



ARBITRATION COURT

attached to the Economic Chamber of the Czech Republic
and Agricultural Chamber of the Czech Republic

Online Dispute Resolution: Virtual reality and real life

ADR practice for domain names

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Czech Arbitration Court

- 1949 standard arbitration court
|
- 2004 **.cz** domain names disputes
- 2006 **.eu** domain names disputes
113 panellists from 30 countries
all EU official languages
more than 1.000 disputes
- 2009 **gTLD** (UDRP) disputes
39 panellists from 12 countries



domain names disputes

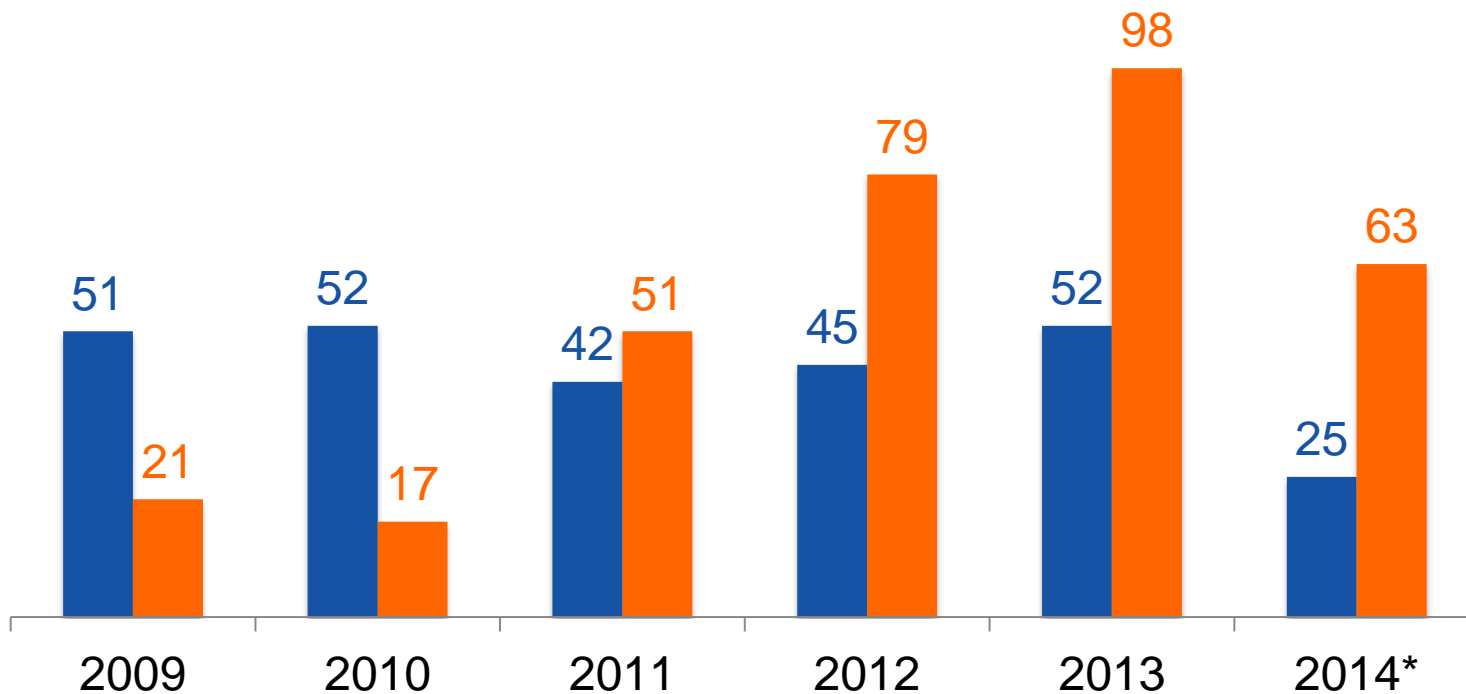
- ADR.eu and UDRP disputes are Alternative Dispute Resolution processes
- ADR.eu based on European regulations (733/2002 & 874/2004)
- UDRP (*Uniform Domain Name Dispute Resolution*) based on ICANN's contractual rules
- competence of courts in the competent jurisdiction remains untouched
- 2 - 4 months for the decision



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.eu / UDRP complaints





online resolution

All domain names disputes administered via multilingual „online platform“

- Electronic forms for complainants, respondents and panellists
- Evidence in the electronic form
- No oral hearings, electronic case file, notifications of changes

Creative parties & lawyers → non-standard communication form

Problems with the proxy holders & language of the proceedings

Important role of a dispute administrator



to fill a complaint you need to

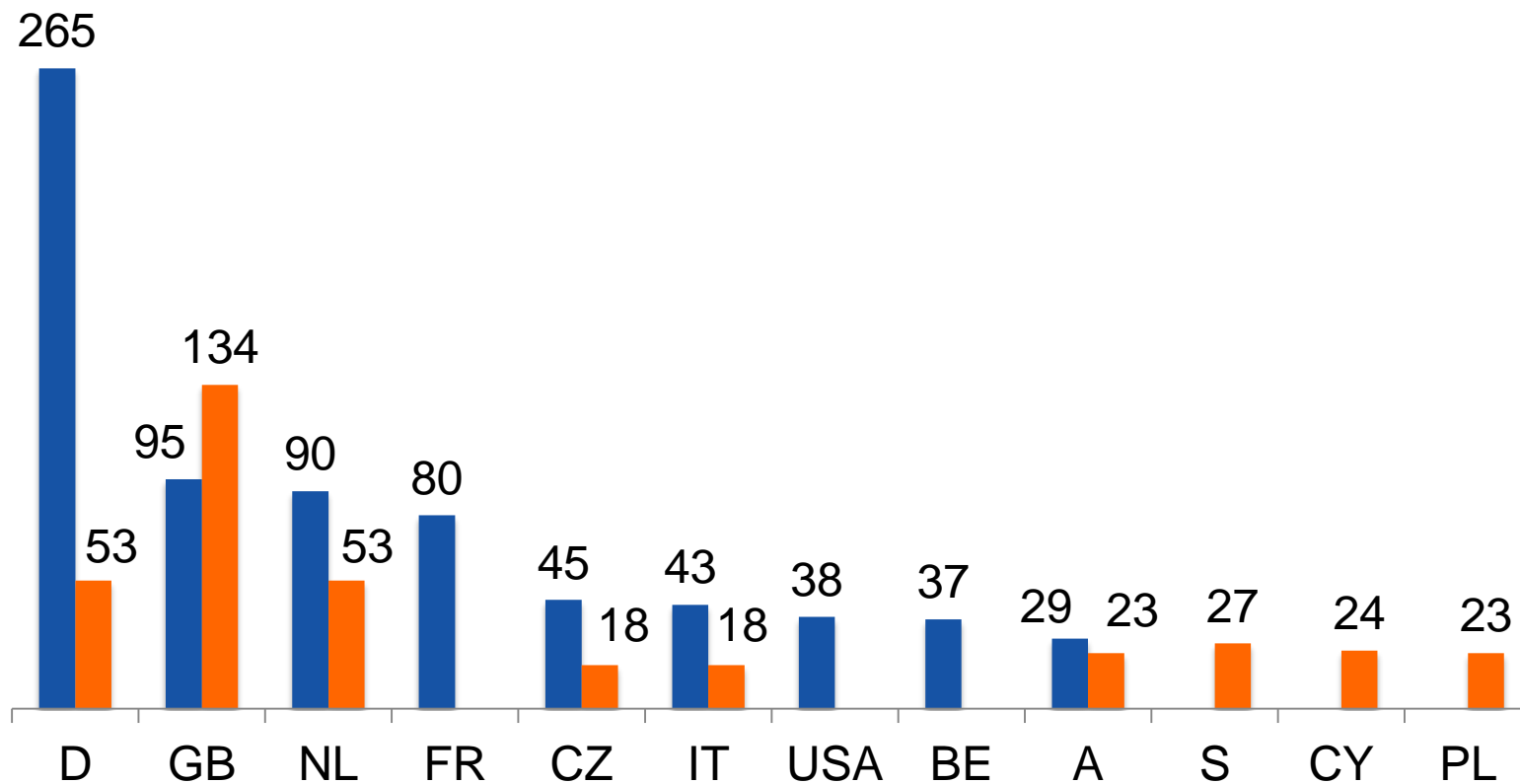
- know who shall be the respondent;
- know the language of the proceeding;
- identify the grounds of the case;
- prepare (and translate) the evidence;
- decide the number of panellists;
- decide what to require (transfer/cancellation).



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.eu complainants / respondents in last 3 years





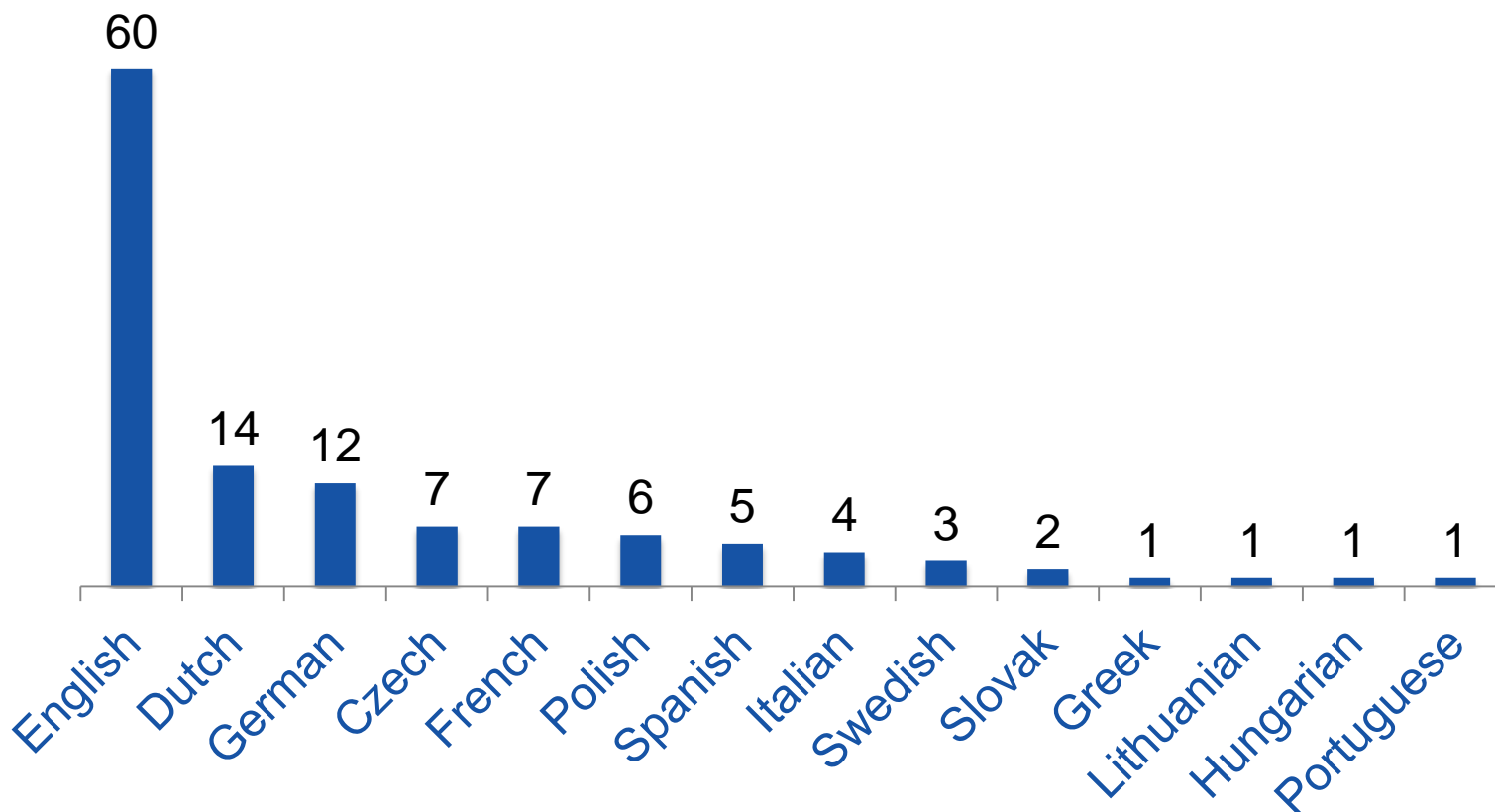
- In both proceedings the identity of the domain holder should be published in WHOIS database (EURid in .eu and specific registrar in UDRP)
- **.eu** issue – personal data protection (EURid however provides personal data of individuals concerned to entities who are planning to file an ADR complaint)
- **UDRP** issue – no central database, inaccurate WHOIS information, privacy/proxy registration services - be ready to adjust the complaint after being notified that the domain holder is a different person than originally designated



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.eu languages in last 3 years





- language of the registration agreement
- exceptions
 - agreement of the parties
 - different provision of the registration agreement
 - different decision in language trial (.eu)
 - different decision of the Panel (UDRP)

Finding out what is the language of the registration agreement

- .eu – WHOIS database of EURid
- UDRP – no central database, language certain after the verification by registrar



language trial (.eu)

- special procedure before starting the complaint; separate fee
- single panellist
- language of the language trial is the language of the registration agreement
- panellist shall have regard to the „circumstances of the case“
 - relevant – respondent speaks the requested language, respondent chose the language of the RA to complicate possible proceeding, there is no logical reason for the respondent to choose the particular language of the RA
 - irrelevant – complainant doesn't speak the language of the RA, expenses the translation would require



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translations

in both proceedings the Panel may request a translation but it may simply disregard any document filed in other language without requesting a translation and without a notification that the filing will not be taken into account

→ **recommendation** is to translate all the **relevant** parts to the language of the proceedings



protected names

.eu

a name in respect of which a right is recognized or established by the national law of a member state and/or Community law:

registered trademarks, geographical indications or designations of origin, unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works ...

UDRP

a trademark or service mark



dispute grounds

.eu	UDRP
domain name is identical or confusingly similar to <protected name>	
and	
either the domain name has been registered by the respondent without rights or legitimate interest in the name	the holder has no rights or legitimate interests in respect of the domain name
or	
domain name has been registered in bad faith	
or	
and	
domain name is being used in bad faith	



panel investigation

- panel shall conduct the proceeding in such manner as it considers appropriate in accordance with the rules
- panel is not obliged, but is permitted in its sole discretion, to conduct its own investigations on the circumstances of the case
 - visit the internet site linked to the disputed domain name in order to obtain more information about the respondent and the use of the domain name.
 - undertake limited factual research into matters of public record if it feels that it needs that assistance in reaching a decision.
- panel can issue a panel order to the parties to provide further information.



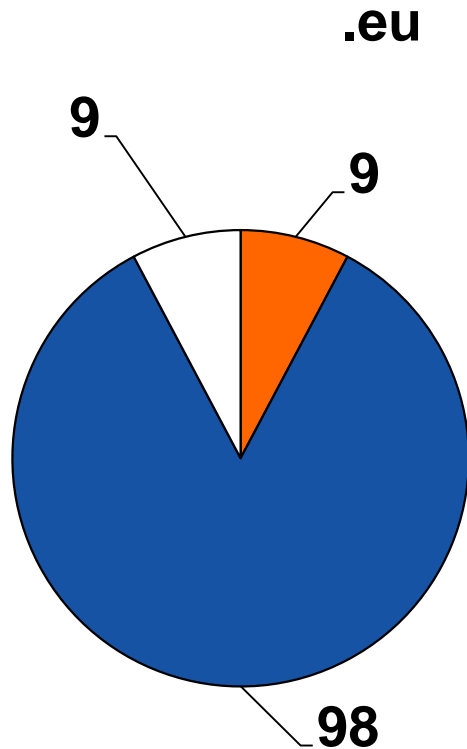
.eu transfer or cancellation

domain names can only be registered by entities residing in EU

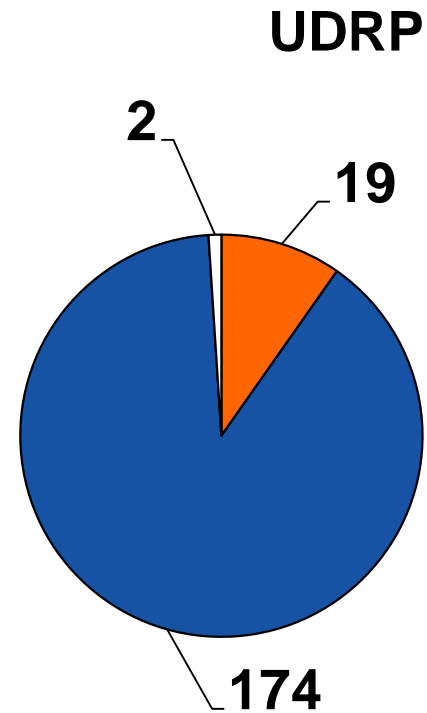
- non-EU right holder can file an complaint but may only ask for
 - **cancellation**
 - **transfer** to its EU branch office
- EU licensee of non-EU right holder can ask for **transfer** (consensual view)
- EU subsidiary of non-EU right holder could ask for **transfer** (consensual view), but minority view is that one cannot invoke the right of a third party for its own benefit and in this case the complaint was **rejected**
- if non-EU right holder and EU subsidiary are co-complainants, they can ask for **transfer** to subsidiary



decisions in last 3 years



- Rejected
- Transferred
- Canceled



- Rejected
- Transferred
- Canceled



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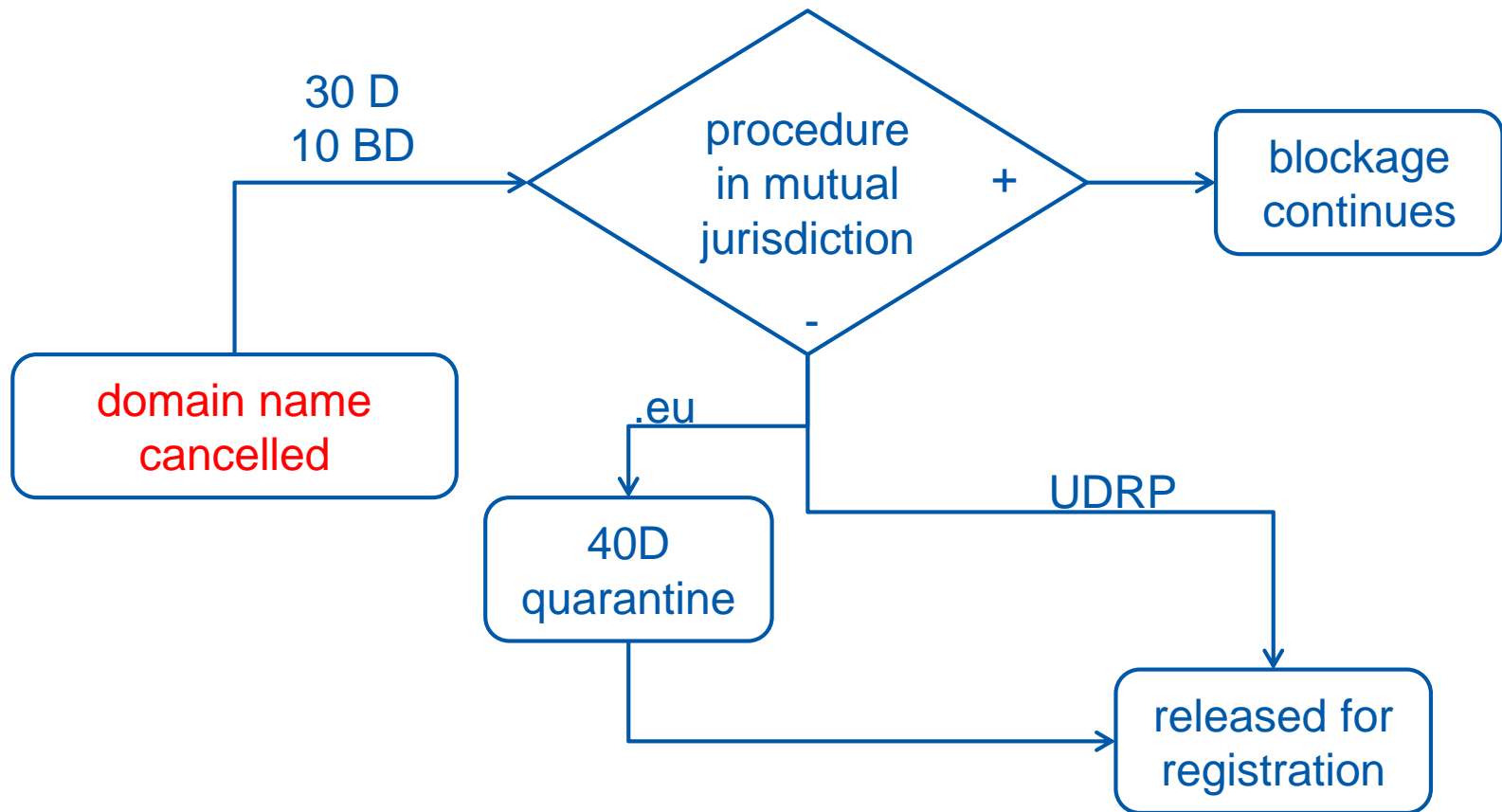
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decision implementation



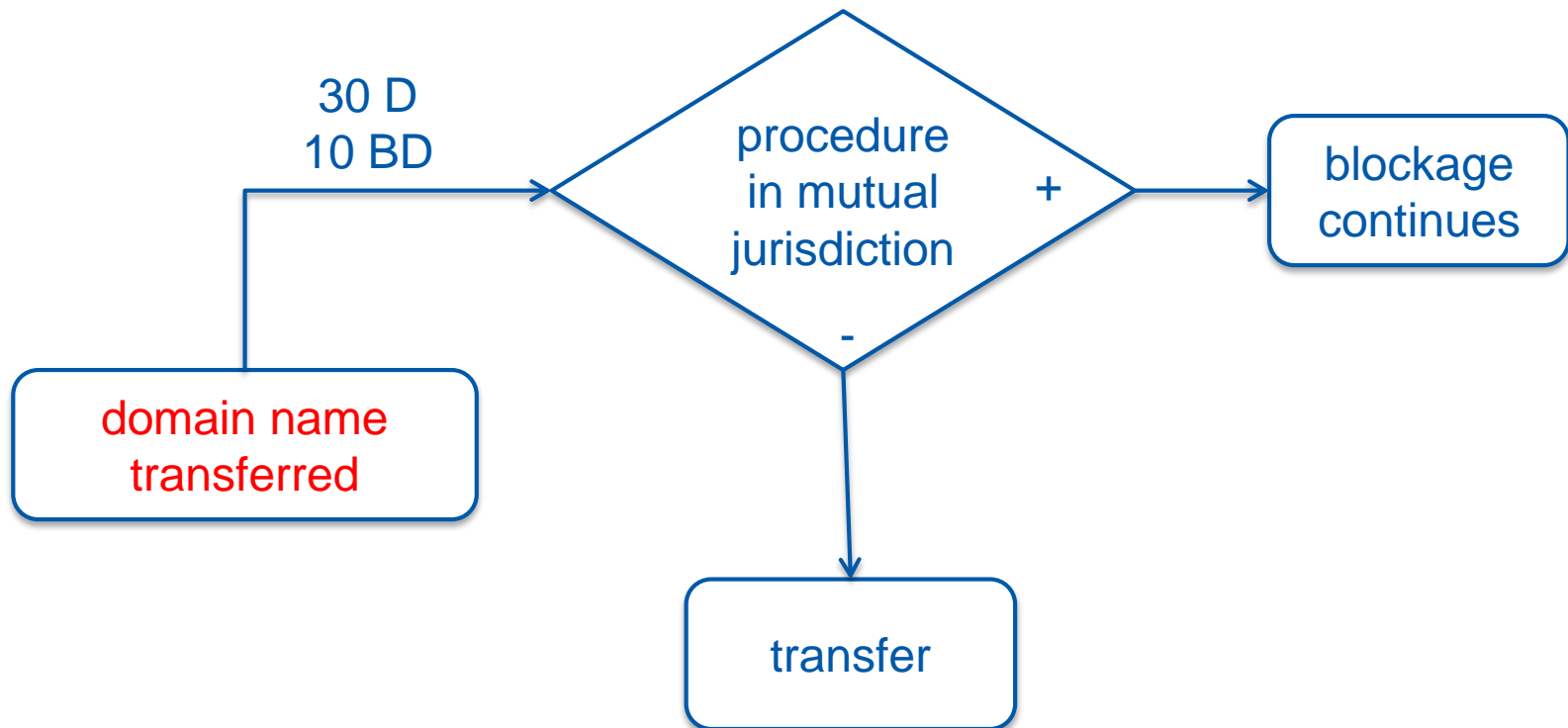


decision implementation





decision implementation





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Thank you

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