

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2020/855

of 7 May 2020

amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards adding the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe to the table in point I of the Annex and deleting Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia from this table

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) The Union has to ensure an effective protection of the integrity and proper functioning of its financial system and the internal market from money laundering and terrorist financing. Hence, Directive (EU) 2015/849 provides that the Commission should identify countries which present strategic deficiencies in their regimes on anti-money laundering and countering terrorist financing that pose significant threats to the financial system of the Union.
- (2) Commission Delegated Regulation (EU) 2016/1675 ⁽²⁾ identified high-risk third countries with strategic deficiencies. That Regulation should be reviewed at appropriate times in light of the progress made by those high-risk third countries in removing the strategic deficiencies in their regime on anti-money laundering and countering terrorist financing ('AML/CFT'). The Commission should take into account in its assessments new information from international organisations and standard setters, such as those issued by the Financial Action Task Force (FATF). In light of that information, the Commission should also identify additional countries presenting strategic deficiencies in their AML/CFT regime.
- (3) Considering the high level of integration of the international financial system, the close connection of market operators, the high volume of cross-border transactions to/from the Union, as well as the degree of market openness, it is therefore considered that any AML/CFT threat posed to the international financial system also represents a threat to the financial system of the Union.

⁽¹⁾ OJ L 141, 5.6.2015, p. 73.

⁽²⁾ Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1).

- (4) It is thus essential to take into account relevant work already undertaken at international level for identifying countries, in particular that of the FATF. With a view to ensuring the integrity of the global financial system, it is of the highest importance that the Union duly considers the countries identified as having strategic deficiencies in their AML/CFT regime in the FATF at Union level. In line with the criteria set out in Directive (EU) 2015/849, the Commission took into account the recent available information, in particular recent FATF Public Statements, FATF documents 'Improving Global AML/CFT Compliance: Ongoing Process Statement', and FATF reports of the International Cooperation Review Group in relation to the risks posed by individual third countries, in line with Article 9(4) of Directive (EU) 2015/849.
- (5) Any third country representing a risk to the international financial system, as identified by the FATF, is presumed to represent a risk to the internal market. That presumption concerns any country publicly identified in the FATF documents 'Public Statement' and in the FATF documents 'Improving Global AML/CFT Compliance: Ongoing Process Statement'.
- (6) In order to conduct its autonomous assessment, the Commission assessed available information from the FATF and, where appropriate, other sources of information to reach its conclusion. Following that assessment, the Commission's analysis has confirmed the respective strategic deficiencies described in recitals 8 to 19.
- (7) In October 2018, the FATF identified the Bahamas as a jurisdiction having strategic AML/CFT deficiencies for which the Bahamas has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The Bahamas has taken steps towards improving its AML/CFT regime and in February 2020, the FATF has made the initial determination that the Bahamas has substantially completed its action plan and warrants an on-site assessment to verify that the implementation of the Bahamas' AML/CFT reforms has begun and is being sustained, and that the necessary political commitment remains in place to sustain implementation in the future. The FATF has yet to carry out such assessment to confirm its initial determination. Therefore, the Commission does not have in its possession information which would enable it to confirm at this stage that the strategic deficiencies have been effectively addressed. The future assessment will focus on the following areas: (1) developing of a comprehensive electronic case management system for international cooperation; (2) demonstrating risk-based supervision of non-bank financial institutions; (3) ensuring the timely access to adequate, accurate and current basic and beneficial ownership information; (4) increasing the quality of the Financial Intelligence Unit's products to assist Law Enforcement Authorities in the pursuance of Money Laundering (ML)/Terrorist Financing (TF) investigations, specifically complex ML/TF and stand-alone ML investigations; (5) demonstrating that authorities are investigating and prosecuting all types of money laundering, including complex ML cases, stand-alone money laundering, and cases involving proceeds of foreign offences; (6) demonstrating that confiscation proceedings are initiated and concluded for all types of ML cases; and (7) addressing gaps in the Terrorist Financing and Proliferation Financing Targeted Financial Sanctions' frameworks and demonstrating implementation. On this basis, the Bahamas should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (8) In February 2020, the FATF identified Barbados as a jurisdiction having strategic AML/CFT deficiencies for which the Barbados has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) lack of effective risk-based supervision for financial institutions and Designated non-financial businesses and professions ('DNFBPs'); (2) deficiencies relating to measures for preventing legal persons and arrangements from being misused for criminal purposes, and deficiencies in ensuring that accurate and up-to-date basic and beneficial ownership information is available on a timely basis; (3) deficiencies relating to the capacity of the Financial Intelligence Unit ('FIU') in providing financial information to further assist law enforcement authorities in investigating money laundering or terrorism financing; (4) deficiencies relating to money laundering investigations and prosecutions which are not in line with the country's risk profile and backlog of prosecutions; (5) deficiencies in pursuing confiscation in relation to money laundering cases, including limited assistance requested from foreign counterparts. On this basis, Barbados should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (9) In October 2018, the FATF identified Botswana as a jurisdiction having strategic AML/CFT deficiencies for which Botswana has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) shortcomings in the assessment of risks associated with legal persons, legal arrangements, and non-profit organisations; (2) lack of implementation of risk-based AML/CFT supervisory manuals; (3) the level of analysis and dissemination of financial intelligence by the FIU; (4) shortcomings in the implementation of a CFT strategy, and insufficient capacity of the law enforcement agencies in relation to investigations of terrorist financing; (5) inability to ensure the implementation without delay of targeted financial sanctions measures related to terrorist financing and proliferation financing; and (6) shortcomings in the application of a risk-based approach to monitoring non-profit organisations. On this basis, Botswana should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (10) In February 2019, the FATF identified Cambodia as a jurisdiction having strategic AML/CFT deficiencies for which Cambodia has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) lack of a broad legal basis for Mutual Legal Assistance and of relevant training to law enforcement authorities; (2) lack of implementation of risk-based supervision to the real estate sector and casinos; (3) lack of implementation of risk-based supervision to banks, including through prompt, proportionate and dissuasive enforcement actions, as appropriate; (4) technical compliance deficiencies in the AML/CFT Law; (5) the level of analysis of suspicious transaction reports and related disseminations to law enforcement authorities; (6) insufficient results in terms of Money Laundering investigations and prosecutions; (7) insufficient results in terms of freezing and confiscation of criminal proceeds, instrumentalities, and property of equivalent value; (8) lack of legal framework and implementation of United Nations targeted financial sanctions related to Proliferation Financing, as well as insufficient understanding of sanctions evasion. On this basis, Cambodia should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (11) In October 2018, the FATF identified Ghana as a jurisdiction having strategic AML/CFT deficiencies for which Ghana has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) lack of implementation of a comprehensive national AML/CFT Policy based on the risks identified in the National Risk Assessment, including measures to mitigate Money Laundering/Terrorism Financing risks associated with the legal persons; (2) shortcomings in risk-based supervision, including insufficient capacity of the regulators and insufficient awareness of the private sector; (3) shortcomings in ensuring timely access to adequate, accurate and current basic and beneficial ownership information; (4) deficiencies as regards the need to ensure that the FIU is focusing its activities on the risks identified in the National Risk Assessment, and that adequate resources are allocated to the FIU; and (5) shortcomings in the application of a risk-based approach for monitoring non-profit organisations. On this basis, Ghana should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (12) In February 2020, the FATF identified Jamaica as a jurisdiction having strategic AML/CFT deficiencies for which Jamaica has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) lack of a comprehensive understanding of its money laundering/terrorism financing risk; (2) failure to include all financial institutions and DNFBPs in the AML/CFT regime and to ensure adequate risk-based supervision in all sectors; (3) lack of appropriate measures to prevent legal persons and arrangements from being misused for criminal purposes, and to ensure that accurate and up-to-date basic and beneficial ownership information is available on a timely basis; (4) lack of proper measures to increase the use of financial information and to increase money laundering investigations and prosecutions, in line with the country's risk profile; (5) failure to demonstrate the implementation of targeted financial sanctions for terrorist financing without delay; and (6) deficiencies in implementing a risk-based approach for supervision of its non-profit organisation sector to prevent abuse for terrorism financing purposes. On this basis, Jamaica should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (13) In February 2020, the FATF identified Mauritius as a jurisdiction having strategic AML/CFT deficiencies for which Mauritius has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) deficiencies in demonstrating that the supervisors of its global business sector and DNFBPs implement risk-based supervision; (2) failure to ensure access to accurate basic and beneficial ownership information by competent authorities in a timely manner; (3) failure to demonstrate that law enforcement authorities have capacity to conduct money laundering investigations, including parallel financial investigations and complex cases; (4) failure in implementing a risk-based approach for supervision of its non-profit organisation sector to prevent abuse for terrorist financing purposes; and (5) failure to demonstrate adequate implementation of targeted financial sanctions through outreach and supervision. On this basis, Mauritius should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (14) In October 2019, the FATF identified Mongolia as a jurisdiction having strategic AML/CFT deficiencies for which Mongolia has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. While Mongolia has taken steps towards improving its AML/CFT regime outstanding deficiencies include: (1) shortcomings in the sectoral money laundering/terrorist financing risk understanding by DNFBP supervisors, as well as in the application of a risk-based approach to supervision, particularly in relation to dealers in precious metals and stones; (2) need to demonstrate increased investigations and prosecutions of different types of money laundering activity in line with identified risks; and (3) inadequate monitoring of compliance by financial institutions and DNFBPs with their targeted financial sanctions obligations related to proliferation financing, and insufficient application of proportionate and dissuasive sanctions. On this basis, Mongolia should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (15) In February 2020, the FATF identified Myanmar/Burma as a jurisdiction having strategic AML/CFT deficiencies for which Myanmar/Burma has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) failure to demonstrate an improved understanding of money laundering risks in key areas; (2) failure to ensure the supervisory body for DNFBPs is sufficiently resourced, onsite/offsite inspections are risk-based, and hundi operators are registered and supervised; (3) failure to demonstrate enhancements in the use of financial intelligence in investigations by the law enforcement authorities, and insufficient operational analysis and disseminations by the FIU; (4) need to ensure that money laundering is investigated/prosecuted in line with risks; (5) failure to demonstrate investigation of transnational money laundering cases with international cooperation; (6) failure to demonstrate an increase in the freezing/seizing and confiscation of criminal proceeds, instrumentalities, and/or property of equivalent value; (7) deficiencies in managing seized assets to preserve the value of seized goods until confiscation; and (8) deficiencies in demonstrating implementation of targeted financial sanctions related to proliferation financing, including training on sanctions evasion. On this basis, Myanmar/Burma should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (16) In February 2020, the FATF identified Nicaragua as a jurisdiction having strategic AML/CFT deficiencies for which Nicaragua has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) lack of a comprehensive understanding of its money laundering/terrorist financing risk; (2) failure to proactively seek international cooperation to support money laundering investigation, especially with the aim of identifying and tracing assets with confiscation and repatriation purposes; (3) deficiencies with regard to conducting effective risk-based supervision; (4) lack of appropriate measures to prevent legal persons and arrangements from being misused for criminal purposes, and failure to ensure that accurate and up-to-date basic and beneficial ownership information is available on a timely basis. On this basis, Nicaragua should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (17) In June 2019, the FATF identified Panama as a jurisdiction having strategic AML/CFT deficiencies for which Panama has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) a limited understanding of the national and sectoral money laundering/terrorist financing risk and consequent shortcoming in informing the related findings to the country's national policies in a view to mitigate the identified risks; (2) deficiencies regarding proactive identification of unlicensed money remitters, the application of a risk-based approach to supervision of the DNFBP sector and the application of effective, proportionate, and dissuasive sanctions against AML/CFT violations; (3) lack of adequate verification and update of beneficial ownership information by obliged entities, lack of an effective mechanism to monitor the activities of offshore entities, shortcomings in assessing the existing risks of misuse of legal persons and arrangements to define and implement specific measures to prevent the misuse of nominee shareholders and directors, and shortcomings in ensuring timely access to adequate and accurate beneficial ownership information; and (4) deficiencies with regard to the effective use of FIU products for money laundering investigations, as well as with regard to the ability to investigate and prosecute money laundering involving foreign tax crimes and to provide constructive and timely international cooperation in relation to such offence, and unsatisfactory focus on ML investigations in relation to high-risk areas identified in the National Risk Assessment and Mutual Evaluation Report. On this basis, Panama should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (18) In October 2019, the FATF identified Zimbabwe as a jurisdiction having strategic AML/CFT deficiencies for which Zimbabwe has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) insufficient understanding of the key Money Laundering/Terrorist Financing risks among the relevant stakeholders and lack of implementation of the national AML/CFT policy based on the identified risks; (2) lack of implementation of risk-based supervision for financial institutions and DNFBPs, including inadequate capacity building among the supervisory authority; (3) lack of adequate risk mitigation measures among financial institutions and DNFBPs entailing the application of proportionate and dissuasive sanctions to breaches; (4) shortcomings in the legal framework and mechanism to collect and maintain accurate and updated beneficial ownership information for legal persons and arrangements, and to ensure timely access by the competent authorities; and (5) gaps in the framework and implementation of targeted financial sanctions related to terrorist financing and proliferation financing. On this basis, Zimbabwe should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (19) In accordance with the latest relevant information, the Commission's assessment concluded that the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe should be considered as third-country jurisdictions which have strategic deficiencies in their AML/CFT regime that pose significant threats to the financial system of the Union, in accordance with the criteria set out in Article 9 of Directive (EU) 2015/849. It is noted that these countries have provided written high-level political commitments to address the identified deficiencies and have developed action plans with the FATF.
- (20) It is further noted that the FATF identified Uganda as a jurisdiction having strategic AML/CFT deficiencies for which Uganda has developed an action plan with the FATF in February 2020. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) lack of a national AML/CFT strategy; (2) shortcomings in seeking international cooperation in line with the country's risk profile; (3) lack of development and implementation of risk-based supervision to financial institutions and DNFBPs; (4) gaps in ensuring that competent authorities have timely access to accurate basic and beneficial ownership information for legal entities; (5) deficiencies in demonstrating that law enforcement and judicial authorities apply the money laundering offence consistently with the identified risks; (6) failure to establish and implement policies and procedures for identifying, tracing, seizing and confiscating proceeds and instrumentalities of crime; (7) failure to demonstrate that law enforcement authorities conduct terrorist financing investigations and pursue prosecutions commensurate with Uganda's terrorist financing risk profile; (8) technical deficiencies in the legal framework to implement targeted financial sanctions related to proliferation

financing and shortcomings in the implementation a risk-based approach for supervision of its non-profit organisations sector to prevent abuse for terrorist financing purposes. Uganda also provided a written high-level political commitment to address the identified deficiencies and has developed an action plan with the FATF. Uganda is already included in the Delegated Regulation (EU) 2016/1675. Therefore, the status and current measures applied with regard to Uganda should remain unchanged.

- (21) It is of the utmost importance that the Commission conducts a permanent monitoring of third countries and assesses developments in their legal and institutional framework, the powers and procedures of competent authorities, and the effectiveness of their AML/CFT regime, with a view to updating the Annex of Delegated Regulation (EU) 2016/1675.
- (22) The Commission assessed the progress in addressing strategic deficiencies of countries in the Annex of Delegated Regulation (EU) 2016/1675 that have been delisted by the FATF since July 2016, based on the requirements of Directive (EU) 2015/849. The Commission concluded the assessment of progress made by Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia.
- (23) The FATF welcomed significant progress made by Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia in improving their AML/CFT regime and noted that these countries have established the legal and regulatory framework to meet the commitments in their action plans regarding the strategic deficiencies that the FATF had identified. These countries are therefore no longer subject to the FATF's monitoring process under its on-going global AML/CFT compliance process. These countries will continue to work with the FATF-Style Regional Bodies to further improve their AML/CFT regime.
- (24) The Commission assessed the information relating to the progress in addressing strategic deficiencies of those third countries.
- (25) The Commission's assessment concluded that, at this stage, Bosnia-Herzegovina and Guyana do not have strategic deficiencies in their AML/CFT regime considering the available information. These countries have recently taken a number of measures in order to reinforce their AML/CFT regimes and the Commission will further monitor effective implementation of such measures. The Commission will assess those countries when new information sources become available. Therefore Bosnia and Guyana should not be considered as having strategic deficiencies in their AML/CFT regime.
- (26) Similarly, the Commission's assessment concluded that Tunisia no longer has strategic deficiencies in its AML/CFT regime considering the available information. Tunisia has strengthened the effectiveness of its AML/CFT regime and addressed related technical deficiencies to meet the commitments in its action plan regarding the strategic deficiencies that the FATF had identified. These measures are sufficiently comprehensive and meet the necessary requirements to consider that strategic deficiencies identified under article 9 of the Directive (EU) 2015/849 have been removed.
- (27) Furthermore the Commission's assessment concluded that Ethiopia, Lao People's Democratic Republic and Sri Lanka implemented measures to address the strategic deficiencies identified by the FATF and no longer present such strategic deficiencies. Following the measures implemented to address the action plan agreed with the FATF, these countries no longer present an AML/CFT threat to the international financial system. Taking into account their relevance for the financial system of the Union, the Commission considers that these countries no longer pose a significant threat to the financial system of the Union. Therefore, Ethiopia, Lao People's Democratic Republic and Sri Lanka should not be considered as having strategic deficiencies in their AML/CFT regime at this stage.
- (28) The Commission is committed to provide technical assistance, where appropriate, to third countries included in the Annex of Delegated Regulation (EU) 2016/1675 in order to assist them to remedy the identified strategic deficiencies.

- (29) Taking into account the very exceptional and unpredictable situation arising from the COVID-19 pandemic which has an impact at global scale and is very likely to lead to disruptions in the proper functioning of economic operators and competent authorities alike, the date of application of Article 2 concerning the addition of third countries should be defined in a way that ensures sufficient time for its effective implementation in these circumstances. Therefore, the date of application of Article 2 of this Regulation should exceptionally be set at a later date than its entry into force.

For third countries which should be delisted, no major implementation issues arise. It is therefore reasonable to provide for delisting without undue delay.

- (30) Delegated Regulation (EU) 2016/1675 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Delegated Regulation (EU) 2016/1675, in the table under point 'I. High-risk third countries which have provided a written high-level political commitment to address the identified deficiencies and have developed an action plan with FATF', the following lines are deleted:

2	Bosnia-Herzegovina
3	Guyana
5	Lao PDR
10	Ethiopia
11	Sri Lanka
13	Tunisia

Article 2

In the Annex to Delegated Regulation (EU) 2016/1675, the table under point 'I. High-risk third countries which have provided a written high-level political commitment to address the identified deficiencies and have developed an action plan with FATF' is replaced by the following:

No	High-risk third country
1	Afghanistan
2	The Bahamas
3	Barbados
4	Botswana
5	Cambodia
6	Ghana
7	Iraq
8	Jamaica
9	Mauritius
10	Mongolia
11	Myanmar/Burma
12	Nicaragua
13	Pakistan

14	Panama
15	Syria
16	Trinidad and Tobago
17	Uganda
18	Vanuatu
19	Yemen
20	Zimbabwe'

Article 3

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

However Article 2 shall apply from 1 October 2020.

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

Done at Brussels, 7 May 2020.

For the Commission
The President
Ursula VON DER LEYEN
