
STATUTORY INSTRUMENTS

2020 No. 51

The Double Taxation Dispute Resolution (EU) Regulations 2020

PART 2

Complaints about a question in dispute

CHAPTER 4

Challenging decisions to reject complaints

Appeal to competent court against decision of Commissioners to reject the complaint

14.—(1) Paragraph (2) applies where each competent authority concerned has made a decision to reject the complaint.

(2) The complainant may appeal, to the competent court, against the decision of the Commissioners to reject the complaint, and the competent court may make an order in relation to that appeal.

(3) When an appeal is made under paragraph (2) the complainant must submit evidence, to the competent court, that each competent authority concerned has rejected the complaint.

Request to set up an Advisory Commission for the purposes of giving opinions on decisions to accept and reject the complaint

15.—(1) Paragraph (3) applies where—

- (a) the Commissioners decided to reject the complaint and another competent authority concerned decided to accept it, or
- (b) the Commissioners decided to accept the complaint and another competent authority concerned decided to reject it, and the conditions in paragraph (2) are met.

(2) The conditions are, in relation to the decision to reject the complaint, under the laws of that member State concerned—

- (a) no appeal can be made against that decision,
- (b) no appeal is pending against that decision, or
- (c) the complainant has formally renounced any right of appeal.

(3) The complainant may make a request to the Commissioners to set up an Advisory Commission for the purposes of giving opinions on the decisions to accept and reject the complaint.

(4) That request—

- (a) must be made electronically or otherwise in writing, and
- (b) where paragraph (1)(b) applies, must include, or be accompanied by, a declaration made by the complainant that the conditions in paragraph (2) are met.

(5) That request must be made within the period of 50 days beginning with the date the complainant was notified of—

- (a) the decision to reject the complaint, and
- (b) the decision to accept the complaint,

whichever is later.

(6) Paragraph (7) applies if the complainant was notified of a decision to accept, or to reject, the complaint by more than one competent authority concerned on different dates.

(7) For the purposes of paragraph (5)—

- (a) the date the complainant was notified of the decision to accept the complaint is the earliest of the dates on which it was accepted, and
- (b) the date the complainant was notified of the decision to reject the complaint is the earliest of the dates on which it was rejected.

(8) The Commissioners must endeavour to set up an Advisory Commission, for the purposes mentioned in paragraph (3), within the period of 120 days beginning with the date on which a request made in accordance with this regulation was received.

(9) But the Commissioners may refuse to set up an Advisory Commission for those purposes if in any particular case—

- (a) the question in dispute does not involve double taxation,
- (b) a culpable penalty has been imposed in relation to any adjustment of income or capital to which the question in dispute relates, or
- (c) judicial or administrative proceedings have been commenced which could potentially result in such a penalty.

(10) If the Commissioners make such a decision, the Commissioners must inform the complainant and each other competent authority concerned without delay.

(11) If an Advisory Commission is not set up in accordance with paragraph (8), the complainant may make an application to the competent court—

- (a) for the purposes of regulation 45 (competent court: appointments of independent persons of standing and the chair), and
- (b) within the period of 30 days beginning with the day after the date on which the period mentioned in paragraph (8) ended.

(12) In paragraph (9)(a), “double taxation” has the same meaning as it has in Article 2 of the Directive.

Advisory Commission opinion on decisions to accept or reject the complaint

16.—(1) An Advisory Commission set up for the purposes of regulation 15(3) must give an opinion, in respect of the decisions of each competent authority concerned, within the period of 180 days beginning with the date it was set up.

(2) The chair of the Advisory Commission must ensure that each competent authority concerned is notified of the opinion of the Advisory Commission within the period of 30 days beginning with the date on which that opinion was given.