



2023/2389

6.10.2023

**COMMISSION IMPLEMENTING REGULATION (EU) 2023/2389**

**of 29 September 2023**

**determining that the information to be automatically exchanged pursuant to the agreement to be concluded between the competent authorities of Finland and the United Kingdom is equivalent to the information specified in certain provisions of Council Directive 2011/16/EU**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC <sup>(1)</sup>, and in particular Article 8ac(7), first subparagraph, thereof,

Whereas:

- (1) Article 8ac(7), first subparagraph of Directive 2011/16/EU provides that the Commission is, following a reasoned request by a Member State or on its own initiative, to determine whether the information that is to be automatically exchanged by the competent authorities of that Member State and a non-Union jurisdiction under an agreement between those authorities and that jurisdiction is equivalent to that specified in Section III, paragraph B, of Annex V to that Directive. Commission Implementing Regulation (EU) 2023/823 <sup>(2)</sup> lays down rules for implementing that provision of Directive 2011/16/EU.
- (2) On 16 February 2023, the Commission received a reasoned request from the competent authority of Finland to determine whether the information that is required to be automatically exchanged pursuant to an agreement between the competent authorities of that Member State and the United Kingdom relates to the activities within the scope of Directive 2011/16/EU and whether it is equivalent to the information required under the reporting rules set out in that Directive.
- (3) For the purposes of the determination, the competent authority of Finland submitted the draft regulations of the United Kingdom as set out in the Platform Operators (Due Diligence and Reporting Requirements) Regulations 2022 <sup>(3)</sup> ('the draft regulations'), which will come into force on 1 January 2024 and the Multilateral Competent Authority Agreement on automatic exchange of information on income derived through digital platforms <sup>(4)</sup> ('DPI-MCAA'), which is to be concluded between the competent authorities of Finland and the United Kingdom.
- (4) The draft regulations apply provisions of the Organisation for Economic Cooperation and Development (OECD) 2020 Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy <sup>(5)</sup>, supplemented by the OECD 2021 Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for sale of goods <sup>(6)</sup>. Any expression defined in the Model Rules but not defined in the draft regulations has the same meaning in the draft regulations as in the Model Rules.

<sup>(1)</sup> OJ L 64, 11.3.2011, p. 1.

<sup>(2)</sup> Commission Implementing Regulation (EU) 2023/823 of 13 April 2023 laying down detailed rules for implementing certain provisions of Council Directive 2011/16/EU as regards the assessment and determination of equivalence of information in an agreement between the competent authorities of a Member State and a non-Union jurisdiction (OJ L 103, 18.4.2023, p. 1).

<sup>(3)</sup> The Platform Operators (Due Diligence and Reporting Requirements) Regulations 2022 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1111803/Draft\\_The\\_Platform\\_Operators\\_Regulations\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1111803/Draft_The_Platform_Operators_Regulations_2022.pdf)

<sup>(4)</sup> The DPI-MCAA is available online at <https://www.oecd.org/tax/exchange-of-tax-information/model-reporting-rules-for-digital-platforms-international-exchange-framework-and-optional-module-for-sale-of-goods.pdf>

<sup>(5)</sup> OECD (2020), Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy, OECD, Paris. Available online at <https://www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.pdf>

<sup>(6)</sup> OECD (2021), Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods, OECD, Paris. Available online at <https://www.oecd.org/tax/exchange-of-tax-information/model-reporting-rules-for-digital-platforms-international-exchange-framework-and-optional-module-for-sale-of-goods.pdf>

- (5) The DPI-MCAA is an international legal framework developed by the OECD to support the annual automatic exchange of information collected under the OECD Model Rules by the residence jurisdiction of the platform operator with the jurisdictions of residence of the sellers and, with respect to transactions involving the rental of immovable property, the jurisdictions in which such immovable property is located, as determined on the basis of the due diligence procedures.
- (6) The United Kingdom and Finland are both signatories of the DPI-MCAA, however the conclusion of the agreement requires the activation of the exchange relationship between both parties in accordance with Section 7 of the DPI-MCAA.
- (7) In accordance with Article 2 of Implementing Regulation (EU) 2023/823, the Commission has determined that the definitions regarding the reporting platform operator set out in the draft Platform Operators (Due Diligence and Reporting Requirements) Regulations 2022 and pursuant to the Multilateral Competent Authority Agreement on automatic exchange of information on income derived through digital platforms (DPI-MCAA) to be concluded between the competent authorities of Finland and the United Kingdom are equivalent to the definitions set out in Section I, subparagraphs A(1) to A(4), of Annex V to Directive 2011/16/EU.
- (8) In accordance with Article 3 of Implementing Regulation (EU) 2023/823, the Commission has determined that the definitions regarding reportable sellers set out in the draft Platform Operators (Due Diligence and Reporting Requirements) Regulations 2022 and pursuant to the DPI-MCAA to be concluded between the competent authorities of Finland and the United Kingdom are equivalent to the definitions set out in Section I, subparagraphs B(1) to B(4), C(1) and C(2), of Annex V to Directive 2011/16/EU.
- (9) In accordance with Article 4 of Implementing Regulation (EU) 2023/823, the Commission has determined that the definitions of relevant activity set out in the draft Platform Operators (Due Diligence and Reporting Requirements) Regulations 2022 and pursuant to the DPI-MCAA to be concluded between the competent authorities of Finland and the United Kingdom are equivalent to the definitions set out in Section I, subparagraphs A(8), A(10), A(11) and C(9) of Annex V to Directive 2011/16/EU.
- (10) In accordance with Article 5 of Implementing Regulation (EU) 2023/823, the Commission has determined that the due diligence procedures set out in the draft Platform Operators (Due Diligence and Reporting Requirements) Regulations 2022 and pursuant to the DPI-MCAA to be concluded between the competent authorities of Finland and the United Kingdom are equivalent to the due diligence procedures set out in Section II of Annex V to Directive 2011/16/EU and the definitions set out in Section I, subparagraphs C(3) to C(7), of Annex V to Directive 2011/16/EU.
- (11) In accordance with Article 6 of Implementing Regulation (EU) 2023/823, the Commission has determined that the reporting requirements set out in the draft Platform Operators (Due Diligence and Reporting Requirements) Regulations 2022 and pursuant to the DPI-MCAA to be concluded between the competent authorities of Finland and the United Kingdom are equivalent to the reporting requirements set out in Section III, subparagraphs A(1), A(2), A(5), A(6) and A(7) and paragraph B of Annex V to Directive 2011/16/EU, and the definitions set out in Section I, subparagraphs C(3) to C(8), of Annex V to Directive 2011/16/EU.
- (12) In accordance with Article 7 of Implementing Regulation (EU) 2023/823, the Commission has determined that the rules and administrative procedures laid down in the draft Platform Operators (Due Diligence and Reporting Requirements) Regulations 2022, and pursuant to the DPI-MCAA to be concluded between the competent authorities of Finland and the United Kingdom, to ensure the effective implementation of, and compliance with, the due diligence procedures and reporting requirements are equivalent to the provisions set out in Section IV, paragraphs A to D of Annex V to Directive 2011/16/EU.
- (13) Therefore, the information that is required to be automatically exchanged between the competent authorities of Finland and the United Kingdom pursuant to the DPI-MCAA should be deemed to be equivalent to that specified in Section III, paragraph B, of Annex V to Directive 2011/16/EU. In accordance with Article 8 of Implementing Regulation (EU) 2023/823, this determination of equivalence applies to the same agreement between the competent authorities of any other Member State and the United Kingdom.

- (14) However, this determination of equivalence should only apply provided that the draft regulations are adopted in full by the United Kingdom and the DPI-MCAA is concluded by way of the activation of the exchange relationship between Finland and the United Kingdom in accordance with Section 7 of the DPI-MCAA.
- (15) As required by Article 25(1) of Directive 2011/16/EU, all exchange of information between the competent authorities of Member States and non-Union jurisdictions pursuant to the DPI-MCAA should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>(7)</sup>.
- (16) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(8)</sup>.
- (17) The measures provided for in this Regulation are in accordance with the opinion of the Committee on administrative cooperation for taxation,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

### **Determination of equivalence**

The information that is required to be automatically exchanged pursuant to the draft Platform Operators (Due Diligence and Reporting Requirements) Regulations 2022 and the DPI-MCAA to be concluded between the competent authorities of Finland and the United Kingdom is equivalent, within the meaning of subparagraph A(7) of Section I of Annex V to Directive 2011/16/EU, to that specified in Section III, paragraph B, of Annex V to Directive 2011/16/EU.

The determination of equivalence is subject to the following conditions:

- (i) the adoption of the Platform Operators (Due Diligence and Reporting Requirements) Regulations 2022 in the version of the text as present in the draft Platform Operators (Due Diligence and Reporting Requirements) Regulations 2022 assessed by the Commission;
- (ii) the conclusion of the DPI-MCAA between the competent authorities of Finland and the United Kingdom by way of the activation of the exchange relationship in accordance with Section 7 of that agreement.

#### *Article 2*

### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 September 2023.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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<sup>(7)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>(8)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).