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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	21 August 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2018) 5006 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 27.7.2018 amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards adding Pakistan to the table in point I of the Annex

Delegations will find attached document C(2018) 5006 final.

Encl.: C(2018) 5006 final



Brussels, 27.7.2018
C(2018) 5006 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 27.7.2018

amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards adding Pakistan to the table in point I of the Annex

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

On 20 May 2015, a new framework on anti-money laundering and counter-terrorist financing ("AML/CFT") was adopted. The new rules consist of:

- (a) Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843, which entered into force on 9 July 2018, and
- (b) Regulation (EU) 2015/847 on information accompanying transfers of funds.

The new rules constitute a modern, coherent framework in the field, and are consistent with international standards and recommendations currently in force, mainly those issued by the Financial Action Task Force (FATF).

According to Article 9(1) of Directive (EU) 2015/849, third-country jurisdictions which have strategic deficiencies in their AML/CFT regimes that pose significant threats to the financial system of the Union ('high-risk third countries') must be identified in order to protect the proper functioning of the internal market. Article 9(2) of the Directive empowers the Commission to adopt delegated acts in order to identify those high-risk third countries, taking into account strategic deficiencies, and laying down the criteria on which the Commission's assessment is to be based. The delegated acts shall be adopted within one month after the identification of the strategic deficiencies. Based on this identification, obliged entities are called by Article 18a of the Directive (EU) 2015/849, as amended by Directive (EU) 2018/843, to apply enhanced customer due diligence measures when establishing business relationships or carrying out transactions involving high-risk third countries identified by the Commission.

On 14 July 2016, the Commission adopted Delegated Regulation (EU) 2016/1675 which identifies a number of third countries that have strategic deficiencies in their AML/CFT regimes that pose significant threats to the financial system of the Union.

It is necessary to continue to update the list in order to ensure that EU rules apply to third countries internationally identified as being of high risk. As stressed in recital 28 of Directive (EU) 2015/849, the changing nature of money laundering and terrorist financing threats, facilitated by a constant evolution of technology and of the means at the disposal of criminals, requires that quick and continuous adaptations of the legal framework as regards high-risk third countries be made in order to address efficiently existing risks and prevent new ones from arising. Considering the level of financial systems' integration, the internal market would be exposed to serious risks of money laundering and terrorist financing if the EU does not add high risk jurisdictions identified by FATF to the EU list. The EU AML/CFT framework would also fall short of complying with international commitments and contravene EU efforts to promote a global approach towards high risk countries.

A. Addition to the list of high-risk third countries

The Commission took into account, as appropriate, the recent FATF Public Statements, FATF documents (Improving Global AML/CFT Compliance: on-going process), FATF reports on International Cooperation Review, and the mutual evaluations report carried out by FATF and FATF Style Regional Bodies (FSRBs) in relation to the risks posed by individual third countries in line with Article 9(4) of Directive (EU) 2015/849. In particular, it considered the outcome of the FATF 31st Plenary meeting and the high-risk countries identified by FATF.

On this occasion, Pakistan was identified as presenting strategic deficiencies in its AML/CFT regime.

Based on these information sources, the Commission considers that Pakistan meets the criteria set in article 9(2) of the Directive (EU) 2015/849. Hence Pakistan should be added on the list of high-risk third countries presenting strategic deficiencies in their AML/CFT regime that pose significant threats to the financial system of the Union. Therefore this country should be included in the Delegated Act provided under article 9 of Directive (EU) 2015/849.

Pakistan provided a written high-level political commitment to address the identified deficiencies and has developed an action plan with the FATF, in view of fulfilling the requirements laid down in Directive (EU) 2015/849. The Commission welcomes this commitment and calls on this jurisdiction to complete the implementation of the action plan expeditiously and within the proposed timeframes. The implementation of the action plan will be closely monitored. In order to take into account the level of commitment that has been demonstrated by this high-risk third country, in the context of the FATF, to correct the identified weaknesses, this third country is listed in the table in point I of the annex to the amended Delegated Act.

B. Consequence

According to article 18a of Directive (EU) 2015/849, obliged entities in all Member States will be bound to apply enhanced customer due diligence measures (ECDD) when dealing with natural persons or legal entities established in high-risk third countries as defined in Delegated Regulation (EU) 2016/1675.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

No public consultations were held by the Commission.

On 23 July 2018, the Expert Group on Money Laundering and Terrorist Financing (EGMLTF) was consulted on the draft delegated act by written procedure.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This delegated act amends the list of high-risk third countries which has been previously adopted in Delegated Regulation (EU) 2016/1675.

The legal effects of the publication of the list are governed by the basic act, Directive (EU) 2015/849.

As a direct consequence of the establishment of the list, obliged entities in all Member States will be bound to apply enhanced customer due diligence measures (ECDD) according to article 18a of Directive (EU) 2015/849 when dealing with natural persons or legal entities established in high-risk third countries. Such obligations therefore also apply with regard to the country added to the Annex - namely Pakistan.

COMMISSION DELEGATED REGULATION (EU) .../...

of 27.7.2018

amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards adding Pakistan to the table in point I of the Annex

(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/EC¹, 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 high-risk third 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) The Commission should review the list of high risk third countries listed in Delegated Regulation (EU) 2016/1675² 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 account in its assessments of new information from international organisations and standard setters, such as those issued by the Financial Action Task Force (FATF). In light of this information, the Commission should also identify additional high-risk third countries presenting strategic deficiencies in their AML/CFT regime.
- (3) 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 document "Improving Global AML/CFT Compliance: ongoing process", 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.

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) The FATF identified Pakistan as having strategic deficiencies in its anti-money laundering and counter-terrorist financing ("AML/CFT") regime that pose a risk to the international financial system, for which it has developed an action plan with the FATF.
- (5) The AML/CFT framework in force in Pakistan and the manner in which that framework is applied reveal strategic deficiencies. The deficiencies include the supervision and enforcement of AML/CFT controls by financial institutions, including money service businesses; insufficient measures to prevent illicit cross-border transportation of currency; no robust track record of terrorist financing investigations and prosecutions, including the lack of necessary coordination between various authorities; insufficient implementation of targeted financial sanctions and of United Nations Security Council Resolutions 1267 (1999) and 1373 (2001); insufficient enforcement of prohibition of funds and financial services.
- (6) 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 or from the Union, as well as the degree of market opening, the Commission considers that any AML/CFT threat posed to the international financial system also represents a threat for the Union financial system.
- (7) In accordance with the latest relevant information, the Commission's analysis has concluded that Pakistan should be considered as a third-country jurisdiction which has strategic deficiencies in its 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. However, this country has provided a written high-level political commitment to address the identified deficiencies and has developed an action plan with the FATF, which would allow the requirements laid down in Directive (EU) 2015/849 to be met. The Commission will reassess this country's status in the light of the implementation of that commitment.
- (8) 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 in point I the following line is added:

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14	Pakistan
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Article 2

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, 27.7.2018

For the Commission
The President
Jean-Claude JUNCKER