

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

Article 7

Appointments by competent courts or national appointing body

1 If an Advisory Commission is not set up within the period provided for in Article 6(1), Member States shall provide that the relevant affected person may apply to a competent court or to any other body or person designated in their national law for the carrying out of such function (national appointing body) to set up the Advisory Commission.

Where the competent authority of a Member State has failed to appoint at least one independent person of standing and a substitute, the affected person may request the competent court or national appointing body in that Member State to appoint an independent person of standing and a substitute from the list referred to in Article 9.

If the competent authorities of all Member States concerned have failed to do so, the affected person may request the competent courts or national appointing body of each Member State to appoint the two independent persons of standing from the list referred to in Article 9. Those independent persons of standing shall appoint the chair by drawing lots from the list of independent persons according to Article 8(3).

Affected persons shall submit their referral to appoint the independent persons of standing and their substitutes to each of their respective states of residence, if more than one affected person is involved in the proceedings, or to the Member States whose competent authorities have failed to appoint at least one independent person of standing and a substitute if only one affected person is involved.

2 The appointment of the independent persons and their substitutes under paragraph 1 of this Article shall be referred to a competent court of a Member State or national appointing body only after the end of the 120-day period referred to in Article 6(1), and within 30 days after the end of that period.

3 The competent court or national appointing body shall adopt a decision under paragraph 1 and notify it to the applicant. The applicable procedure for the competent court to appoint the independent persons, when the Member States fail to appoint them, shall be the same as the procedure under national rules in matters of civil and commercial arbitration that applies when courts or national appointing bodies appoint arbitrators because parties have failed to agree in this respect. The competent court or national appointing body of the Member State shall inform the competent authority of that Member State, which shall in turn inform the competent authority of the other Member States concerned without delay. The competent authority of the Member State that initially failed to appoint the independent person of standing and the substitute shall be entitled to appeal the decision of the court, or national appointing body in that Member State, provided that the competent authority has the right to do so under national law. In case of rejection, the applicant shall be entitled to appeal against the decision of the court in accordance with national procedural rules.