

---

STATUTORY INSTRUMENTS

---

**2020 No. 51**

The Double Taxation Dispute Resolution (EU) Regulations 2020

PART 4

Advisory Commission: composition, procedure and costs etc

CHAPTER 1

Preliminary

**Interpretation of Part**

**36.** In this Part—

“independent persons of standing” means individuals—

- (a) nominated by the Commissioners, on behalf of the United Kingdom, in accordance with regulation 39 (nominations for the list of independent persons of standing), or
- (b) nominated by another member State in accordance with Article 9(1) of the Directive;

“list of independent persons of standing” means the list, referred to in Article 9(1) of the Directive, of all the independent persons of standing;

“rules for the appointment of the independent persons of standing” has the same meaning as it has in Article 8(2) of the Directive; and

“secret information” has the meaning given in regulation 49(3) (Advisory Commission: wrongful disclosure).

CHAPTER 2

Composition

**Composition of the Advisory Commission**

**37.** The Advisory Commission must have the following composition—

- (a) one chair;
- (b) one representative of each competent authority concerned or, if the Commissioners and each other competent authority agree, two representatives of each of them; and
- (c) one independent person of standing for, and appointed by, each competent authority concerned or, if the Commissioners and each other competent authority agree, two independent persons of standing for, and appointed by, each of them.

## CHAPTER 3

### Representatives of the Commissioners

#### **Representatives of the Commissioners on an Advisory Commission**

**38.** The Commissioners may appoint any individual to act as a representative of the Commissioners on an Advisory Commission and may agree the terms and conditions of appointment with that individual.

## CHAPTER 4

### Independent persons of standing

#### **Nominations for the list of independent persons of standing**

**39.**—(1) The Commissioners must nominate at least three individuals to be on the list of independent persons of standing.

(2) Those individuals must, in the opinion of the Commissioners, be competent and independent and able to act with impartiality and integrity.

(3) The Commissioners must notify the Commission of—

- (a) the names of the independent persons of standing nominated under paragraph (1), and
- (b) complete and up-to-date information regarding those individuals?—
  - (i) professional and academic background,
  - (ii) competence,
  - (iii) expertise, and
  - (iv) conflicts of interest (if any).

(4) The Commissioners may specify in the notification which of those individuals may be appointed as chair.

(5) The Commissioners may agree the terms and conditions of nomination with an individual nominated under paragraph (1).

(6) The Commissioners may remove, from the list of independent persons of standing, any individual who was nominated under paragraph (1) if—

- (a) that individual is found, in the opinion of the Commissioners, not to be independent, or
- (b) the nomination of that individual is otherwise terminated in accordance with any terms and conditions of nomination.

(7) The Commissioners must notify the Commission of any changes to the list of independent persons, without delay.

#### **Objections to nominations for the list of independent persons of standing**

**40.**—(1) Paragraph (2) applies if the Commissioners have reasonable cause to object to any independent person of standing, who was nominated by or on behalf of another member State, being on the list of independent persons of standing due to that individual lacking independence.

(2) The Commissioners may object to that individual being on the list of independent persons of standing.

(3) If the Commissioners make such an objection they must—

- (a) notify the Commission, and
- (b) provide the Commission with appropriate evidence in support of it.

- (4) Paragraph (5) applies if the Commission—
  - (a) notifies the Commissioners of an objection to an individual, who was nominated under regulation 39(1), being on the list of independent persons of standing for reasons of lack of independence, and
  - (b) provides the Commissioners with evidence in support of that objection.
- (5) The Commissioners must—
  - (a) investigate that objection within the period of 180 days beginning with the date the Commissioners received the notification and evidence mentioned in paragraph (4), and
  - (b) decide whether to remove the individual from the list of independent persons of standing.
- (6) The Commissioners must notify the Commission in respect of any action taken under paragraph (5).

#### **Independent persons of standing and substitutes: appointments etc**

**41.**—(1) The Commissioners must endeavour to agree, with each other competent authority concerned, the rules for the appointment of the independent persons of standing to an Advisory Commission.

(2) The independent persons of standing must be appointed by the Commissioners in accordance with those rules.

(3) Following the appointment of the independent persons of standing, substitutes are to be appointed for each of them in accordance with those rules.

(4) But if those rules are not agreed, the appointment of the independent persons of standing are to be carried out in accordance with Article 8(3) of the Directive.

(5) Where the independent persons of standing appointed to an Advisory Commission are prevented from carrying out their duties, the substitutes may carry them out.

#### **Objections to appointments of independent persons of standing**

**42.**—(1) The Commissioners may object, in accordance with Article 8(4) of the Directive, to an appointment of an independent person of standing.

(2) Paragraph (3) applies where a competent authority concerned (other than the Commissioners) objects, in accordance with Article 8(4) of the Directive, to an appointment of an independent person of standing.

(3) The Commissioners must ensure that any action, which the Commissioners consider is appropriate, is taken in relation to that objection.

#### **Request for disclosure of information about an independent person of standing etc**

**43.**—(1) Paragraph (2) applies to independent persons of standing, and the substitutes for such persons, who have been appointed to the Advisory Commission in accordance with the rules for the appointment of independent persons of standing or in accordance with Article 8(3) of the Directive.

(2) Any person to whom this paragraph applies must, if requested to do so by the Commissioners, disclose any interest, relationship, or any other matter which—

- (a) is likely to affect that person's independence or impartiality, or
- (b) might reasonably create an appearance of bias in the proceedings of the Advisory Commission.

(3) Any disclosure made under paragraph (2) must be made to the Commissioners, and each other competent authority concerned, without delay.

(4) If a person contravenes paragraphs (2) or (3), the competent court may order that person to comply with those paragraphs.

(5) Any request, and any disclosure, made under this regulation must be made electronically or otherwise in writing.

(6) The second sub-paragraph of Article 8(5) of the Directive applies, for the purposes of these Regulations, to an independent person of standing who is part of the Advisory Commission.

## CHAPTER 5

### The chair

#### **Election of the chair**

**44.**—(1) The representatives of each competent authority concerned on the Advisory Commission, and the independent persons of standing appointed to the Advisory Commission, must elect a chair to that Advisory Commission.

(2) The chair must be—

- (a) named on the list of independent persons of standing, and
- (b) a judge, unless the representatives of each competent authority concerned and the independent persons of standing agree otherwise.

## CHAPTER 6

### Appointments following application to competent court

#### **Competent court: appointments of independent persons of standing and the chair**

**45.**—(1) This regulation applies where a complainant makes an application under—

- (a) regulation 15(11) (request to set up an Advisory Commission for the purposes of giving opinions on decisions to accept and reject the complaint), or
- (b) regulation 28(9) (request to set up an Advisory Commission for the purpose of resolving the question in dispute).

(2) Paragraphs (3) and (4) apply if the Commissioners failed to appoint at least one of the independent persons of standing, and a substitute for that person, in accordance with regulation 41 (independent persons of standing and substitutes: appointments etc).

(3) The competent court may—

- (a) order the Commissioners to make those appointments, or
- (b) make those appointments itself.

(4) When, for the purpose of regulation 37 (composition of the Advisory Commission), there is a sufficient number of independent persons of standing, they must appoint the chair in accordance with Articles 7(1) and 8(3) of the Directive.

(5) If those independent persons of standing fail to make that appointment within a reasonable period of time, the competent court may order them to do so.

(6) The complainant must ensure a copy of the application mentioned in paragraph (1) is sent—

- (a) if there is more than one affected person involved in the proceedings, to the competent authority concerned in each of the member States in which the affected persons are resident for tax purposes, or
- (b) if the complainant is the only affected person involved in the proceedings, to each competent authority concerned which has failed to appoint an independent person of standing and a substitute.

(7) When the competent court has made a decision under this regulation, it must ensure that both the complainant and the Commissioners are notified of it.

(8) After the Commissioners have been notified of that decision, the Commissioners must ensure that each other competent authority concerned is notified of it, without delay.

(9) The leave of the competent court is required for any appeal against a decision made under this regulation by that court.

## CHAPTER 7

### Rules of Functioning

#### **The Rules of Functioning agreed by the Commissioners etc**

**46.**—(1) The Commissioners must endeavour to agree the Rules of Functioning, in respect of an Advisory Commission, with each other competent authority concerned.

(2) The Rules of Functioning must—

(a) in respect of an Advisory Commission set up for the purpose of resolving the question in dispute, include the provision referred to in points (a) to (g) of the second sub-paragraph of Article 11(2) of the Directive; and

(b) in respect of an Advisory Commission set up for the purposes of giving opinions on the decisions to accept or reject the complaint, include the provision referred to in points (a), (d), (e) and (f) of that sub-paragraph.

(3) After the Rules of Functioning have been agreed, the Commissioners must ensure the complainant is notified of them, without delay.

(4) That notification must include, or be accompanied by, a copy of the Rules of Functioning and the information referred to in points (b) and (c) of Article 11(1) of the Directive (if, and to the extent, it is not already included in the Rules of Functioning).

(5) That notification must be made electronically or otherwise in writing.

#### **The standard Rules of Functioning**

**47.**—(1) The standard Rules of Functioning apply in the cases mentioned in paragraphs (3) and (4).

(2) The “standard Rules of Functioning” are the standard Rules of Functioning set out in Annex 1 of Commission implementing regulation (EU) 2019/652 of 24 April 2019 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 Council Directive (EU) 2017/1852(1).

(3) The case is that the Rules of Functioning have not been agreed by the Commissioners and each other competent authority concerned, and notified to the complainant, within the period referred to in, as the case may be—

(a) regulation 15(8) (request to set up Advisory Commission for purposes of giving opinions on decisions to accept and reject the complaint), or

(b) regulation 28(7) (request to set up Advisory Commission for the purpose of resolving the question in dispute).

(4) The case is that the Rules of Functioning do not meet the requirements of regulation 46(2).

---

(1) OJ L 110/26 25.4.2019.

(5) Where the standard Rules of Functioning apply in a case, the independent persons of standing and the chair must—

- (a) complete the Rules of Functioning, in accordance with Article 11(4) of the Directive, and
- (b) ensure the complainant is notified of them within the period of 14 days beginning with the date on which the Advisory Commission was set up.

(6) If the independent persons of standing and the chair—

- (a) have not agreed on the Rules of Functioning, or
- (b) have not notified the complainant of them,

the complainant may apply to the competent court for the purpose of obtaining an order for the implementation of the Rules of Functioning, and that court may make such an order.

## CHAPTER 8

### Information sharing and representation

#### **Provision of information to an Advisory Commission**

**48.**—(1) Paragraphs (2) to (4) apply if the Advisory Commission makes a request to—

- (a) any affected person,
- (b) the Commissioners, or
- (c) any other competent authority concerned,

to provide any information (including any evidence or documents) which is specified in the request by the Advisory Commission.

(2) Any of those persons who receives such a request must, if the person has possession of the requested information, provide that information to the Advisory Commission without delay.

(3) If the person fails to provide that information, the chair of the Advisory Commission may make an application to the competent court for an order requiring it to be provided by that person, and that court may make such an order.

(4) But the Commissioners, or any other competent authority concerned, may refuse to provide information to the Advisory Commission in any of the cases referred to in points (a) to (d) of Article 13(1) of the Directive.

(5) Paragraph (6) applies where—

- (a) the Commissioners, and each other competent authority concerned, agree to any information being provided by the complainant, or by any other affected person, to the Advisory Commission, and
- (b) that information may be relevant to a question in dispute and has not been requested by the Advisory Commission.

(6) That information may be provided to the Advisory Commission.

#### **Advisory Commission: wrongful disclosure**

**49.**—(1) The chair, independent persons of standing and all other members of an Advisory Commission must not, without the consent of the Commissioners, disclose to any other person any secret information received by them in their capacity as members of the Advisory Commission.

(2) If a person discloses any secret information in contravention of paragraph (1), section 19 (wrongful disclosure) of the Commissioners for Revenue and Customs Act 2005(2) applies in

relation to that disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) (public interest disclosure) of that Act.

(3) “Secret information” means any revenue and customs information relating to a person whose identity—

- (a) is specified in the disclosure, or
- (b) can be deduced from it,

and “revenue and customs information relating to a person” has the same meaning as it has in section 19(1) of the Commissioners for Revenue and Customs Act 2005.

### **Affected persons: non-disclosure declaration and wrongful disclosure**

**50.**—(1) An affected person, and that person’s representative (if any), must undertake, when required to do so by the Commissioners, not to disclose to any other person any information (including knowledge of documents) which is received in the course of proceedings before the Advisory Commission.

(2) That undertaking must be made by a declaration to the Commissioners.

(3) If an affected person, or that person’s representative, fails to make such a declaration when required to do so by the Commissioners, those persons—

- (a) are not entitled to receive any, or any more, information in the course of the proceedings, and
- (b) must return any information they have already received in the course of the proceedings.

(4) If an affected person, or that person’s representative, fails to comply with paragraphs (1), (2) or (3) the Commissioners may make an application to the competent court for an order which rectifies the non-compliance, and that court may make such an order.

(5) If an affected person, or that person’s representative, discloses to any other person any secret information which was received in the course of proceedings before an Advisory Commission, section 19 of the Commissioners for Revenue and Customs Act 2005 applies in relation to that disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.

### **Affected persons appearing or being represented before Advisory Commission**

**51.**—(1) A complainant or any other affected person may, in respect of the question in dispute, make a request to the Advisory Commission to appear, or to be represented, before it.

(2) That request must be made electronically or otherwise in writing.

(3) If the Commissioners, and each other competent authority concerned, consents to the request, the affected person may appear, or be represented, before the Advisory Commission.

(4) An affected person must appear, or be represented, before an Advisory Commission if that person is requested to do so by it.

(5) Paragraph (6) applies if a person contravenes paragraph (4) by failing to appear, or to be represented, before an Advisory Commission.

(6) The chair of the Advisory Commission may make an application to the competent court for an order requiring that person to appear, or to be represented, before an Advisory Commission, and that court may make such an order.

## CHAPTER 9

### Costs

#### **Costs of the Advisory Commission**

**52.**—(1) The Commissioners may agree, with each other competent authority concerned, the costs of the Advisory Commission including, in particular—

- (a) the fees and expenses of the chair, and of each of the independent persons of standing, of an Advisory Commission, and
- (b) who is to pay (and in what proportion) those fees and expenses.

(2) Where the chair or an independent person of standing has acted in contravention of any of the provisions in these Regulations, or the Rules of Functioning applicable to them, the Commissioners may agree, with each other competent authority concerned, any reasonable reduction to those fees having regard to the contravention.

(3) Where the Commissioners, and each other competent authority concerned, do not agree otherwise, the costs of the Advisory Commission referred to in points (a) and (b) of Article 12(1) of the Directive are to be shared equally by the member States concerned.

#### **Costs incurred by the complainant**

**53.**—(1) The Commissioners are to have no liability to costs incurred by the complainant, or any other affected person, in relation to any proceedings brought under these Regulations.

(2) Paragraph (5) applies to the cases mentioned in paragraphs (3) and (4).

(3) The case is where a notification of withdrawal of a complaint has been made by the complainant in accordance with regulation 17 (withdrawal of the complaint by the complainant).

(4) The case is where—

- (a) a request under regulation 15(3) (request to set up an Advisory Commission for the purposes of giving opinions on decisions to accept and reject the complaint) has been made, and
- (b) the Advisory Commission has subsequently given an opinion that each competent authority concerned which rejected the complaint was correct to reject it.

(5) If the Commissioners and each other competent authority concerned agree, some or all of the costs of the Advisory Commission, referred to in regulation 52, are to be borne by the complainant.