



STATUTORY INSTRUMENTS.

S.I. No. 673 of 2020

EUROPEAN UNION (TAX DISPUTE RESOLUTION MECHANISMS)
(AMENDMENT) REGULATIONS 2020

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I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Council Directive (EU) 2017/1852 of 10 October 2017¹, hereby make the following regulations:

1 These Regulations may be cited as the European Union (Tax Dispute Resolution Mechanisms) (Amendment) Regulations 2020.

2 These Regulations shall be deemed to have come into operation on 1 July 2019.

3 The European Union (Tax Dispute Resolution Mechanisms) Regulations 2019 (S.I. No. 306 of 2019) are amended -

- (a) in Regulation 3(1), by substituting the following definition for the definition of "Advisory Commission":

" 'Advisory Commission' means -

 - (a) where it is set up by the Commissioners, an Advisory Commission set up pursuant to a request under Regulation 11(1)(a) or (b), as the case may be, and
 - (b) where it is set up by the competent authority of a relevant Member State, an Advisory Commission set up in accordance with Articles 6 and 8 of the Directive;"
- (b) in Regulation 8(5)(c), by substituting the following clause for clause (i):

"(i) the affected person has failed to provide all or any of the information referred to in paragraph (2)(b) and, where applicable, paragraph (2)(d),"
- (c) in Regulation 11 -
 - (i) in paragraph (1), by substituting the following for all of the words from "Subject to this Regulation" to "where -":

"Subject to this Regulation and paragraphs (4) and (5) of Regulation 20, an affected person may, by notice in writing, make a request to the Commissioners and, subject to Regulation 21, to the competent authority of each relevant Member State for the setting up of an Advisory Commission, for the purposes of Article 6 of the Directive, where -",

¹ OJ No. L265, 14.10.2017, p. 1

and

- (ii) by substituting the following paragraphs for paragraph (4):

“(4) Where the Commissioners receive a request under paragraph (1)(a) or (b), as the case may be, they shall endeavour to set up an Advisory Commission not later than 120 days from the date of receipt by them of the request and the chair of the Advisory Commission shall, as soon as practicable, inform the affected person that it is set up.

- (5) The Advisory Commission shall be composed

of -

(a) one chair,

(b) one representative of the Commissioners and one representative of the competent authority of each relevant Member State or, if the Commissioners and each such other competent authority agree, 2 representatives of each of them, and

(c) one independent person of standing, appointed by the Commissioners from the list and one independent person of standing appointed by the competent authority of each relevant Member State from the list or, if the Commissioners and each such other competent authority agree, 2 independent persons of standing appointed by each of them from the list.

- (6) An Advisory Commission set up pursuant to a request under paragraph (1)(a) shall -

(a) adopt a decision on the acceptance of the complaint not later than 6 months from the date on which it is set up, and

(b) notify the Commissioners and the competent authority of each relevant Member State of its decision not later than 30 days from the date of the decision referred to in subparagraph (a).

- (7) Where -

(a) the Advisory Commission -

(i) adopts a decision to accept a complaint, and

(ii) has confirmed that the requirements of Article 3 of the Directive have been satisfied,

and

(b) a request to initiate a mutual agreement procedure has been made by the Commissioners or the competent authority of a relevant Member State, as the case may be, to resolve the question in dispute,

the Commissioners shall endeavour to resolve the question in dispute by the mutual agreement procedure in accordance with Regulation 9, and the period referred to in Regulation 9(1)(a) shall commence on the date on which the Commissioners are notified of the adoption by the Advisory Commission of its decision to accept the complaint.

- (8) Where the Commissioners make a request referred to in paragraph (7)(b), they shall notify, in writing, the Advisory Commission, the competent authority of each relevant Member State and the affected person of the request.
- (9) Where a request referred to in paragraph (7)(b) is not made within the period of 60 days from the date of the notification of the decision of the Advisory Commission to accept the complaint, the Advisory Commission shall deliver an opinion under Article 14(1) of the Directive, in writing, on the resolution of the question in dispute not later than 6 months from the date of expiry of that period of 60 days.
- (10) An Advisory Commission set up pursuant to a request under paragraph (1)(b) shall deliver its opinion under Article 14(1) of the Directive, in writing, on the resolution of the question in dispute to the Commissioners and the competent authority of each relevant Member State not later than 6 months from the date on which it is set up.
- (11) (a) Where the Advisory Commission considers that the question in dispute is such that it would need more than the period of 6 months specified in paragraph (9) or (10), as the case may be, to deliver an opinion, that period may be extended by 3 months.
- (b) The Advisory Commission shall give notice in writing to the Commissioners, the competent authority of each relevant Member State and the affected person of any extension under subparagraph (a) of the period within which the Advisory Commission shall deliver an opinion.
- (12) The Advisory Commission shall base its opinion on the resolution of the question in dispute on -

- (a) the arrangement, the Act of 1997, these Regulations and any other enactment related to the question in dispute, and
 - (b) the law of each relevant Member State in so far as it relates to the question in dispute.
- (13) (a) The Advisory Commission shall adopt its opinion on the resolution of the question in dispute by a simple majority of its members.
- (b) Where a majority opinion of its members cannot be reached, the vote of the chair of the Advisory Commission shall determine the final opinion.
- (c) The chair of the Advisory Commission shall notify in writing the Commissioners and the competent authority of each relevant Member State of the opinion.”,
- (d) in Regulation 12 -
- (i) in paragraph (1), by substituting “Regulation 11(4)” for “Regulation 11(1)”,
 - (ii) in paragraph (4), by substituting “the period of 120 days specified in Regulation 11(4)” for “the period of 120 days from the date of receipt of the request under Regulation 11(1)”, and
 - (iii) by inserting the following paragraphs after paragraph (5):

“(6) An affected person shall submit a copy of the application made under paragraph (2) or (3), as the case may be -

 - (a) if there is more than one affected person involved in the proceedings, to the competent authority of the Member State in which the affected person is resident for tax purposes, or
 - (b) if there is only one affected person involved in the proceedings, to the competent authority of the Member State which failed to appoint at least one independent person of standing and a substitute.
- (7) (a) Where a Court has made a decision on an application made under paragraph (1), (2) or (3), as the case may be, it shall ensure that the affected person and the Commissioners are notified of it.
- (b) The Commissioners shall notify the competent authority of each relevant Member State of the

decision referred to in subparagraph (a) as soon as practicable.

(8) When, for the purpose of Regulation 11(5), a sufficient number of independent persons of standing have been appointed to an Advisory Commission pursuant to an application made under paragraph (3), those independent persons of standing shall appoint the chair of the Advisory Commission by drawing lots from the list according to Articles 7(1) and 8(3) of the Directive.”,

(e) in Regulation 13 –

- (i) in paragraph (4), by inserting “under Regulation 12” after “appointed by the Court”,
- (ii) in paragraph (5), by inserting “under Regulation 12” after “appointed by the Court”, and
- (iii) by inserting the following paragraph after paragraph (6):

“(7) (a) The representatives of the Commissioners and of the competent authority of each relevant Member State on the Advisory Commission and the independent persons of standing appointed to the Advisory Commission shall elect a chair to the Advisory Commission.

(b) The chair shall -

- (i) be elected from the list, and
- (ii) be a judge, unless the representatives of the Commissioners and of the competent authority of each relevant Member State and the independent persons of standing agree otherwise.”,

(f) in Regulation 15, by inserting the following paragraphs after paragraph (4):

“(5) An ADRC shall deliver an opinion, in writing, on the resolution of the question in dispute not later than 6 months from the date on which it is set up.

(6) (a) Where the ADRC considers that the question in dispute is such that it would need more than the period of 6 months specified in paragraph (5) to deliver an opinion, that period may be extended by 3 months.

(b) The ADRC shall give notice in writing to the Commissioners, the competent authority of each relevant Member State and the affected person of any extension under subparagraph (a) of the period within which the ADRC shall deliver an opinion.

- (7) The ADRC shall base its opinion on the resolution of the question in dispute on -
- (a) the arrangement, the Act of 1997, these Regulations and any other enactment related to the question in dispute, and
 - (b) the law of each relevant Member State in so far as it relates to the question in dispute.
- (8) (a) The ADRC shall adopt its opinion on the resolution of the question in dispute by a simple majority of its members.
- (b) Where a majority opinion of its members cannot be reached, the vote of the chair of the ADRC shall determine the final opinion.
 - (c) The chair of the ADRC shall notify in writing the Commissioners and the competent authority of each relevant Member State of the opinion.”,
- (g) by substituting the following Regulation for Regulation 16:
- “16. (1) (a) The Commissioners shall agree the Rules of Functioning for the Advisory Commission or the ADRC, as the case may be, with the competent authority of each relevant Member State and shall sign the Rules of Functioning so agreed.
- (b) The Rules of Functioning shall -
- (i) in the case of an Advisory Commission set up pursuant to a request under Regulation 11(1)(a) for the purpose of delivering an opinion on the decision to reject a complaint, include the information referred to in points (a), (d), (e) and (f) of Article 11(2) of the Directive, and
 - (ii) in the case of an Advisory Commission or ADRC, as the case may be, set up for the purpose of delivering an opinion on the resolution of the question in dispute, include the information referred to in points (a) to (g) of Article 11(2) of the Directive.
- (2) The Commissioners shall, not later than the end of the period of 120 days specified in Regulation 11(4), give notice in writing to the affected person of -

- (a) the Rules of Functioning for the Advisory Commission or ADRC, as the case may be,
 - (b) the date by which the opinion on the resolution of the question in dispute shall be delivered, and
 - (c) references to the applicable provisions of any enactment and to any applicable arrangements.
- (3) (a) In this paragraph ‘the standard Rules of Functioning’ means the standard Rules of Functioning set out in Annex I of Commission Implementing Regulation (EU) 2019/652 of 24 April 2019² laying down standard Rules of Functioning for the Advisory Commission or Alternative Dispute Resolution Commission and a standard form for the communication of information concerning publicity of the final decision in accordance with the Directive.
- (b) Where notice of the Rules of Functioning has not been given to the affected person in accordance with paragraph (2)(a), the independent persons of standing and the chair shall -
- (i) complete the Rules of Functioning on the basis of the standard Rules of Functioning, and
 - (ii) ensure they are notified to the affected person not later than 14 days from the date on which the Advisory Commission or ADRC, as the case may be, was set up.
- (4) Where the independent persons of standing and the chair of the Advisory Commission or ADRC, as the case may be, have not agreed the Rules of Functioning or have not notified them to the affected person, the affected person may apply to the Court for an order for the implementation of the Rules of Functioning.”,
- (h) in Regulation 17(3), by substituting “Commissioners.” for “Commissioners,”, and
- (i) in Regulation 21(1), by substituting “8(2)(d), 8(4)(b)(ii),” for “8(2), 8(4),”.

² OJ No. L110, 25.4.2019, p. 26



GIVEN under my Official Seal,
18 December, 2020.

PASCHAL DONOHOE,
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Regulations and does not purport to be a legal instrument.)

These Regulations amend the European Union (Tax Dispute Resolution Mechanisms) Regulations 2019 (S.I. 306 of 2019). These Regulations build on the existing Regulations as they relate to the set up and composition of an Advisory Commission or, where appropriate, an Alternative Dispute Resolution Commission.

These Regulations elaborate on the administrative requirements and procedures under which the appropriate Commission will deliver an opinion on the dispute submitted for arbitration. These Regulations also build on the provisions for the appointment of independent persons of standing following an application by the affected person to the Court. The existing Regulations relating to the Rules of Functioning of the Advisory Commission or, where appropriate, the Alternative Dispute Resolution Commission, have also been broadened to accommodate the role of the competent authorities of the other Member States.

These Regulations are deemed to have come into effect as and from 1 July 2019.

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