European Commission

Directive on Tax Dispute Resolution Mechanisms

Albania and North Macedonia
Explanatory Meeting of the acquis Chapter 16 – Taxation
4 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.

Agenda

1. BACKGROUND
2. SUBJECT MATTER, SCOPE AND DEFINITIONS
3. OVERVIEW OF THE PROCEDURE
4. COMPLAINT
5. MUTUAL AGREEMENT PROCEDURE
6. DISPUTE RESOLUTION BY THE ADVISORY COMMISSION
7. ALTERNATIVE DISPUTE RESOLUTION
8. FINAL STAGE
9. INTERACTION WITH OTHER INSTRUMENTS AND PROCEDURES

1. BACKGROUND

The history

- EU proposed Directive in 1976
- EU Arbitration Convention (EU AC) in 1990
- Establishment of JTPF to monitor EU AC in 2002
- Change of EU JTPF Statistics on AC in 2012 *
- Intensive Monitoring of EU AC in EU JTPF in 2014/2015 *
- Impact Assessment analysing different options *
- Legislative proposal adopted on26 October 2016
- The legal adoption of the Directive EU 2017/1852 on 10 October 2017

**** Published on the Commission website***

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BEFORE	AFTER
Member States' obligation to resolve transfer pricing disputes not always enforced	Enforceable obligation on Member States to arrive at a resolution of all disputes that originate in tax treaties and affect the tax position of businesses and citizens
Often no recourse for taxpayers when mechanisms not applied properly	Recourse for taxpayers to national courts to unblock procedures
Unpredictable timeline for procedures	Clearly defined and enforceable timelines with a standard period of 18 months for the arbitration phase
Scope limited to issues related to transfer pricing and permanent establishment	Scope extended to all tax disputes between Member States that derive from tax treaties and other international agreements, such as the elimination of double taxation for businesses and citizens
No transparency requirements	Obligation to notify taxpayers and publish abstracts of the arbitration decisions

2. SUBJECT MATTER, SCOPE AND DEFINITIONS

Subject matter

- Disputes arising out of application or interpretation of:
  - Bilateral tax treaties
  - EU Arbitration Convention
  - Nordic Treaty
- Concluded between Member States

EU Arbitration Convention

- Practical importance:
  - Situations where no DTA in place between MS
  - Transfer pricing
    - Arm's length principle (Article 4 of the EU AC)
- Extension to new EU Member States

Territorial scope

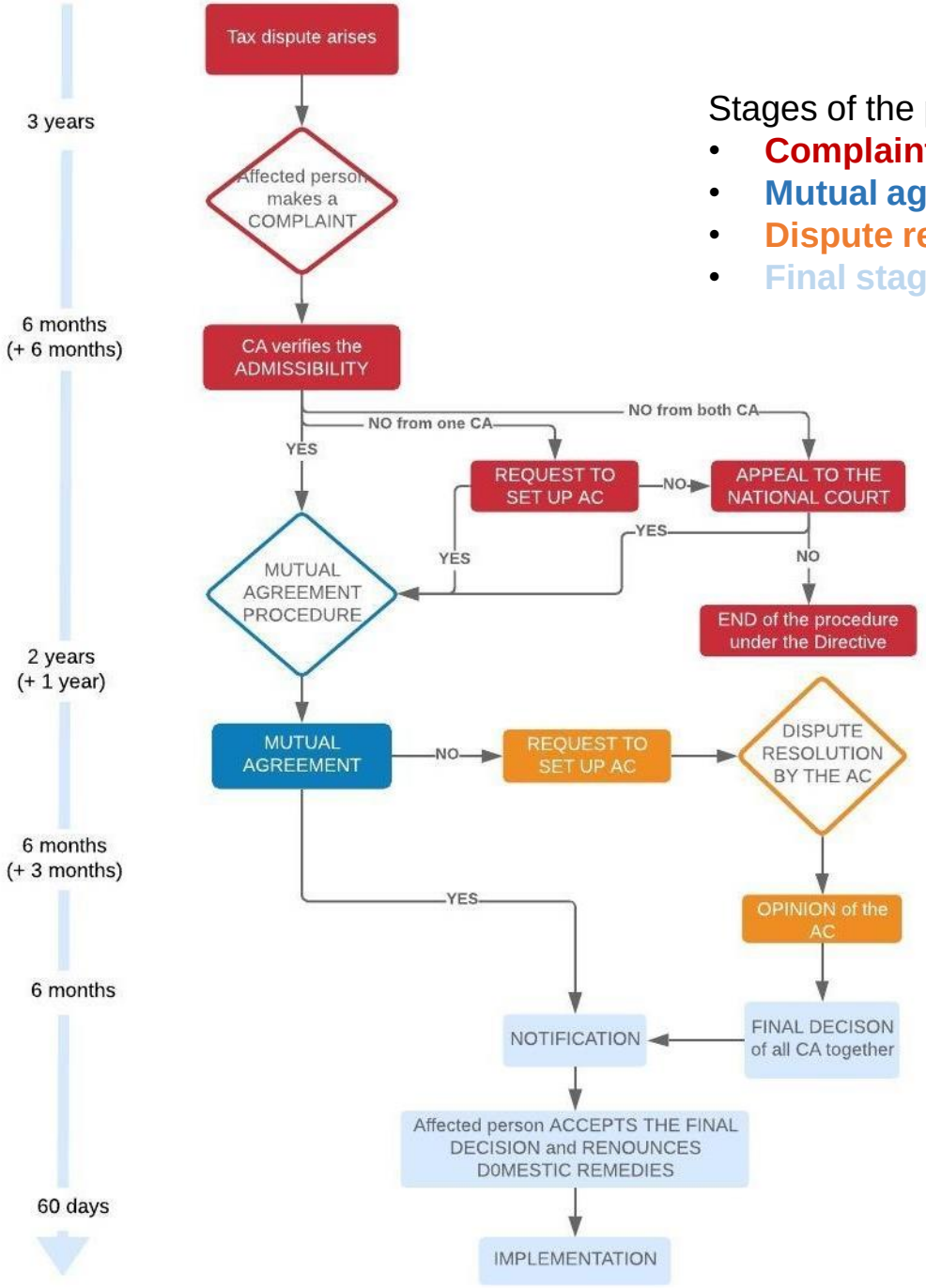
'Affected person':

- Any person, including an individual
- **Tax resident** of a MS
- Taxation is **directly affected** by a question in dispute

3. OVERVIEW OF THE PROCEDURE

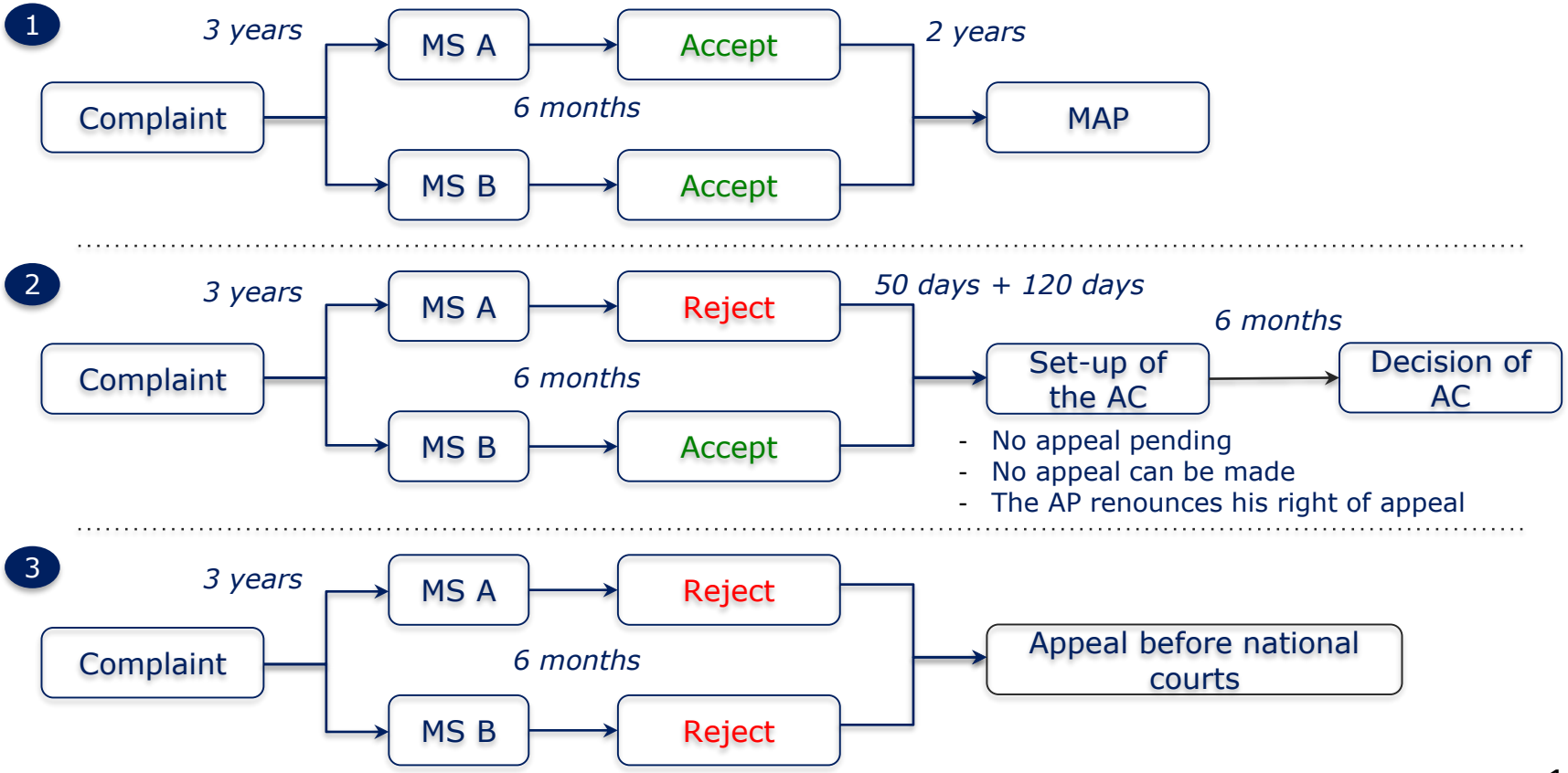
Stages of the procedure:

- **Complaint**
- **Mutual agreement procedure**
- **Dispute resolution**
- **Final stage**



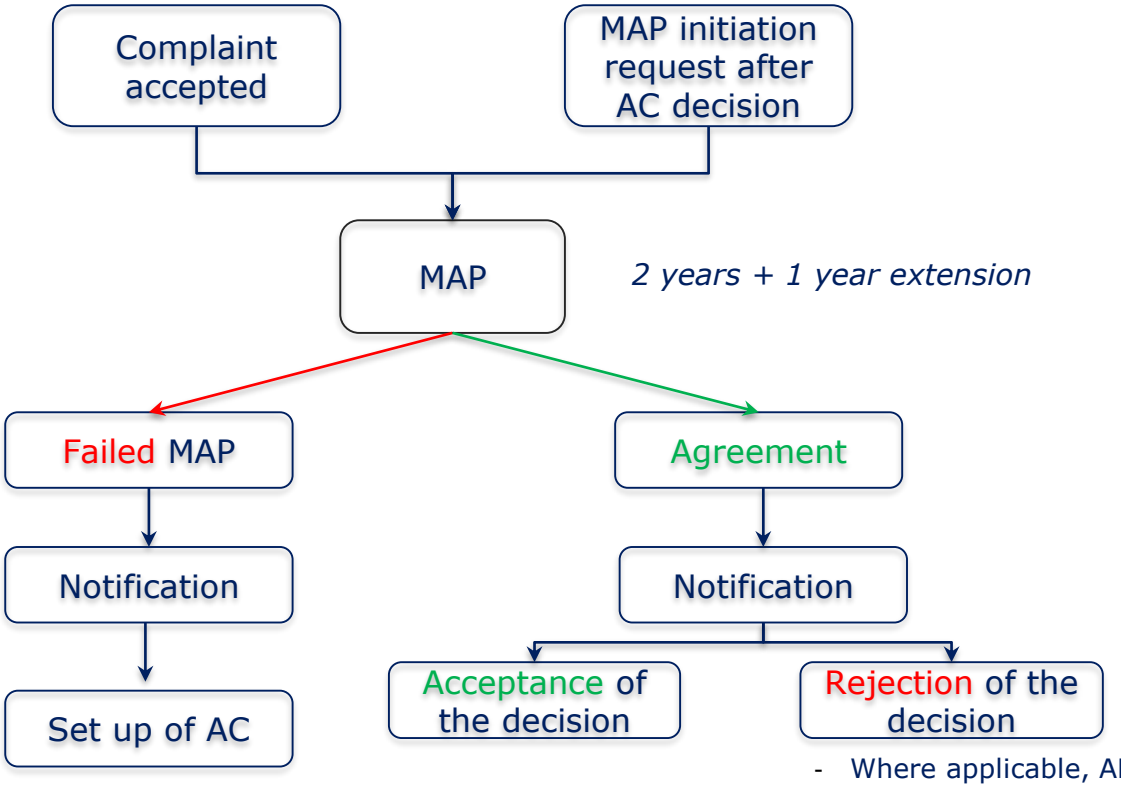
4. COMPLAINT

Complaint (Article 3)



5. MUTUAL AGREEMENT PROCEDURE (MAP)

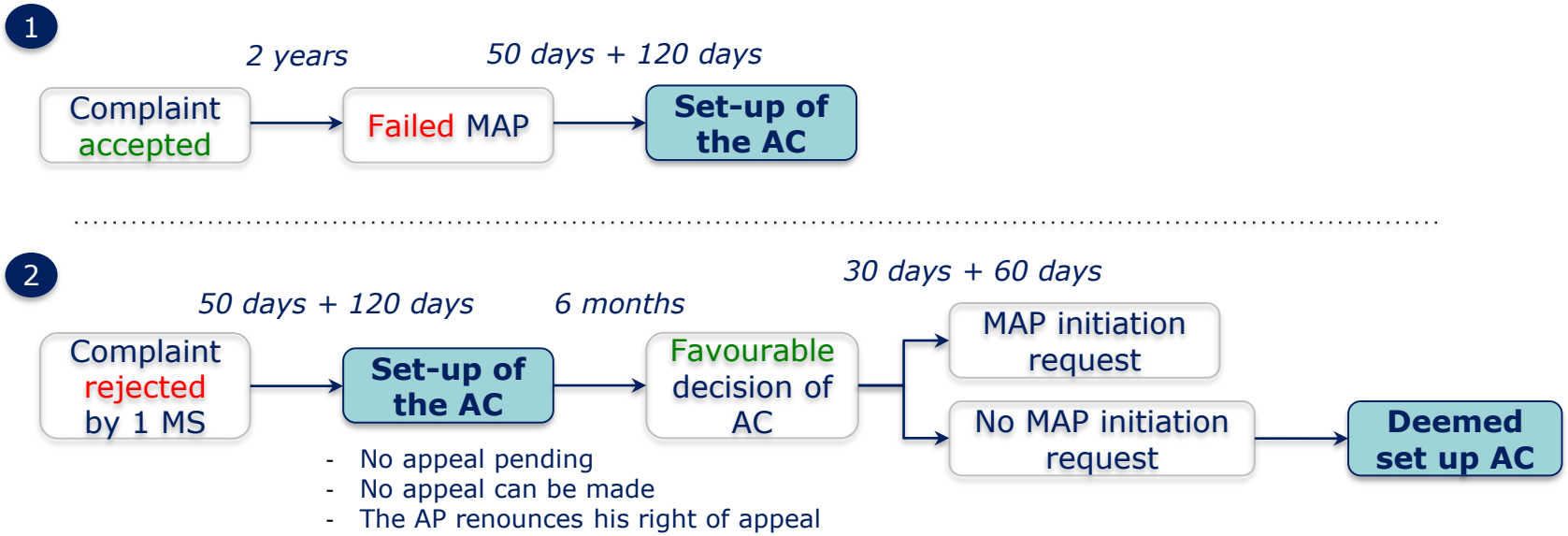
Mutual agreement procedure (Article 4)



- Where applicable, AP continues pending proceedings before national courts
- AP starts proceedings if statutes of limitation allow

6. DISPUTE RESOLUTION BY THE ADVISORY COMMISSION

6.1 Situations in which the AC is set up (Article 6(1))



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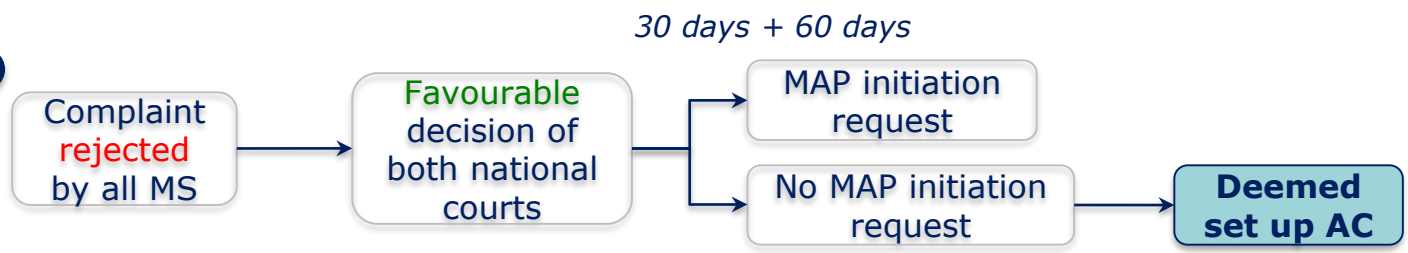
a)



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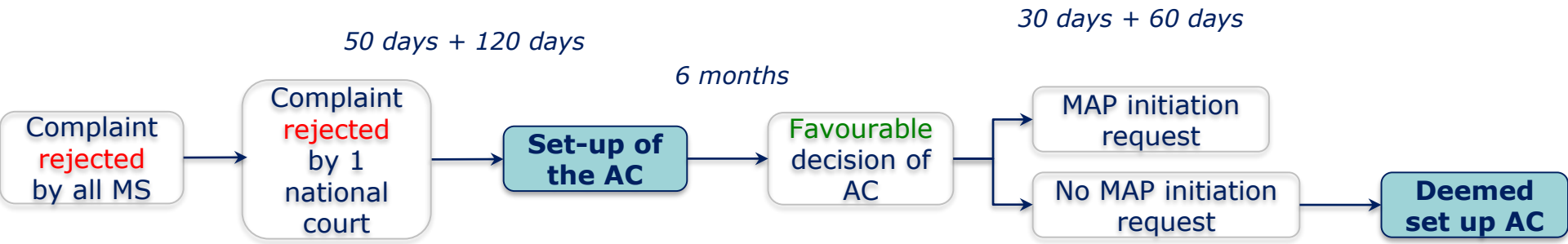
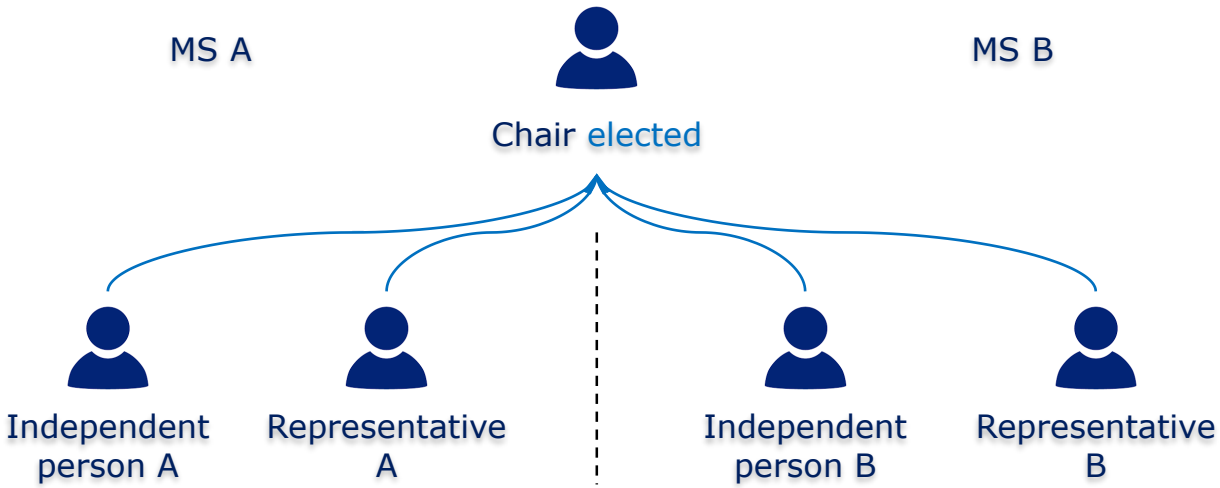
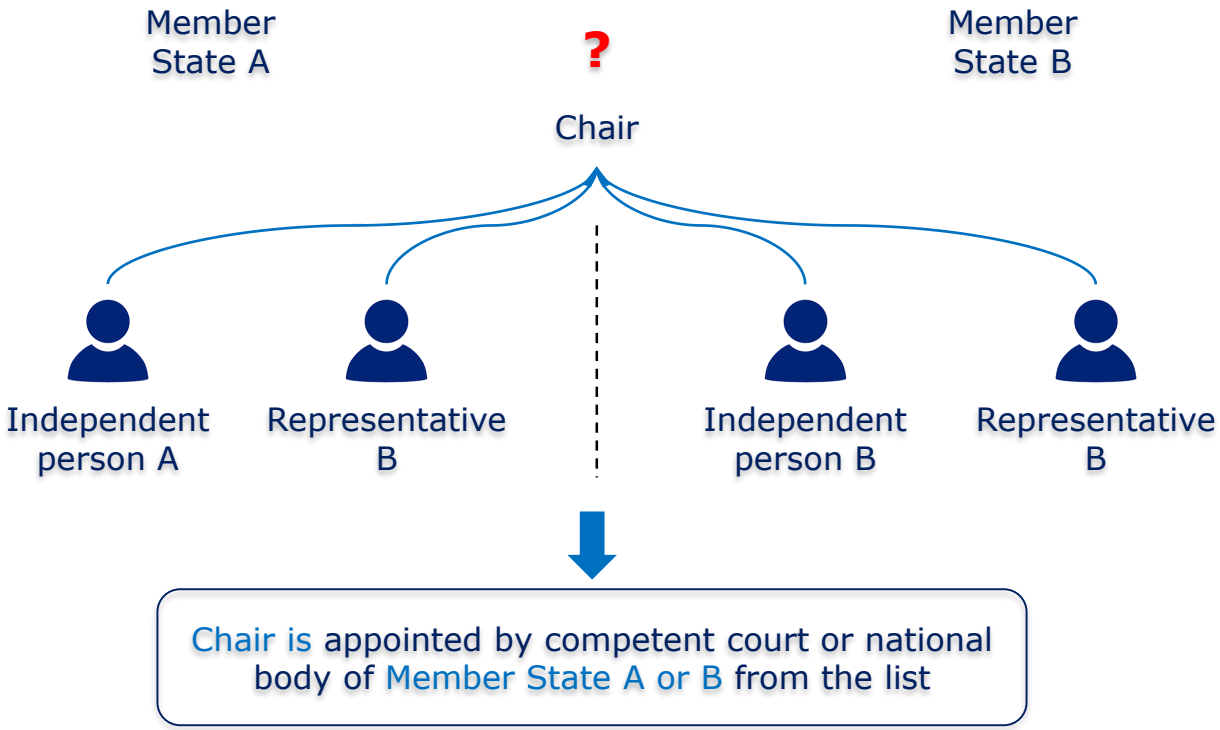


- No appeal pending
- No appeal can be made
- The AP renounces his right of appeal

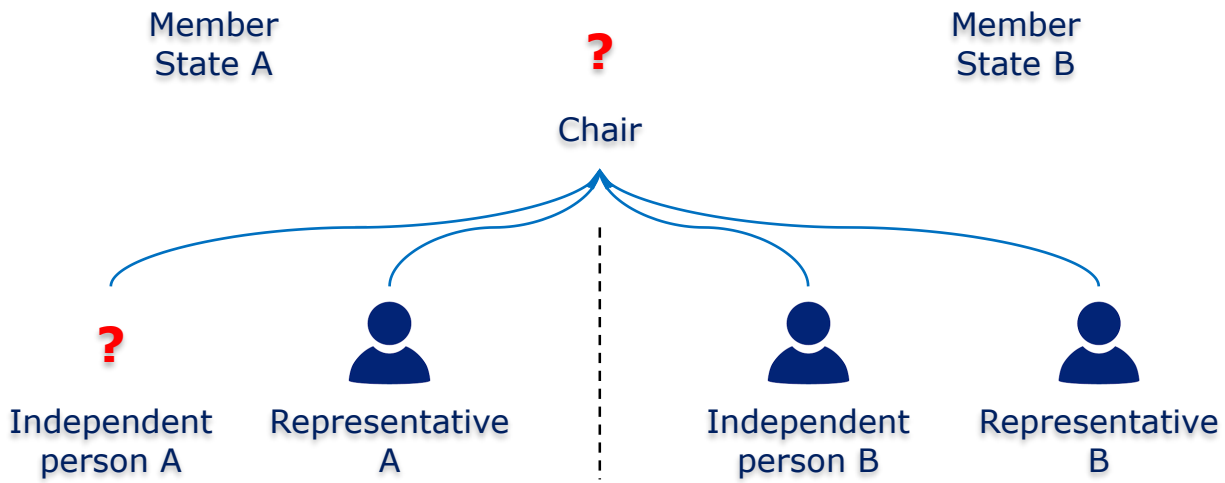
6.2. Appointment of the AC (Art. 8)



6.3. Appointment of the AC (Art. 7(1) subpara. 1)



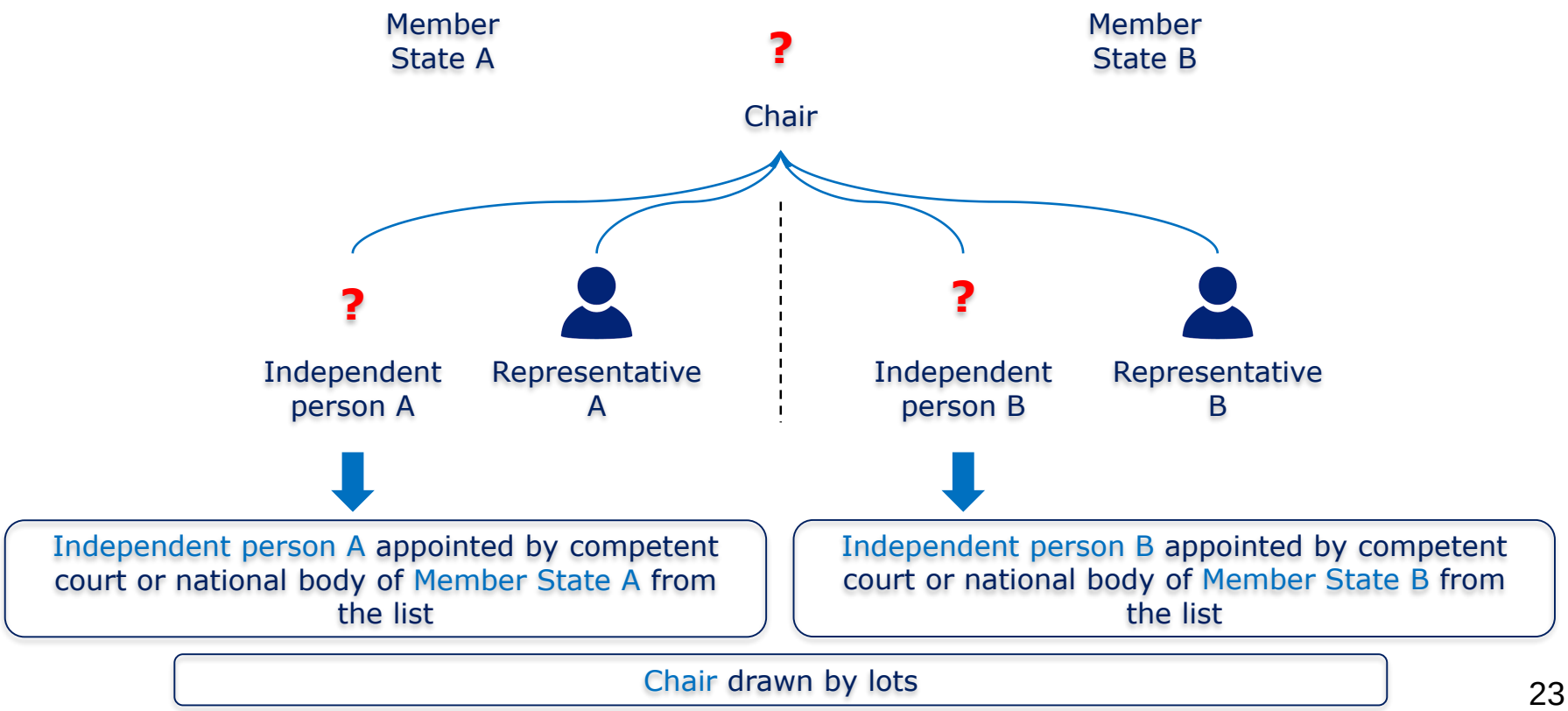
6.4. Appointment of the AC (Art. 7(1) subpara. 2)



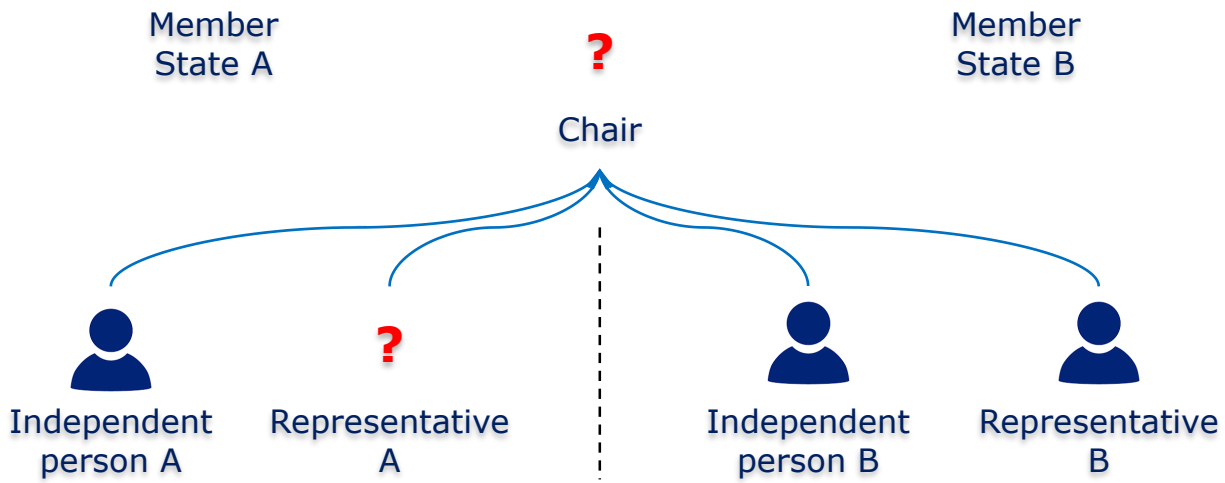
Independent person A appointed by competent court or national body of Member State A from the list

Chair then elected by the AC

6.5. Appointment of the AC (Art. 7(1) subpara. 3)



6.6. Appointment of the AC (Art. 7(1) subpara. 1)



Representative appointed by competent court or national body of Member State A

Chair then elected by the AC

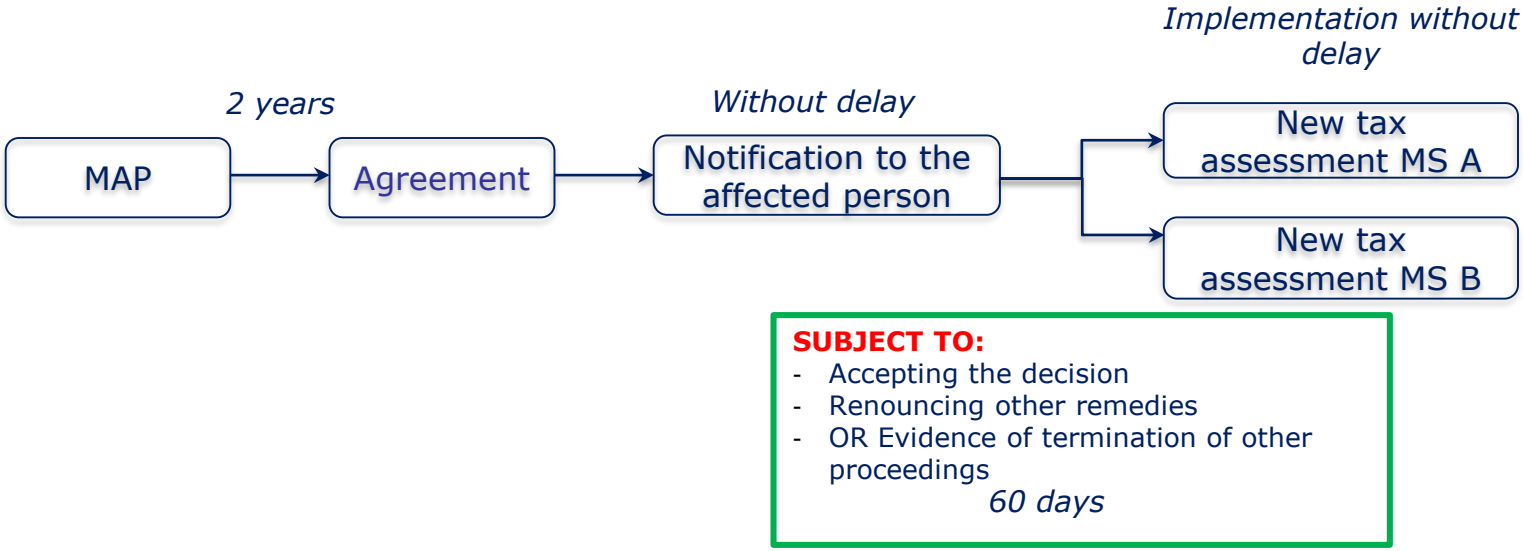
7. ALTERNATIVE DISPUTE RESOLUTION COMMISSION (ADRC)

ADRC (Article 10)

- Allowed to differ from the AC in:
  - Method
  - Form
  - Composition
- Costs (Article 12) and evidence taking (Article 13) can be agreed differently
- Ongoing project on a Standing Committee as a permanent body for tax dispute resolution

8. FINAL STAGE

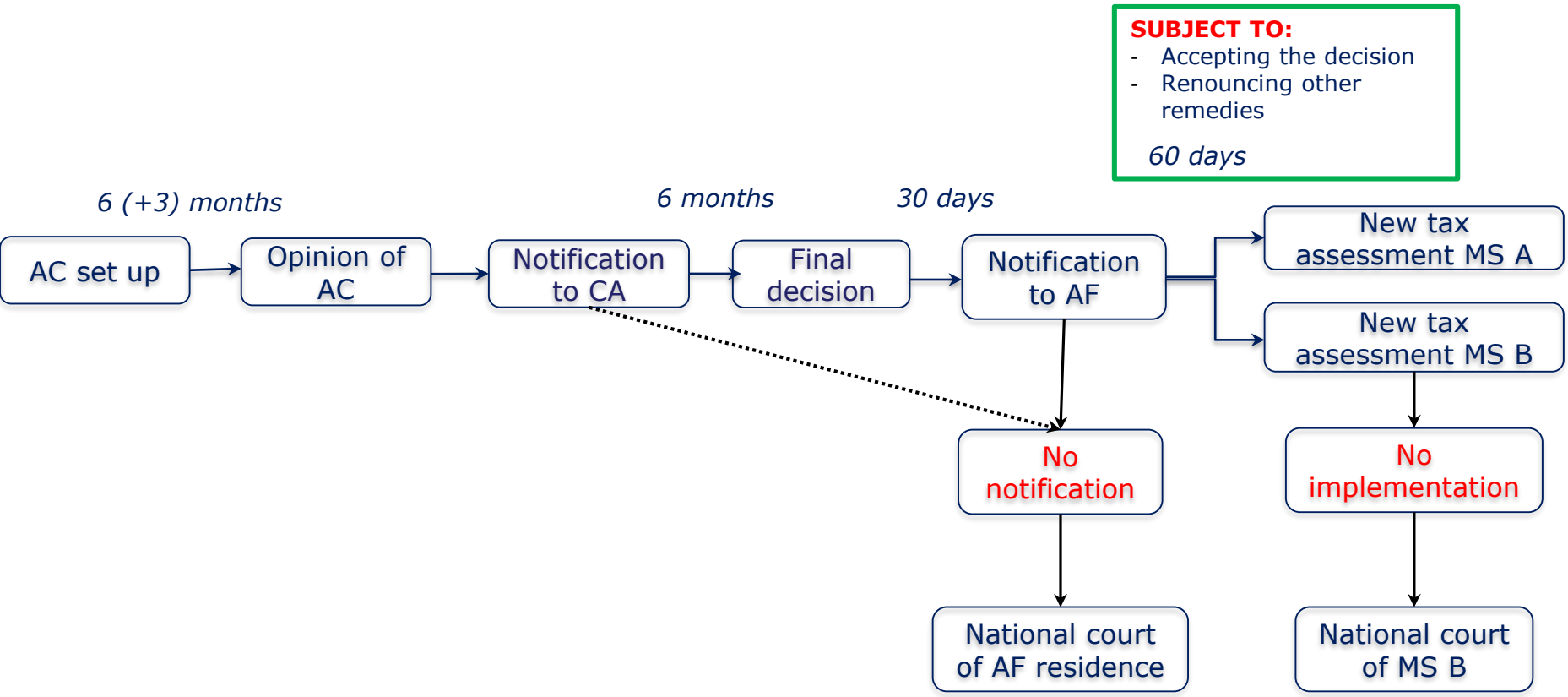
8.1. Implementation of the MAP agreement



8.2. Opinion (Article 14)

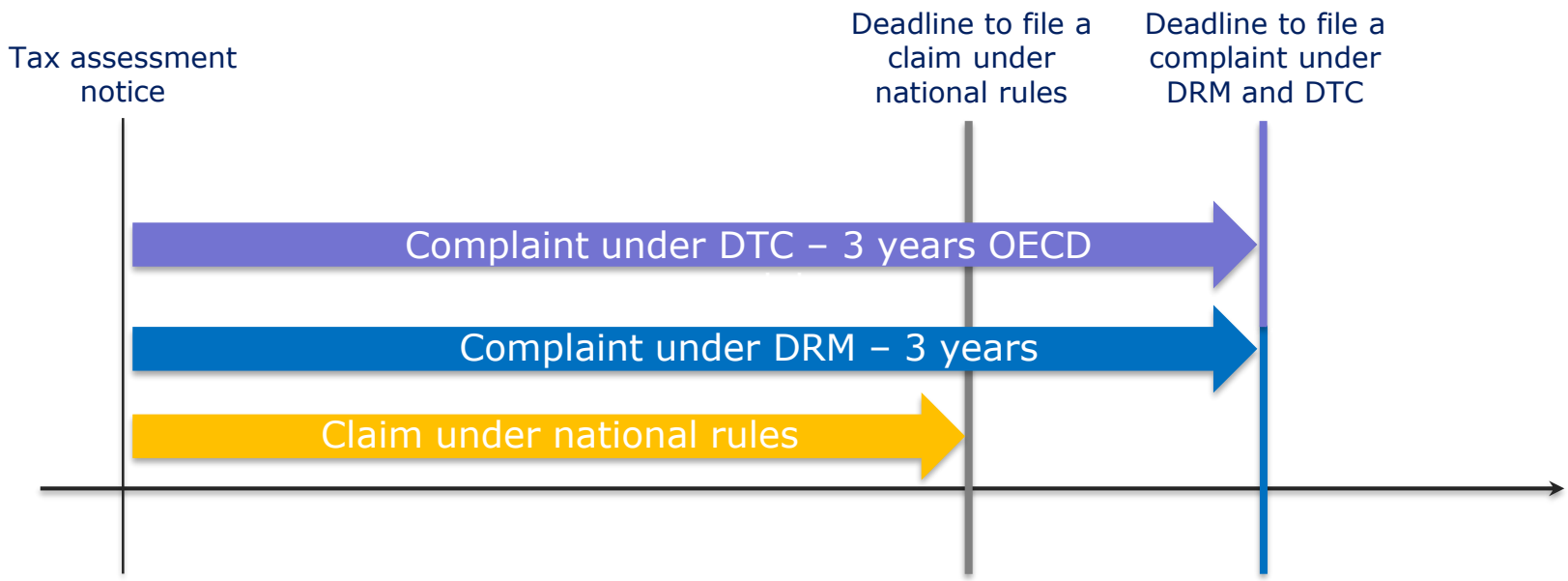
- Based on:
  - The provision of applicable agreement or convention and
  - Any applicable national rules
- Adopted by a **simple majority** of its members
- Delivered to all CA within 6 months (+3 months)

8.3. Final Decision (Article 15)

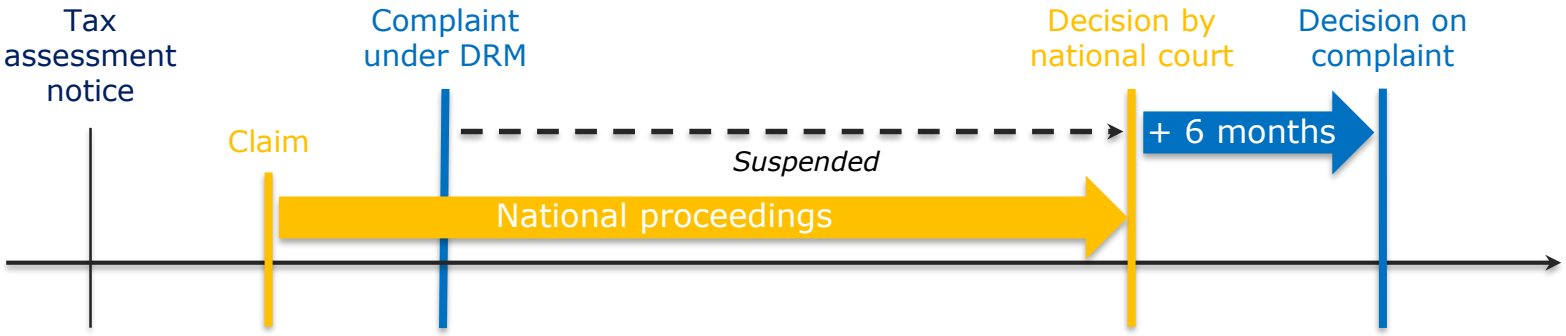


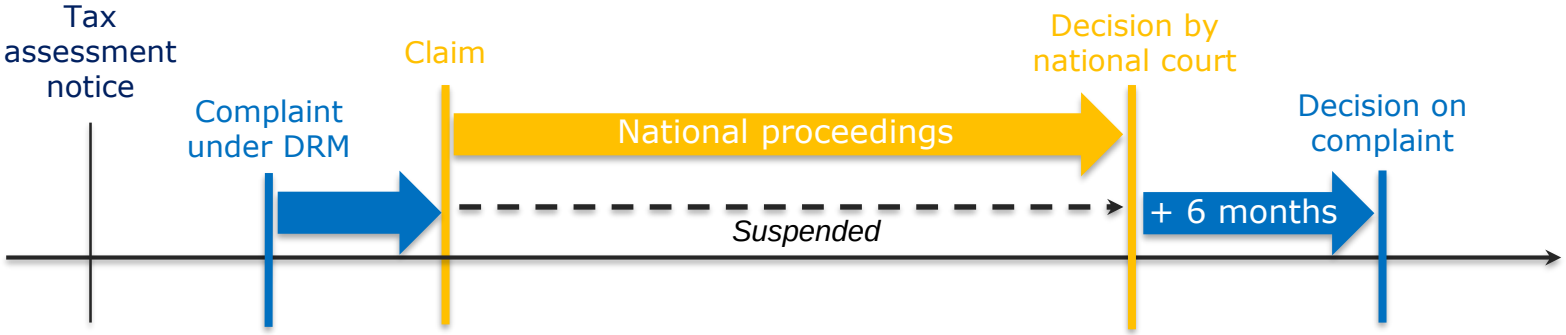
9. INTERACTION WITH OTHER INSTRUMENTS AND PROCEDURES

9.1 Options for the taxpayer (Article 3.1)

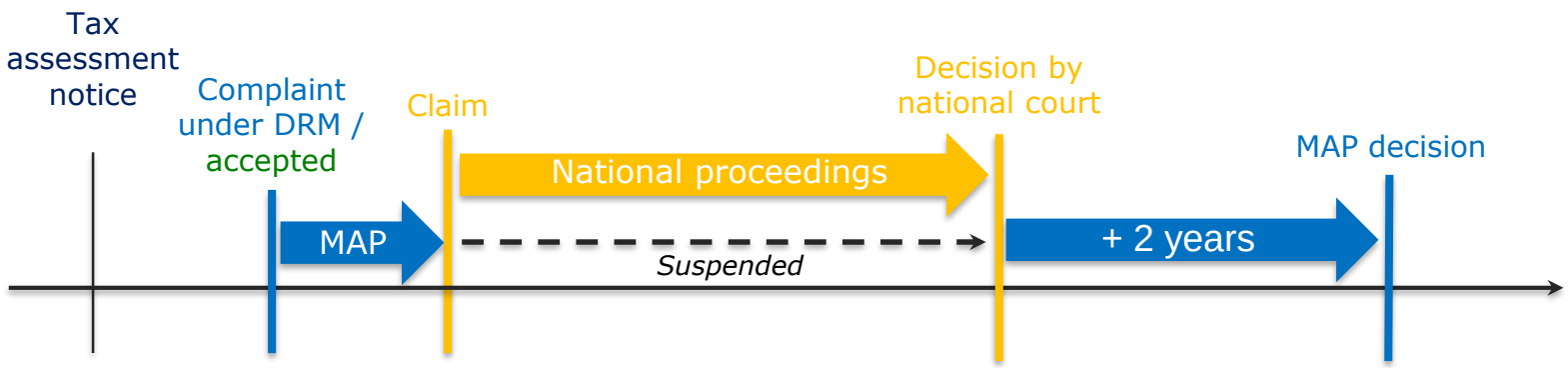


9.2 Interactions with national proceedings (complaint stage)

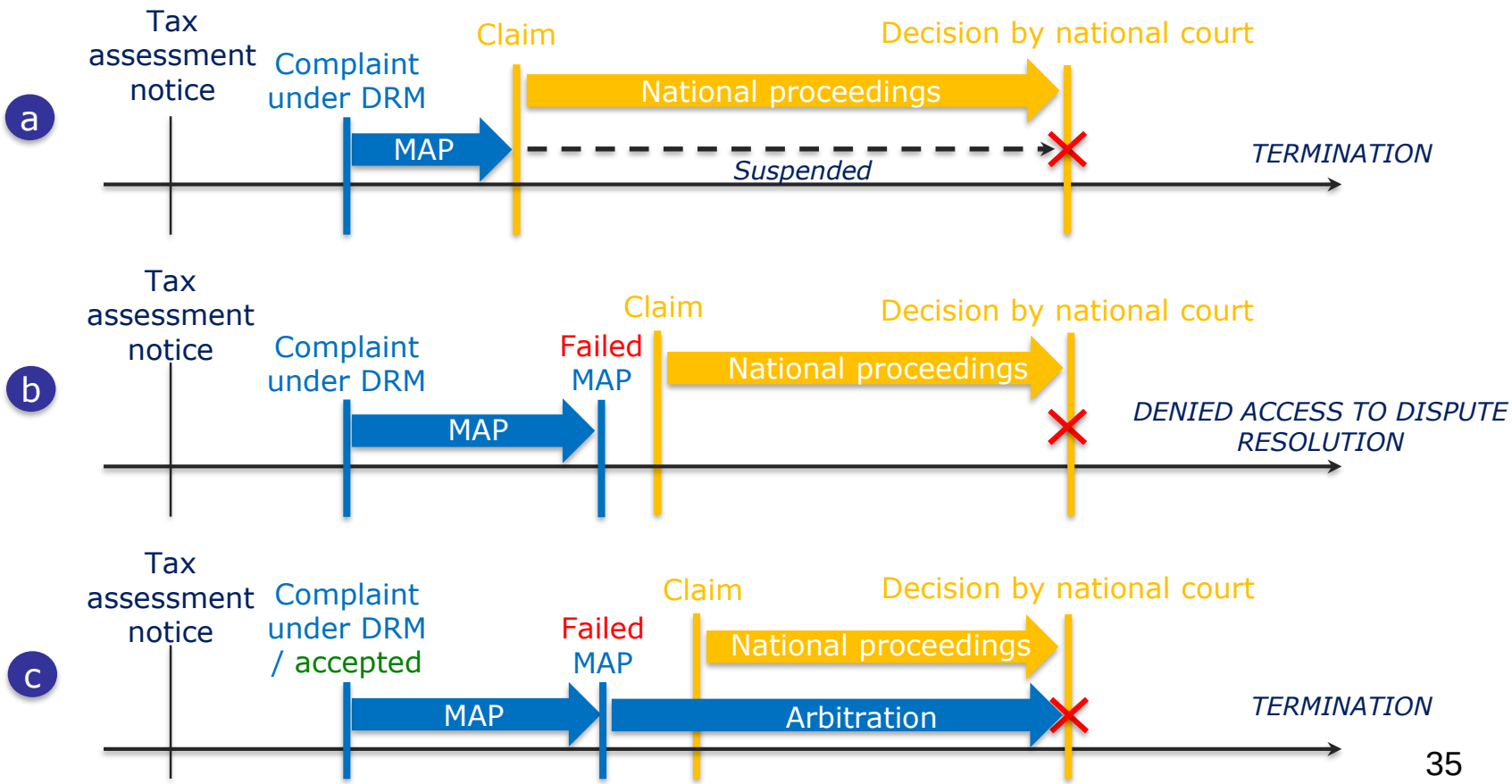




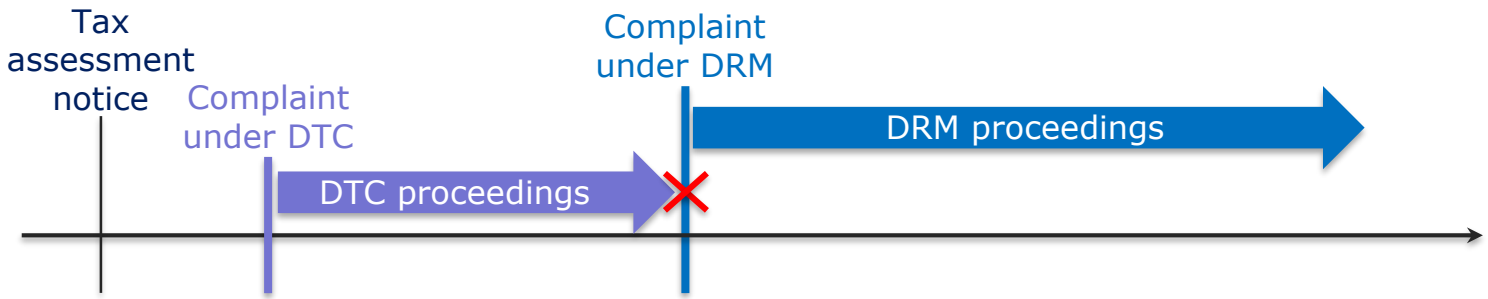
9.3 Interactions with national proceedings (MAP stage)

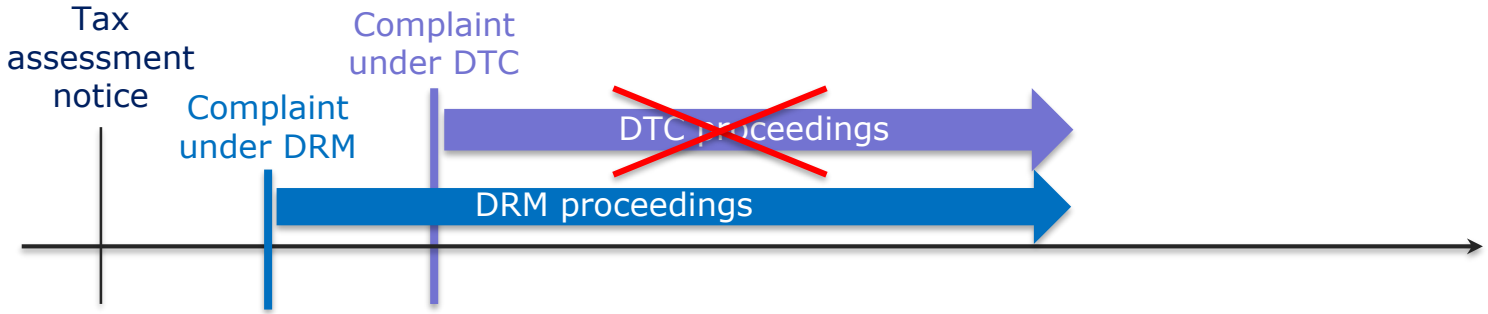


9.4 Interactions with national proceedings (Article 16-4)



9.5 Interactions with DTC proceedings





Contacts

European Commission

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