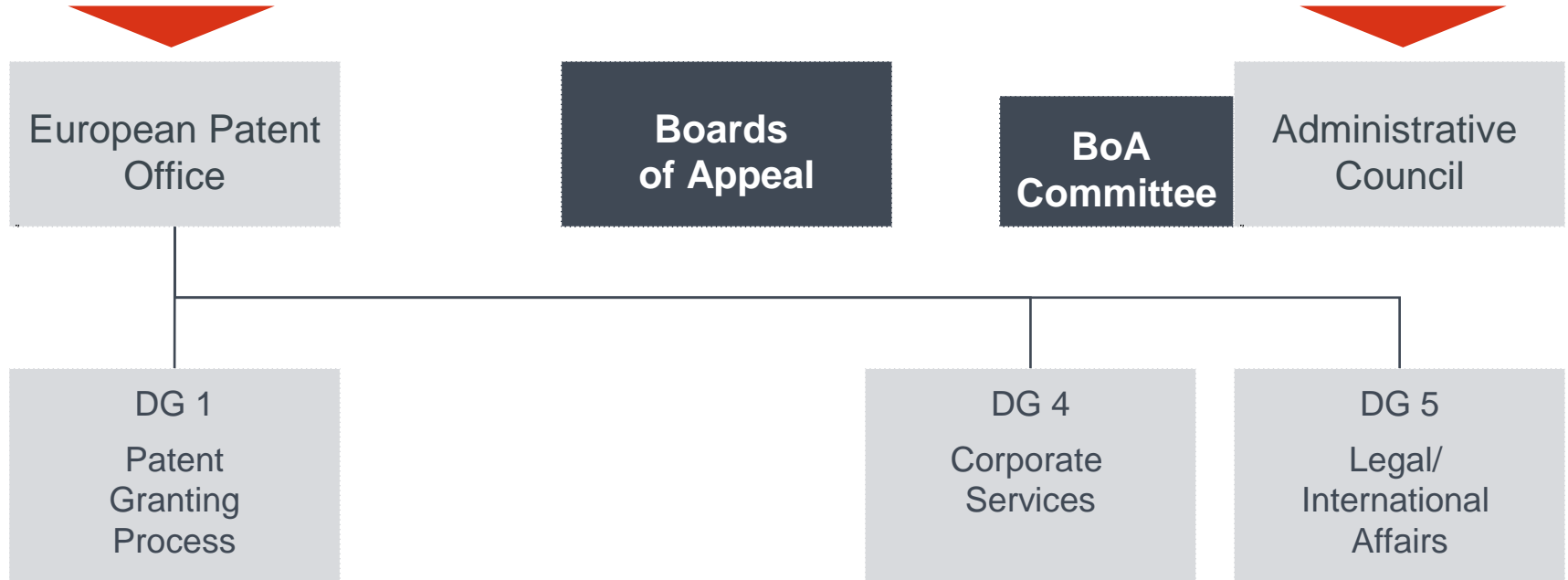
## SUMMARY OF MAIN POINTS

- Institutional framework
- Different courts with a shared responsibility

# INSTITUTIONAL FRAMEWORK



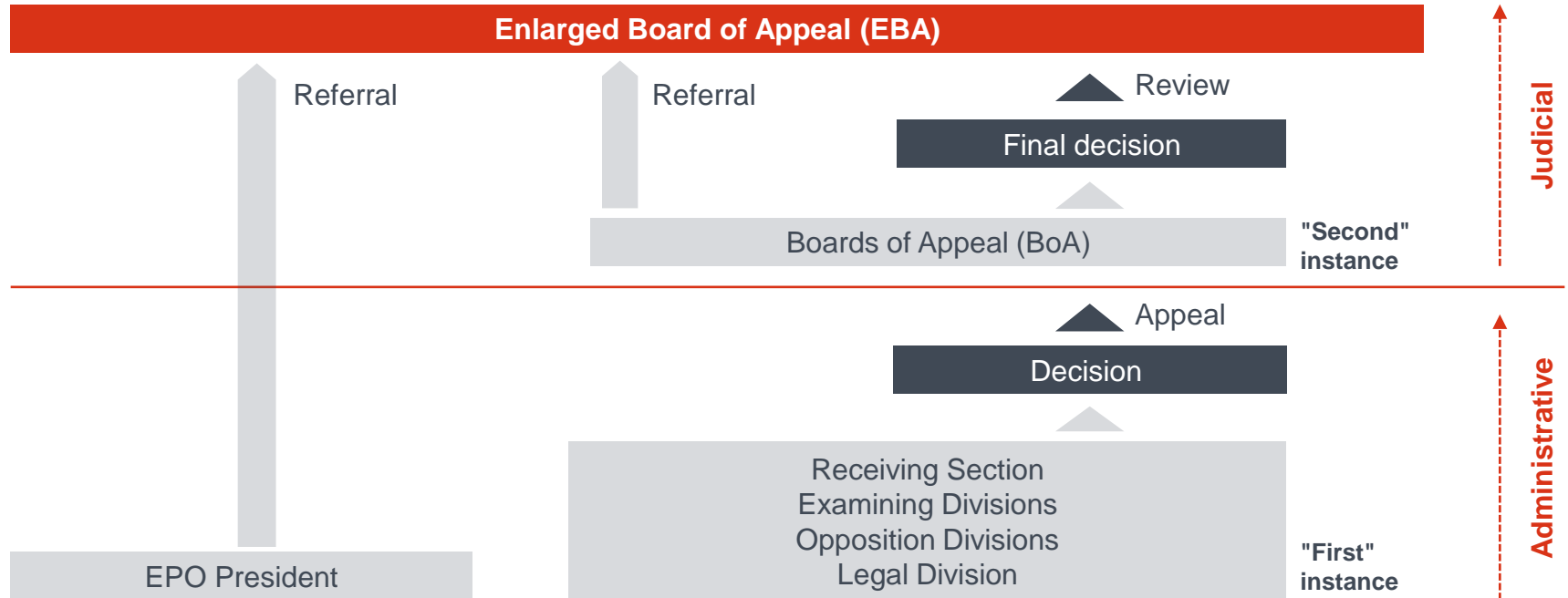
## European Patent Organisation

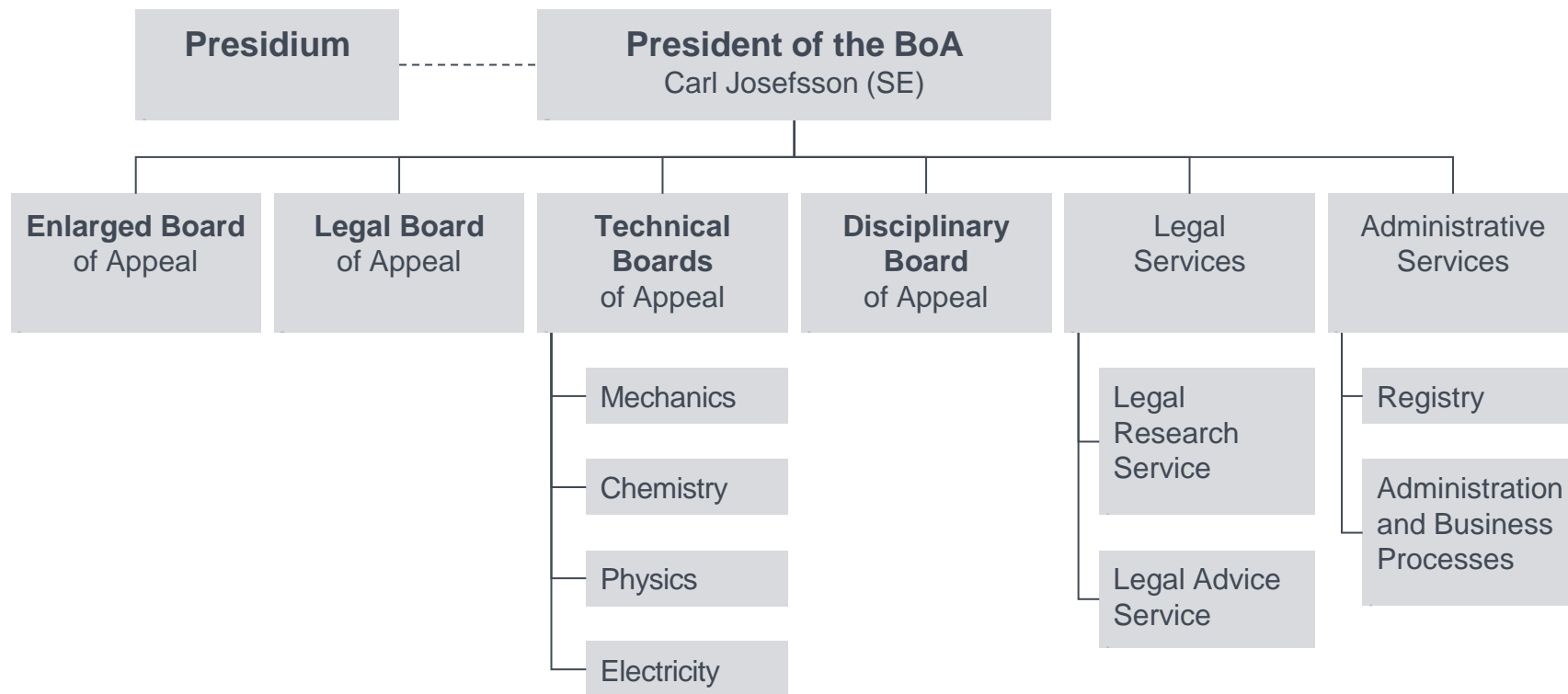


## BOARDS OF APPEAL AND ITS JUDICIAL FUNCTION

- First and final judicial instance in procedures before the EPO
- Provide **independent, final review** of decisions taken by the EPO's administrative departments within the framework of the EPC, in particular the Office's Examining and Opposition Divisions
- Review of pre-grant and post-grant decision "in a judicial manner" (Art. 12 RPBA 2020)
- Very exceptionally are subject to **review** by Enlarged Board of Appeal (fundamental procedural defect)
- European and Unitary Patents may be **subject to validity proceedings**:
  - in parallel to or after proceedings before the EPO (incl. appeal)
  - before competent **national** courts, in the EPC contracting states and/or the UPC

## APPEAL STRUCTURE



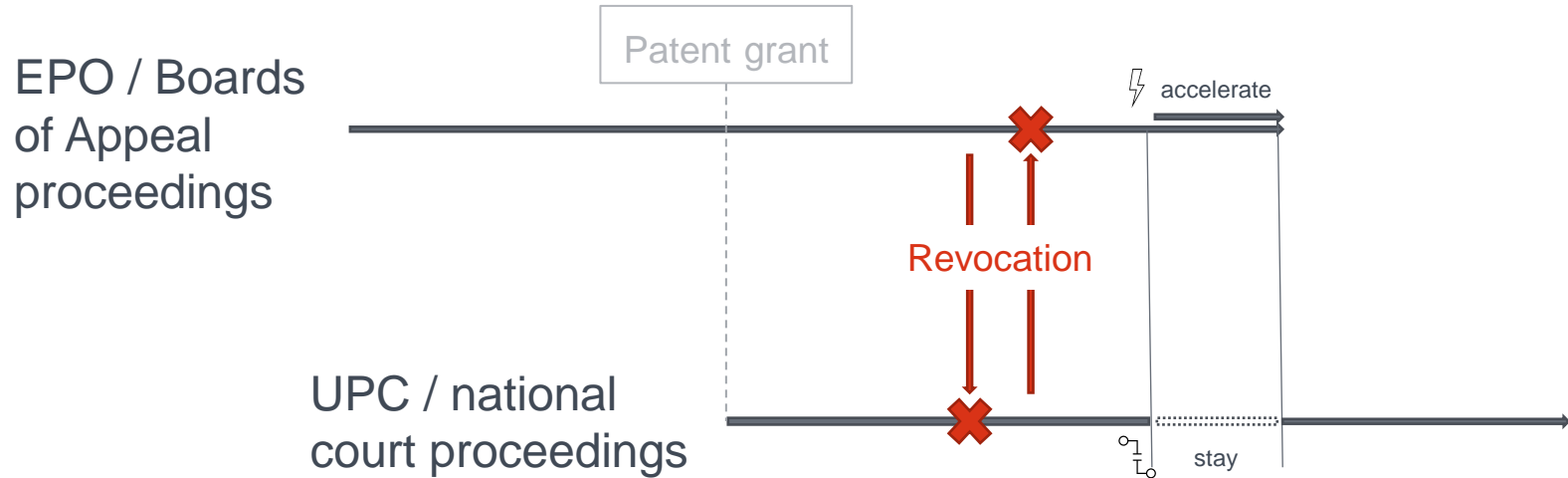


# DIFFERENT COURTS WITH A SHARED RESPONSIBILITY





## OVERLAPPING AND CONCURRENT JURISDICTION



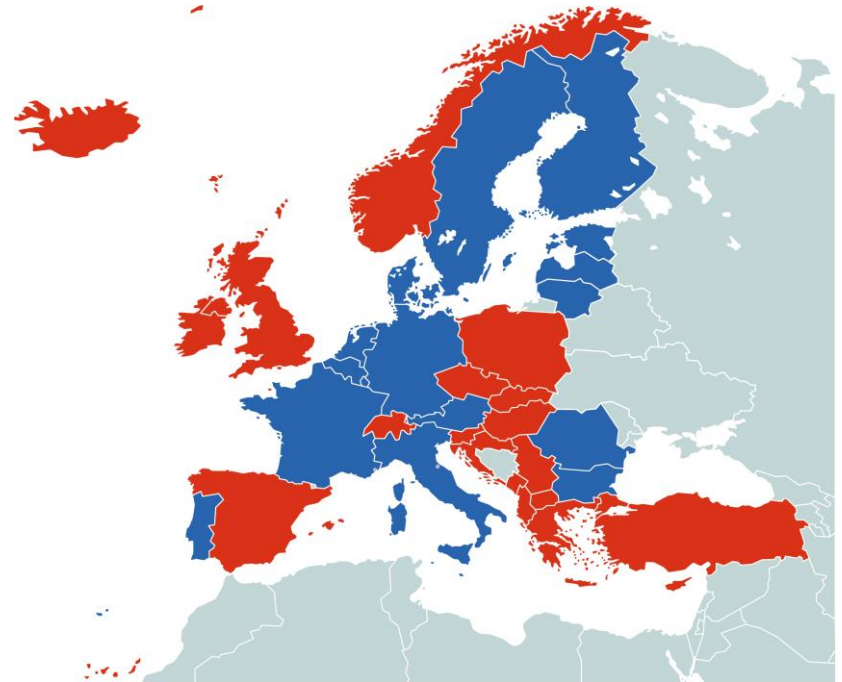
## BOARDS OF APPEAL, UPC AND NATIONAL COURTS

### EPC contracting states participating in the unitary patent system (UPCA in force – 18)

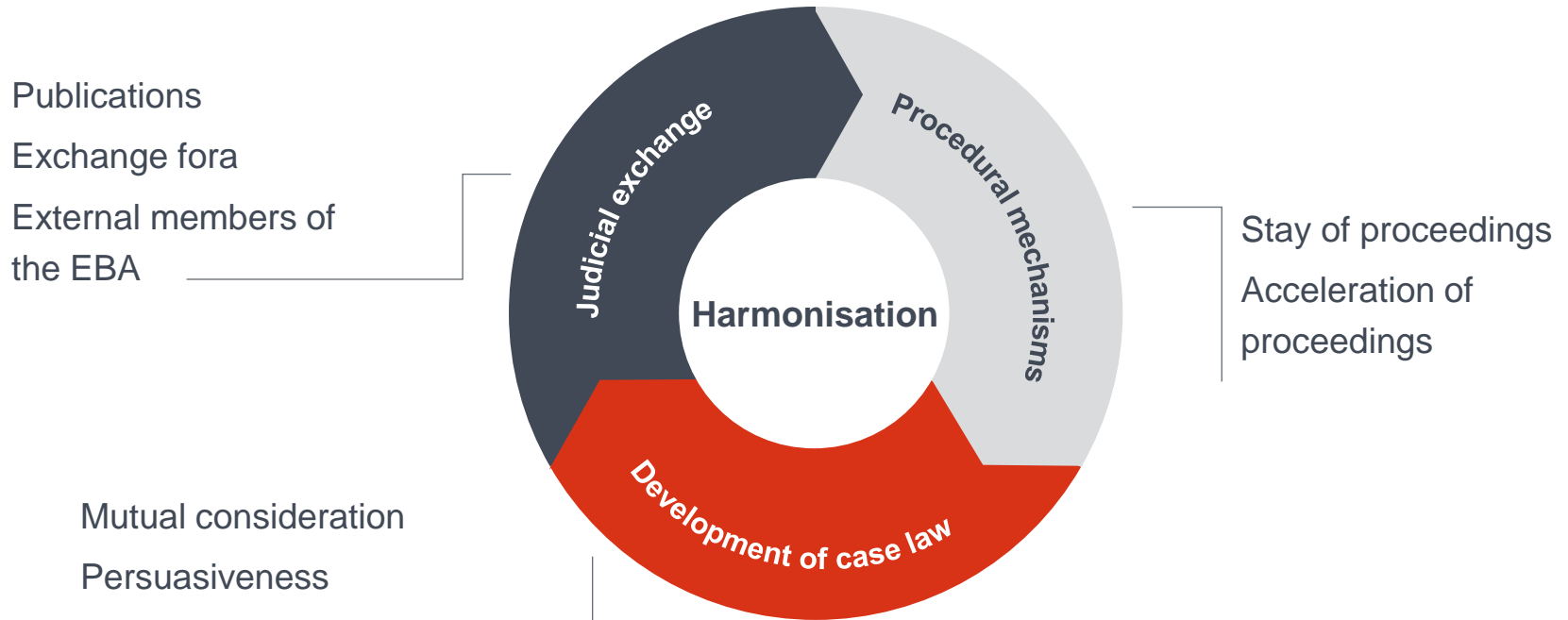
Austria • Belgium • Bulgaria • Denmark • Estonia  
Finland • France • Germany • Italy • Latvia  
Lithuania • Luxembourg • Malta • Netherlands  
Portugal • Romania • Slovenia • Sweden

### Other EPC contracting states (21)

Albania • Cyprus • Croatia • Czech Republic • Greece  
Hungary • Iceland • Ireland • Liechtenstein • Monaco  
Montenegro • North Macedonia • Norway • Poland  
San Marino • Serbia • Slovakia • Spain • Switzerland  
Türkiye • United Kingdom



## EPC HARMONISATION PHILOSOPHY



## ACCELERATION OF PROCEEDINGS (1/2)

### Opposition proceedings before the EPO\*

- The **EPO will accelerate** its processing of parallel opposition proceedings **if it is informed by the UPC or a national court or competent authority** of a contracting state that an infringement or revocation action relating to a European patent or a Unitary Patent has been instituted before it.
- In the absence of such information, **a party** to the parallel opposition proceedings **may request** accelerated processing at any time.

(\*see [OJ EPO 2023, A99](#))

### Appeal proceedings before the BoA\*\*

- **A party may request** acceleration of proceedings citing reasons.
- **A national court, other competent authority** in an EPC contracting state **or the UPC** may request acceleration; **as a rule, the board will grant** such requests.
- **Discretion** of the board to **accelerate ex officio**, in particular where infringement or revocation proceedings pending
- Boards may give a case **priority** over others and adopt a **strict framework**.

(\*\*see Art. 10 RPBA and [Supplementary publication 1, OJ EPO 2024, 79](#)) 12

## ACCELERATION OF PROCEEDINGS (2/2)

### Boards of Appeal

Art. 10(4) RPBA: If a court [...] requests acceleration of the appeal proceedings, the Board shall inform the court [...] and the parties whether the request has been granted and when oral proceedings, if foreseen, are likely to take place.

Art. 10(5) RPBA: The Board may accelerate the appeal proceedings of its own motion.

Art. 10(6) RPBA: If the Board accelerates the appeal proceedings, it shall give the appeal priority over other appeals. The Board may adopt a strict framework for the proceedings.

### UPC

Rule 298 RoP: The Court may of its own motion or at the request of a party request that [...] proceedings [...] before the European Patent Office be accelerated [...].

UPC-EPO Agreement on data  
exchange between the registers



**THANK YOU FOR YOUR ATTENTION**

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