

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

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

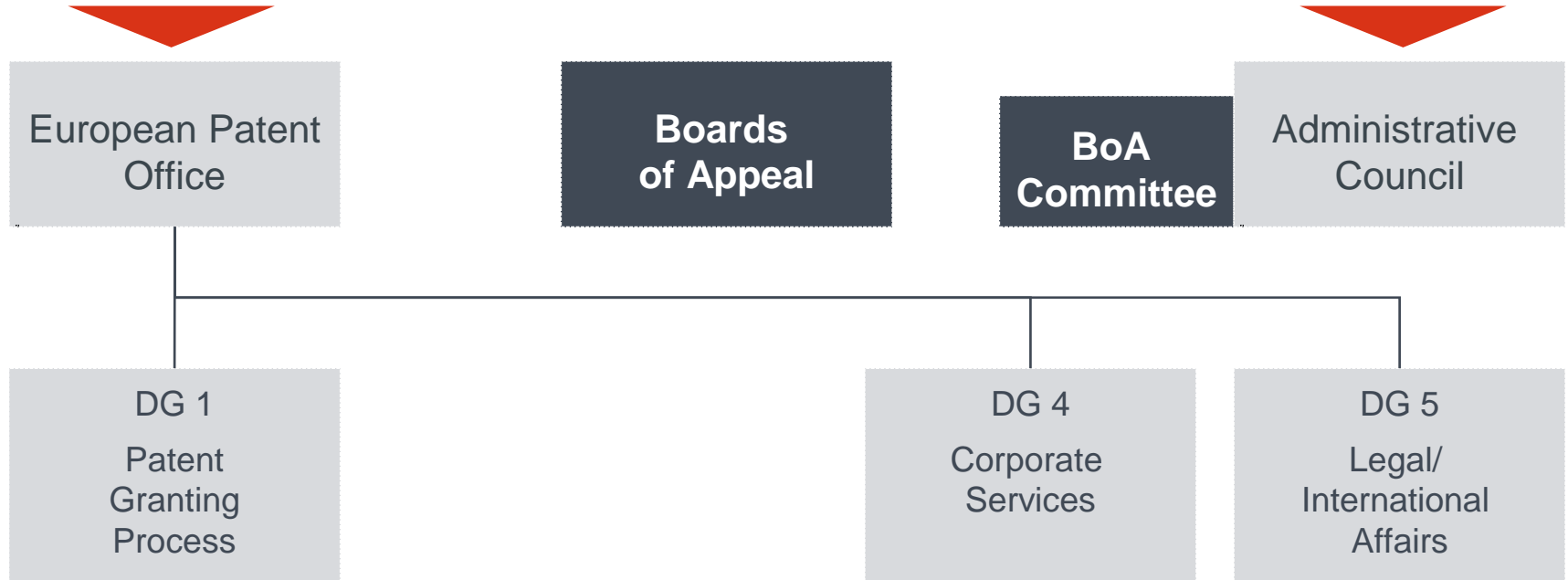
SUMMARY OF MAIN POINTS

- Institutional framework
- Different courts with a shared responsibility

INSTITUTIONAL FRAMEWORK



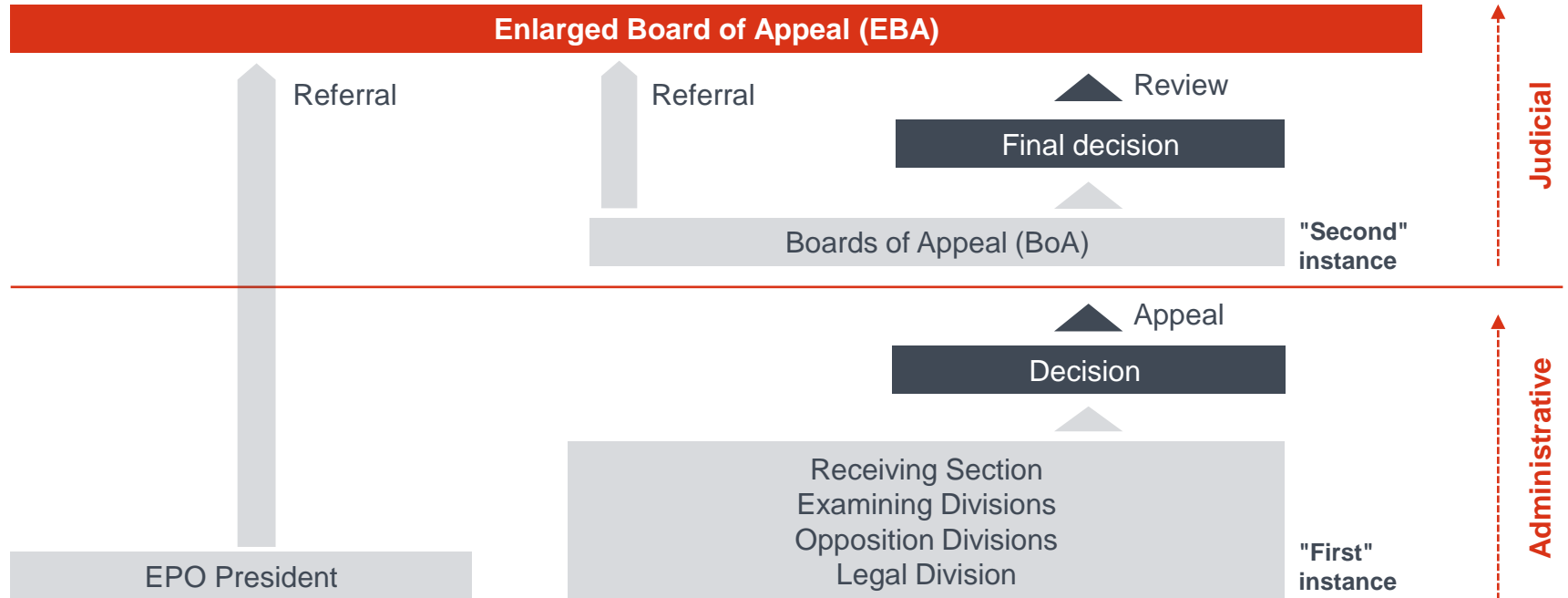
European Patent Organisation

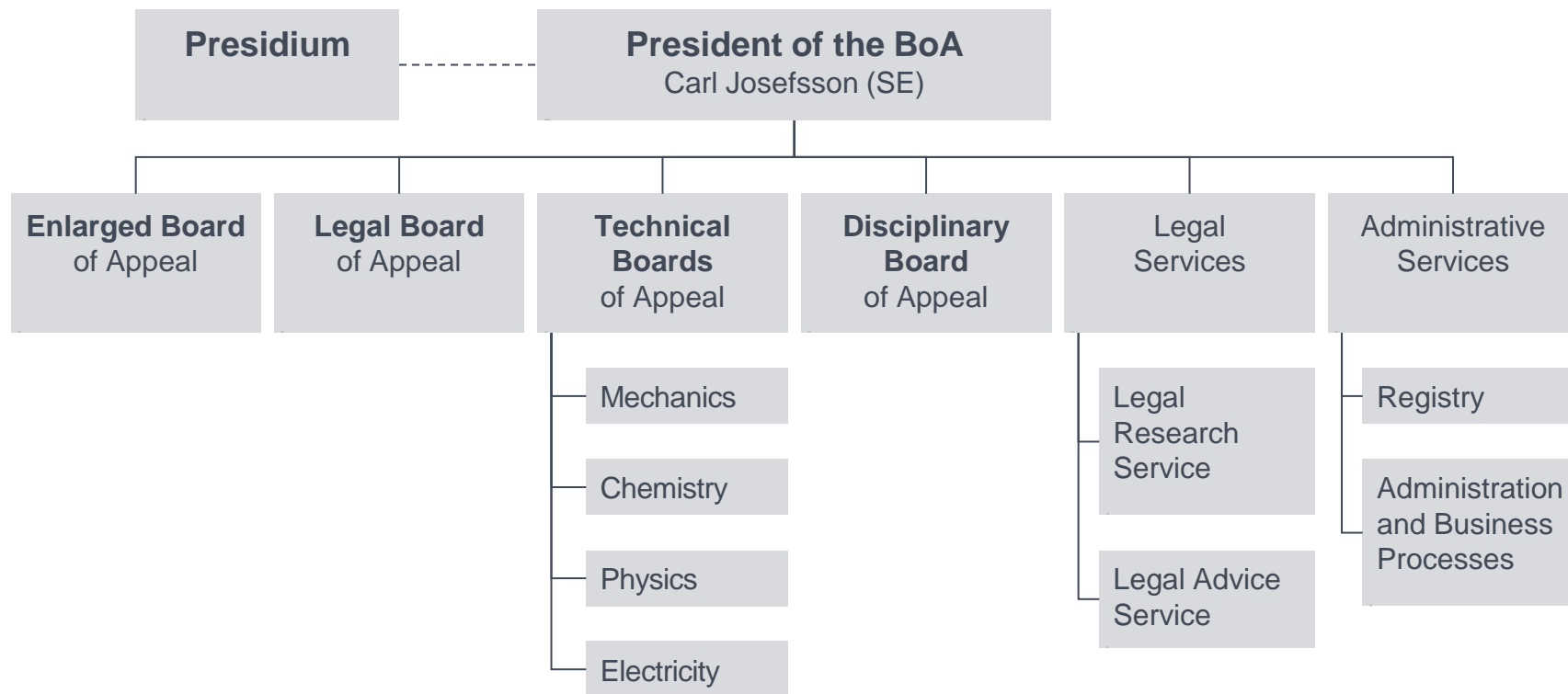


BOARDS OF APPEAL AND ITS JUDICIAL FUNCTION

- 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

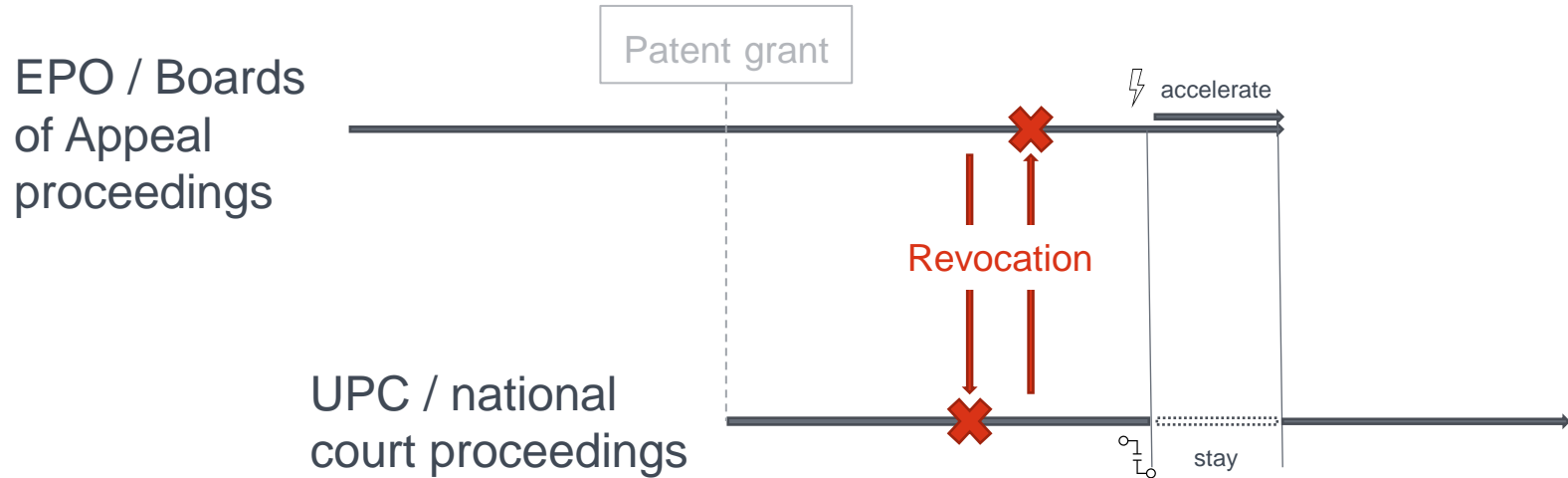




DIFFERENT COURTS WITH A SHARED RESPONSIBILITY



OVERLAPPING AND CONCURRENT JURISDICTION



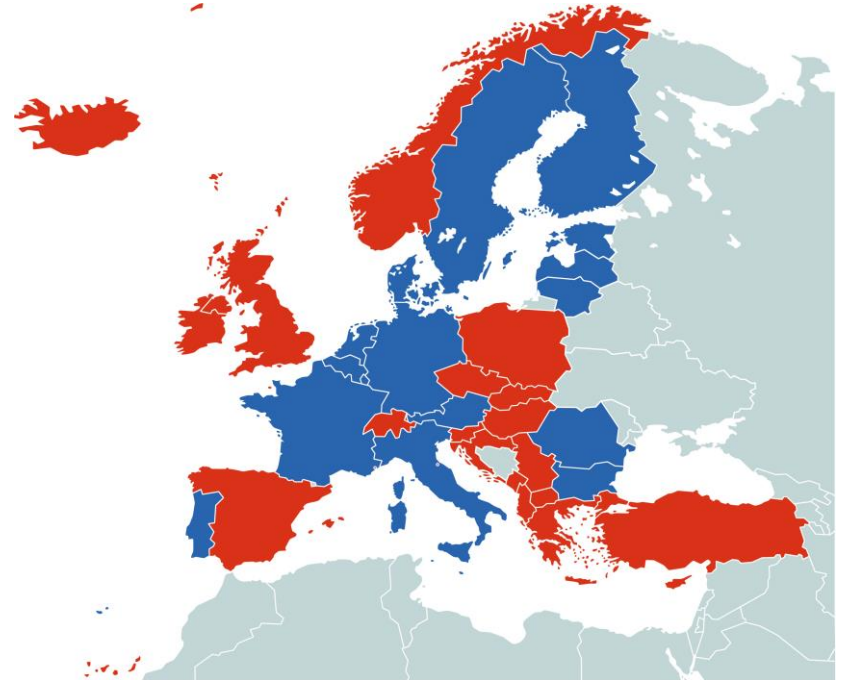
BOARDS OF APPEAL, UPC AND NATIONAL COURTS

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

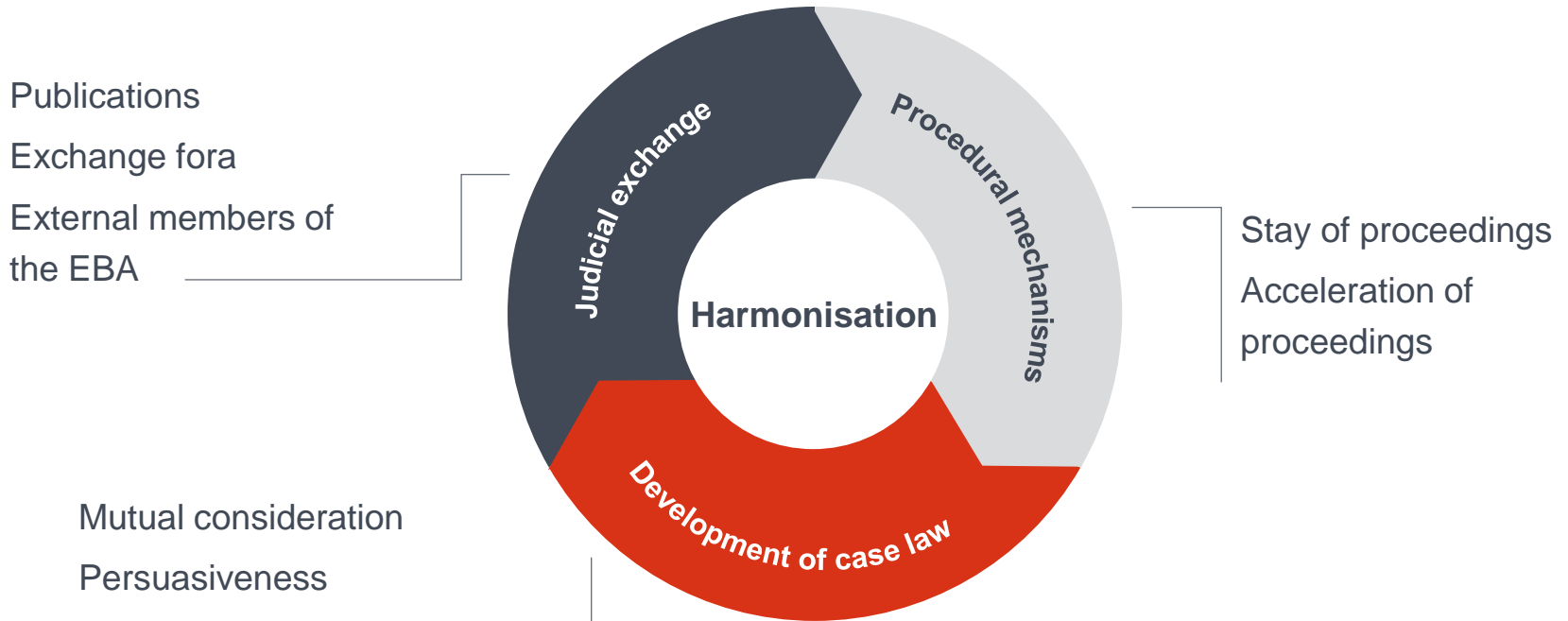
Austria • Belgium • Bulgaria • Denmark • Estonia
Finland • France • Germany • Italy • Latvia
Lithuania • Luxembourg • Malta • Netherlands
Portugal • Romania • Slovenia • Sweden

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
