

Enforcement and Judicial Control of Arbitration Decisions

Dr. Paloma Schwarz

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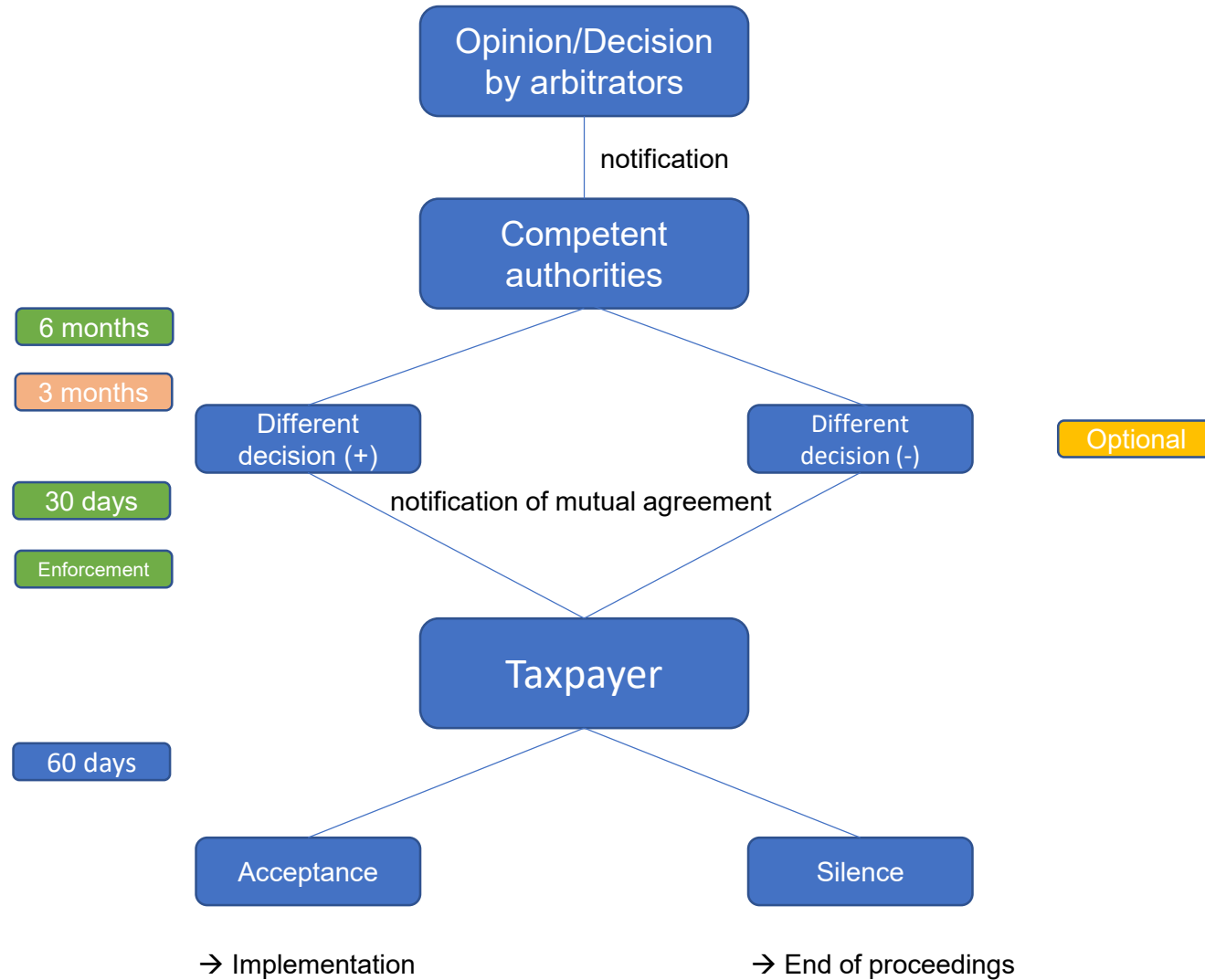
Overview of the implementation phase

Enforcement

Judicial Review

Concluding remarks

Overview of the implementation phase



Enforcement

Enforcement through national courts and according to domestic law (e.g. Germany: Verpflichtungsklage, § 41 FGO, Luxembourg: Art. 15 Loi instaurant un mécanisme de règlement des différends fiscaux)

No enforcement in case of impartiality of arbitrators (Art. 19(4)(b) MLI/Art. 15 IV DRD)?

- Consequence: Arbitration procedure should be considered as not to have taken place
- Open questions:
 - Possibility to request new arbitration procedure?
 - Impartiality where only one arbitrator is judged not to be independent?
 - Deviating decision taken by competent authorities. Possibility to invoke impartiality?
 - Notification to other contracting state?
 - Obligation to annul implementation of mutual agreement?

Judicial
review

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graph TD; A[Judicial review] --> B[Domestic courts]; A --> C[International bodies]
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Domestic
courts

International
bodies

Judicial review by domestic courts

Enforcement of a mutual agreement reflecting an arbitration decision?

Possibility to challenge independence in the context of a separate proceeding?

Judicial review by international bodies

Art. 52 of the ICSID Convention provides for the possibility to challenge the validity of an arbitral award on the following grounds:

- if the Tribunal was not properly constituted;
- if the Tribunal has manifestly exceeded its powers;
- If there was corruption on the part of a member of the Tribunal;
- If there has been a serious departure from a fundamental rule of procedure; or
- if the award has failed to state the reasons on which it is based.
- **Not all these reasons can be transferred to arbitration in tax matters**

Judicial review through International Court of Justice based on art. 36 of the ICJ Statute?

Not applicable to arbitration procedures under DRD.

Concluding remarks

Enforcement procedure is set by national law

Judicial review very limited (impartiality of arbitrators) and depends on domestic law

Judicial review by international bodies not applicable to proceedings under DRD

Thank you for listening!