

Council Directive (EU) 2017/1852 of 10 October 2017 on
tax dispute resolution mechanisms in the European Union

Article 16

Interaction with national proceedings and derogations

1 The fact that the action of a Member State that gave rise to a question in dispute has become final under national law shall not prevent the affected persons from having recourse to the procedures provided for in this Directive.

2 The submission of the question in dispute to the mutual agreement procedure or to the dispute resolution procedure under Articles 4 and 6 respectively shall not prevent a Member State from initiating or continuing judicial proceedings or proceedings for administrative and criminal penalties in relation to the same matters.

3 Affected persons may have recourse to the remedies available to them under the national law of the Member States concerned. However, where the affected person has commenced proceedings to seek such a remedy, the terms of periods referred to in Articles 3(5) and 4(1) respectively shall commence from the date on which a judgement delivered in those proceedings has become final or on which those proceedings have otherwise been definitively concluded or where the proceedings have been suspended.

4 Where a decision on a question in dispute has been rendered by the relevant court or other judicial body of a Member State, and the national law of that Member State does not allow it to derogate from the decision, that Member State may provide that:

- a before an agreement has been reached by the competent authorities of the Member States concerned under the mutual agreement procedure under Article 4 on that question in dispute, the competent authority of such Member State is to notify the other competent authorities of the Member States concerned of the decision of the relevant court or other judicial body and that that procedure is to be terminated as from the date of such notification;
- b before the affected person has made a request under Article 6(1), the provisions of Article 6(1) do not apply if the question in dispute had remained unresolved during the whole of the mutual agreement procedure under Article 4, in which case the competent authority of that Member State is to inform the other competent authorities of the Member States concerned of the effect of the decision of the relevant court or other judicial body;
- c the dispute resolution process under Article 6 is to be terminated if the decision of the relevant court or other judicial body was rendered at any time after an affected person has made a request under Article 6(1) but before the Advisory Commission or the Alternative Dispute Resolution Commission has delivered its opinion to the competent authorities of the Member States concerned in accordance with Article 14, in which case the competent authority of the relevant Member State concerned is to inform the other competent authorities of the Member States concerned and the Advisory Commission or the Alternative Dispute Resolution Commission of the effect of the decision of the relevant court or other judicial body.

5 The submission of a complaint as provided under Article 3 shall put an end to any other ongoing proceedings under the mutual agreement procedure or dispute resolution procedure under an agreement or convention that is being interpreted or applied in relation to the relevant

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question in dispute. Such other ongoing proceedings concerning the relevant question in dispute shall come to an end with effect from the date of the first receipt of the complaint by any of the competent authorities of the Member States concerned.

6 By way of derogation from Article 6, a Member State concerned may deny access to the dispute resolution procedure under that Article in cases where penalties were imposed in that Member State in relation to the adjusted income or capital for tax fraud, wilful default and gross negligence. Where judicial or administrative proceedings were commenced that could potentially lead to such penalties, and these proceedings are being conducted simultaneously with any of the proceedings referred to in this Directive, a competent authority may stay the proceedings under this Directive as from the date of acceptance of the complaint until the date of the final outcome of those proceedings.

7 A Member State may deny access to the dispute resolution procedure under Article 6 on a case-by-case basis where a question in dispute does not involve double taxation. In such a case, the competent authority of the said Member State shall inform the affected person and the competent authorities of the other Member States concerned without delay.