



BASKETBALL
ARBITRAL TRIBUNAL

***Developments and lessons (to be) learned
since the last user conference***

**Heiner Kahlert, Head of Case Management
Munich, 4 November 2022**

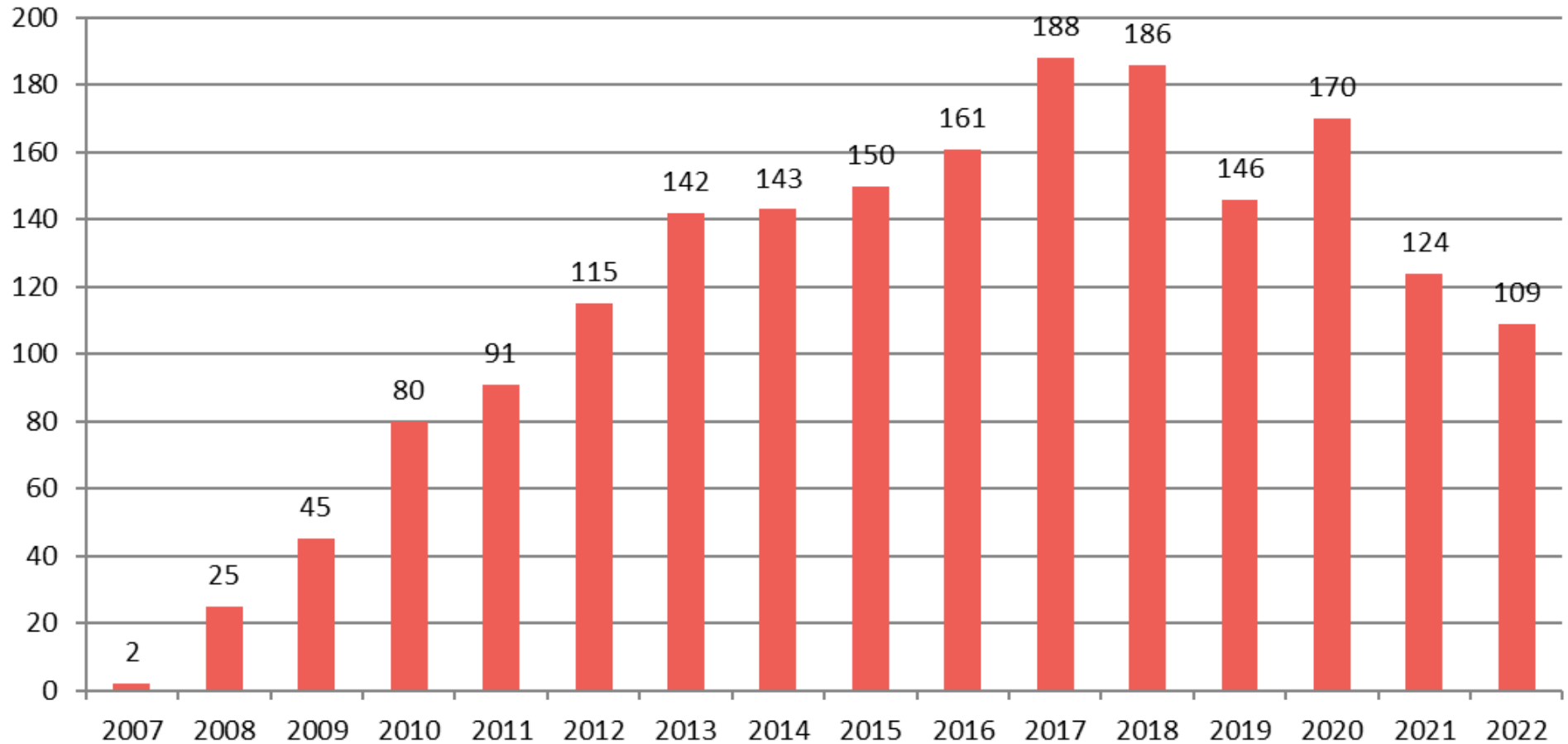
Developments

BAT in „crisis mode“ – COVID-19 and war in Ukraine

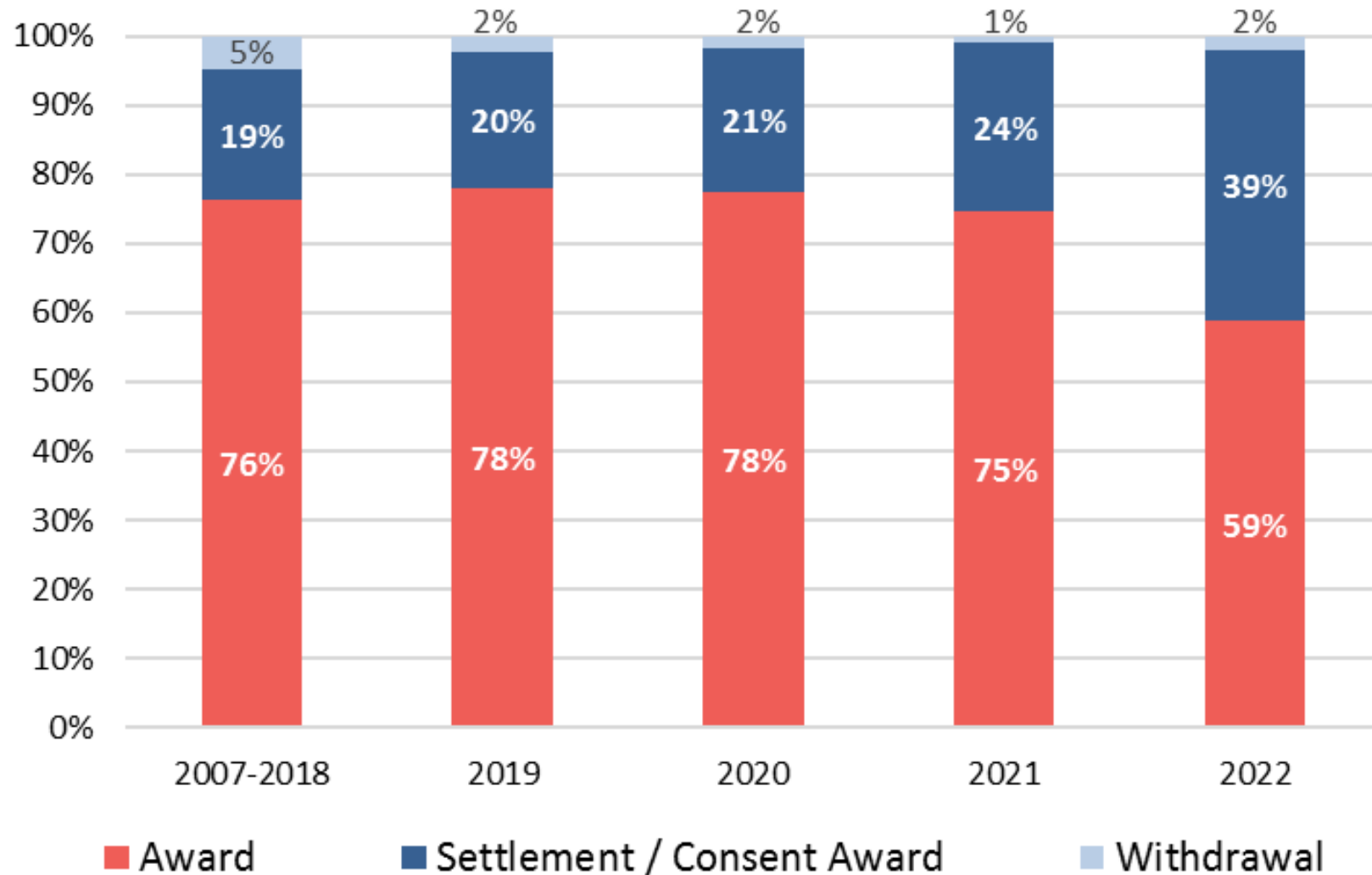
Impact of COVID-19 on BAT proceedings

- Procedurally: No need for any adjustments (electronic filing, virtual hearings, remote access for arbitrators all available since 2007)
- Substantively:
 - Most basketball competitions suspended in March/April 2020, giving rise to numerous legal questions and disputes
 - BAT COVID-19 Guidelines issued to provide guidance to the basketball community

Impact of COVID-19(-Guidelines) on BAT caseload



Impact of COVID-19(-Guidelines) on resolution of BAT cases



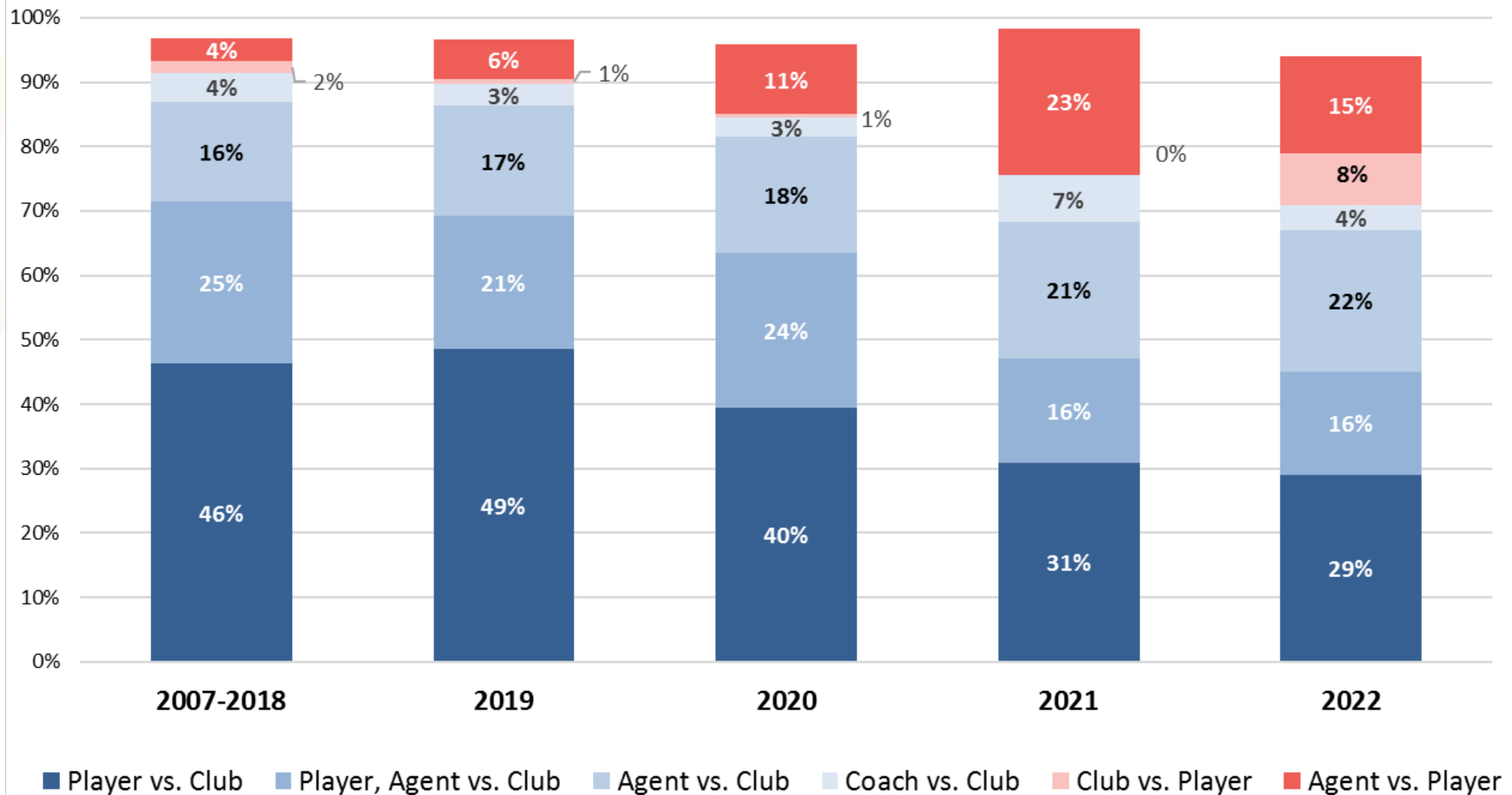
Impact of war in Ukraine on BAT proceedings

- Substantive issues related to the war: no award yet (but 4 pending cases)
- Operational difficulties:
 - Ensuring compliance with international sanctions
 - Service of documents
 - Payment of advance on costs

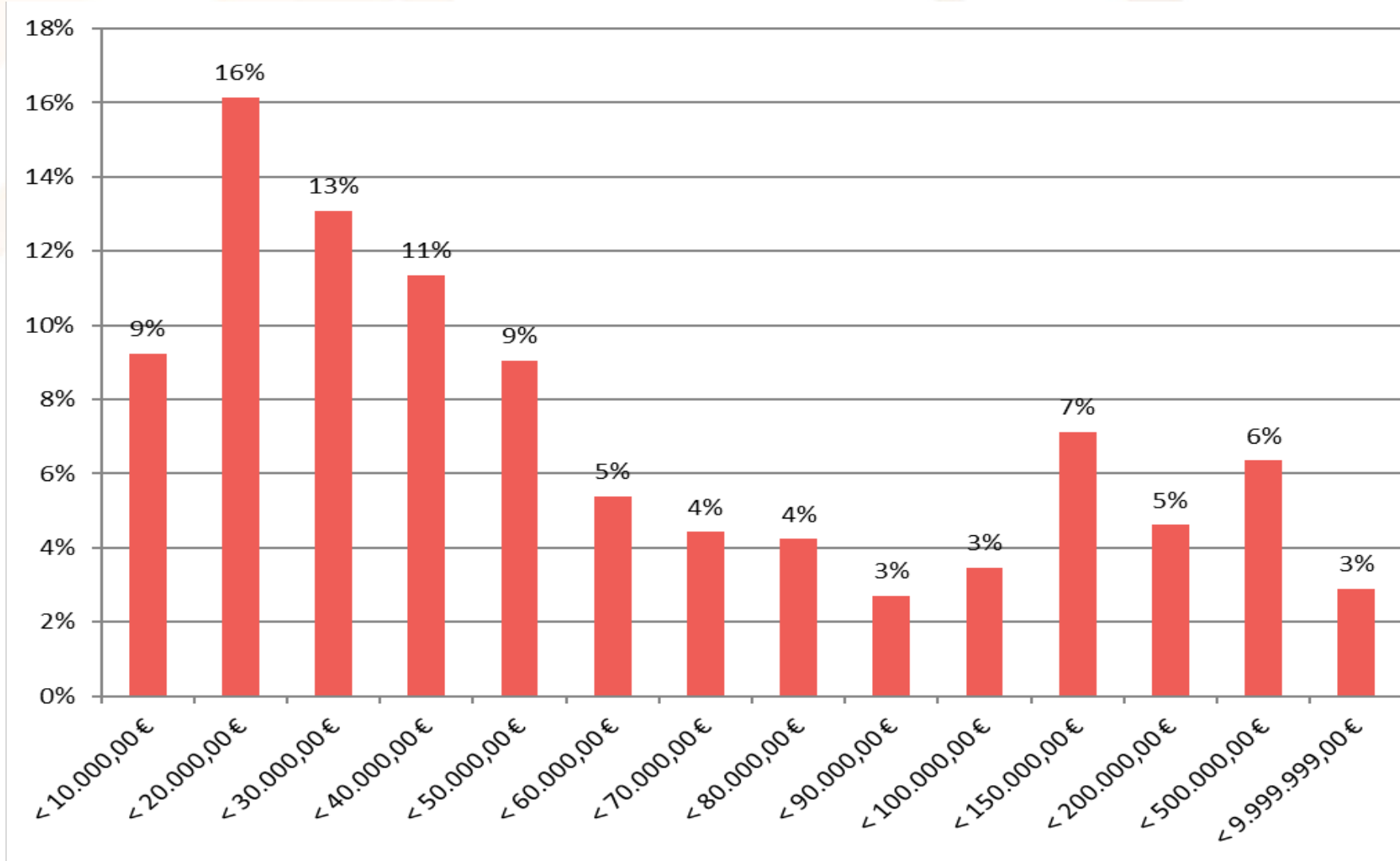
Developments

Update on BAT statistics

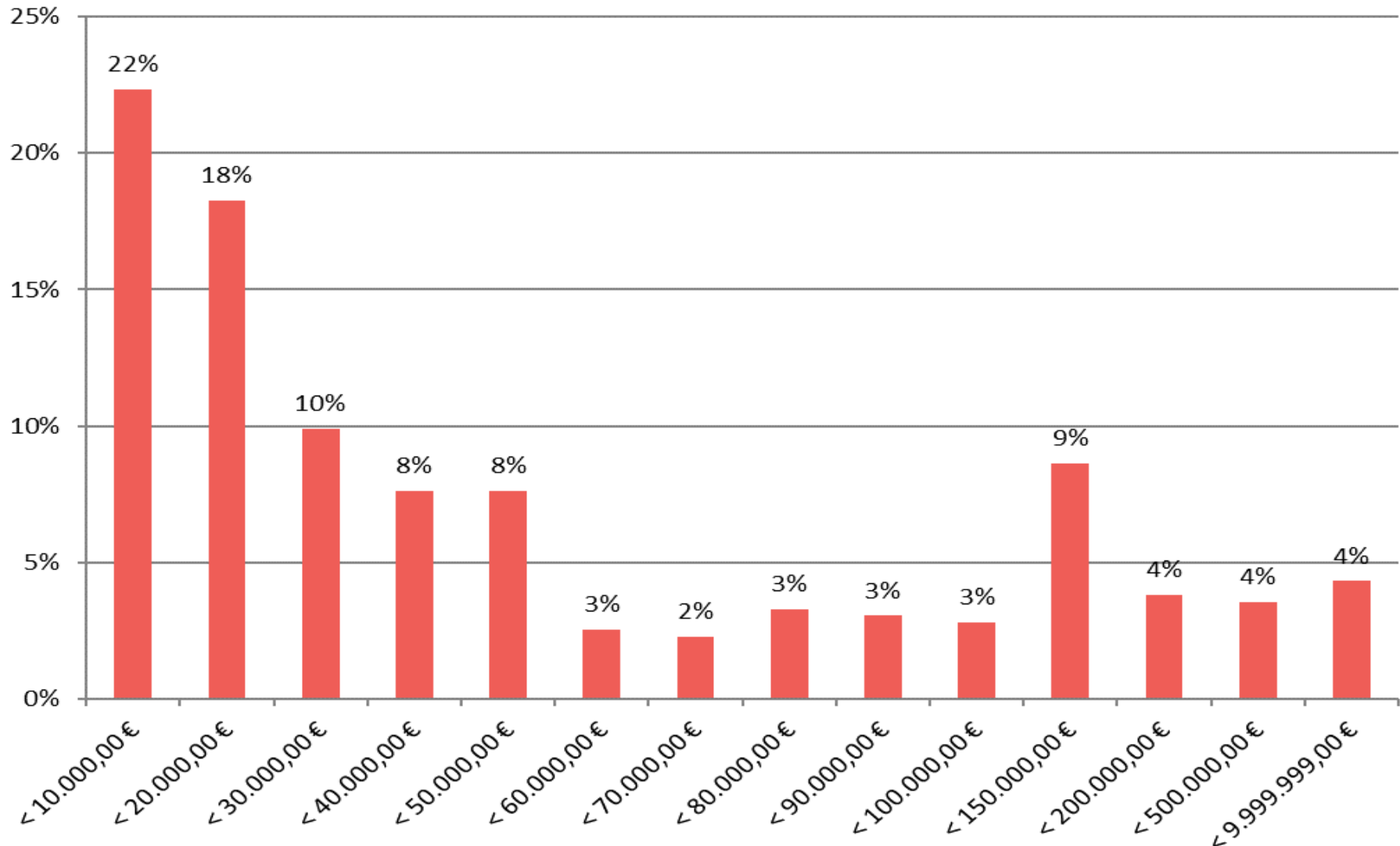
Claimants and Respondents in BAT proceedings



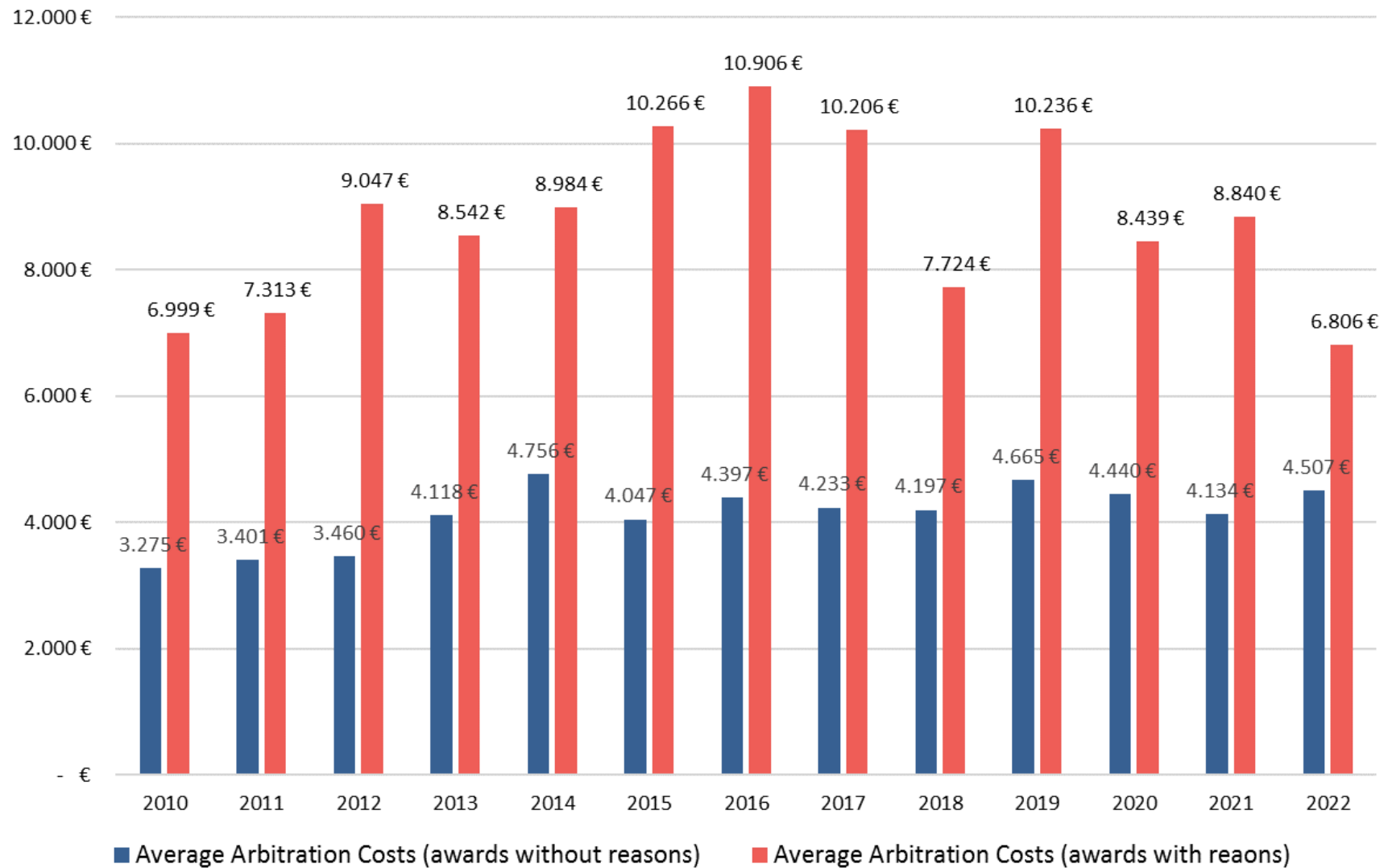
BAT cases split by sum in dispute: 2017-2019



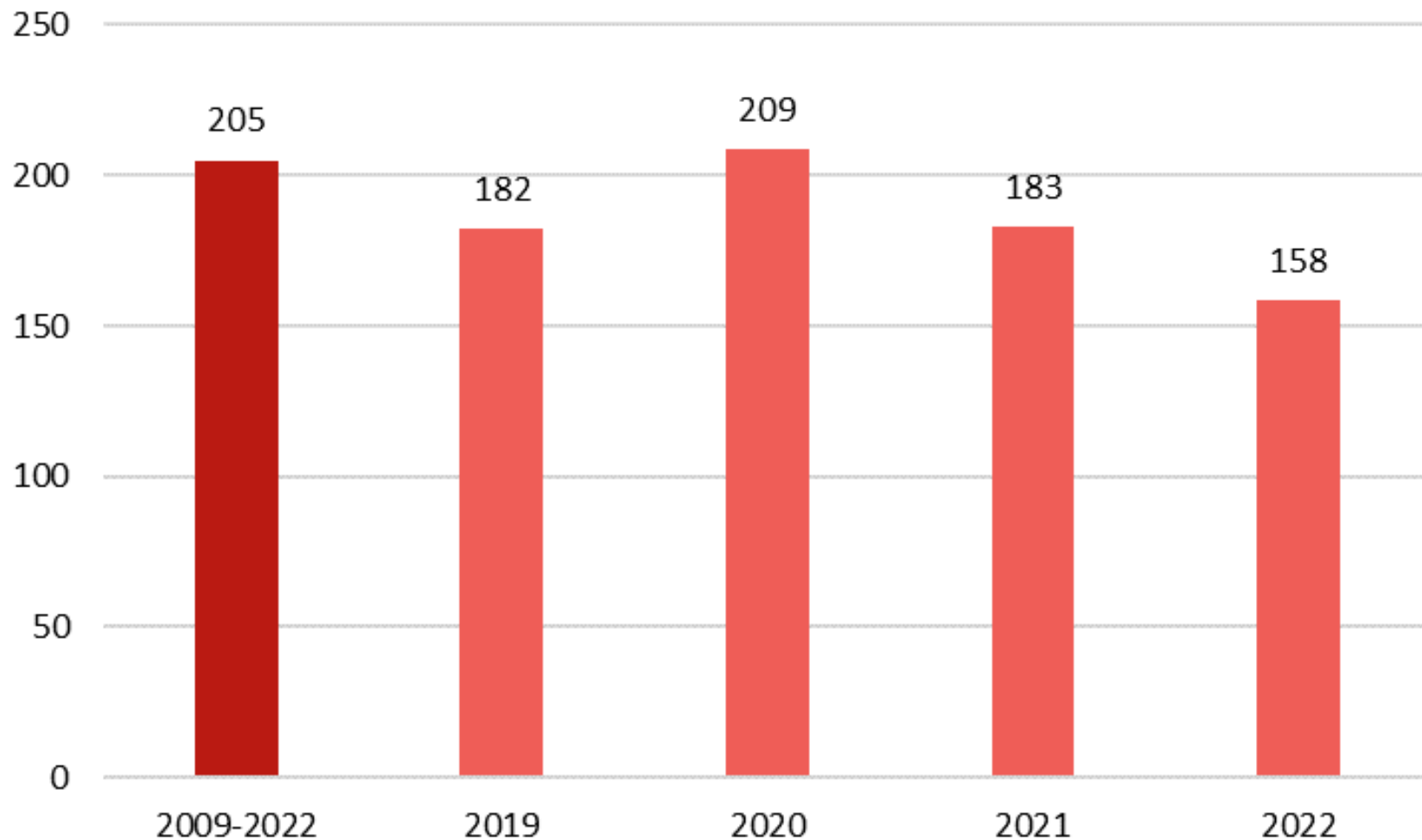
BAT cases split by sum in dispute: 2020-2022



Average arbitration costs



Average duration from filing to the award (incl. suspensions)



Lessons learned

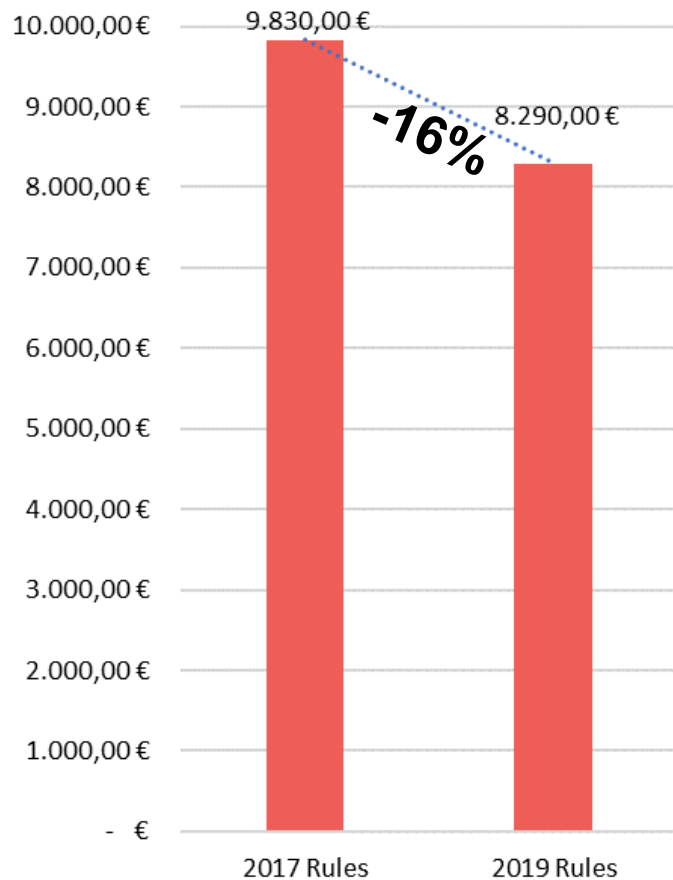
Measures taken by the BAT in response to user feedback

Reduction of Advance on Costs

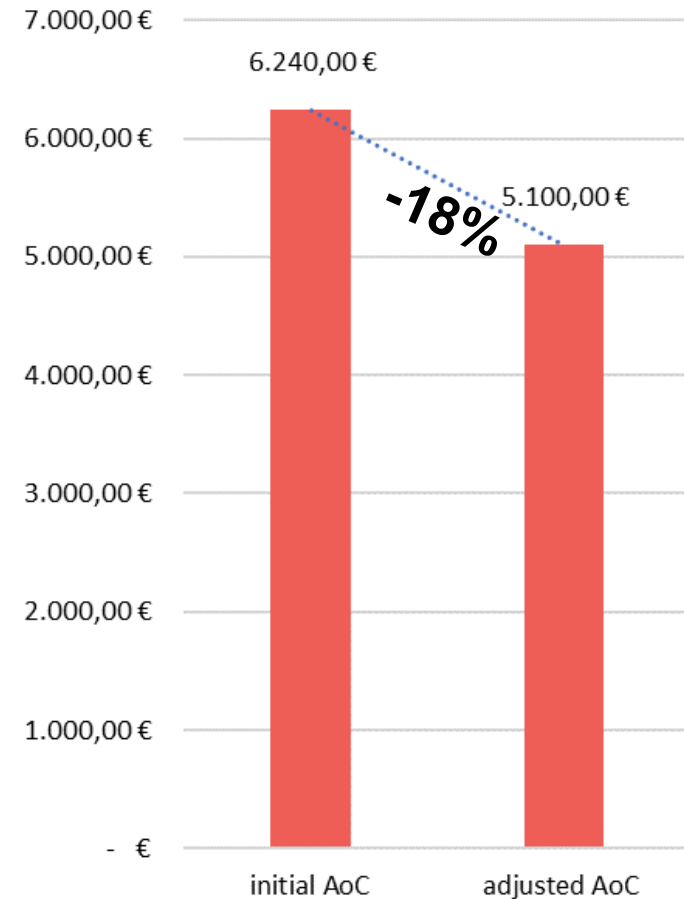
- **Feedback received:** Some parties find it difficult to finance the Advance on Costs (“AoC”) – in particular Claimants when Respondents do not pay their share.
- **Measures taken:**
 - New Article 9.3.1: Initial AoC not to exceed...
 - ...EUR 6,000 for awards with reasons
 - ...EUR 9,000 for awards without reasons if amount in dispute does not exceed EUR 100,000
 - New practice: AoC is reduced, wherever possible, if Respondent fails to submit an Answer

Reduction of Advance on Costs: Impact of new rules and practice

Reduction of initial AoC
(awards with reasons, value approx. 100,000 EUR)



Adjustment of AoC under 2019 Rules
(if no Answer and AoC adjusted)



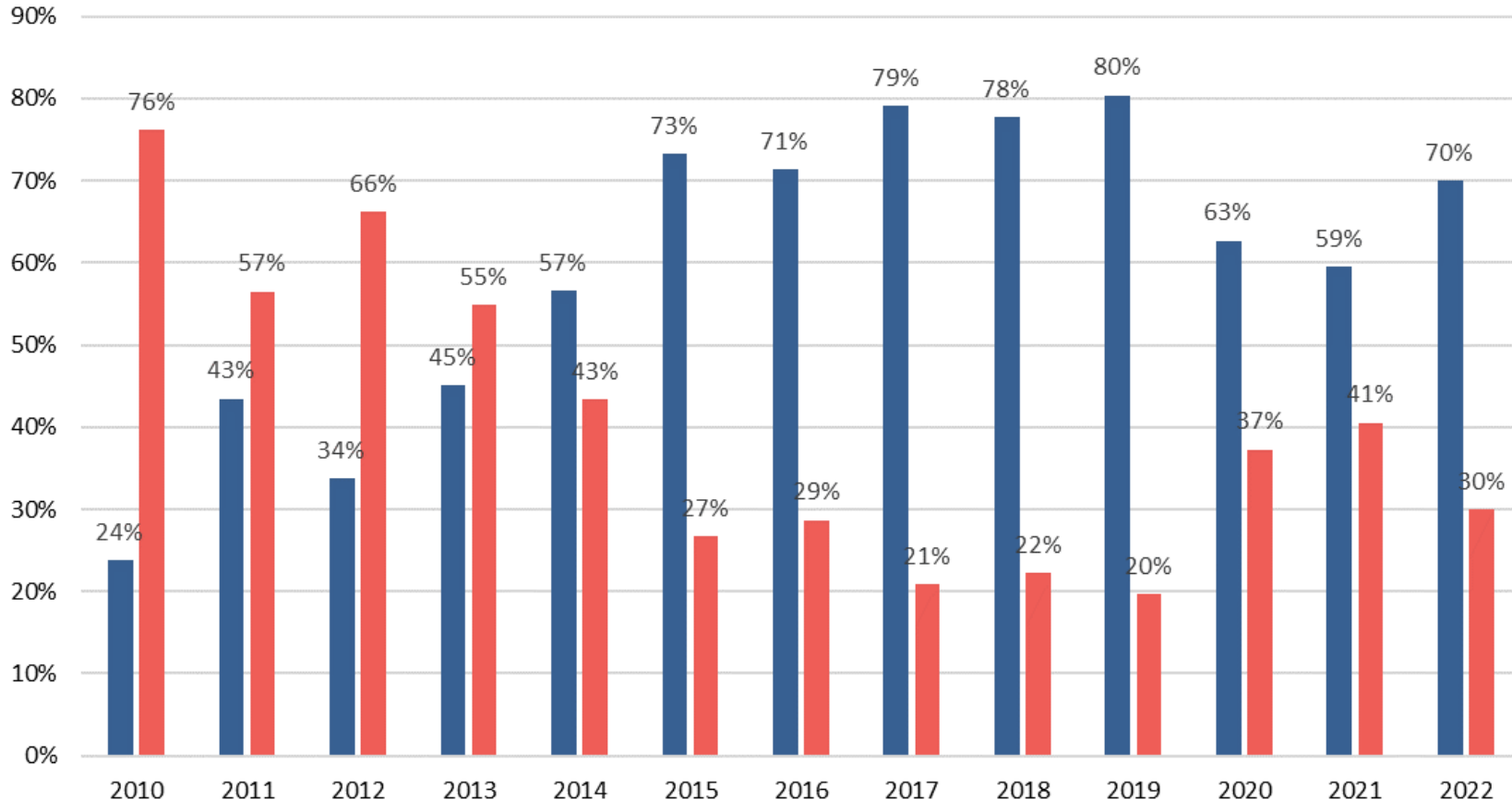
Reduction of non-reimbursable handling fee & Additional purpose of BAT Fund

- **Feedback received:** While the overall costs of BAT proceedings are quite low, they are still too high for very small claims.
- **Measures taken**
 - Reduction of AoC (see previous slides)
 - New Article 17.1 BAT Rules: For disputes of up to EUR 25,000, the non-reimbursable handling fee was reduced from EUR 1,500 to EUR 1,000
 - New Article 18.5: BAT Fund may be used to finance measures aimed at increasing efficiency and effectiveness of BAT dispute resolution (e.g. future use of artificial intelligence?)

More awards with reasons

- **Feedback received:** There are not enough awards with reasons.
- **Measures taken:**
 - New Article 16.2: Threshold for award with reasons reduced from sum in dispute of EUR 100,000 to EUR 50,000
 - New Article 16.3(b): BAT President may direct Arbitrator to issue award with reasons below the monetary threshold (in which case newly created BAT Fund contributes to the arbitration costs, see new Article 18.2)
 - New Article 16.3(a): Each party may request reasons for flat amount of EUR 3,000 (instead of advance of EUR 5,000)

More awards with reasons: impact of new rules



↑
Threshold for awards with reasons: 30k

↑
Threshold: 200k (unless Respondent pays AoC, then 30k)

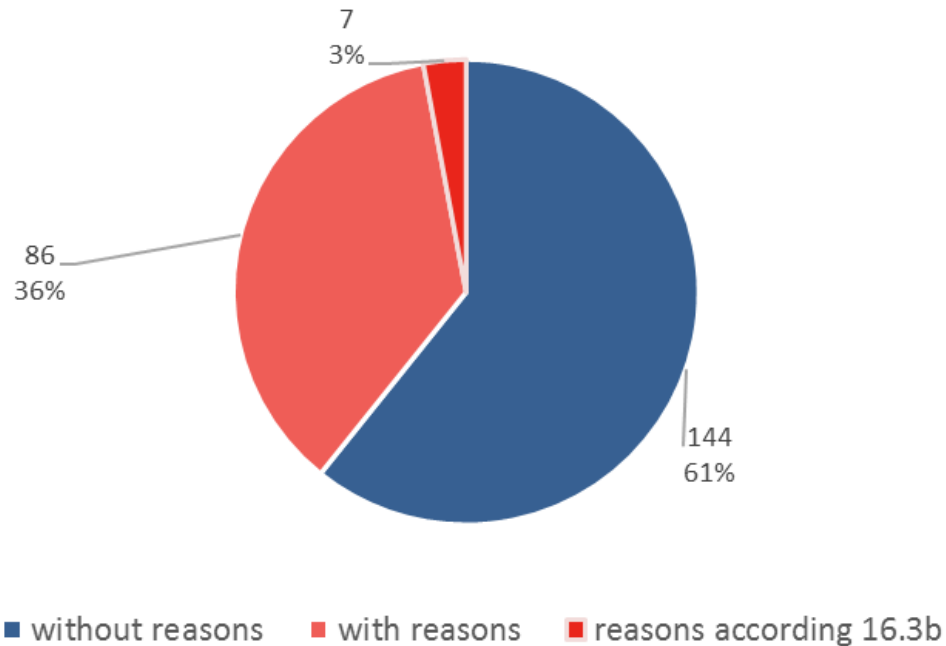
↑
Threshold: 100k

↑
Threshold: 50k

■ without reasons ■ with reasons

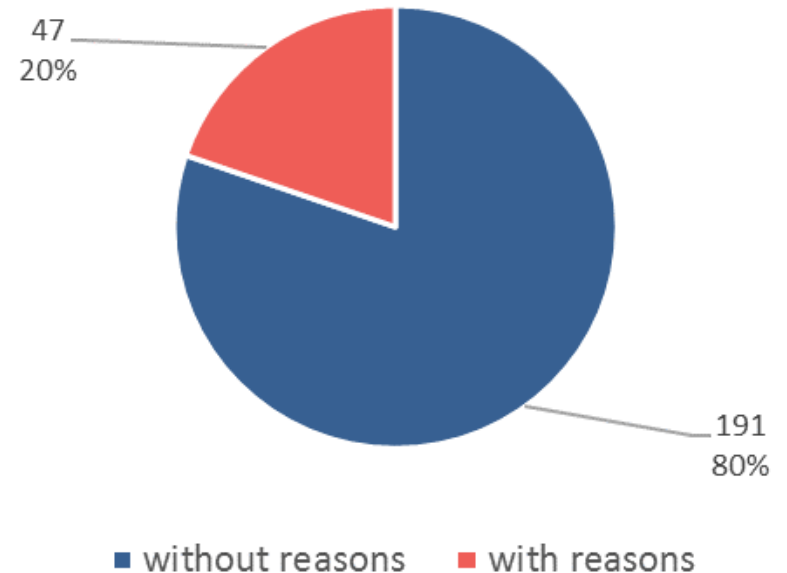
More awards with reasons: impact of new rules (cont'd)

Actual split under 2019 Rules



**Threshold for awards
 with reasons >50k**

**Hypothetical split had 2017 Rules
 continued to apply**



**Threshold for awards
 with reasons >100k**

Improvement of research tools

- **Feedback received:** Users wish for (i) improved searchability of published BAT awards and (ii) public material providing additional guidance on BAT arbitration
- **Measure taken:**
 - Collaboration with JusMundi, a leading search machine and research platform for international arbitration and international law
 - All published BAT awards will be searchable through JusMundi's KI-powered search engine
 - There will be a "Wiki" with concise commentary on BAT arbitration

Lessons to be learned

Recommendations for users

Lessons to be learned: Recommendations for users

- Keep submissions concise to foster efficiency & avoid cost sanctions
- RfA to clearly identify who the Claimant and the Respondent is. In particular:
 - In case of group of companies or otherwise related legal entities, specify which legal entity is suing / being sued
 - In case of an agent who owns/works for an agency, specify if it is the agent individually or the agency who is suing / being sued
- RfA to indicate total amount of any interest / late payment penalty sought up to RfA filing date (Article 9.1; background: forms part of amount in dispute, see Article 17.5), BUT:
 - This information does not need to form part of request for relief (which may e.g. still say: „5% interest as of [day after due date] until payment“)
 - Claimant may of course still request interest also for time after filing of RfA

Lessons to be learned: Recommendations for users (cont'd)

- Any deadline extension to be requested as soon as possible, but in any case before the last day of the deadline (Article 7.2)
- As of 1 January 2021: deadline for requesting correction of award is 30 days (Art. 189a(1) Swiss Private International Law Act)
- Request for consent award needs to provide all relevant information (amounts, due dates, allocation of arbitration costs, reimbursement of legal fees etc.) => BAT will issue guidelines soon

Thank you for your attention.