



European Chemicals Agency (ECHA)

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# ECHA/2022/546: Ex-post evaluation of ECHA's Board of Appeal

Revised final report: Board of Appeal

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## Report for

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## Document revisions

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| 1   | Draft final report | 24/03/2023 |
| 2   | Final report v1    | 31/03/2023 |
| 3   | Final report v2    | 12/05/2023 |
| 4   | Final report v3    | 17/05/2023 |

# Executive summary

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The objective of this work is to analyse the degree of effectiveness, efficiency, proportionality, coherence, added value, relevance, and sustainability of the Board of Appeal (BoA), with the results supporting the European Commission's work on the basic regulation for the European Chemicals Agency (ECHA).

The BoA is an independent body that is responsible for appeals that are filed under the REACH Regulation and the Biocidal Products Regulation. The BoA is composed of 3 members, a chairman, one technically qualified member, and one legally qualified member, that take decisions collectively based on legal, technical, and scientific principles. These members are appointed for a five-year period – renewable once – by the ECHA Management Board based on a list of candidates that is proposed by the Commission, along with alternate and additional members.

This report is based on the following evaluation criteria: effectiveness and relevance, efficiency and proportionality, added-value, sustainability, and coherence. Those criteria were used to guide the analysis of stakeholder responses. The data for this study was collected from responses to the public consultation on the basic regulation of ECHA from autumn 2022, a targeted survey designed by the ECHA internal working group and circulated in early 2023 to stakeholders and follow up interviews performed by WSP of key stakeholder types. The ECHA internal working group also provided inputs regarding the BoA's efficiency in terms of the number of decisions, number of staff, and the duration of appeal proceedings from 2018 to 2022.

Overall, the BoA is found to be effective and efficient in the work it undertakes, and there has been a noticeable increase in the efficiency of the appeals process in recent years. The three-member model of the BoA provides the necessary competences for the work the BoA undertakes, and the members of the BoA have the necessary competences. The Chairman taking decisions alone when appropriate (e.g. inadmissibility decisions) improves efficiency. Appeals proceedings are overall efficient, although there seems to be a few challenges when it comes to filing an appeal.

The work of the BoA is highly relevant and sustainable, and the expertise of the BoA is necessary to ensure that there are checks for the decisions of ECHA. The decisions of the BoA are proportionate. The BoA is found to be an independent body, and irrespective of the outcomes of the appeals decisions (for or against the appellant) there is high trust in the technical, scientific, and legal aspects of those decisions.

## Summary of conclusions made in the evaluation

### Conclusion 1: Improvement of the BoA website

- The website should be revised as it is difficult for stakeholders to find information regarding appeal submission and decisions, especially in the case of historic decisions.
- The file size limit of the BoA email should be increased, again to reduce the need to submit paper copies of documents and hamper the submission process.

### Conclusion 2:

- The presentation of evidence before the BoA should be similar to that of the presentation of evidence before the European Courts
  - When submitting evidence to the BoA, a specific document format must be used that is not always in line with the method of evidence submission with the European Courts. This adds a layer of complexity to appeals submissions and deters

appellants who cannot afford to pay representation for the time it would take to ensure documents are in the correct format.

Conclusion 3:

Further analysis on the processing of appeals should be done to see if the steps the BoA is involved in can be streamlined.

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# 1. Overview

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## 1.1 Project context

The European Chemicals Agency (ECHA) works to implement the EU's chemicals legislation (e.g., REACH, CLP, BPR) to protect human health and the environment. As such, ECHA's organisational structure relies on several Committees and bodies, for example, to provide scientific and technical opinions, supporting decision making within areas of the Agency's legislative mandate. One of these bodies is the Board of Appeal (BoA).

The BoA has the responsibility of deciding on appeals that are lodged against certain decisions of ECHA under the REACH and Biocidal Products Regulations<sup>1</sup>. This process presents the possibility for the affected parties to request an independent review of the decisions taken by ECHA under the two regulations and each appeal is considered on a case-by-case basis. As such, the BoA aims to consider all appeals effectively and efficiently. This, for example, includes ensuring that the rights of all parties in appeal proceedings are fully respected, that impartiality and independence are applied in the decision-making process, and that the scientific, technical, and legal perspectives are fully considered for all appeals. The board consists of a chairman and two other members – one technically qualified and one legally qualified – and each case is decided upon collectively (with the exception that the chairman can decide within a 30-day period of an appeal being filled that the appeal is inadmissible independently of the other two members). These members are appointed for five years by the ECHA Management Board based on a list of candidates that is proposed by the Commission. Their term can be prolonged once for another five years. In addition, the Management Board appoints alternate and additional members who are not staff members of ECHA, but who may be designated to decide on cases whenever a full-time member(s) are precluded to take part in proceedings or whenever appeals need to be processed in a timelier manner.

## 1.2 Objectives of the study

The object of this study is to analyse the degree of effectiveness, efficiency, proportionality, coherence, added value, relevance, and sustainability of the BoA using the Commission's Better Regulation guidelines and toolbox<sup>2</sup> covering ex-post evaluations. The results of this work will support the Commission's implementation work of the Chemicals Strategy for Sustainability.

This work will be done with the Evaluation Coordination Function of ECHA (ECF) and a nominated internal working group (WG) with the findings of the internal WG presented in this report.

## 1.3 Defined terms

- Effective: successful in producing the desired process outputs
- Efficient: having optimised processes and high productivity

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<sup>1</sup> [Who we are - ECHA \(europa.eu\)](https://eucha.europa.eu)

<sup>2</sup> [br\\_toolbox-nov\\_2021\\_en\\_0.pdf \(europa.eu\)](https://br-toolbox-nov-2021-en-0.pdf)

## 1.4 Structure of the report

This report is composed of the following sections:

- Key findings (Section 2),
- Approach to analysis (Section 3),
- Detailed findings (Section 4),
- Identified limitations and gaps (Section 5).



## 2. Key findings

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Overall, the Board of Appeal (BoA) is an impartial and independent body. The BoA is efficient and effective, with stakeholders providing a few areas of the process that could be improved further. Stakeholders do not often encounter obstacles regarding the BoA. The transparency through the decision process could be improved by providing further information to stakeholders following appeals cases (other than parties to the appeal) in the case of non-classified documents. Further information regarding the process (leading to the decision that is contested in appeal proceedings) could be shared with stakeholders to allow them to be more proactive in the future and avoid going through the appeals process if possible. It is important to note that the findings of this study are based on the survey results and stakeholder interviews, which represents 25 total responses.

### 2.1 Effectiveness and relevance

The BoA is effective at performing its tasks. The BoA has the necessary competences to complete all tasks, and the three members structure of the Board ensures the necessary competences for all decisions. It was found that having a technically qualified member on the board is essential for the execution of tasks. The decisions of the BoA are to some extent clear, complete, and conclusive, with the need for further elaboration and specification indicated by several stakeholders in surveys and interviews. The work of the BoA is highly relevant, as it ensures that the work of ECHA is of high scientific and legal quality.

### 2.2 Efficiency and proportionality

The BoA is efficient at performing its tasks. Internal data suggests (with some uncertainty) that there has been an increase in efficiency in 2021-2022 when compared to 2018-2019, which was also reflected in stakeholder responses to surveys and interviews. The stakeholders broadly agree that the oral hearings are beneficial (including if they are remote). However, the outcomes of cases sometimes take too much time to be published. Stakeholders noted in survey and interview responses that while there has been an improvement in the timeliness of decisions, the timeline does not always align well for legislators or appellants. The presentation of evidence to the BoA differing from the European Courts was cited as a factor that reduces efficiency. The website for the BoA is found to be challenging to navigate to submit an appeal and find previous decisions.

### 2.3 Added value

The stakeholders who responded to the targeted survey noted overall a high level of trust in the decisions of the BoA. The European Courts upholding and aligning with the decisions of the BoA strengthens the trust in the BoA as a working body. The BoA overturning decisions of ECHA when appropriate increases the appellants trust in the BoA and increases the likelihood of appellants filing appeals when there are concerns with outputs from ECHA.

### 2.4 Coherence

The work of the BoA positively influences trust in ECHA for some stakeholders. The outcomes of appeals show the BoA's independence and scientific, technical, and legal knowledge is of a high calibre, even for stakeholder's who have lost an appeal. The work of the BoA is critical in maintaining checks and balances with the work of ECHA.

## 2.5 Sustainability

The work of the BoA will remain relevant in the evolving policy context, such as the CSS. Nevertheless, the changes in the REACH Regulation will be a determining factor of the tasks remaining relevant for the BoA as these changes could create new challenges. That BoA's current working method is sustainable. The stakeholders who responded to the survey and interviews want to ensure the BoA continues to be an integral part of the greater ECHA working body.

## 2.6 Conclusions

Stakeholders find that the work of the BoA is a critical part of the ECHA working body and the check it places on ECHA decisions is integral to the continued trust from outside groups on the work ECHA is doing. The BoA should continue to operate at the high legal, technical, and scientific standard that it has been. Further analysis on the processing of appeals should be done to see if the steps the BoA is involved in can be streamlined.

It is also recommended that the BoA website be updated to ensure that stakeholders can easily access information. Appellants do not find that the website is easy to navigate or find critical information regarding submissions or decisions. It is noted that in autumn 2020 there was a change to the BoA website that included the use of a dedicated webform for submissions in appeal proceedings. Following this, the maximum file size allowable by the webform is 300 MB in total per submission. The file size limit of the BoA email should also be reviewed, as documents are usually over the size limit and submission of paper copies of documents can hamper the submission process.

Finally, it may be important that the presentation of evidence before the BoA is similar to that of the presentation of evidence before the European Courts. When submitting evidence to the BoA, a specific document format must be used that is not always in line with the method of evidence submission with the European Courts. This not only adds a layer of complexity to appeals submissions, but also deters appellants who cannot afford to pay representation for the time it would take to ensure documents are in the correct format.

## 3. Approach to analysis

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All views in this report are those of the stakeholders and do not reflect the views of WSP.

### 3.1 Targeted survey on BoA

ECHA launched a targeted survey to gain feedback on BoA from a variety of stakeholder types. The responses of this survey were sent to WSP to analyse the responses to gain information regarding the operation of BoA. The evaluation criteria used in this report focus on the effectiveness and relevance, efficiency, and proportionality, added value, coherence, and sustainability of BoA. The questions were first identified as closed or open. All closed questions were graphed to understand the breakdown of responses visually. All possible responses to the closed questions are shown in the graphs.

Attention was paid to the breakdown of stakeholder type. Responses are broken down by stakeholder type, and when relevant stakeholder type is noted in the analysis.

The closed questions were matched to the evaluation criterion they addressed, and the open question responses provided further context as to the responses of some stakeholders. In some cases, the open question response addressed multiple aspects of the evaluation criterion, and each part of the response was critically assessed.

There were 30 total respondents to the BoA survey, however five indicated they are not familiar with the BoA and its work, leaving only 25 responses to analyse. Of these 25, 10 respondents indicated that they have not been involved with the appeals process but have had other experiences with the BoA, such as one Member State competent authority (MSCA) who noted rather the learnings from the BoA during their time in the Member State Committee (MSC).

### 3.2 Public consultation

The Commission launched a public consultation from 12 September 2022 to 10 October 2022 which covered a basic regulation for ECHA, and the feedback is available online<sup>3</sup>. The basic regulation covered not only making the financing of ECHA more stable but streamlining the working methods of ECHA bodies (including the BoA) and adapting to ECHA's future role. Each response was moved into an excel spreadsheet for further assessment. Responses that were not provided in English were translated. Responses that were in attached PDFs (uploaded by the respondent) were summarised in the spreadsheet. The key comments and themes were highlighted in each response, focusing on facts versus opinions to understand how the implementation of a basic regulation would impact ECHA and its bodies, as well as the public's trust and connection to ECHA. The findings were distributed per evaluation criterion (effectiveness, relevance, efficiency, proportionality, added value, coherence, and sustainability). The information regarding BoA is included within the key findings, in Section 2, and all detailed findings are provided in Section 4.

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<sup>3</sup> [European Chemicals Agency – proposal for a basic regulation \(europa.eu\)](https://european-chemicals-agency-proposal-for-a-basic-regulation.europa.eu)

### 3.3 Stakeholder engagement

Stakeholder engagement was undertaken to probe stakeholders for further information, with an emphasis on inconsistencies and gaps found in the preliminary report by WSP and the internal work done by the ECF and WG at ECHA. The questions were designed to highlight these areas and can be found in a separate document 'Interview guide: BoA' located in Appendix A. WSP completed interviews with stakeholders that included five different law firm representatives, which were classified as "regular stakeholders". WSP was only able to complete those five interviews for BoA, as the remaining stakeholders who were contacted for further comment did not respond to the invitation. The stakeholders who did not respond were chased a minimum of 3 times for further engagement.

The information gained from these interviews has been anonymised for the purpose of this report. Any information that comes from a stakeholder interview is noted as such.

### 3.4 Further data

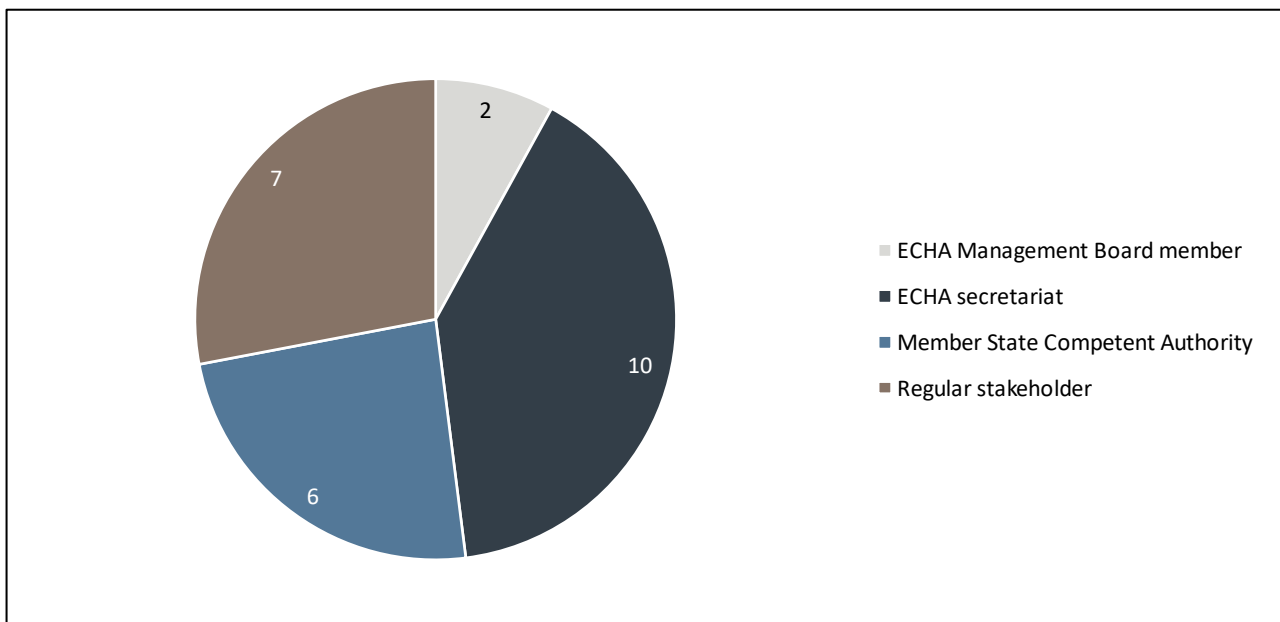
The ECHA internal WG ran a parallel analysis of the BoA from 2018-2022 to understand efficiency in terms of duration of each appeal, number of staff, and duration of appeal proceedings. Full details on this analysis and associated information can be found in Appendix C.

## 4. Detailed findings

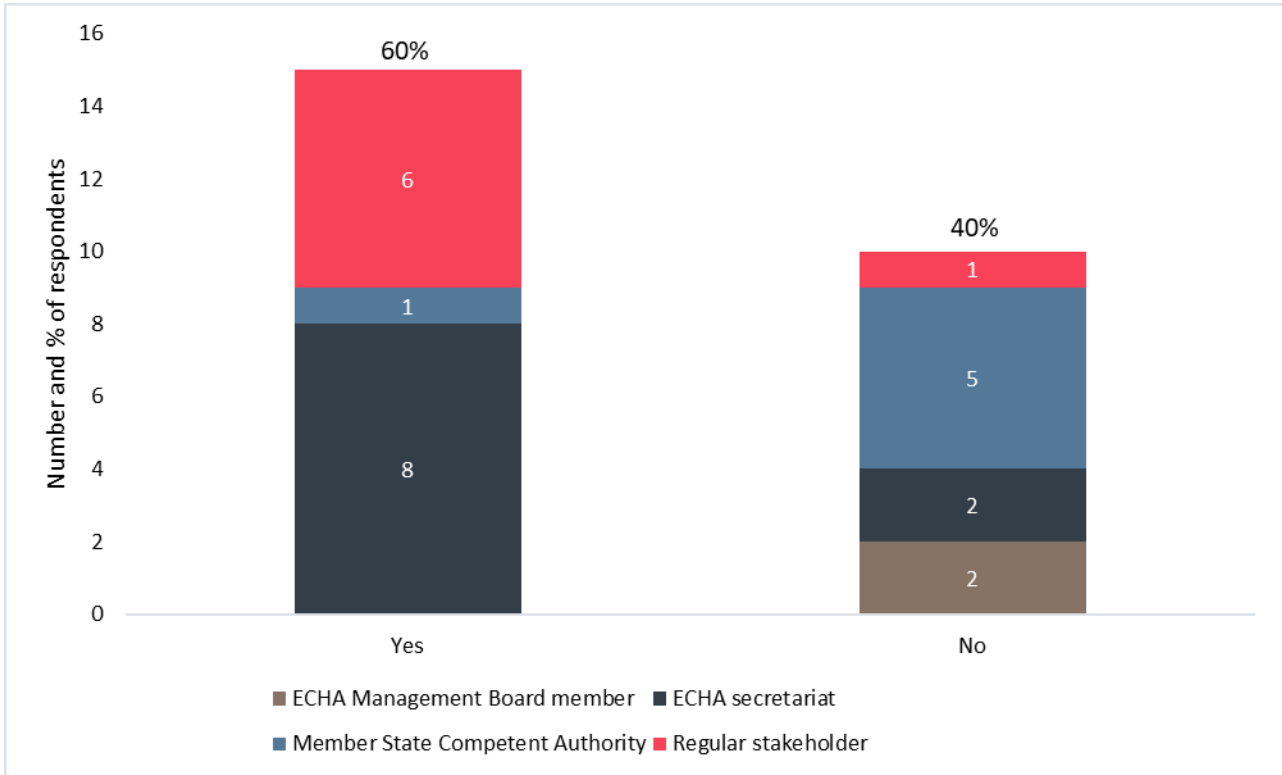
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The majority of respondents to the BoA targeted survey were ECHA secretariat (ten), followed by six MSCA, seven regular stakeholders (three from law firms, three economic operators, and one other NGO), and two ECHA management board members (Figure 1). Of the stakeholders who responded to the targeted survey, 15 of the 25 have been involved in proceedings before the BoA (Figure 2).

**Figure 1. Breakdown of stakeholder types.**

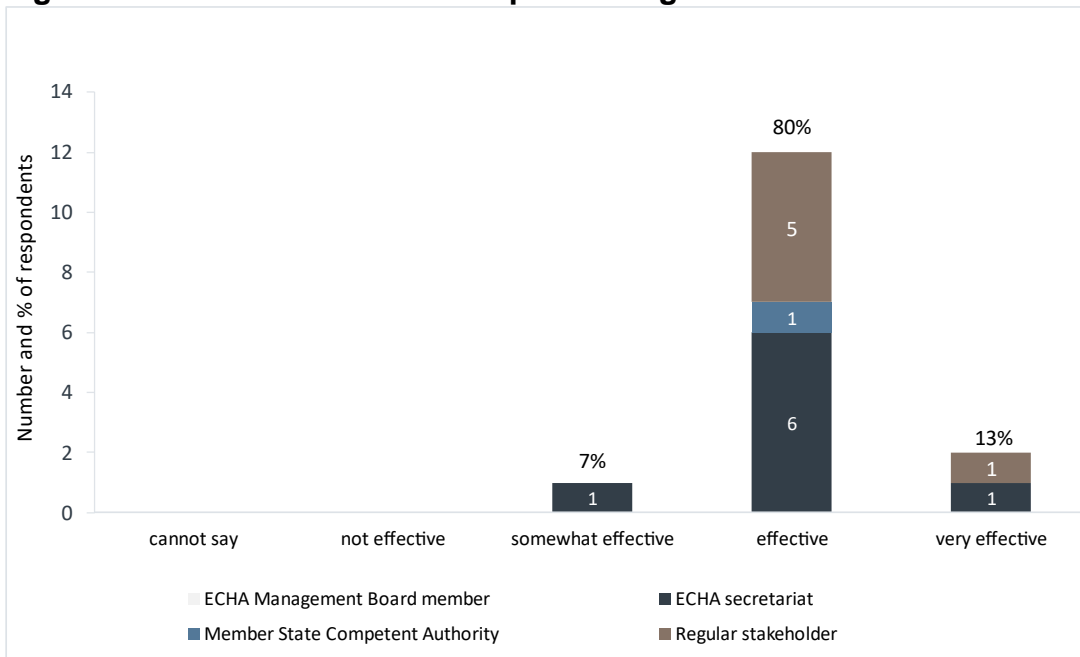


**Figure 2. Breakdown by respondent type of number of respondents who have been involved in the BoA proceedings before.**



## 4.1 Effectiveness and relevance

**Figure 3. How effective is BoA in performing its tasks?**



Overall, respondents found BoA to be effective or very effective at performing its tasks (93%). No respondents said the BoA was 'not effective'.

The ECHA secretariat member who considered the BoA to be very effective, responded that the decisions of the BoA have been crucial for setting the direction for ECHA particularly through corrections of where ECHA has gone wrong. Of the respondents who marked that BoA is 'effective', one ECHA secretariat respondent said that the BoA has become more effective in its tasks after the appointment of the new chairman, whereby decisions have been previously taking between 18 and 22 months. According to the same respondent, one of the reasons as to why this has been made possible is the fact that the Chairman has not hesitated to declare an appeal inadmissible under Article 93(2) of the REACH Regulation. This will, however, be dependent on the cases that are presented in front of the BoA (e.g. there may have been less inadmissible cases with the previous Chairman). Another ECHA secretariat respondent noted that they view the BoA as 'effective' although they noted that the legal interpretation on certain definitions and principles (not further elaborated) could be improved, as they could influence processes that the BoA has no powers over. As it is left to the ECHA secretariat to consider decisions of the BoA, having a clear legal interpretation from the BoA could improve future actions on decisions. Another ECHA secretariat respondent commented that the BoA sometimes lacks a broader understanding of the appeals, that it should refrain from general statements, and that it should consider if the quality of a particular decision has been impaired by an error of assessment of the BoA (although examples of such errors were not given by the respondent). At the same time, two law firm representatives said in the interviews that members of the Board do not lack any types of knowledge and skills necessary to execute their tasks. The MSCA respondent commented that the BoA and the Member State Committee (MSC) would benefit from the continuation and development of the exchange of experiences, whereby updating the MSC on specific cases has been appreciated in the past. Furthermore, they said that aspects such as BoA processes, outcomes, shortcoming, and progress over the last 10 years could be presented to MSCA (possibly through the MSC) to improve the understanding of the work of the BoA. Finally, one stakeholder who self-reported to be a part of "Other NGO" commented that cases take too much time sometimes, which happens particularly after an oral hearing. In the public consultation, one respondent stated that BoA offers an effective and balanced remedy.

The following comments address Figure 4 and Figure 5. The stakeholders responded that the BoA decisions are 'to a large extent' independent from conflict of interest and impartial. The one MSCA respondent that has been involved in appeals proceedings before the BoA, suggested that the composition of the BoA only having three members with voting rights seems to make the body vulnerable to the risk of partiality and/or conflict of interest but responded 'cannot say' to both closed questions. They further elaborated on this remark by saying that they do not know how the other nine alternate/additional members<sup>4</sup> are practically involved in BoA's work, and they do not know what the level of agreement among all BoA members has been before voting on a decision. They had the impression that decisions might be taken based on diverging views and referred to a column in Chemical Watch<sup>5</sup> which noted that there were legal disagreements during the 10 year period prior to 2018. The article in Chemical Watch notes that these disagreements did not impact the stakeholder view of the BoA's independence, and if anything, the decisions of the BoA demonstrated genuine independence. At the same time, during their interviews, three law firm representatives said that the three-member model adds a lot of value and uniqueness (due to the technically qualified member) to the BoA. However, one of them expressed concerns about certain limitations from the vote by consensus. Namely, their concern was that if one of the three members has a different position than the other two, that will not be enough to change the outcome of the decision, regardless of the quality of this one position. Additionally, one MSCA respondent said in the public consultation that whilst the BoA plays an important role in ECHA, it still has limited scientific capacity. As such, the MSCA responded added that in their opinion, the Board should not be able to reject unanimously agreed upon decisions by the MSC because that committee is comprised of scientific experts from the whole European Union. Another MSCA respondent who

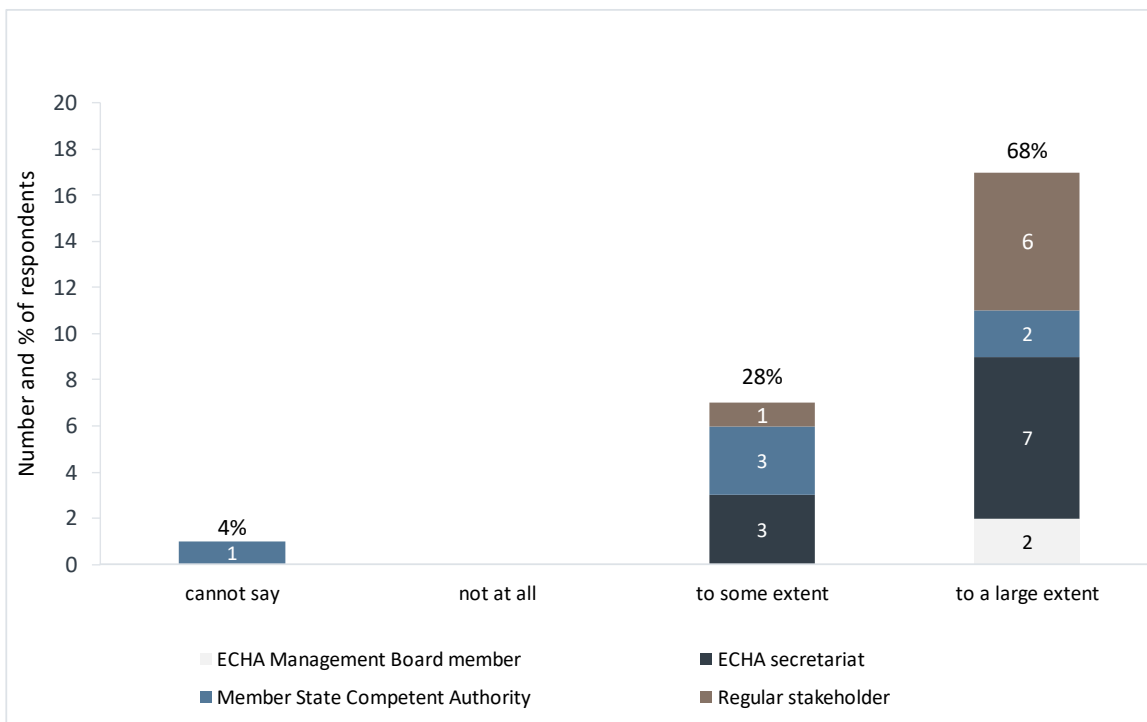
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<sup>4</sup> Referring to the members listed on ECHA's website: <https://echa.europa.eu/about-us/who-we-are/board-of-appeal/the-board-of-appeal/the-list-of-the-members-of-the-board-of-appeal-and-the-alternate-additional-members>

<sup>5</sup> [6ca94942-4fe9-864d-9286-c8f73531f002 \(europa.eu\)](https://www.chemicalwatch.com/6ca94942-4fe9-864d-9286-c8f73531f002)

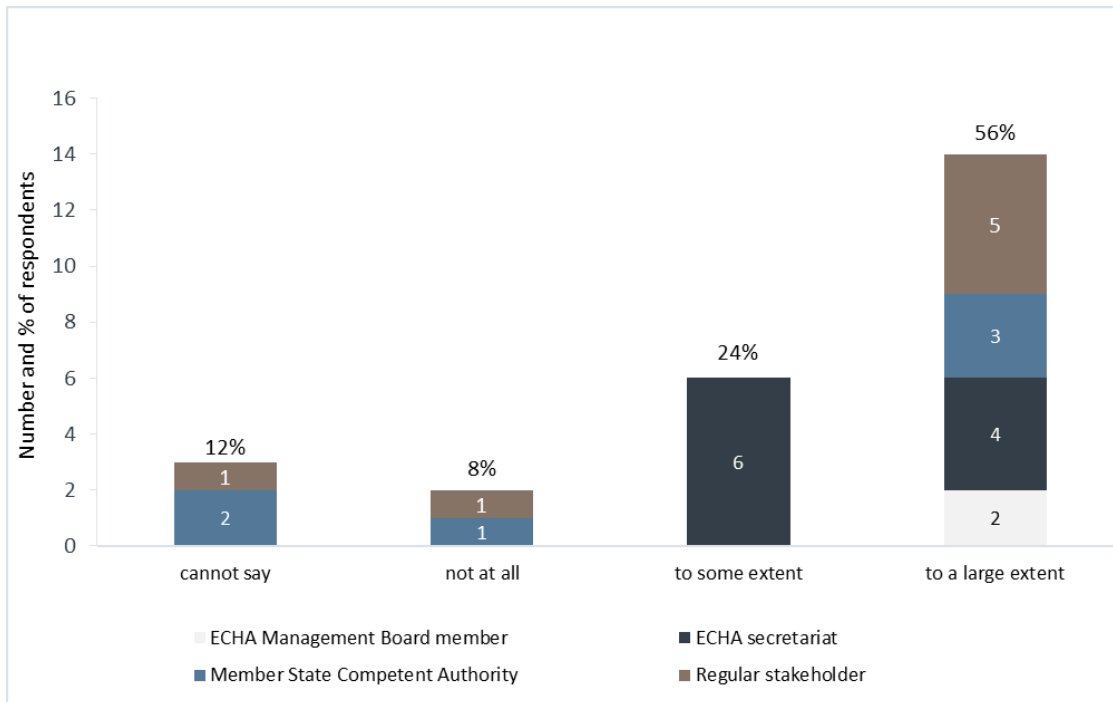
has not been involved in appeal proceedings responded, ‘to some extent’ and left further comment that the BoA appears to be isolated from ECHA and the rest of the regulatory community in an attempt to remain independent, and this is seen as an issue. When asked in interviews, all stakeholders responded that they find the decisions of the BoA to be independent from conflict of interest and impartial and noted that these features are crucial to appellants. The stakeholders from law firms responded in their interviews because the BoA continues to be impartial and independent, the appellants have a higher trust in the outcomes of appeals and are more willing to continue using the BoA.

**Figure 4. To what extent do you agree with the following statements: BoA decisions are independent from conflict of interest.**



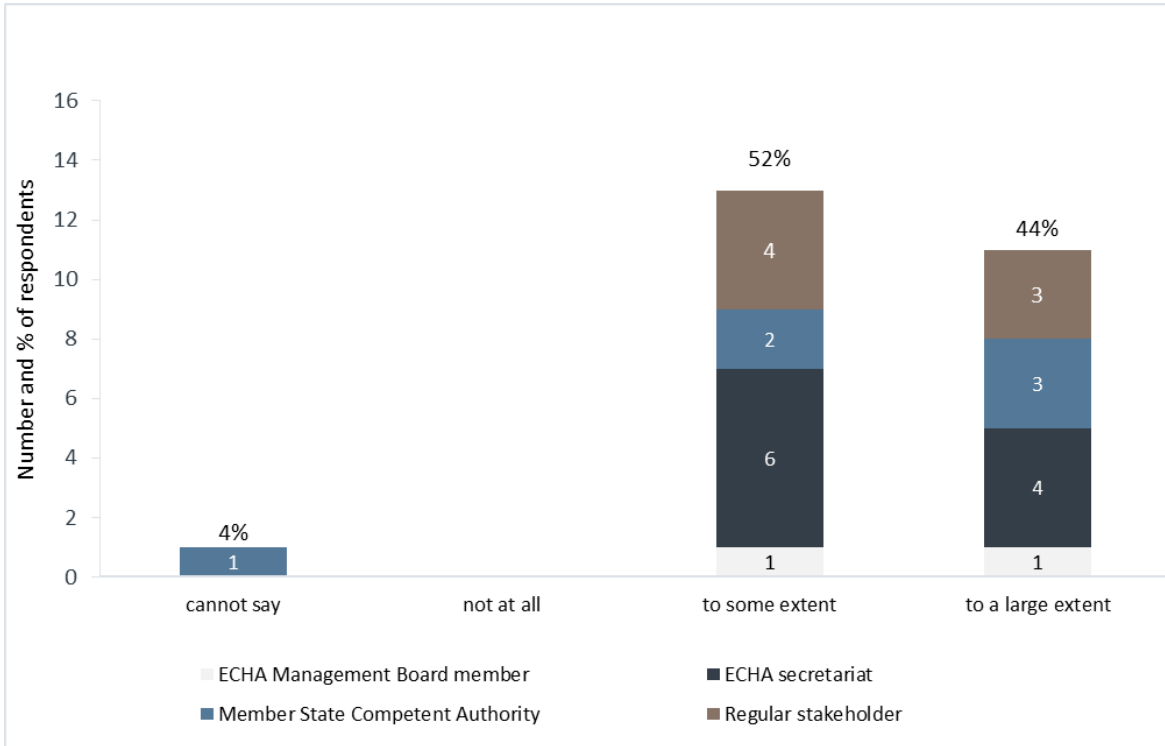


**Figure 5. To what extent do you agree with the following statements: BoA decisions are impartial.**

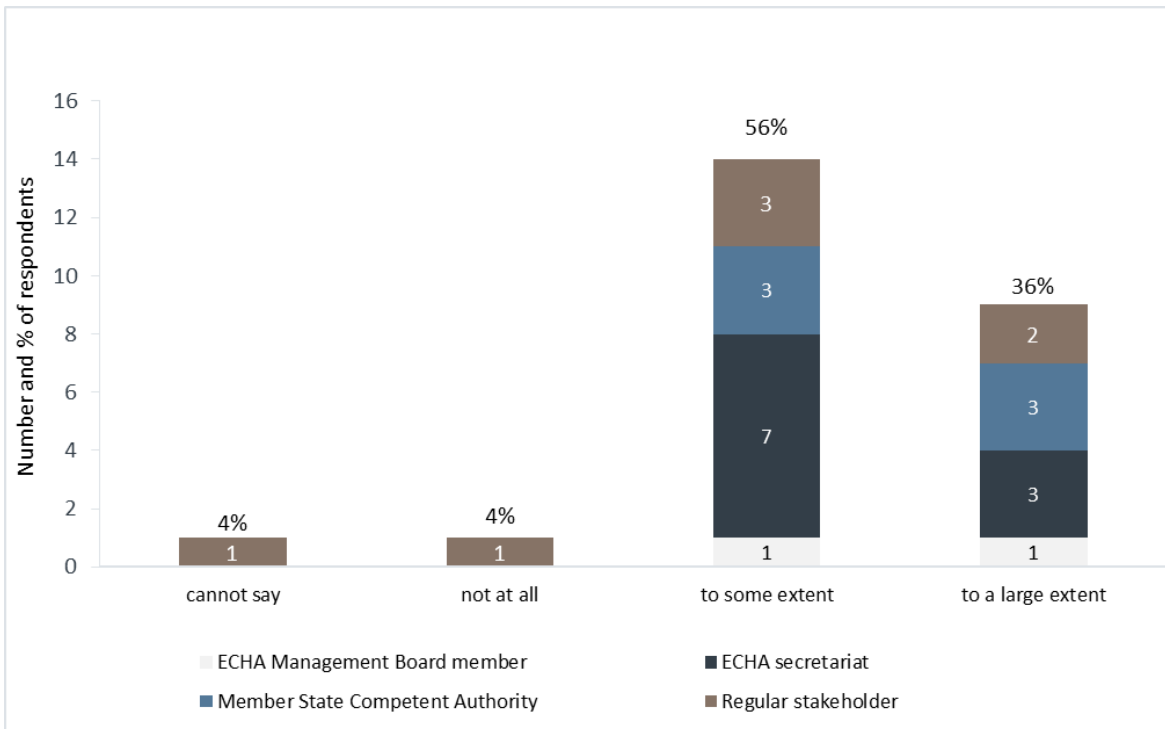


When addressing the clarity, completeness, and conclusiveness, views were broadly shared, with 52% to some extent followed by 44% to a large extent. (Figure 6 and Figure 7). One ECHA secretariat respondent suggested that the language is often highly technical and there needs to be a greater emphasis on clarity in the writing. One law firm representative answered in their interview that the decisions of the BoA are both clear and complete. On the other hand, another law firm representative expressed that in their view while decision might be clear, they are not necessarily complete as some points made in the decisions need further specification. The law firm representative noted as well that when it comes to scientific disagreements, they find the BoA more often agrees with ECHA’s position. However, all law firm representatives said that they find the legal aspects to be clear, complete, and conclusive.

**Figure 6. To what extent do you agree with the following statements: BoA decisions are clear.**

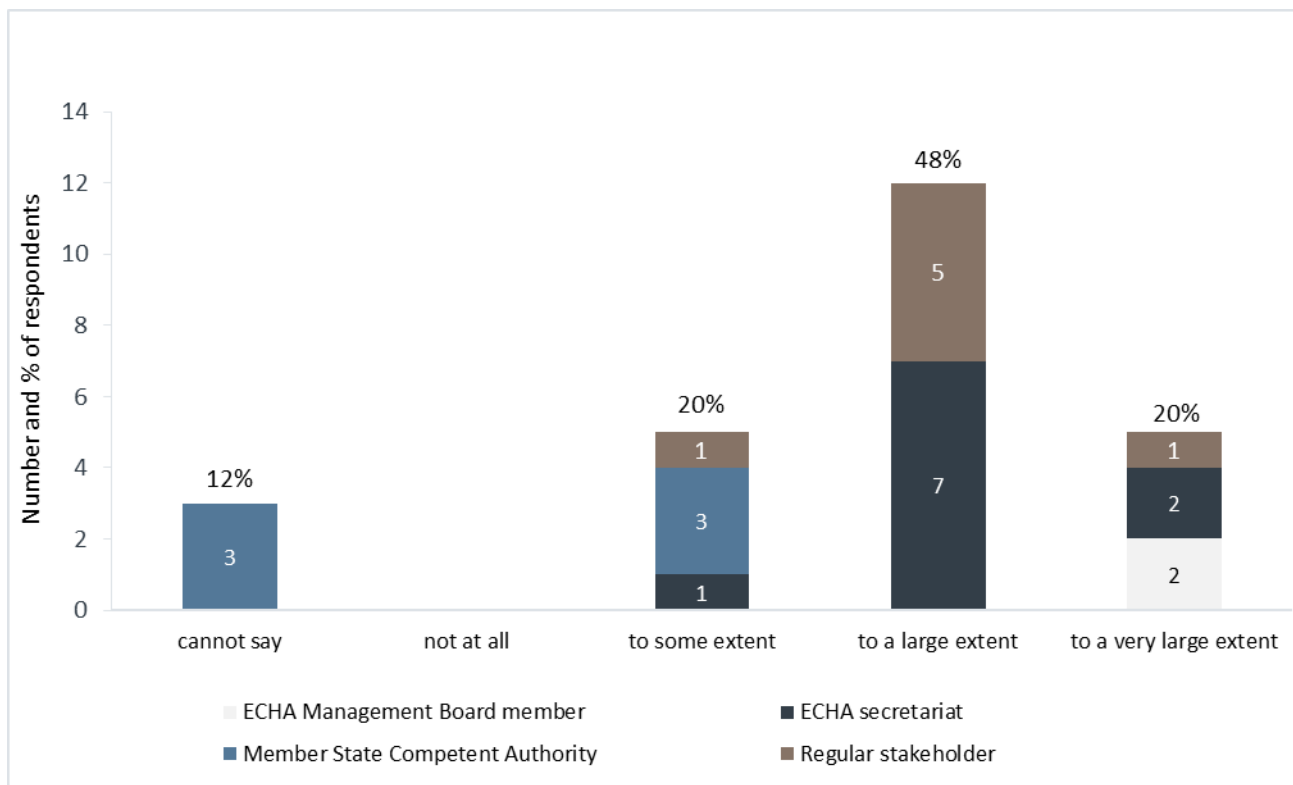


**Figure 7. To what extent do you agree with the following statements: BoA decisions are complete and conclusive.**



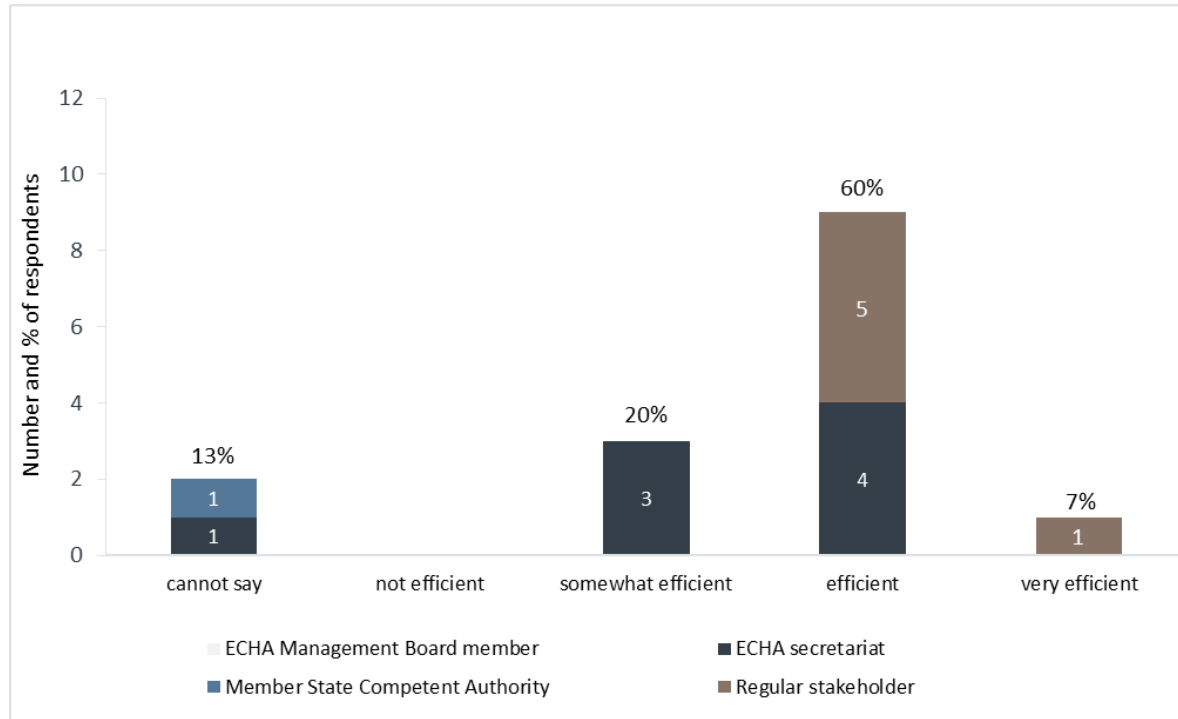
Most stakeholders responded that the BoA has the necessary competences to execute its tasks ‘to a large extent’ or ‘to a very large extent’ (68%) (Figure 8). Three of the ECHA secretariat members who responded with “to a large extent” left further comments. One said that the BoA can never possess the full scope of competencies that ECHA has. Another was wondering whether the BoA can seek external expertise whenever this might be needed while the third mentioned that there is a lack of understanding of certain processes within the BoA (but that this can be remedied with trainings). The ECHA secretariat member who noted ‘to some extent’ said that having only one technically qualified member may not be enough to tackle more controversial and difficult topics related to multidisciplinary science. An additional comment was included by a stakeholder who identified themselves as being from a law firm and who responded with “to a large extent”. Namely, they responded that the current system of placing large decision-making responsibility on the European Commission is highly inefficient, that it creates legal uncertainty, and that judicial protection is inadequate. As such, they said that they would welcome the BoA receive additional competences and a revision of the REACH Regulation whereby ECHA would be charged with additional decision making subject to BoA appeals.

**Figure 8. Does BoA have the necessary competences to execute its tasks?**



## 4.2 Efficiency and proportionality

**Figure 9. How efficient is BoA in performing its tasks?**

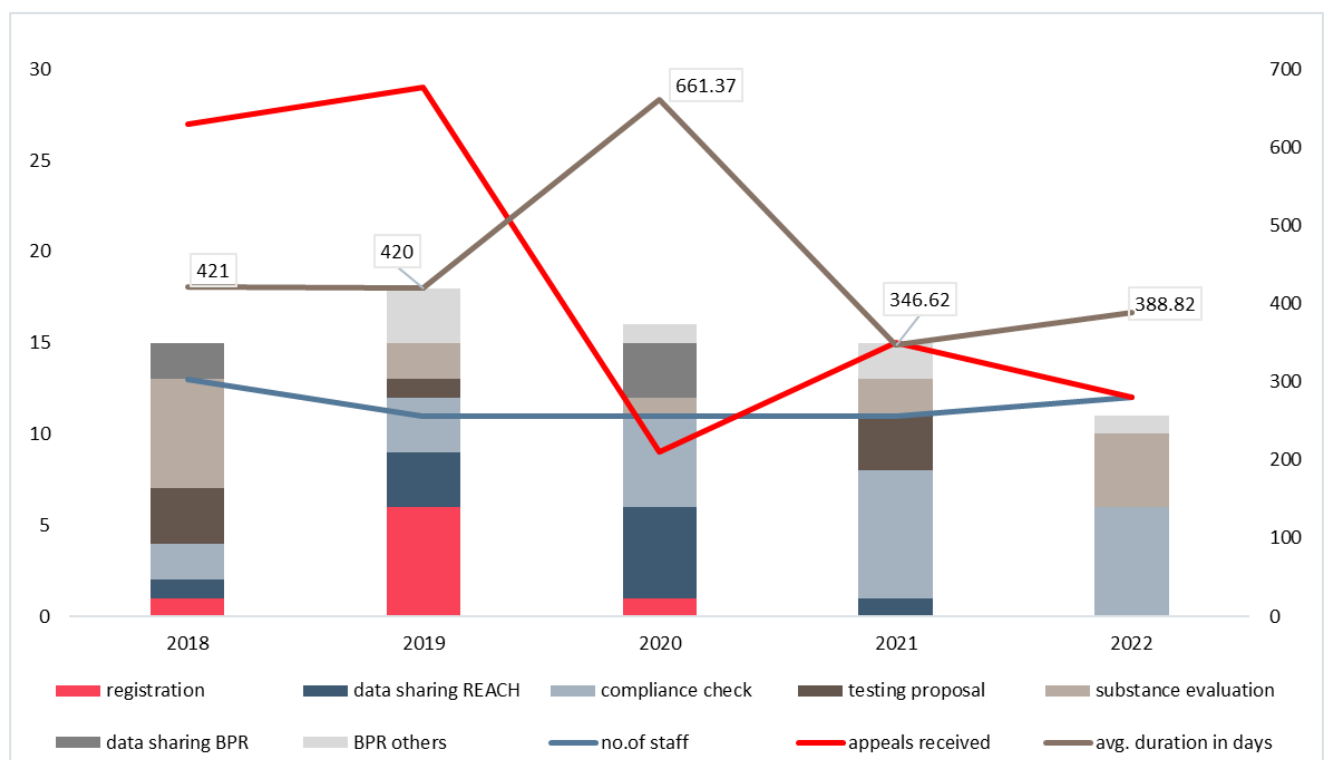


Most respondents find BoA to be ‘efficient’ or “very efficient” at performing its tasks (67%), with no respondents choosing ‘not efficient’. Two ECHA secretariat respondents who thought that the BoA is efficient commented that occasionally the process has been slow after an oral hearing, and that the second round of the written observations are not needed because the parties tend to repeat their previous arguments. The two ECHA secretariat members who thought that the BoA is somewhat efficient at performing its tasks commented that the proceedings take long, that the oral hearings are heavy, and that some decisions are delayed because it seems like they are not bound by a timeline. The ECHA secretariat member who could not say how efficient BoA is in its tasks said that they had chosen that answer as it was difficult to judge BoA’s efficiency since the number of cases have decreased while the staff has remained the same. However, this respondent did not elaborate further on their answer by considering whether the complexity of the current cases has also been an important factor. Two of the regular stakeholders who considered BoA efficient left additional comments. One was from an economic operator who said that submitting appeals is very formalistic, outdated, and environmentally harmful as they sometimes must send very long reports (above 1000 pages) in printed format. The regular stakeholder identified themselves as being from “Other NGO” and referred to their previous comment on the effectiveness of BoA, whereby they said that cases take too much time sometimes, which happens particularly after an oral hearing. At the same time, in an interview, one representative of a law firm said that they appreciate the fact the BoA requests an oral hearing more often than in the past and that they would like to see oral hearings occur more often. They also suggested holding mediation meetings whereby the BoA and stakeholders could discuss possible options for settlement between them. Moreover, another law firm representative mentioned that remote oral hearings have worked well, bringing additional flexibility, even though they do not want all hearings to be remote.

## Further data on the efficiency of the BoA

The ECHA internal WG conducted an analysis regarding the efficiency of the BoA in parallel to the work done by WSP. The below chart (Figure 10) includes all BoA decisions for the period 2018-2022 for all processes for which BoA is competent. The type of ECHA decision (i.e., registration, substance evaluation, data sharing under REACH or Biocidal Products Regulation (BPR), compliance checks, testing proposal, and BPR others) appealed is indicated. All decisions with which an appeal case was concluded are taken into account in the data presented. This includes all decisions adopted either by the BoA or its Chairman, where the decisions relate to the closure of the case following withdrawal of the notice of appeal (most often after the Executive Director has rectified the decision contested with the appeal) or decisions declaring an appeal to be inadmissible. Procedural decisions (e.g. on applications to intervene) are not included in this overview.

**Figure 10. Statistics on appeal decisions by the BoA (provided by ECHA).**



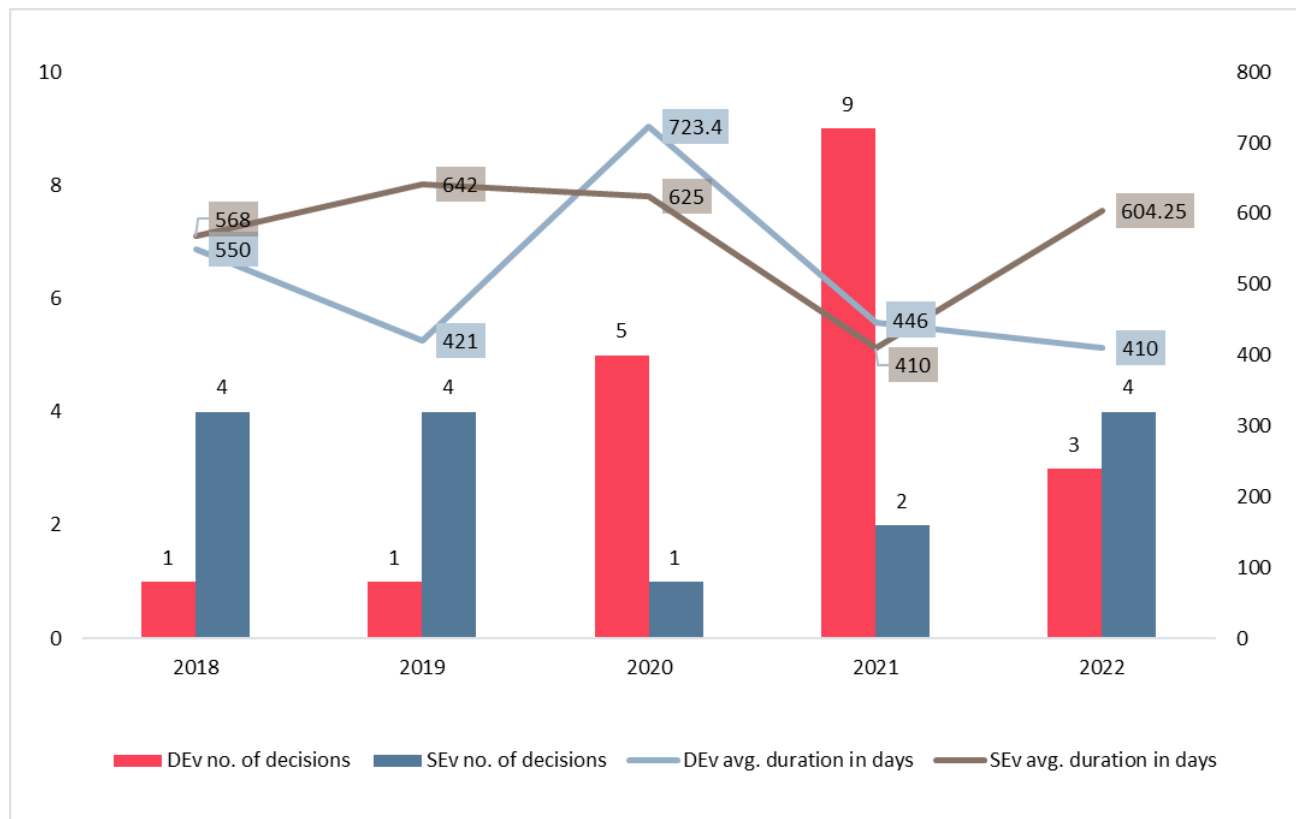
\*The left vertical axis is used for this graph with the exception of the brown avg. duration in days line which is associated with the right axis and has values attached for ease. The bar chart represents appeal cases that are were closed during the noted calendar year, while the red line indicated the number of appeals submitted during the calendar year.

From the data in Figure 10, the average time spent per decision adopted in appeal cases has been the highest in 2020, due to Covid restrictions and an incomplete BoA composition as there were changes necessary in the BoA members' composition. The time per case decreased in 2021 and 2022 by an average of 13% compared to the years 2018 and 2019. The resources have remained mostly constant. The number of decisions decreased from an average of 16 decisions for 2018-2021 to 11 decisions in 2022. It needs to be noted that the appeal process spans more than one year taking into account the procedural steps prescribed by law.

The average duration of appeal proceedings in days is also presented in Figure 11, using dossier evaluation (DEv) (compliance checks and testing proposals) and substance evaluation (SEv) appeals as an example. The calculation of the duration of an appeal is taken from the date of the lodging of the appeal to the date of the final decision in the case, i.e. the decision concluding the

appeal case. The calculation does not take into account instances where an appeal was stayed (i.e. suspended) e.g. while waiting for the conclusion of a similar case lodged before the Court.

**Figure 11. Average number of days per decision and number of decisions for DEv and SEv appeals (provided by ECHA).**



\*The left vertical axis is the scale for the bar chart, while the right vertical axis is the scale for the line graph.

The data on SEv appeals appears to not clearly indicate an efficiency trend, since there was a certain decrease of the time in 2021 which appears to increase in 2022. However, in 2021 there were only two SEv decisions. For one of the decisions, the case duration was 606 days which is consistent with the duration of cases in previous years. The other case, which had a duration of 214 days, was an exceptional case due to the nature of the appeal lodged, for example no hearing or second round of written observations were necessary. Excluding the exceptional case, the trend is towards a slight decrease in the duration of the processing of SEv cases by BoA.

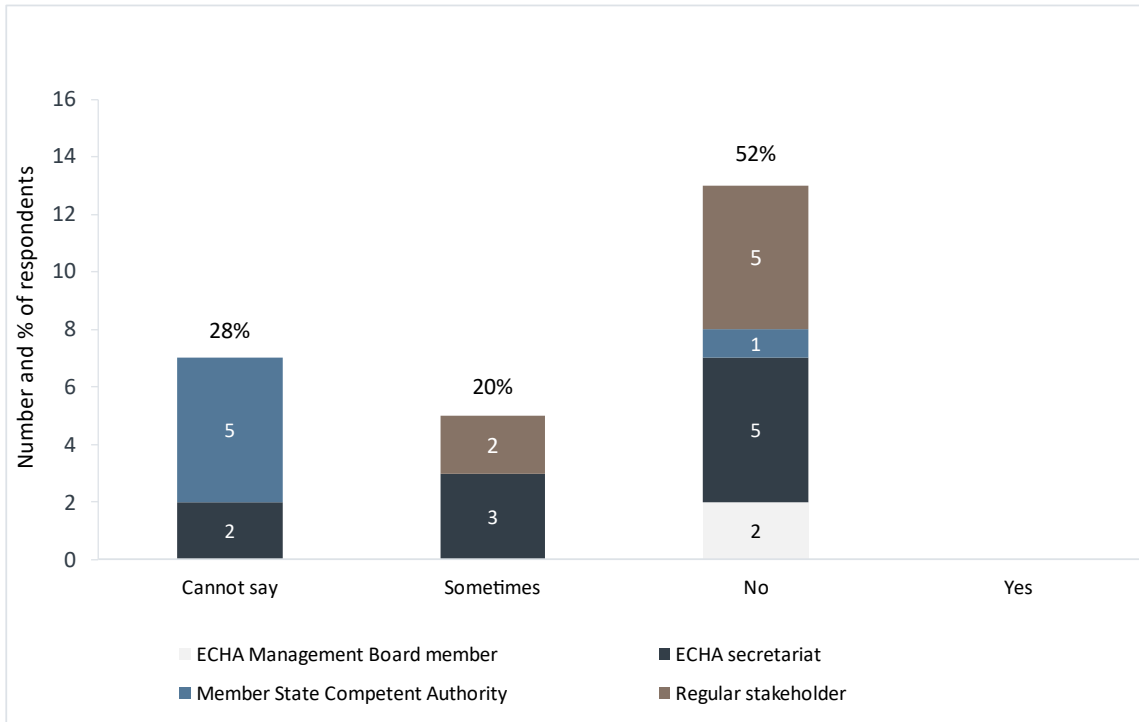
Certain considerations should be taken into account when considering this data, including certain decisions concluding a case are adopted by the Chairman alone and in certain situations (e.g. the absence, in case of conflict of interest or illness of a BoA member or a vacant post) it will be necessary to use alternate members who are not staff members of ECHA, and do not carry out tasks related to appeals as a part of their usual occupational activity.

Moreover, over the years, the Board of Appeal has proven itself as being a valuable decision-making body, adding to the efficient and effective implementation in the regulatory frameworks under REACH and Biocidal Products Regulations. To illustrate this, thus far, the Courts have confirmed all the decisions of the Board of Appeal which were challenged before them. The Courts have also followed the Board of Appeal's legal interpretation on a number of issues. Based on the internal statistics on the throughput time for all appeal cases, there appears to have been some efficiency gains in the years 2021-2022 compared to 2018-2019. However, there is no reliable data to assess the time spent per case by each staff member. Therefore, it cannot be clearly concluded that there were measurable efficiency gains in the BoA decision-making process and internal WGs

will continue to analyse if the processing of appeals can be further streamlined at those process steps where the BoA has control.

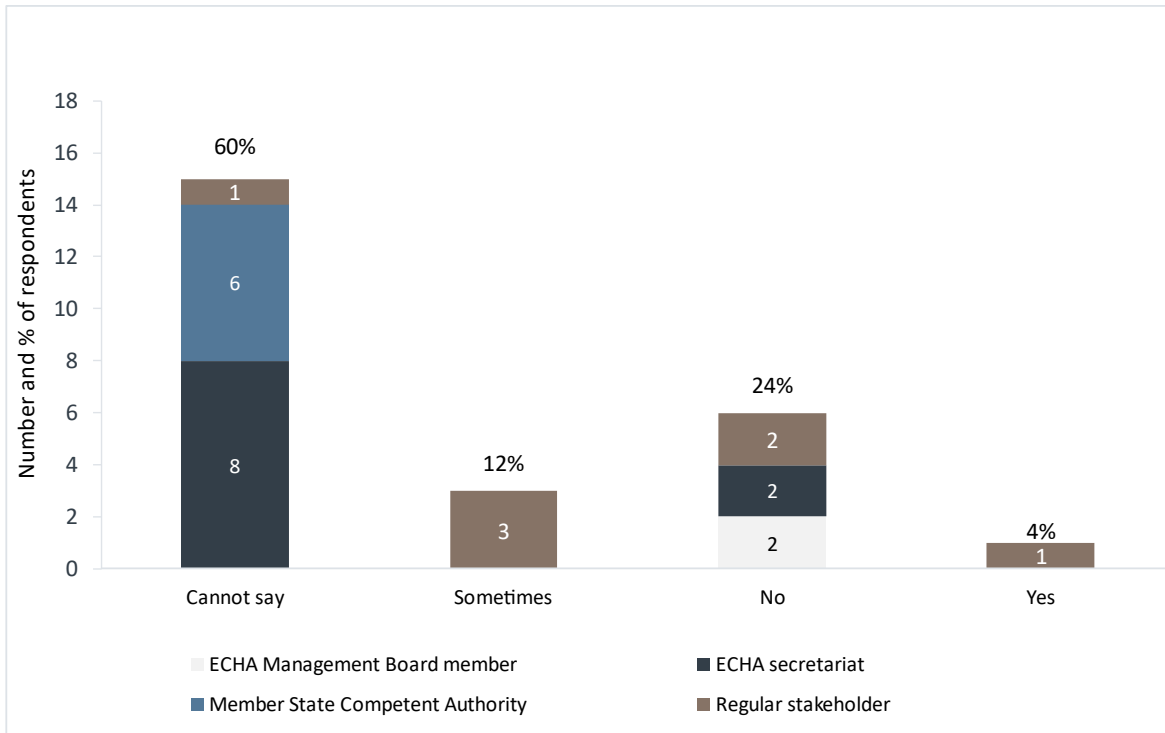
The full findings of the internal WG are in Appendix C.

**Figure 12. Have you encountered obstacles that have reduced the efficiency of appeal proceedings?**



Overall, respondents to the survey have not encountered a reduction in the efficiency of appeal proceedings due to obstacles. One law firm representative mentioned in an interview the fact that the rules on providing evidence in hearings should be simplified and that they find it inefficient to send paper copies when documents are longer than 4 pages. This stakeholder did note that they have spoken with the ECHA secretariat about improving the efficiency in terms of paperwork. While stakeholders did not directly say that it decreased the efficiency of appeal proceedings, many stakeholders who have been involved in the appeals process noted that the BoA website and email should be updated and maintained to help appellants submit appeals with more ease and improve the ability of everyone to search cases and case outcomes.

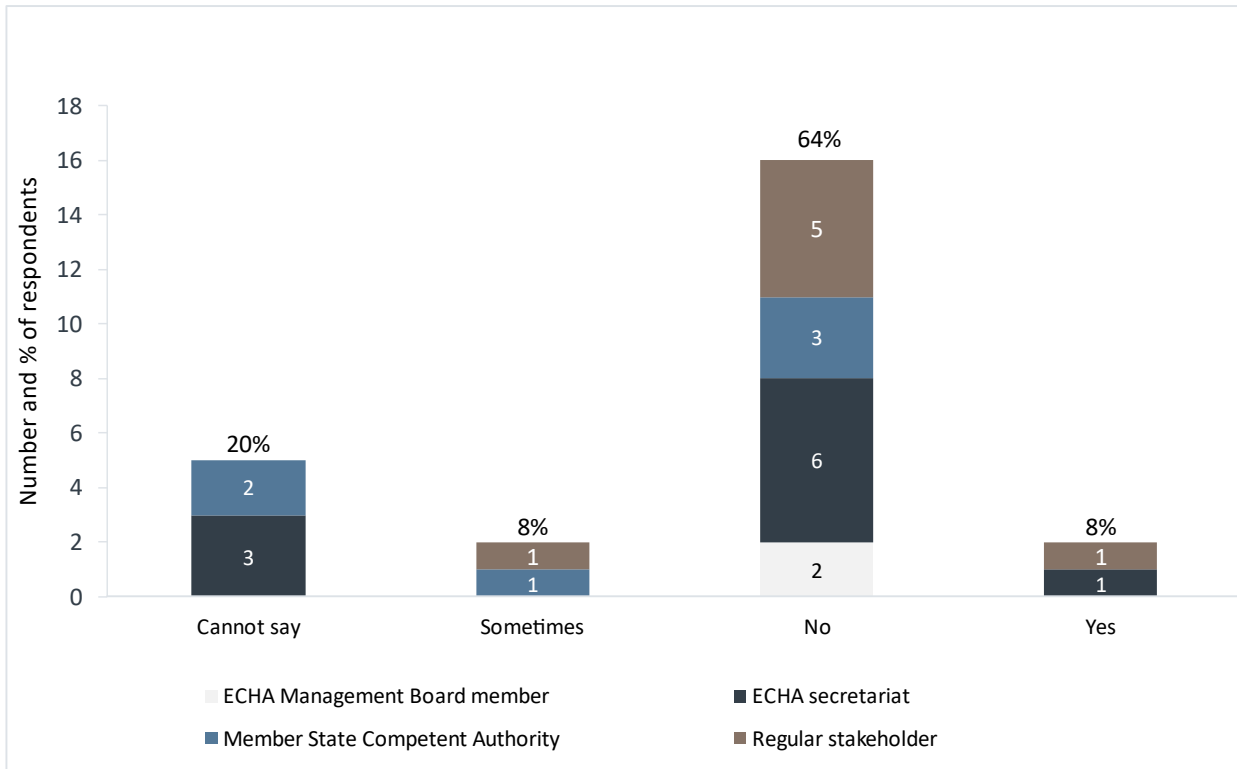
**Figure 13. Have you encountered obstacles that have hampered you from submitting an appeal?**



60% of stakeholders marked ‘cannot say’ regarding obstacles that hampered them from submitting and appeal. This percentage most likely represents the 10 stakeholders who have not been involved in appeal proceedings. Those that said ‘yes’ or ‘sometimes’ did not leave further comment directly to this question, and the concerns regarding the BoA website are mentioned above. In interviews, representatives from law firms noted that the presentation of evidence before the BoA is not always the same as before the European Courts, and that this can hamper stakeholders from submitting appeals as they cannot afford the legal fees to submit appeals and the time spent by legal teams to prepare evidence specifically for the BoA.

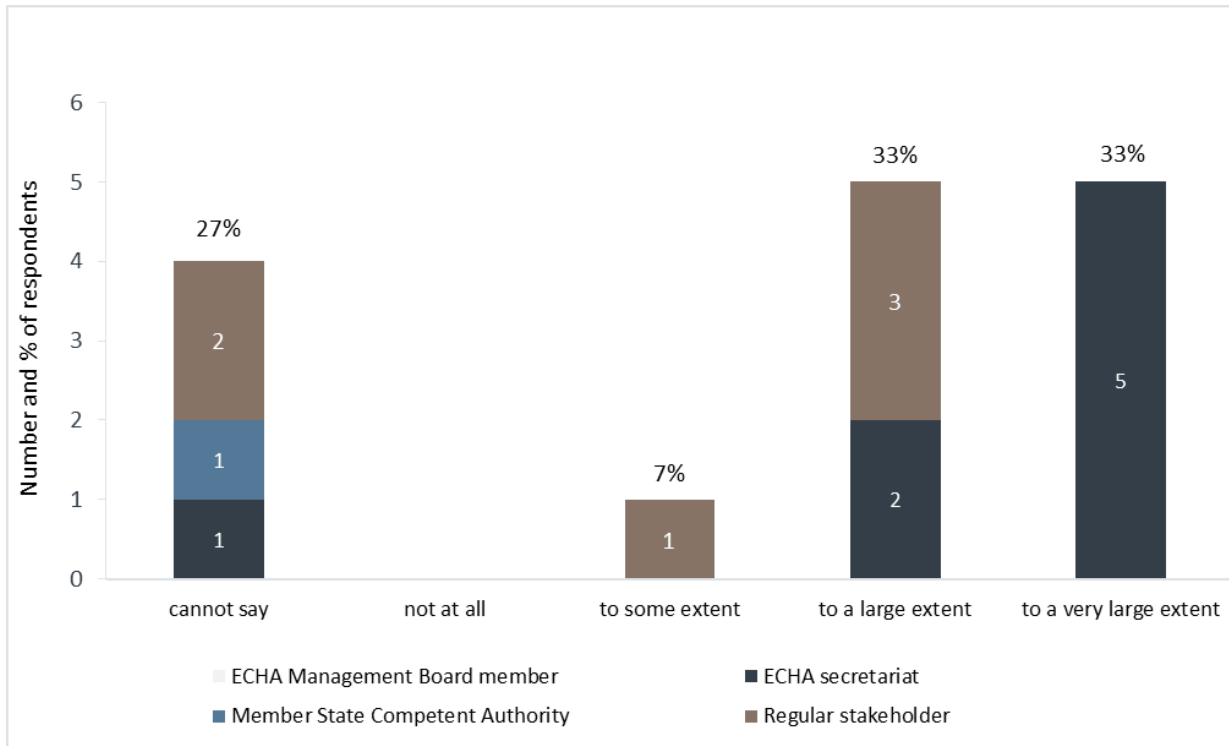


**Figure 14. Have you encountered obstacles that have prevented you from following the Board of Appeal’s activity?**



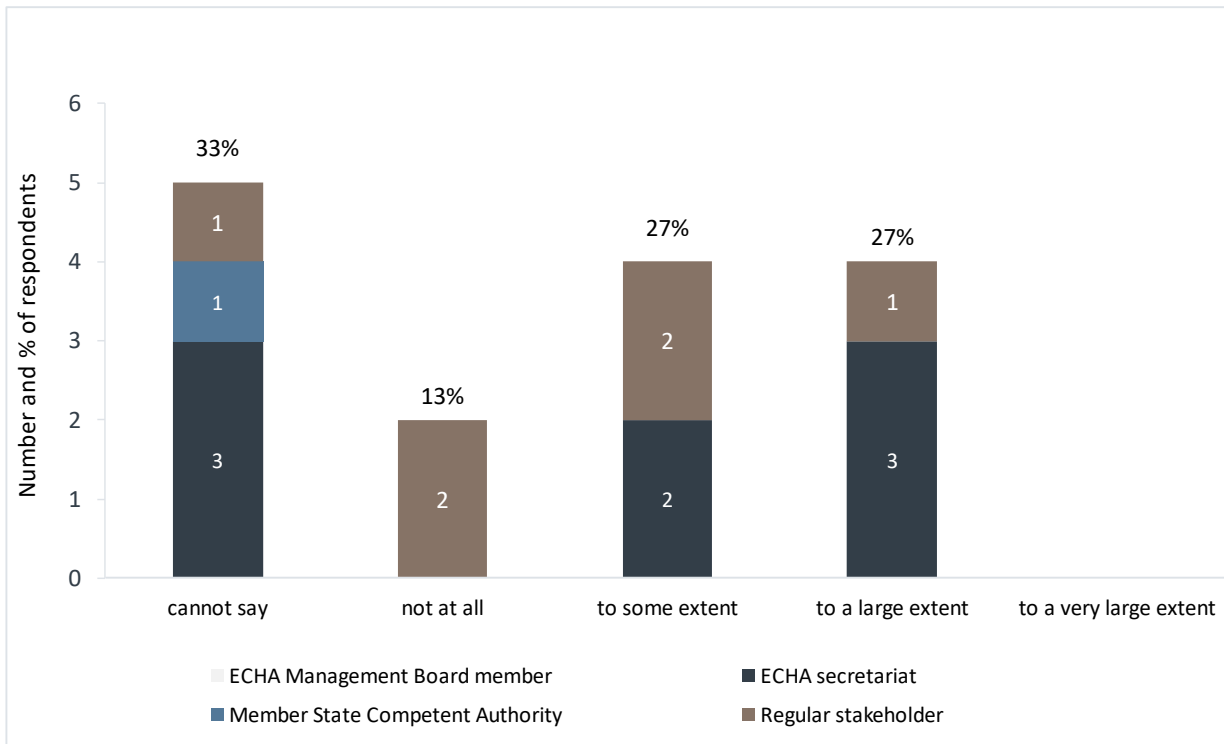
Stakeholders noted that overall, they have not encountered obstacles that prevent them from following the BoA’s activity (64%). One ECHA secretariat member mentioned that the search function on the website of the BoA is not working properly. Two of the regular stakeholders who identified themselves as being representatives of law firms commented that the charges for lodging an appeal were high and mentioned that information should be published online once the decision is made (unless marked confidential) because this could inform the interpretation of BoA’s final decision. The third regular stakeholder, who self-identified as an economic operator commented on the fact that there has been an improvement related to the newly introduced webform submission because large files could not be sent to BoA’s mailbox in the past. As such, it would appear that the survey respondents interpreted this question as obstacles in initiating an appeal process (high appeals charges, website IT problem, difficulty in searching for publicly available decisions) rather than obstacles in technical issues after an appeal has been submitted such as submitting documents related to an appeal (the issue with the mailbox has already been resolved).

**Figure 15. Does BoA have sufficient capacity to perform its tasks?**



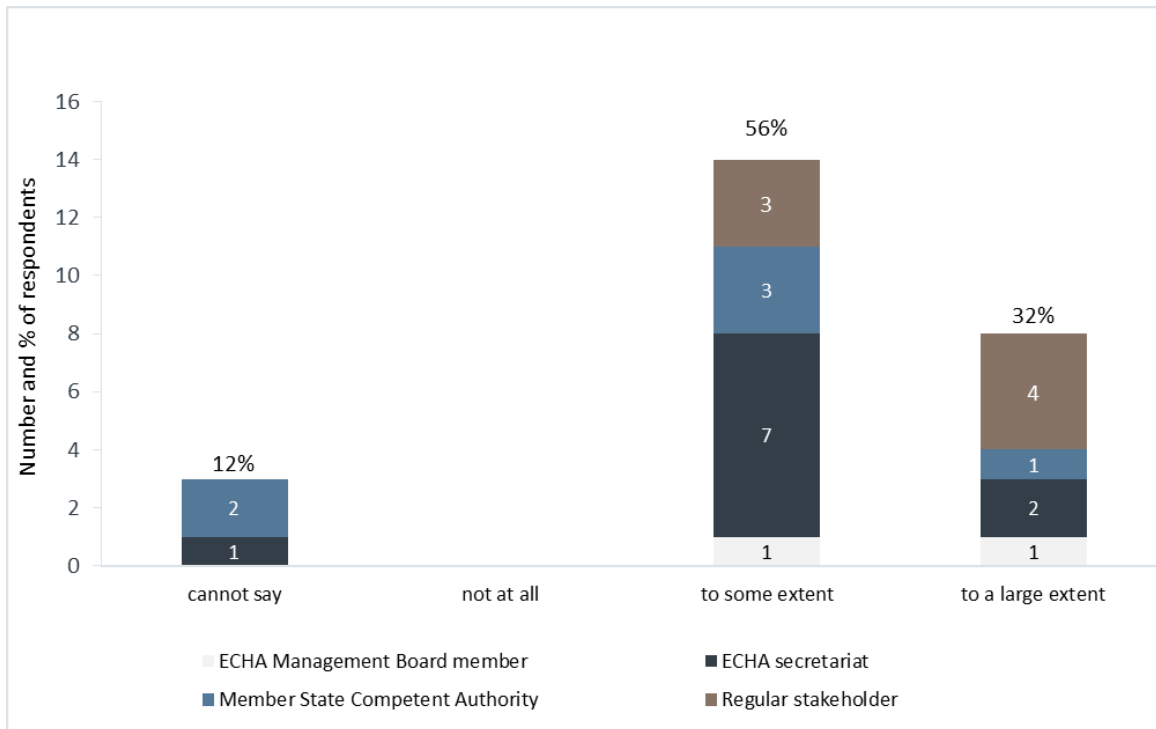
The stakeholders noted that the BoA has ‘to a very large extent’ and ‘to a large extent’ sufficient capacity to perform its tasks (66%). Those who responded in these categories left comments related to the fact that the capacity of the BoA is sufficient considering the team of lawyers, the alternates that are available and the fact that the caseload is not very heavy. In one interview, a law firm representative said that having the sufficient capacity within BoA is a great contributor to making better decisions. This resonated with the response of another law firm representative, who said that the ability of BoA to execute its tasks is dependent on the number of cases they are dealing with and that a surge in cases might hamper their efficiency.

**Figure 16. Do you consider that appeal proceedings could be streamlined?**



54% of respondents noted that the appeals process was ‘to some extent’ (27%) to ‘to a large extent’ (27%) streamlined. From the ECHA secretariat respondents, one suggested that the timeline could be shortened by providing further written guidance, and by concentrating the hearings to only the main issues at hand, the other said that the second written round could be removed and that oral hearings could be shortened. A stakeholder who identified themselves as an economic operator and who chose the “to some extent” option, recommended that appellants should be notified once the appeal announcement has been published on ECHA’s website so that they can inform potential applicants that may intervene in a timely manner. 33% of respondents said ‘cannot say’ when asked about if the appeals proceedings could be streamlined. One ECHA secretariat member who chose the “cannot say” option also provided a comment, whereby they explained that the timeline to respond can be quite challenging because of all the lawyers and scientists that need to participate so the BoA needs to think more about the month-long period for appellants and agency.

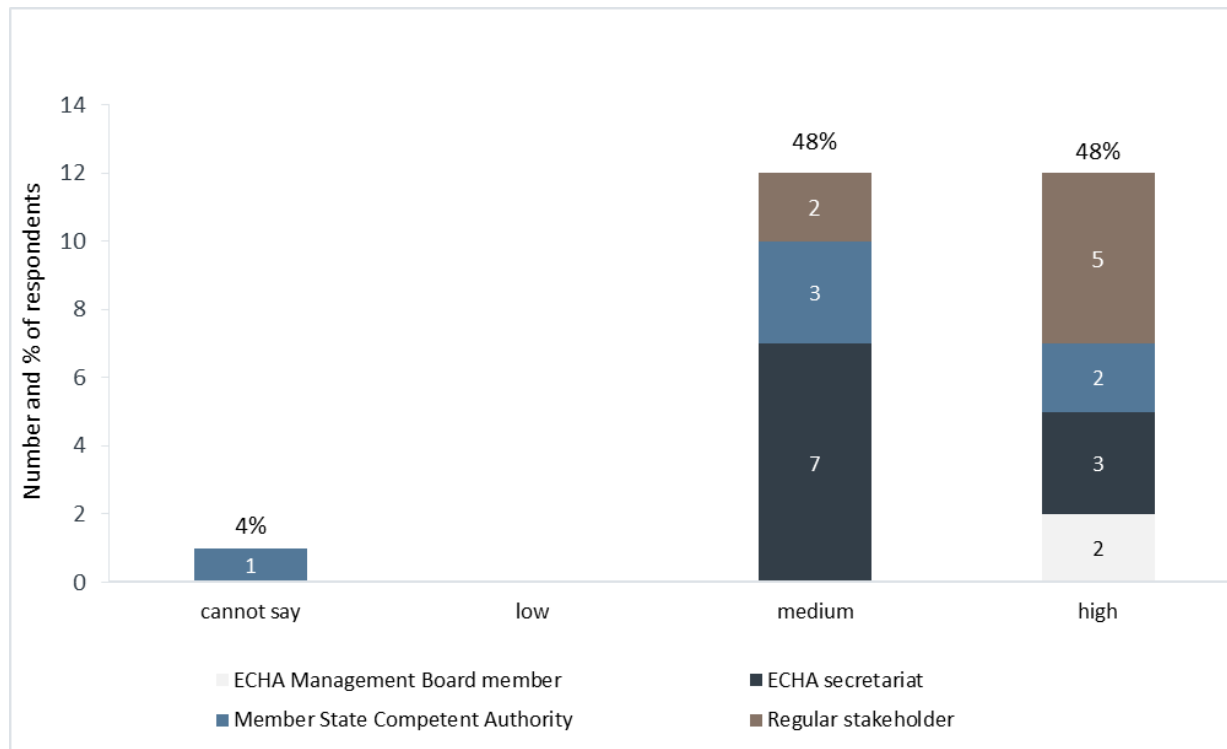
**Figure 17. To what extent do you agree with the following statements: BoA decisions are delivered in a timely manner.**



Overall, respondents felt that the decisions are ‘to some extent’ (56%) or ‘to a large extent’ (32%) delivered in a timely manner. 2 of the ECHA secretariat respondents, both which responded, ‘to some extent’, left further context regarding their opinion of the timeliness of the decisions. One respondent suggested that the timeliness has improved recently. The other respondent noted that the 18 month or so timeline for BoA decisions is not what a legislator may envision and can lead to delays is the generation of further information when applicable, slowing the process further. In an interview, a law firm representative said that the time between the closure of written procedures or oral hearings and final handing down of decision is too long and could be shortened. This was contrasted by the opinion of another law firm representative who said that longer timelines would be acceptable to ensure that the BoA takes all necessary insights in consideration.

### 4.3 Added value

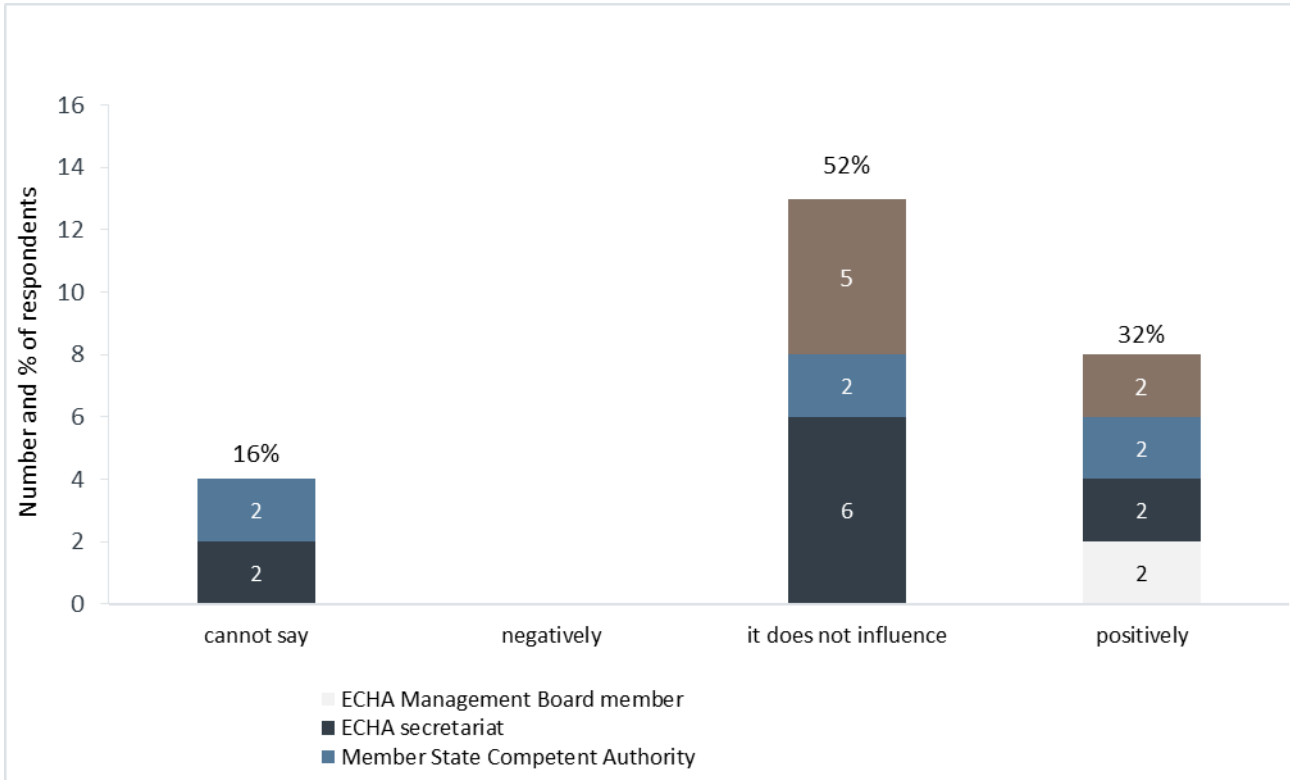
**Figure 18. What is your level of trust in the decisions of BoA?**



Respondents were split between ‘high’ and ‘medium’ when asked about their trust in the decisions of BoA. One of the ECHA secretariat respondents who said ‘medium’ reiterated their previous response on the fact that not all processes are well understood by BoA. The other two ECHA secretariat respondents who chose ‘medium’ left comments about the decisions are not always perceived as consistent and interpretations can be unexpected and sometimes even surprising. This was echoed by a law firm representative who said that their clients (industry representatives) doubt of the BoA's impartiality and objectiveness because the BoA sometimes does not impose high enough requirements for ECHA to substantiate decisions. In their view, appellants need to have trust that they will be heard, which can only happen if industry representatives observe a high level of scrutiny from ECHA on both the legal and scientific aspects. Otherwise, the law firm representative says that there would be less appeals (which they think has already happened, to some extent) and the BoA role might be hampered. Two of the ECHA secretariat members who chose the “high” option, commented that the BoA is undoubtedly independent and impartial, and that it has justifiably overturned ECHA on numerous occasions. One MSCA respondent elaborated that decisions are well reasoned and clearly documented and that is why they have high trust in the BoA. In an interview, another law firm representative said that they have trust in the BoA and that their decisions are of good quality, but sometimes the legal argumentations and justifications are too short. One stakeholder who responded with ‘high’ said that members have integrity. On the other hand, one stakeholder who responded ‘medium’ raised doubts that sometimes it seems like some decisions (especially on which the BoA has not ruled on beforehand) are streamlined whilst others are ignored.

## 4.4 Coherence

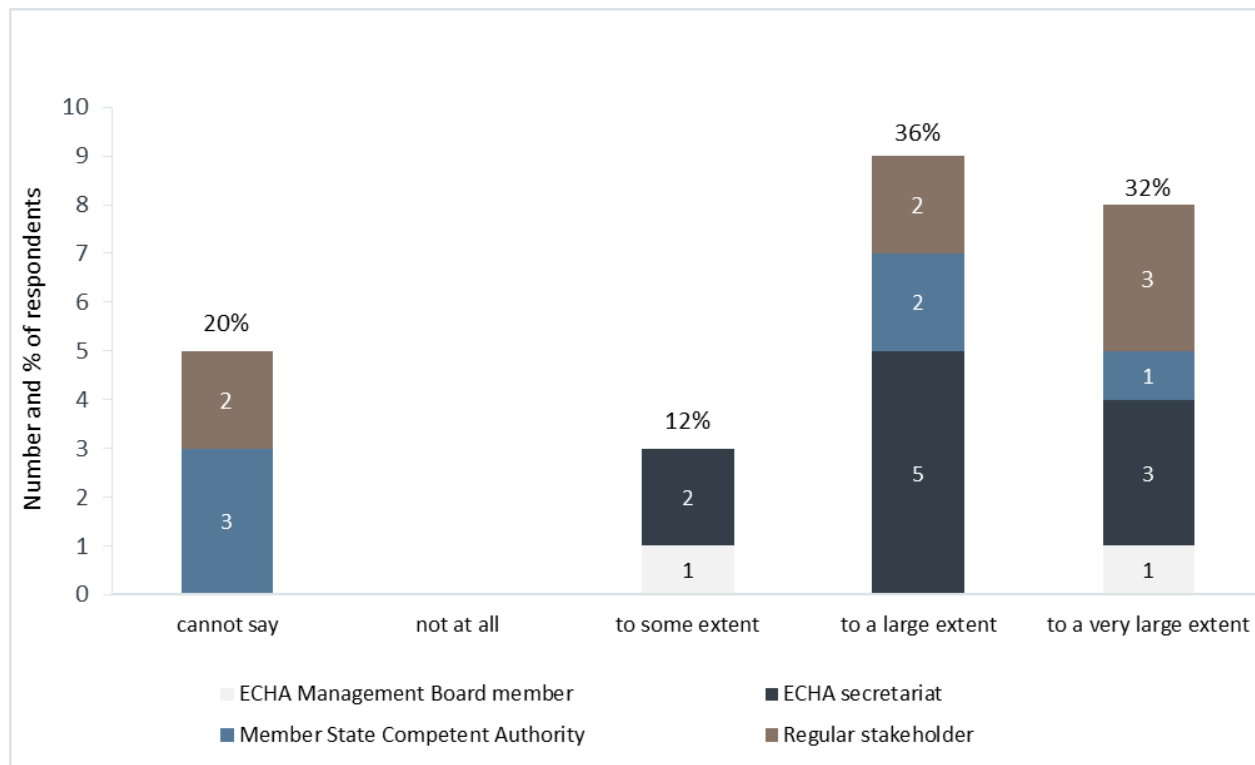
**Figure 19. How does BoA’s work influence your level of trust in ECHA?**



There was only one further response from the MSCA who chose ‘cannot say’, where they explained they perceive that disagreement exists between ECHA and the BoA because lawyers on both sides tend to disagree on topics, but at the same time the BoA might have too much of an impact on ECHA’s working procedures. One law firm representative said that their customers believe that ECHA had made mistakes (though this was not further elaborated or substantiated) and thus the trust in ECHA would be lower without the BoA. Two other law firm representatives said that their level of trust in ECHA is high as, according to them, the BoA is acting as a control authority appropriately. At the same time, they noted that the decisions of the BoA are justified well, which improves their trust.

## 4.5 Sustainability

**Figure 20. In your view, do BoA’s tasks remain relevant within the evolving policy context, in particular the Chemicals Strategy for Sustainability (CSS)?**



The majority of stakeholders (68%) think the BoA’s tasks will remain relevant within the evolving policy context ‘to a large extent’ (36%) and ‘to a very large extent’ (32%). One MSCA respondent provided the further context that they perceive that the BoA provides clarity to legislation interpretation which improves ECHA’s decision making and that this task will remain relevant, and another responded that the REACH revision and the new data requirements will likely create new challenges for interpretation of those requirements. One regular stakeholder who identified as part of a law firm responded that efficient judicial review should become more important for credible decisions and policy making. They voiced that they do not perceive that this has not been the case in the past 30 years because decisions taken at national level have become "legislative" decisions on the EU level without adequate judicial review. As a result, they believe that this has severely impacted the credibility of the EU institutions. To remedy this, the stakeholder proposed that there should be increased decision making at ECHA in combination with a judicial review by the BoA (with suspensive effect). In their interview response, the same law firm representative stakeholder elaborated further that the suspensive effect is the biggest advantage of the BoA because it gives the opportunity of not going to the court to find a settlement. Namely, if a firm appeals a negative decision on a restriction in court, they will need two to four years for a court decision, which might negatively affect their business. Moreover, the legal fees for going to the European Court of Justice are much higher compared to the ones of the BoA, which is appreciated by the industry. The regular stakeholder who provided additional insight into their “to a very large extent” answer identified themselves as an economic operator. They said that the tasks remaining relevant is highly dependent on the REACH changes that concern the specific ECHA decisions that can be subject to BoA appeals and on the BoA’s power. To make thing clearer, the stakeholder also included an example whereby they explained that limiting BoA’s power to only being able to check whether procedural provisions were observed, without the possibility of submitting science-based

arguments, would severely limit the efficiency of the BoA. This aligns with views from another representative of a law firm who said that the role of the BoA will need to be reconsidered and that the evolution of the scope of decisions needs to continue. One of the MSCA respondents who chose the “cannot say” option responded that they do not see the link between the BoA’s tasks and the CSS. In the Commission’s public consultation, one stakeholder commented that if ECHA receives more tasks and decision-making powers, it will be important to reassess the scope of decisions that BoA can review.



## 5. Limitations and gaps

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### 5.1 Study limitations

One limitation of the study is that of the 25 respondents who were familiar with the BoA, only 15 have been involved in the appeal proceedings before the BoA. The other 10 respondents included both ECHA management board respondents as well as five MSCAs and two ECHA secretariat respondents. This reduces the respondent types who have experience with the appeals before the BoA. There is also one NGO stakeholder represented here, which is a stakeholder area that is lacking. The majority of the findings are based off the targeted survey, as only five stakeholders engaged in interviews, all of which represented law firms for industry and NGO organisations.

### 5.2 Identified gaps

Further stakeholders may need to be identified to better understand the viewpoints on the BoA. There are only 15 survey responses to the multiple choice questions from stakeholders who have been involved in the appeals process, and less than half of these respondents did not leave further comments regarding their answers to fully understand the good or bad practices they are experiencing with the BoA. Respondents who left their contact details in the survey were contacted. They were sent emails at least three times with an invitation to participate. However, only five stakeholders were able to be reached for an interview, which is a limitation of this report. There are also divergent views from stakeholders who did provide further comment regarding whether one technically qualified member is sufficient for decisions or not, and further information regarding why this may be the case is needed. The other area where certain stakeholders were of differing views is whether the second round of written observations should be shorter or even removed. MSCAs who have participated in the appeals process are a stakeholder type that needs further engagement.

# Appendix A

## Interview guide

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### Introduction to document

WSP has been contracted by ECHA to support an ex-post evaluation of the Board of Appeal (BoA). This document serves as a portion of the stakeholder engagement aspect of the project, where we aim to better understand the responses of stakeholders to a targeted survey and a public consultation. The questions within this document aim to probe contradictions in data from the targeted survey, as well as evidence gaps to help better understand the effectiveness, efficiency, relevance, proportionality, coherence, added value, and sustainability of the Board of Appeal as one of the ECHA bodies.

This document focuses on BoA, however not all stakeholders will be able to answer all questions. The questions within this document are targeting individuals who had the previous experience with the appeals process before the BoA. It includes ECHA secretariat and Management Board, Member State competent authorities (MSCA), and stakeholder observers (registrants' representatives, business associations, environmental NGOs, other NGOs). If the question is intended for a specific stakeholder type, it is noted in brackets after the question.

### BoA

The Board of Appeal (BoA) has the responsibility of deciding on appeals that are lodged against certain decisions of ECHA under the REACH and Biocidal Products regulations<sup>6</sup>. This process presents the possibility for the affected parties to request an independent review of the decisions taken by ECHA under the two regulations and each appeal is considered on a case-by-case basis. As such, the aims of the BoA are to consider all appeals effectively and efficiently. This, for example, includes ensuring that rights of all appeal parties are fully respected, that impartiality and independence are applied in the decision-making process, and that both the legal and scientific/technical perspectives present in the respective regulatory context are fully considered in all appeals. The BoA consists of a chairman and two other members - one technically qualified and one legally qualified. The Chairman is legally qualified. Each case is decided upon collectively. BoA members are appointed for five years by the ECHA Management Board based on a list of candidates that is proposed by the Commission. Their term of office may be renewed once. In addition, the Management Board appoints alternate and additional members who are not employees of ECHA, but who deal with cases whenever official members are absent or whenever appeals need to be processed in a timelier manner.

### Effectiveness and relevance

**Question.** Are there areas where the necessary knowledge and skills are not currently found in the BoA?

**Question.** Is the three-member model (chairman, technically qualified member, and legally qualified member) providing the knowledge and skills necessary for the tasks of the BoA?

**Question.** Are the BoA decisions clear and complete? (If yes, please provide an example. If no, what part of the decision is not clear and/or complete, and what can you suggest to improve this?)

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<sup>6</sup> [Who we are - ECHA \(europa.eu\)](https://europea.eu)

## Efficiency and proportionality

**Question.** How do you view the ability of BoA to perform its activity? Are there factors that influence their current capability and in what way?

**Question.** How do you view the timeliness of the BoA process, and do you think it could be improved or streamlined? Please provide examples.

**Question.** Are there any activity or tasks the BoA carries out that do not have proportionate time dedicated to them? I.e., is the time for a task too long or too short?

**Question.** Are there any issues related to the efficiency of the BoA's processes you would like to bring up? If so, what are they and can you give evidence/examples as to why these are efficiencies?

**Question.** Are there any issues related to the inefficiency of the BoA's processes you would like to bring up? If so, what are they and can you give evidence/examples as to why these are inefficiencies?

## Added value

**Question.** How do you think the level of trust in BoA's decisions could be increased? Do you have any examples of good or bad practices or any further suggestions?

**Question.** Does the BoA's work influence your trust in ECHA? Why or why not?

## Coherence

**Question.** To what extent does the work of BoA support the implementation of the REACH Regulation and other relevant regulatory processes?

## Sustainability

**Question.** Do you think the nature and type of tasks performed by BoA is likely to change in the future, e.g. following developments in the CSS.

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## Issued by

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## Approved by

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## Management systems

This document has been produced by WSP Environment & Infrastructure Solutions GmbH in full compliance with our management systems, which have been certified to ISO 9001, ISO 14001 (Milan office) by DNV.

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## Document revisions

| No. | Details         | Date    |
|-----|-----------------|---------|
| 1   | Interview guide | 03/2023 |

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# Appendix B

## Survey questions

| Question number | Question   | Response  |
|-----------------|--|---|
| 1               | I am familiar with ECHA's Board of Appeal (BoA) and its work   | Yes, No   |
| 2               | I have been involved in appeal proceedings before the BoA  | Yes, No   |
| 3               | Which of the following roles best describes you?   | Stakeholder (please specify), MSCA, ECHA secretariat, Commission, ECHA management board member, Other (please specify)                |
| 4               | Stakeholder – please specify:  | Economic operator, law firm (e.g., as an appellant's representative), industry association, trade union, environmental NGO, other NGO |
| 5               | Other – please specify:  | Open response   |
| 6               | Can we contact you to follow up on your answers, if necessary?   | Yes, No   |
| 10              | How effective is BoA in performing its tasks? (Effective = successful in producing the desired process outputs.) | Very effective, effective, somewhat effective, not effective, cannot say  |
| 11              | Comment or further reflection related to question 10.  | Open response   |
| 12              | How efficient is BoA in performing its tasks? (Efficient = having optimised processes and high productivity.)    | Very effective, effective, somewhat effective, not effective, cannot say  |
| 13              | Comment or further reflection related to question 12.  | Open response   |
| 14a             | Have you encountered obstacles that have: reduced the efficiency of appeal proceedings?                          | Yes, no, sometimes, cannot say  |

| Question number | Question   | Response  |
|-----------------|--|---|
| 14b             | Have you encountered obstacles that have: hampered you from submitting an appeal?                      | Yes, no, sometimes, cannot say  |
| 14c             | Have you encountered obstacles that have: prevented you from following the Board of Appeal's activity? | Yes, no, sometimes, cannot say  |
| 15              | Comment or further reflection related to question 14.  | Open response   |
| 16              | Does BoA have the necessary competences to execute its tasks?  | To a very large extent, to a large extent, to some extent, not at all, cannot say |
| 17              | Comment or further reflection related to question 16.  | Open response   |
| 18              | Does BoA have sufficient capacity to perform its tasks   | To a very large extent, to a large extent, to some extent, not at all, cannot say |
| 19              | Comment or further reflection related to question 18.  | Open response   |
| 20              | Do you consider that appeal proceedings could be streamlined?  | To a very large extent, to a large extent, to some extent, not at all, cannot say |
| 21              | Comment or further reflection related to question 20.  | Open response   |
| 22              | What is your level of trust in the decisions of BoA?   | High, medium, low, cannot say   |
| 23              | Comment or further reflection related to question 22.  | Open response   |
| 24              | How does BoA's work influence your level of trust in ECHA?   | Positively, it does not influence, negatively, cannot say                         |
| 25              | Comment or further reflection related to question 24.  | Open response   |

| Question number | Question   | Response  |
|-----------------|--|---|
| 26              | In your view, do BoA's tasks remain relevant within the evolving policy context, in particular the Chemicals Strategy for Sustainability (CSS)?  | To a very large extent, to a large extent, to some extent, not at all, cannot say |
| 27              | Comment or further reflection related to question 26.  | Open response   |
| 28a             | To what extent do you agree with the following statements: BoA decisions are... independent from conflict of interest  | To a large extent, to some extent, not at all, cannot say                         |
| 28b             | To what extent do you agree with the following statements: BoA decisions are... clear  | To a large extent, to some extent, not at all, cannot say                         |
| 28c             | To what extent do you agree with the following statements: BoA decisions are... delivered in a timely manner   | To a large extent, to some extent, not at all, cannot say                         |
| 28d             | To what extent do you agree with the following statements: BoA decisions are... complete and conclusive  | To a large extent, to some extent, not at all, cannot say                         |
| 28e             | To what extent do you agree with the following statements: BoA decisions are... impartial  | To a large extent, to some extent, not at all, cannot say                         |
| 29              | Comment or further reflection related to question 28.  | Open response   |
| 30              | Based on your experience, how sustainable is the current way of working of BoA? (Please consider the execution of tasks, workload, resources, independence, etc.) Do you have ideas for improvement? | Open response   |

# Appendix C

## ECHA WG Findings

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### Data on the Board of Appeal's processing of appeals received between 2018 and 2022 for the purposes of the review of the Board of Appeal

The following data is presented below:

Number of Board of Appeal's decisions closing an appeal case and duration of the related appeals between 2018 and 2022<sup>7</sup>

Staff numbers of the Board of Appeal and its Registry between 2018 and 2022

### C1 The number of decisions closing an appeal case and duration of the related appeals between 2018 and 2022

#### C1.1 Introduction

The number of decisions adopted by the Board of Appeal (BoA) between 2018 and 2022 is presented below. The type of ECHA decision appealed is also indicated. All decisions with which an appeal case was concluded are taken into account. This includes all decisions adopted either by the Board of Appeal or its Chairman, where the decisions relate to the closure of the case following withdrawal of the notice of appeal (most often after the Executive Director has rectified the decision contested with the appeal) or decisions declaring an appeal to be inadmissible. Please note that procedural decisions (e.g. on applications to intervene) are not included in this overview.

The average duration of appeal proceedings in days is also presented. The calculation of the duration of an appeal is taken from the date of the lodging of the appeal to the date of the final decision in the case, i.e. decision concluding the appeal case. The calculation does not take into account instances where an appeal was stayed (i.e. suspended), waiting e.g. for the conclusion of a similar case lodged before the Court.

Certain considerations that should be taken into account when evaluating the data on appeals are presented after the below chart.

Moreover, over the years, the Board of Appeal has proven itself as being a valuable decision-making body, adding to the efficient and effective implementation in the regulatory frameworks under REACH and Biocidal Products regulations. To illustrate this, thus far, the Courts have confirmed all the decisions of the Board of Appeal which were challenged before them. The Courts have also followed the Board of Appeal's legal interpretation on a number of issues.

#### C1.2 Presentation of data – throughput time, cases, resources, appeals received

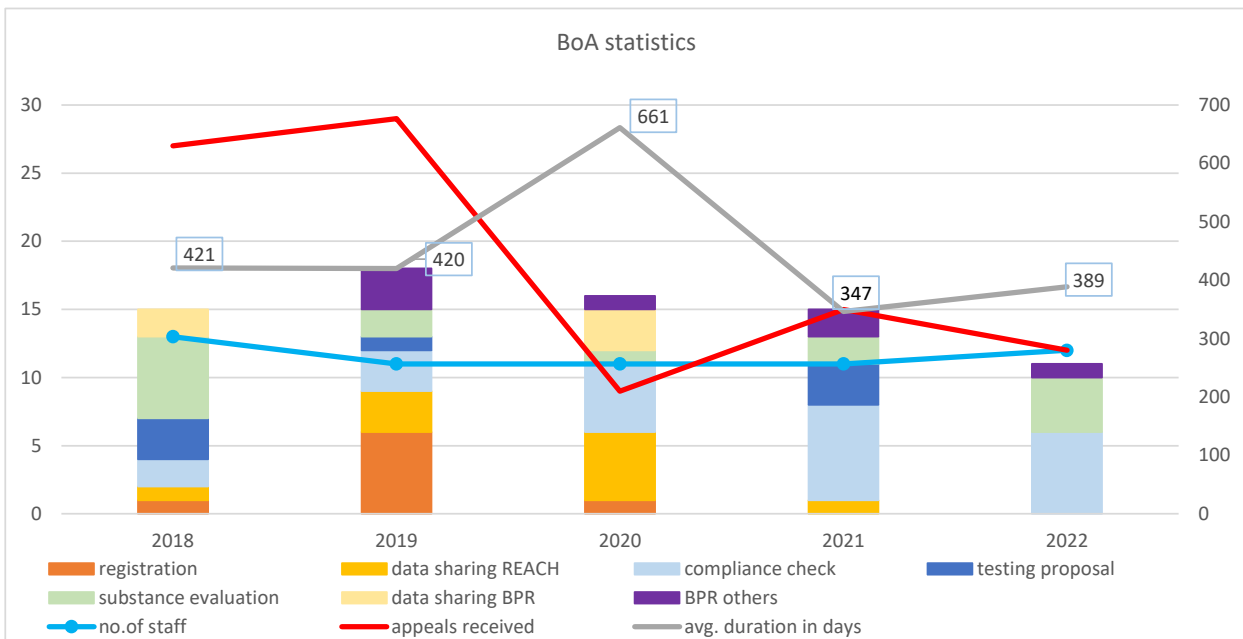
The below chart includes all BoA decisions for the period 2018-2022 for all processes for which BoA is competent. From the data gathered in the chart, the average time spent per decision

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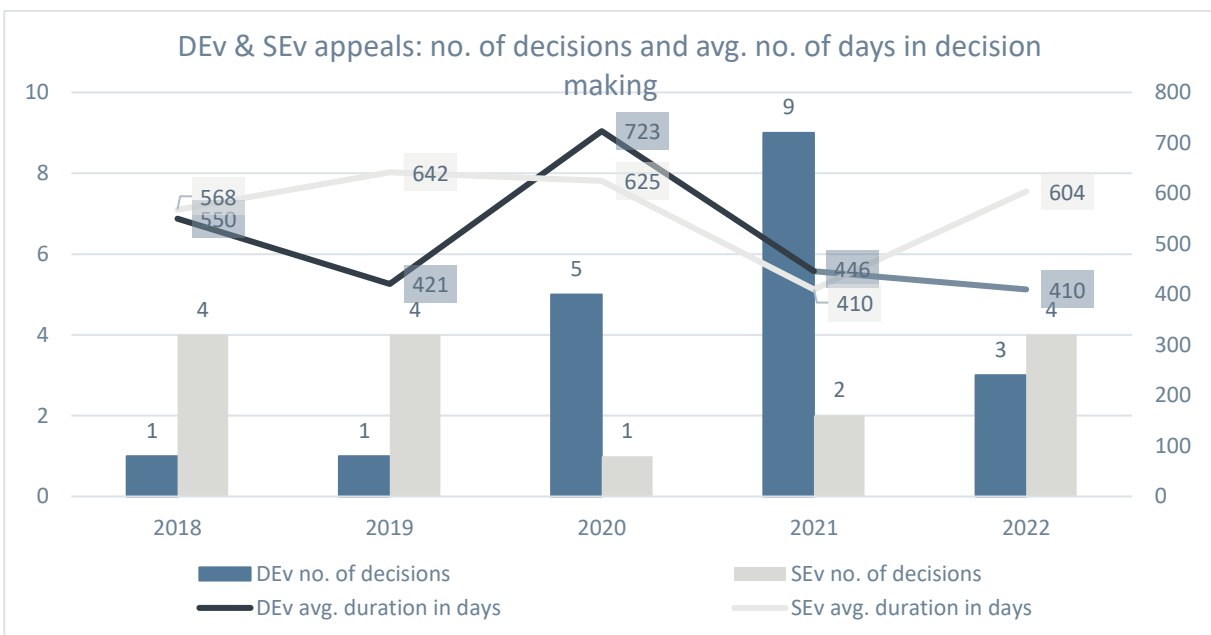
<sup>7</sup> I.e., the presented overview concerns the cases that were concluded in those five years.



adopted in appeal cases has been the highest in 2020 mainly due to Covid restrictions and an incomplete BoA composition due in particular to changes necessary in the BoA members' composition. The time per case decreased in 2021 and 2022 by an average of 13% compared to the years 2018-2019. The resources have remained mostly constant. The number of decisions decreased from an average of 16 decisions for 2018-2021 to 11 decisions in 2022. It needs to be noted that the appeal process spans more than one year taking into account the procedural steps prescribed by law.



The below chart contains a breakdown on Dossier evaluation (compliance checks and testing proposals) and substance evaluation:



The data on SEV appeals appear not to clearly indicate an efficiency trend, since there was a certain decrease of the time in 2021 which appeared to increase in 2022. However, in 2021 there were only two SEV decisions adopted by BoA. For one the decisions, the case duration was 606 days which is consistent with the duration of cases in previous years. The other case, which had a duration of 214 days, was an exceptional case due to the nature of the appeal lodged, for example no hearing or second round of written observations were necessary. Excluding the exceptional case, the trend is towards a slight decrease in the duration of the processing of SEV cases by BoA.

DEV appeals throughput time decreased over the years from 550 days in 2018 to 410 days in 2022.

### **C1.3 Specific issues to be taken into account when examining the data on decisions and length of appeals**

There are specific issues to be taken into account when analysing the data presented above, related to decision-making and length of appeals.

**Decisions adopted by the BoA Chairman:** Certain decisions concluding a case are adopted by the Chairman alone. This includes decisions closing a case following the withdrawal of the appeal (for example after rectification of the contested decision by the Executive Director). In general, the other two members of the Board of Appeal are not involved in the adoption of such decisions. Those decisions are also adopted within a shorter duration when compared to final decisions adopted by the full Board which consider the merits of a case.

**Involvement of alternate members of the BoA:** In certain situations (e.g. the absence, in case of conflict of interest or illness of a BoA member or a vacant post), it will be necessary to use alternate members who are not staff members of ECHA, and do not carry out tasks related to appeals as a part of their usual occupational activity.

**Joined cases:** Where there are certain similarities between cases BoA may join them and process them together. This may lead to BoA adopting one decision for several appeal cases.

Some of the specific issues that arose in each of the reported years are highlighted below.

#### **Decisions in 2018:**

Of the 15 decisions adopted in 2018, 6 were decision taken by the Chairman alone.

Alternate members were involved in one case in which the final decision was adopted during 2018.

Hearings were held in all 9 cases that were decided by a final decision of the full Board of Appeal.

#### **Decisions in 2019:**

The 18 decisions adopted in 2019 concerned 20 appeals as three cases were joined.

Of the 18 decisions adopted in 2019, 11 were decisions taken by the Chairman alone.

Alternate members were involved in the adoption of 3 decisions.

#### **Decisions in 2020:**

The 16 decisions adopted in 2020 concerned 23 appeals as some cases were joined.

All decisions adopted in 2020 were full decisions taken by all three members.

Alternate BoA members were used in all cases due to extended absences of one, or two, BoA members. Some of these alternate members were appointed during the case – rather than at the

beginning of a case; this was needed in 6 cases. In 4 cases, the alternate member had to be designated after the BoA in its earlier composition had already held a hearing.

Hearings were held in all but 2 cases.

Due to the restrictions resulting from Covid there were some delays in the organisation of hearings.

### Decisions in 2021:

The 15 decisions adopted in 2021 concerned 29 appeals as some cases were joined.

Alternate members were involved in the adoption of 11 of the 15 decisions adopted in 2021.

4 of the 15 decisions adopted in 2021 were decisions of the Chairman alone following a finding of inadmissibility or the withdrawal of the case following, for example rectification of the contested decision by the Executive Director.

### Decisions in 2022:

4 of the 11 decisions adopted in 2022 were decisions of the Chairman alone following the withdrawal of the case following, for example, rectification.

Alternate members were involved in the adoption of 5 out of 11 decisions adopted in 2022.

## C2. Staff of the Board of Appeal and its Registry between 2018 and 2022

The data below covers the statutory staff in place on 31 December of each year (temporary agents and contract agents). Vacant posts and trainees, when applicable, are not included.

| Year              | No. of staff total | No. of staff BoA | No. of staff Registry |
|-------------------|--------------------|------------------|-----------------------|
| 2018              | 13                 | 3                | 10 <sup>1</sup>       |
| 2019              | 11                 | 3 <sup>3</sup>   | 8 <sup>2</sup>        |
| 2020              | 11                 | 2 <sup>4</sup>   | 9                     |
| 2021              | 11                 | 3 <sup>5</sup>   | 8                     |
| 2022 <sup>6</sup> | 12                 | 3                | 9                     |

1. Two Registry staff members joined in August and November 2018.  
2. Scientific advisor joined the Registry in August 2019.  
3. Chairman left (following the end of the term of office) in April 2019 and was replaced by new Chairman in August 2019.  
4. LQM left in June 2020.  
5. New LQM joined in December 2021.  
6. BoA and Registry complete.

## C3. Conclusion

**Based on the internal statistics on the throughput time for all appeal cases, there appears to have been some efficiency gains in the years 2021-2022 compared to 2018-2019. However, there is no reliable data to assess the time spent per case by each staff member. Therefore, it cannot be clearly concluded that there were measurable efficiency gains in the BoA decision-making process. There is a need to continue to analyse if the processing of appeals can be further streamlined at those process steps where the BoA has control.**

