European Commission

DG Taxation and Customs Union

Administrative cooperation and combating fraud in the field of excise duty

Explanatory Meeting
Albania and North Macedonia 3 – 4 June

6 June 2019

European Commission

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Administrative cooperation in excise: summary legal framework

- *Council Regulation (EU) No 389/2012*

- *Scope roughly similar to VAT:*
  - Central excise liaison office (CELO)
  - Cooperation on request:
  - Request for information and for administrative enquiries
  - Time limit for providing information – 3 months, or 1 month if information is available
  - Presence in administrative offices and participation in administrative enquiries
  - Simultaneous controls
  - Request for notification of administrative decisions and measures
  - Exchange of information without prior request

Administrative cooperation in excise: legal framework (continued)

- *Some additional elements specific to excise:*
  - Legal basis for exchanging information on the authorisations of economic operators (the SEED system);
    - Covered by Commission Implementing Regulation (EU) No 612/2013
  - Certain exchanges of information will become mandatory;
  - Exchanges of information normally take place electronically through EMCS;
  - Obligation to keep economic operator details and all movement records for 5 years
  - Possibility to launch online queries to all Member States for EMCS and SEED history

Administrative cooperation in excise: legal framework (continued)

- *Two Commission Implementing Regulations:*
  - **Authorisation of economic operators is Commission Implementing Regulation (EU) No. 612/2013**
  - **Requests for administrative cooperation and information are regulated by Commission Implementing Regulation (EU) 2016/323**
    - Please note: investigations with a view to "prosecute and punish" are covered by the Naples II Treaty, rather than Reg. (EU) No. 389/2012
    - Criminal Investigations into excise fraud and investigations into non-harmonised excise goods are also covered by the Naples II Treaty

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- COMMISSION IMPLEMENTING REGULATION (EU) 2016/323
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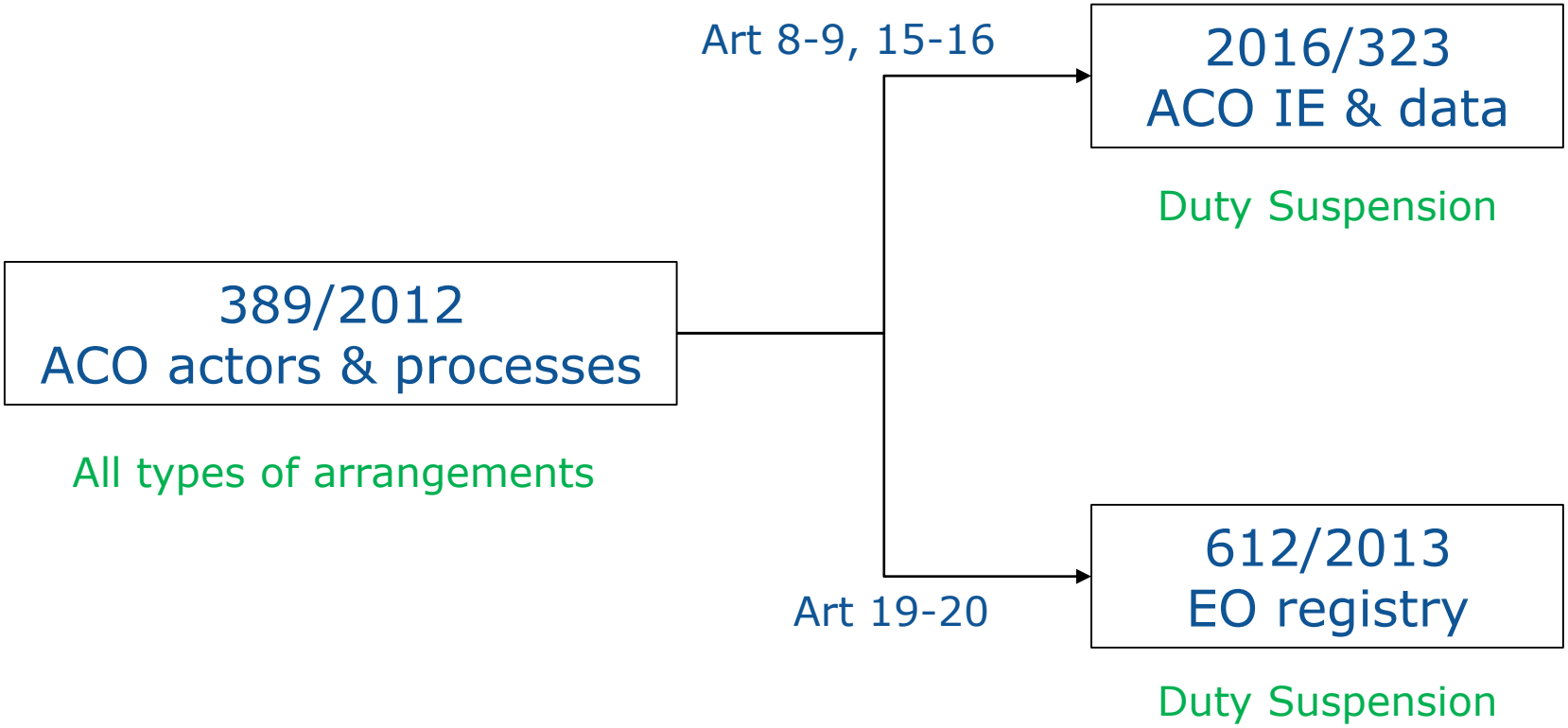
Scope

- Council Regulation (EU) No 389/2012 versus Naples II
  - Council Regulation covers exchanges for ensuring the correct application of excise legislation
  - Mandatory use of EMCS in most cases
  - Excludes mutual assistance in criminal investigations

  - Naples II Convention covers mutual assistance in criminal investigations
  - Exchanges by mutually agreed means

Overview

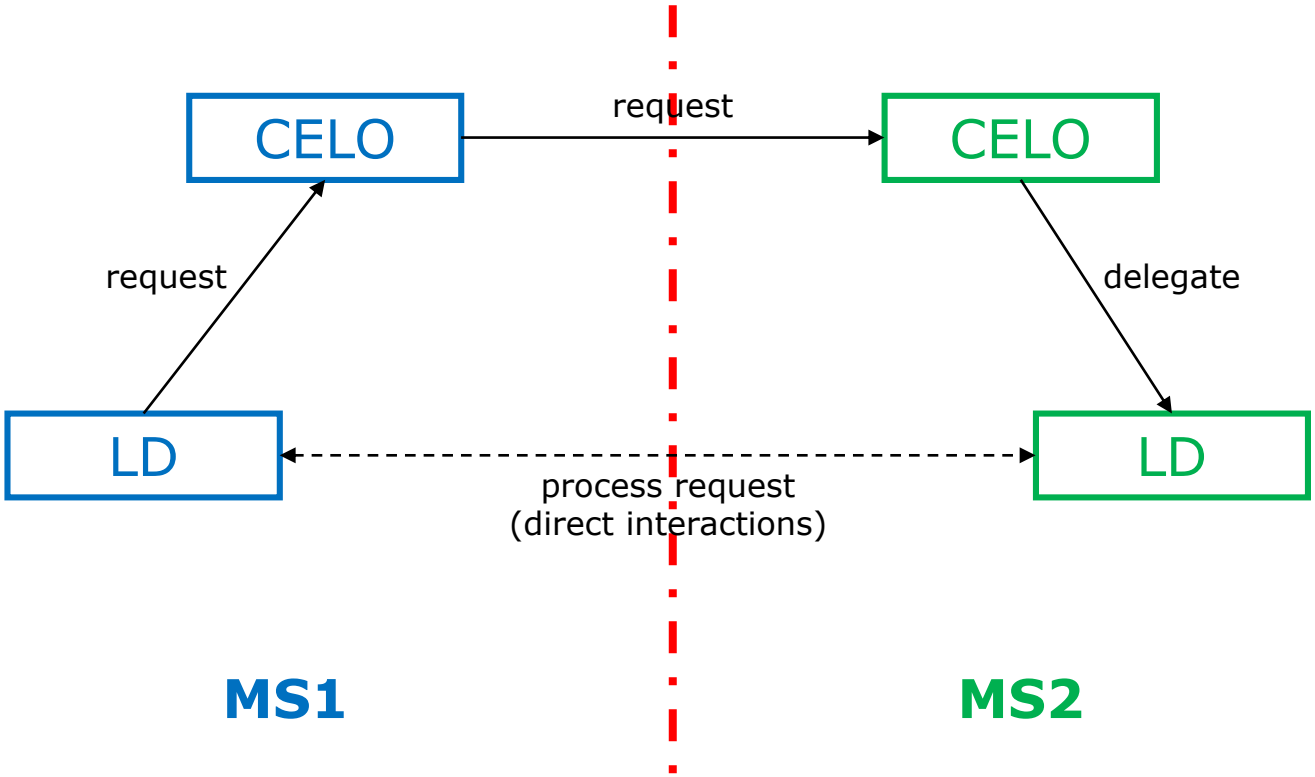

Art 8-9, 15-16
2016/323
ACO IE & data
Duty Suspension
389/2012
ACO actors & processes
All types of arrangements
Art 19-20
612/2013
EO registry
Duty Suspension

- Overview
- **COUNCIL REGULATION (EU) No 389/2012**
- COMMISSION IMPLEMENTING REGULATION (EU) 2016/323
- COMMISSION IMPLEMENTING REGULATION (EU) 612/2013

389/2012 – Actors (Art 3-5)

- Central Excise Liaison Offices (CELO)
  - Contact with other MS; possibly contact with COM too
  - May delegate to other offices for specific activities or requests
  - Keep up-to-date and share list of competent officials
  - Ensure EO registry complete, accurate and up-to-date
- Liaison Departments (LD)
  - Direct contact with other MS if delegated to by CELO

389/2012 – Actors (Art 3-4)



389/2012 – Processes (Art 8, 15, 16)

- Cooperation on request
  - Reply in 1 month (if information available) or 3 months (otherwise)
- Mandatory Exchanges of Information
  - Impact on other MS (irregularity, infringement, etc.)
- Spontaneous Exchanges of Information
  - Optional; information that may be useful to other MS

389/2012 – Economic Operators (Art 19-20)

- National register (complete, accurate, up-to-date)
- Automated inter-MS exchange
  - Via Central register
  - EO involved in inter-MS duty-suspended movements
- EO may
  - access its data
  - request corrections
  - check the validity of (other) EO's excise number

389/2012 – Miscellaneous

- Art 13 – simultaneous controls
- Art 21 – Data retention: 5 years
- Art 24 – Quality of Service
  - Service level Agreement*
  - Security Policy
- Art 25 – General Limits of Obligations
  (e.g. exhaust first usual sources of information)
- Art 34 – Statistics

* Implemented in operational documentation by EMCS SLA and TOC

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2016/323 - Cooperation on Request (Art 4-6)

Core business information

- ARC known to requesting authority
  - Movement download (status)
  - History of movement
- ARC unknown
  - List of e-AD(s) meeting general query's criteria

Other information

- Request
  - Administrative Cooperation, or
  - History

2016/323 - Cooperation on Request (Art 6)

Time Limit	1 | 3 months	Core Business Information: automated exchanges; so, should be much faster
Refusal	CCN Mail (EMCS 3.3: EMCS ACO messages)	
Feedback		

2016/323 - Mandatory Exchanges (Art 10-14)

Communication	Time Limit	Comments
ACO Results	7 days	Infrigement, irregularities, etc. as in 389/2012 Art 15(1)
Control	7 days	
Event	7 days	
Interruption	1 day	
Alert / Rejection	1 day	

2016/323 - Optional Exchanges (Art 9)

Communication	Time Limit	Comments
ACO Results	n/a	Other cases than Mandatory
Control		

2016/323 - Miscellaneous

Duty suspension and other kinds of movement

- Mainly about EMCS movements
- Also covers goods released for consumption and distance selling

Fallback (Art 15)

- Exchanges via any agreed means

- Overview
- COUNCIL REGULATION (EU) No 389/2012
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- **COMMISSION IMPLEMENTING REGULATION (EU) 612/2013**

612/2013

- Art 4-6: synchronisation **twice per day**
  - National Registers <-> Central register
  - Central register -> Extract for online consultation
- Art 6: online consultation (SEED-on-Europa)
- Art 7: Statistics
- Art 8: Time limit
  - **2 hours** to process notification or request
- Annexes: data and messages

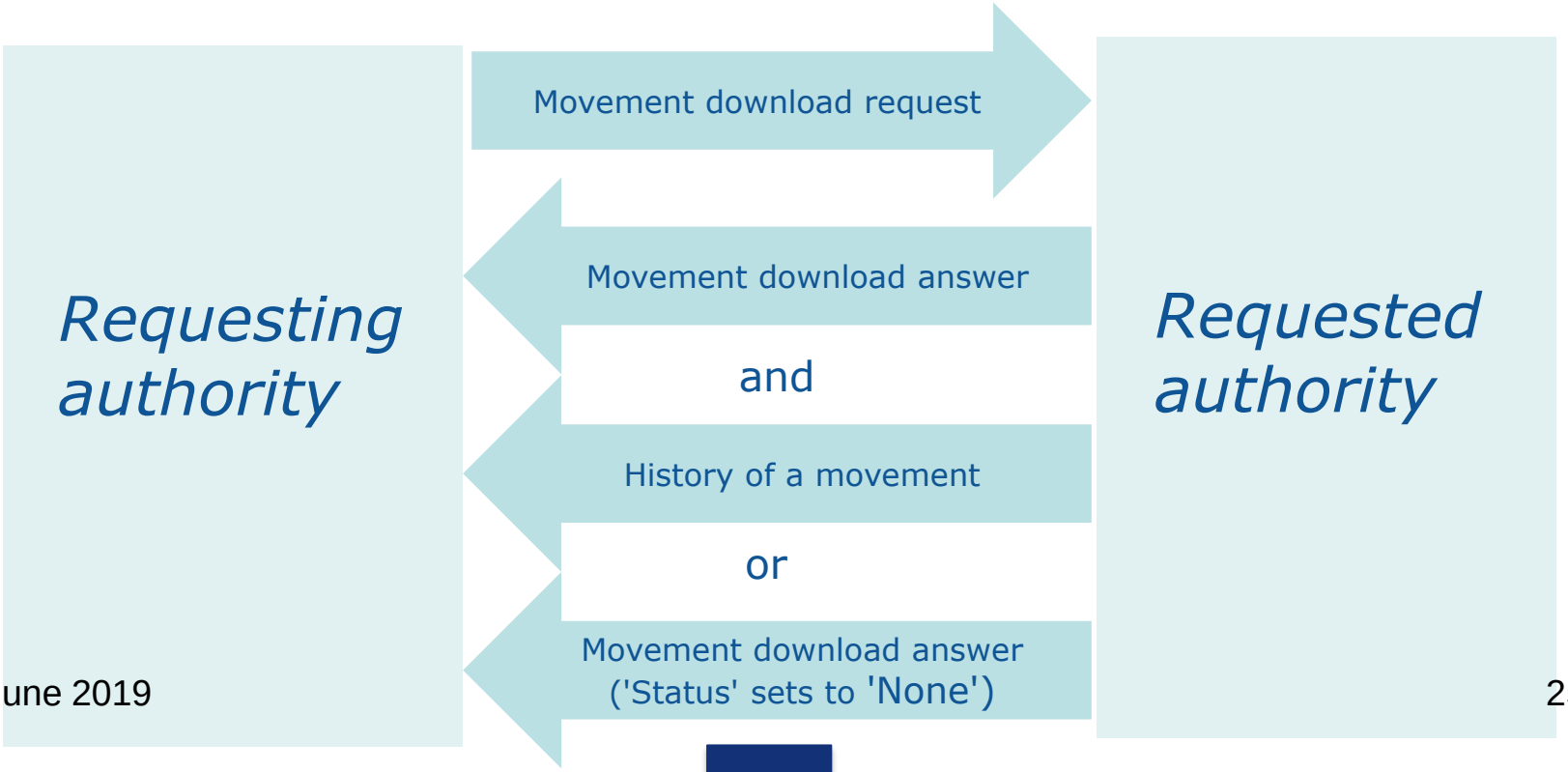
Questions

Annex Slides

Cooperation on request

Request for download of info contained in the computerised system

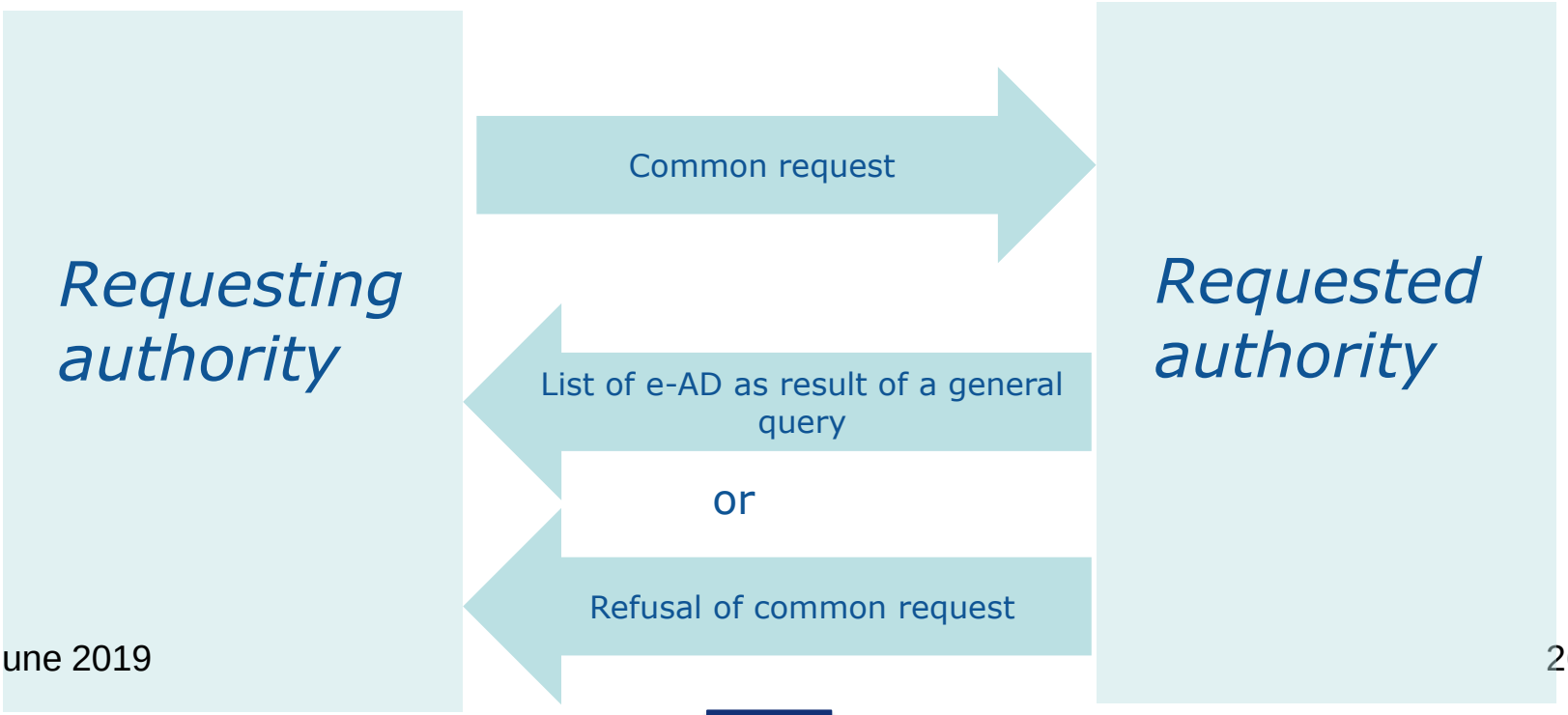
ARC known to the requesting authority (Art.4)



Cooperation on request

Request for download of info contained in the computerised system

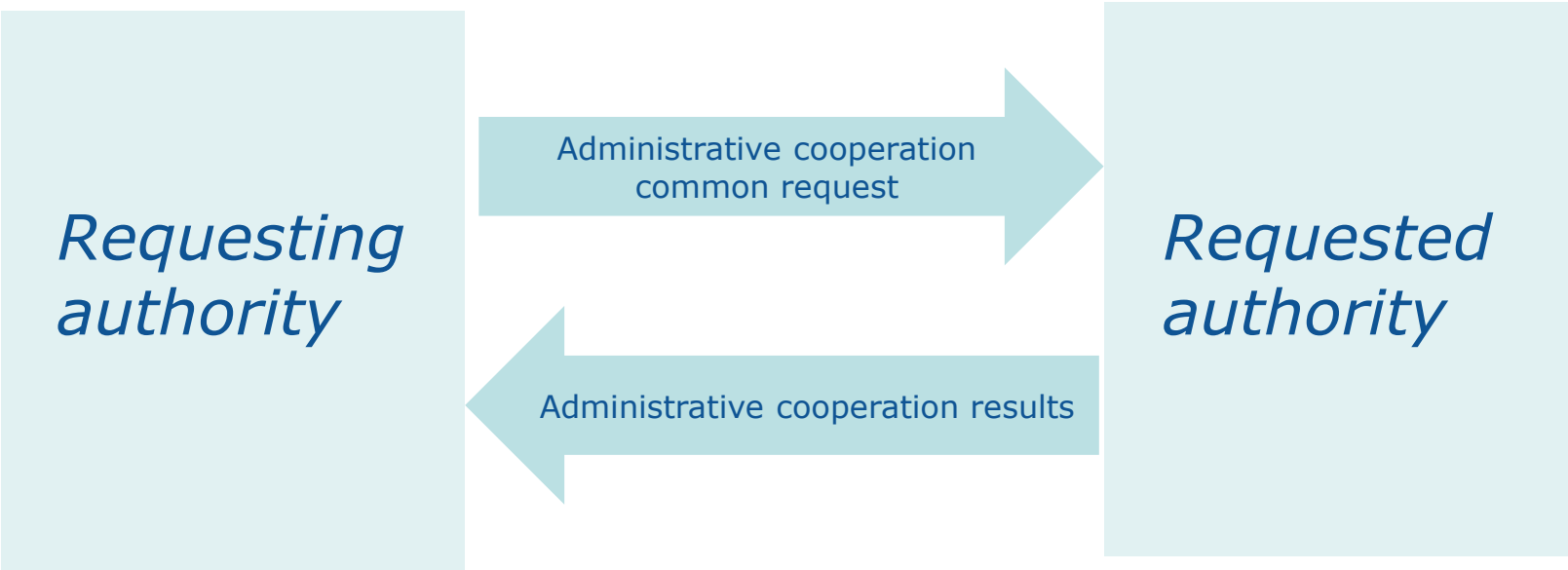
ARC unknown to the requesting authority (Art. 5)



Cooperation on request

Requests for info NOT contained in the computerised system

Requests for info/ enquiries (Art. 6)



Cooperation on request

Requests for info NOT contained in the computerised system

Requests for info/ enquiries (Art. 6)

Each request may concern ONE or MORE economic operator in MS of the requesting authority

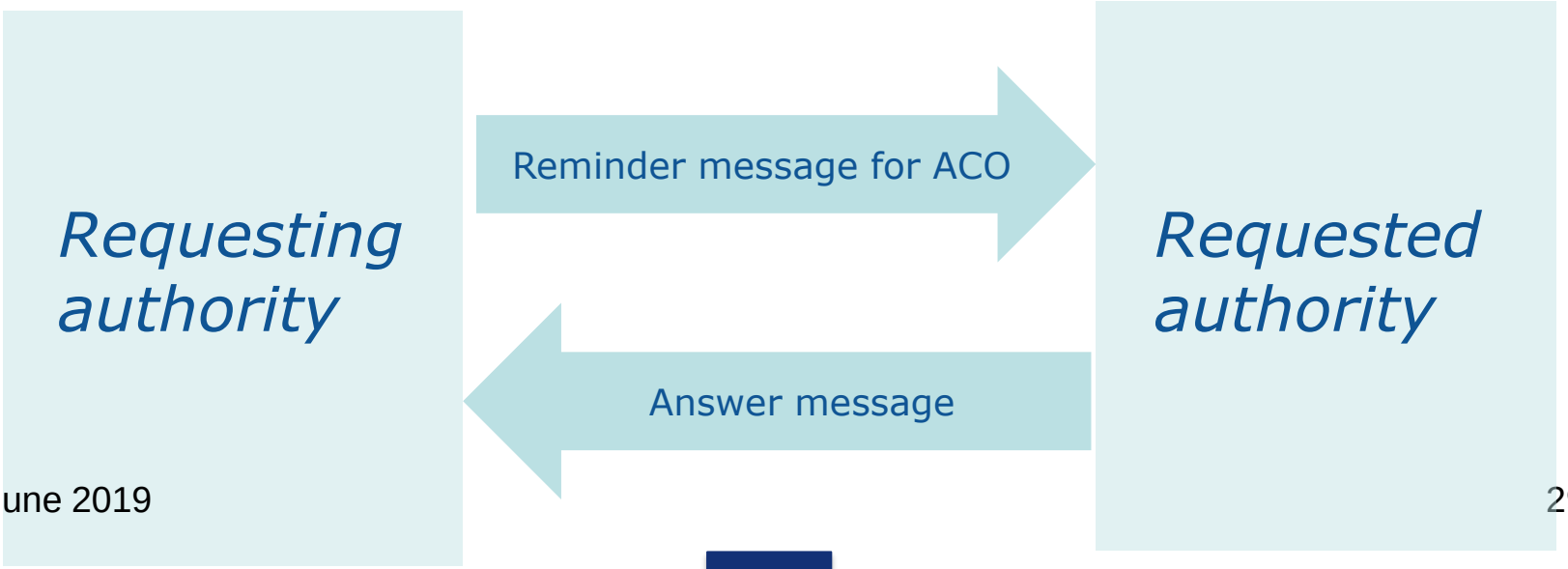
It shall concern NO MORE than ONE economic operator in MS of the requested authority

Cooperation on request

Requests for info not contained in the computerised system

Time limits (Art. 7)

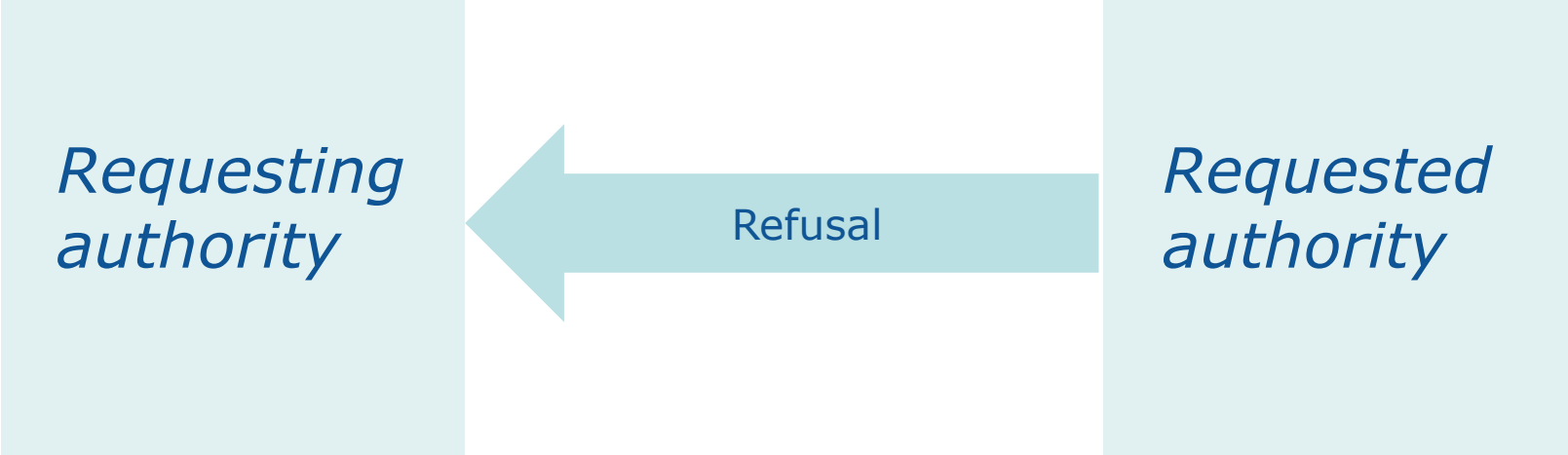
*Time limits under Art. 11(1) of Reg.(EU) 389/2012 – **3 months/ 1 month***



Cooperation on request

Requests for info not contained in the computerised system

Refusal to cooperate (Art. 8)

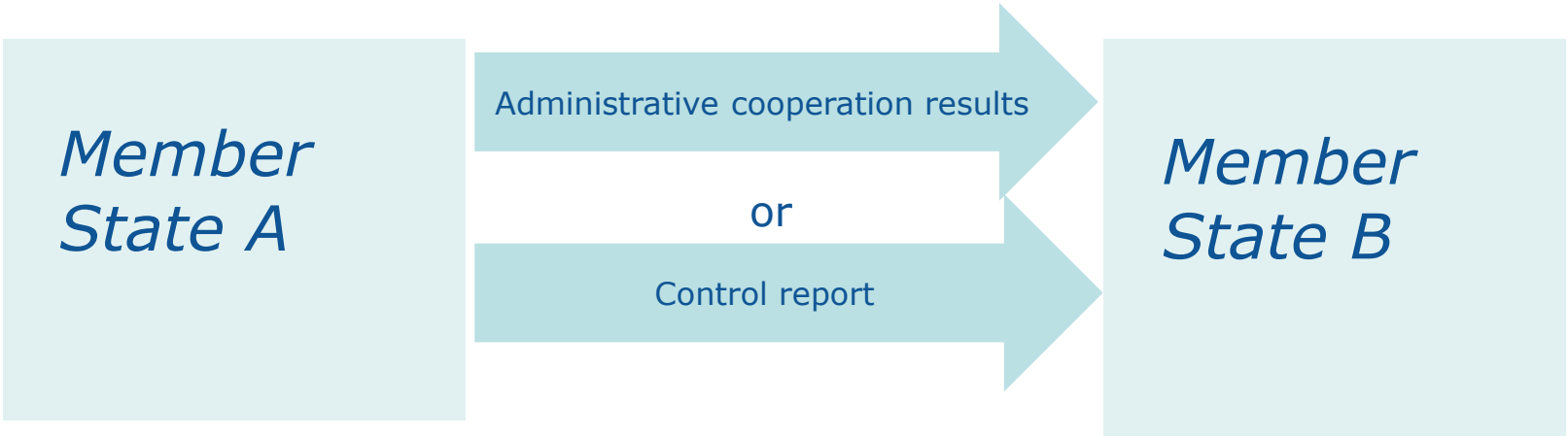


- *using **CCN secure mail***
- *providing necessary information*
- *sent as soon as possible (within 3 months)*

Exchange of info without prior request

Optional exchange of info (Art. 9)

Cases from Art. 16 of Reg. 389/2012 ***OR*** *Results of documentary of physical control* ***during the movement***



Exchange of info without prior request

Mandatory exchange of info (Art. 10) *Cases from Art. 15(1)(a)-(e) of Reg. 389/2012 as a results of a documentary OR physical control of goods at the* ***premises*** *of warehouse keeper or registered consignee*

Member State A

Administrative cooperation results

Member State B

Within 7 days from the control

Exchange of info without prior request

Mandatory exchange of info – control report (Art. 11) *Cases from Art. 15(1)(a)-(e) of Reg. 389/2012 as a results of a documentary or physical control of goods* ***during the movement***

Within 7 days from the control

Exchange of info without prior request

Mandatory exchange of info – definitive interruption of a movement (Art. 12) *due to cases in Art. 15(1)(a)- (e) of Reg. 389/2012*

Member State A

Interruption of movement

Member State B

*Within **1 day** of the moment when the competent authority becomes aware of the definitive interruption*

Exchange of info without prior request

Mandatory exchange of info –alert or rejection notification (Art. 13) - *Goods not requested, content of e-AD incorrect due to cases in Art. 15(1)(a)- (c), (e) of 389/2012 of Reg. 389/212*

Member State A → Alert or rejection of an e-AD → *Member State B*

*Within **1 day** of the moment when the competent authority becomes aware of the facts from Art. 13 1st paragraph*

Exchange of info without prior request

Mandatory exchange of info – event reports (Art. 14) *Situations other than in Art. 10-13 but due to cases in Art. 15(1) of Reg. 389/2012*

*Within **7 days** of the moment when the competent authority becomes aware of the facts from Art. 14 1st paragraph*