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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 13 February 2019

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 13.2.2019  
supplementing Directive (EU) 2015/849 of the European Parliament and of  
the Council by identifying high-risk third countries with strategic  
deficiencies

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Delegations will find attached document C(2019) 1326 final.

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Brussels, 13.2.2019  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 13.2.2019**

**supplementing Directive (EU) 2015/849 of the European Parliament and of the Council  
by identifying high-risk third countries with strategic deficiencies**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

#### I. General context

On 20 May 2015, EU legal instruments on anti-money laundering and counter-terrorist financing ("AML/CFT") were adopted. They 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<sup>1</sup> (subsequently amended by Directive (EU) 2018/843)<sup>2</sup>, and
- (b) Regulation (EU) 2015/847 on information accompanying transfers of funds<sup>3</sup>.

These rules address the need to provide a robust, clear and predictable legal framework to protect the EU's financial system. They are consistent with international standards and recommendations currently in force, mainly those issued by the Financial Action Task Force (FATF).

One of the key elements in the EU legal framework is its risk-based approach. Situations where there is a higher risk of money laundering or terrorist financing require enhanced measures, whereas, conversely, reduced risk may justify less rigorous controls. The geographical/country risk is one of the factors to be considered when applying the risk-based approach.

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 lays down the criteria on which the Commission's assessment is to be based. According to Article 9(4) of the Directive, the Commission shall take into account relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field.

When such countries are identified by the Commission as having strategic deficiencies, obliged entities are called by Article 18a of 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.

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. This Delegated Regulation was subsequently amended by Delegated Regulation (EU) 2018/105, Delegated Regulation (EU) 2018/212, and Delegated Regulation (EU) 2018/1467 identifying further high-risk countries. 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

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<sup>1</sup> OJ L 141, 5.6.2015, p. 73.

<sup>2</sup> OJ L 156, 19.6.2018, p. 43.

<sup>3</sup> OJ L 141, 5.6.2015, p. 1.

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.

On 30 May 2018, the European Parliament and Council adopted Directive (EU) 2018/843, which amended Directive (EU) 2015/849 and entered into force on 9 July 2018<sup>4</sup>. The new Directive notably revised and broadened the criteria to be considered by the Commission when making its assessment of high-risk third countries under Article 9 of Directive (EU) 2015/849. In particular, a criterion related to the availability and exchange of beneficial ownership information was added, going beyond FATF criteria in this regard. The new criteria further cover the existence of effective, proportionate and dissuasive sanctions in case of breaches of AML/CFT obligations, as well as the third country's practice in cooperation and exchange of information with Member States' competent authorities.

This legislative change followed the Commission's commitment to develop and apply a new methodology in identifying strategic deficiencies of third countries by issuing a [roadmap](#)<sup>5</sup> that was sent to the European Parliament and Council on 30 June 2017. This commitment in turn responded in particular to requests by the European Parliament to ensure that the Commission fulfils its obligation based on an autonomous assessment, rather than solely replicating lists adopted by the FATF<sup>6</sup>. The new methodology was set out in a Commission Staff Working Document published on 22 June 2018<sup>7</sup>, which applies the revised criteria for the identification of high-risk third countries.

In light of the above it is necessary to repeal Regulation (EU) 2016/1675 and adopt a new list of high-risk third countries based on the new requirements of Directive (EU) 2015/849, as amended by Directive (EU) 2018/843.

## II. Policy approach with regard to the assessment of high-risk third countries

### A. Objective of the identification of high risk-third countries on AML/CFT

The objective of the list of high-risk third countries is to protect the integrity of the Union financial system and internal market through the application of enhanced due diligence measures by obliged entities when they have a business relationship involving high-risk third countries. Flows of illicit money can damage the integrity, stability and reputation of the financial sector and threaten the internal market. This is particularly relevant since risks posed by countries having strategic deficiencies may easily spread across jurisdictions and ultimately impact the stability of the financial system of their counterparts. Therefore, it is key to ensure that appropriate controls are in place to mitigate such risks.

Moreover, those measures contribute to increased public security by helping to further deter, prevent and fight misuse of the financial system by criminals, terrorists, and their associates. Traceability of financial transactions, customer due diligence requirements and transparency of beneficial ownership information are key enablers for ensuring law enforcement capacity

<sup>4</sup> OJ L 156, 19.6.2018, p. 43.

<sup>5</sup> <http://data.consilium.europa.eu/doc/document/ST-11189-2017-INIT/en/pdf>

<sup>6</sup> See Resolution [P8\\_TA\(2017\)0008](#), Resolution [P8\\_TA-\(2017\)0213](#) and the [Report on the inquiry into money laundering, tax avoidance and tax evasion \(2017/2013\(INI\)\)](#)

<sup>7</sup> SWD(2018) 362 final available at: [https://ec.europa.eu/info/sites/info/files/swd\\_2018\\_362\\_fl\\_staff\\_working\\_paper\\_en\\_v2\\_p1\\_984066.pdf](https://ec.europa.eu/info/sites/info/files/swd_2018_362_fl_staff_working_paper_en_v2_p1_984066.pdf)

in applying the "follow the money" approach. By applying enhanced vigilance, obliged entities will contribute to guaranteeing security across the Union.

The identification of high-risk third countries contributes to ensuring legal certainty for economic operators dealing with third-country jurisdictions. The establishment of the list will ensure a level playing field across the EU by preventing the possibility that certain obliged entities refrain from applying enhanced customer due diligence. It will also contribute to ensuring that obliged entities have solid internal control frameworks in place to mitigate and manage effectively the risks of money laundering and terrorist financing, thereby promoting long-term and sustainable business growth. Similarly, entities implementing financial instruments and budgetary guarantees under the EU budget shall not (i) support actions that contribute to money laundering or terrorist financing and (ii) enter into new or renewed operations with entities established in high-risk third countries in order to protect EU funds from the money laundering and terrorist financing risks posed by those jurisdictions. As a result, this delegated act also contributes to securing an appropriate degree of protection for consumers, promoting effective competition, protecting the EU financial interest and contributing to sustainable growth.

The objective of the listing process is to ensure that due diligence measures are applied in line with the identified risks, based on an assessment of strategic deficiencies in the third countries concerned. The purpose is not to "name and shame" third countries. Rather, the list will help to ensure that the jurisdictions concerned address identified deficiencies. Listed countries will be encouraged to rapidly address their identified strategic deficiencies and the Commission is committed to supporting them where appropriate, with a view to their eventual de-listing on the basis of the clear criteria set out in the methodology, including through technical assistance. This should be facilitated notably through dedicated discussions, with the involvement of the European External Action Service (EEAS) and relevant EU Delegations, and through the Union's political dialogues and consultations with countries concerned. This could be accompanied by targeted use of the Union's instruments, including development cooperation, where applicable, capacity building, exchange of expertise and best practices.

Moreover, the list does not aim at discouraging or reducing legitimate financial flows between the EU and listed third countries. In that regard, obliged entities should not rely on the list to justify reduction of such flows where Union law does not require this. The objective is not to limit the economic or financial relations with the listed countries. On the contrary, the list will contribute to increase the confidence of obliged entities dealing with these countries by enabling them to adopt appropriate controls. Similarly, the nature of the list is not intended to have any undue consequences in third countries with regard to financial inclusion and activities related to non-profit organisations (NPO).

The listing process does not affect the Union humanitarian assistance, its development policy or the provision of grants, procurement and budget support in those third countries. However, the use of EU funded financial instruments and budgetary guarantees is subject to stricter provisions in relation to tax good governance and anti-money laundering following the adoption of Regulation (EU) 2017/2396 on the European Fund for Strategic Investment, Regulation (EU) 2017/1601 on the European Fund for Sustainable Development<sup>8</sup>, and the Financial Regulation (EU, Euratom) 2018/1046. These legal acts contain provisions

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<sup>8</sup> See Article 22 (1) of Regulation (EU) 2017/1601 of the European Parliament and of the Council of 26 September 2017 establishing the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund, OJ L 249, 27.9.2017.

prohibiting new or renewed operations with entities in EU-listed jurisdictions for tax and anti-money laundering purposes, except when the action is physically implemented in this jurisdiction and subject to the absence of other risk factors<sup>9</sup>. The Commission will engage with implementing partners, including notably International Financial Institutions, to ensure compliance with these requirements, through regular dialogue and structural due diligence processes in order to secure the effective implementation of Union policies in the field of EU external action.

## **B. Main milestones for the review**

The Commission presented the main milestones in a [roadmap](#) sent to the European Parliament and the Council on 30 June 2017. This initiative is part of the broader Commission's efforts in order to reinforce enforcement of AML/CFT measures and support global efforts in addressing money laundering and terrorist financing risks.

The Commission is a member of the Financial Action Task Force (FATF) and supports its work in ensuring global compliance with international standards – in particular by identifying and working with countries having strategic deficiencies in their AML/CFT regime in order to reduce risks of money laundering worldwide. The Commission increased its engagement in the work done by FATF and FATF-style Regional Bodies, and will continue to do so as part of its commitment to foster international co-operation in this field.

The Commission complements those efforts by addressing risks that are specific for the EU. This is particularly relevant since the FATF listing process depends on the timing of the evaluation cycle (planned over several years), observation periods and priority setting. It should also be noted that the purpose, process and priority-setting for the EU list of high-risk third countries are different to that of FATF. Limiting the application of enhanced vigilance to transactions involving countries listed by the FATF would fall short of ensuring sufficient safeguards for the EU financial system. Therefore the co-legislators explicitly modified the criteria to be considered by the Commission's analysis in the context of the revision of Directive (EU) 2015/849, thus confirming by a clear legal obligation this approach for a more autonomous assessment.

This approach will therefore reinforce the Commission's efforts in FATF to promote a global approach towards high-risk third countries, while at the same time further protecting the EU financial system from external risks.

Against this background, the Commission developed a new methodology<sup>10</sup> to identify jurisdictions presenting strategic deficiencies in tackling money laundering and financing of terrorism. The methodology ensures that the Commission applies an objective, fair and transparent process. It provides for the main milestones, the assessment criteria and follow-up process in order to give predictability to third countries. This work is being carried out in a staged approach:

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<sup>9</sup> See Article 155(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, OJ L 193, 30.7.2018.

<sup>10</sup> SWD(2018) 362 final available at: [https://ec.europa.eu/info/sites/info/files/swd\\_2018\\_362\\_fl\\_staff\\_working\\_paper\\_en\\_v2\\_p1\\_984066.pdf](https://ec.europa.eu/info/sites/info/files/swd_2018_362_fl_staff_working_paper_en_v2_p1_984066.pdf)

- In a first stage, the Commission developed a detailed methodology clarifying the procedure to be followed, the criteria to determine the relevant countries to be assessed and criteria for the level of priority for their assessment, the assessment criteria to be applied to the selected countries, as well as the follow-up process with third countries. This methodology ensures that the Commission does not exclusively rely on FATF reports, but considers a variety of information sources. In developing this new assessment process, the Commission consulted Member States through the Commission's Expert Group on Money Laundering and Terrorist Financing (hereafter "the Commission's Expert Group"). The resulting methodology was published on 22 June 2018.

- In a second stage ("scoping phase"), the Commission carried out a pre-assessment to determine the scope of countries to be assessed, and identify the level of priority of those countries. Countries which have a very low integration with the EU financial system and which are not exposed to money laundering or terrorist financing threats have been excluded. This pre-assessment is based on objective criteria using reliable and relevant information sources. The results were published on 15 November 2018<sup>11</sup>.

- In a third stage, the Commission assessed the relevant third countries' AML/CFT regimes, starting with countries of the highest priority by the end of 2018. For the remaining countries, the Commission will carry out its assessment gradually over time (until 2025) once new information sources become available. It will continue to monitor already reviewed countries.

### **C. Methodology for assessing third countries and assessment criteria**

[The methodology for identifying high-risk third countries](#) establishes a mechanism ensuring an autonomous assessment by the Commission on the basis of clear criteria, evidence and facts in line with general Union law. Two main avenues can lead to a country's identification as a high-risk third country: (1) countries publicly listed by the FATF (subject to analysis of additional information by the Commission, where available, including from other sources) and (2) countries assessed as posing significant threats to the Union's financial system as a result of strategic deficiencies in their AML/CFT regimes based on external sources of information.

#### **(1) Countries publicly listed by FATF**

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 high degree of market opening, the Commission considers that AML/CFT threats posed to the international financial system also represent threats to the Union financial system. This approach supports international efforts in dealing with high-risk countries and puts further pressure on countries to correct their strategic deficiencies. It also supports EU efforts to promote a global approach towards high-risk countries.

In this context, any third country representing a risk to the international financial system, as identified by the FATF, is presumed to represent a risk to the EU internal market. This concerns any country publicly identified in the FATF documents "Public Statement" and the "Improving Global AML/CFT Compliance: On-going Process". It should be stressed that both the Commission and 15 Member States are members of FATF and are actively involved in the assessment by FATF of countries presenting strategic deficiencies – having access to relevant information sources. The Commission will continue to foster coordination with EU Member

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<sup>11</sup> [https://ec.europa.eu/info/sites/info/files/list\\_of\\_scoping-priority-hrtc\\_aml-cft-14112018.pdf](https://ec.europa.eu/info/sites/info/files/list_of_scoping-priority-hrtc_aml-cft-14112018.pdf)

States in FATF in order to ensure coherence of external representation of EU policies in this regard.

In order to conduct its autonomous assessment, the Commission analyses information from the FATF and other available sources of information (including consultation of the competent Commission Expert Group) before concluding that a country listed by FATF is added to the EU list on high-risk third countries. If the Commission analysis confirms the FATF assessment, it will conclude that there are justified grounds to consider that the FATF-listed countries are high-risk third countries for the purpose of Article 9 of Directive (EU) 2015/849.

The information available from FATF remains a highly relevant starting point for such assessment. Listings by FATF follow a due process based on clear criteria, in which the Commission as FATF member is closely involved. The basis for the review process is information on threats, vulnerabilities, or particular risks arising from a country. This information may be derived from mutual evaluation reports, from FATF members, or from the fact that the country is not participating in the work of any of the FATF-style Regional Bodies (FSRB) and consequently not committing to implementing the FATF standards.

During the review process, FATF determines the most serious AML/CFT weaknesses ('strategic AML/CFT deficiencies') for each country and develops an action plan with the country to address these deficiencies. The FATF also requests a high-level political commitment that the country will implement the legal, regulatory, and operational reforms required by the action plan. Each jurisdiction under review has the opportunity to participate in a face-to-face meeting to discuss the findings with the competent review group in the International Cooperation Review Group (ICRG). On the basis of the results of its reviews, the FATF publishes two statements at each Plenary meeting which reflect the seriousness of the risks posed by the country – and the level of political commitment to address them. Similarly, the removal from the FATF statements follows a due process to ensure that a country has substantially addressed all the components of this action plan and that implementation is underway.

The FATF lists constitute a starting point since the criteria, their weighing and the specific thresholds for being listed focus on countries presenting very material and profound strategic deficiencies. Therefore it appears justified that where the Commission' analysis confirms the assessments of the FATF, those countries are identified as "high risk third countries".

With respect to candidate countries, the Commission, in its assessment, may consider mitigating measures included in the accession negotiations that address the identified strategic deficiencies. This approach is justified by the fact that in specific circumstances the same goals can be reached through alternative means than listing. In such situations, mitigating measures may be developed in the framework of the accession process where the candidate countries are requested to fulfil a set of stringent criteria. The possibility to establish equally robust mitigating measures does not exist with regard to third countries that are not in the process of accession to the EU.

## **(2) Other countries identified following a Commission analysis on the basis of relevant sources of information**

In addition, the Commission selected countries for further analysis in view of additional risks which are specific to the EU financial system. The assessment methodology takes better into account the level of threat in third country jurisdictions in terms of money laundering, terrorist financing and the size of predicate offences – as well as the materiality of the financial and non-financial sector. These elements are taken into account for assessing whether appropriate



mitigating measures are in place in those countries which are commensurate to the country's risk profile. For the assessment of third countries' AML/CFT regimes, the Commission applies the requirements stemming from Directive (EU) 2015/849, as amended by Directive (EU) 2018/843, to assess the building blocks of the countries AML/CFT regime. Although those requirements are consistent with international standards, the EU requirements are different in scope, nature and weighting compared to the FATF listing criteria, in order to protect the EU financial system. For instance, all reviewed countries' regimes were assessed with regard to the availability of information on beneficial ownership, which is a fundamental requirement specifically set in Article 9(2) of Directive (EU) 2015/849, as amended by Directive (EU) 2018/843.

Against this background, the Commission followed a staged approach in carrying out this analysis.

## **2.1. Scoping**

At a first step, the Commission carried out a pre-assessment to determine the countries to be assessed, in addition to those already listed by the FATF. The scoping phase aims at identifying potential countries that should be included in the scope of the EU analysis on the basis of evidence pointing to the fact that, if they have strategic AML/CFT deficiencies, they may be considered to be jurisdictions with a systemic impact on the integrity of the EU financial system. This step allows the Commission to focus its efforts where these are most needed. This phase results in a selection of third countries that are relevant to the financial system of the Union in line with the risk-based approach.

To this end, the Commission applied a set of non-cumulative criteria to all third countries/jurisdictions in the world (217 jurisdictions). Countries were selected for further analysis if they meet at least one of the following criteria:

- 1) Countries identified by Europol as having a systemic impact on the integrity of the EU financial system, or identified by EEAS.
- 2) Jurisdictions reviewed by the International Monetary Fund as international offshore financial centres.
- 3) Economic relevance considering the magnitude of the financial centres and the strength of economic ties with the EU.

On this basis, the Commission identified **132 jurisdictions** that will be further analysed to identify whether they present strategic deficiencies (assessment over 2018-2025). The Commission's Expert Group was consulted and Member States experts endorsed this analysis on 15 September 2018. These [results](#) were published on the Commission's website<sup>12</sup> on 15 November 2018. Inclusion only means that a jurisdiction will be subject to an assessment by the Commission and does not in any way prejudice the final outcome of the assessment.

The Commission may review at any moment the scoping to cover additional countries in case of material changes or new information.

## **2.2. Level of priority for the assessment of countries included in the scope**

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<sup>12</sup> [https://ec.europa.eu/info/sites/info/files/list\\_of\\_scoping-priority-hrtc\\_aml-cft-14112018.pdf](https://ec.europa.eu/info/sites/info/files/list_of_scoping-priority-hrtc_aml-cft-14112018.pdf)

The objective of this step is to determine the level of priority for the assessment of the countries identified in the scoping phase. In accordance with its methodology, the Commission identified countries to be assessed as a matter of priority based on factual and objective criteria. The Commission considered as "priority 1" those countries which fulfil at least one of the following criteria:

- (1) Countries exposed to a high level of threat identified by Europol / EEAS;
- (2) Countries on the EU list of non-cooperative jurisdictions for tax purposes adopted by the Council of the EU (Annex I);
- (3) Countries listed in Regulation (EU) 2016/1675 that have been de-listed by the FATF since 14 July 2016;
- (4) Countries relevant for the EU based on Europol nomination when Mutual evaluation reports (MERs) are available before end of June 2018.

Countries meeting those criteria were subject to an assessment as a matter of priority ("priority 1"). On this basis, the Commission selected **47 jurisdictions** as "priority 1" because they met one or more of the above-mentioned criteria. In addition, the Commission assessed **7 jurisdictions** that, while not having been identified in the scoping (e.g. due to limited economic ties with the EU), have been listed or de-listed by FATF.

Other third countries identified in the scoping but which do not fulfil the abovementioned criteria will be considered as "priority 2" countries (to be assessed at a later stage, as from 2019). The Commission will review those countries when new sources of information become available, in particular reports from international organisations competent in the field of anti-money laundering and countering terrorist financing. It will also consider other information sources and risk indicators to prioritise these further assessments (including jurisdictions listed in "[Annex II](#)" with regard to the EU list of non-cooperative jurisdictions for tax purposes<sup>13</sup>, which fail to meet their commitments). Moreover, priority 1 countries remain subject to review in light of further analysis where needed, developments in the countries concerned and/or when new sources of information become available.

### **2.3. Assessment of third countries' regime on AML/CFT**

Directive (EU) 2015/849 sets the criteria for identifying high-risk third countries. These requirements have been revised by Directive (EU) 2018/843 in order to provide more ambitious criteria, by covering the availability and access to beneficial ownership information, existence of effective, proportionate and dissuasive sanctions in case of breaches of AML/CFT obligations, as well as the third country's practice in cooperation and exchange of information with Member States' competent authorities. Pursuant to the amended Directive, the Commission takes into account strategic deficiencies of third countries, in particular in relation to the legal and institutional AML/CFT framework such as criminalisation of money laundering and terrorist financing, customer due diligence and record keeping requirements, reporting of suspicious transactions, the availability and exchange of information on beneficial ownership of legal persons and legal arrangements; the powers and procedures of competent authorities; their practice in international cooperation; the existence of dissuasive, proportionate and effective sanctions. As a general requirement,

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<sup>13</sup> See Council conclusions adopted on 5/12/2017 and subsequent Council conclusions updating those Annexes as described under [https://ec.europa.eu/taxation\\_customs/tax-common-eu-list\\_en](https://ec.europa.eu/taxation_customs/tax-common-eu-list_en)

the effectiveness in applying those AML/CFT safeguards is also taken into consideration. When carrying out its assessment, the Commission considers relevant evaluations, assessments or reports drawn up by relevant international organisations and standard setters – in particular those issued by FATF and FSRBs – as well as other information sources.

The Commission made a comprehensive analysis of the AML/CFT regime of each assessed country. It reviewed the risk profile of the country in order to consider the level of threat to which it is exposed. It assessed the legal framework and its effective application in eight key areas which are set out in Directive (EU) 2015/849, as amended by Directive (EU) 2018/843 and reflected in the methodology ("building blocks"):

- 1) criminalisation of money laundering and terrorist financing,
- 2) customer due diligence requirements, record keeping and reporting of suspicious transactions in the financial sector;
- 3) customer due diligence requirements, record keeping and reporting of suspicious transactions in the non-financial sector;
- 4) the existence of dissuasive, proportionate and effective sanctions in case of breaches;
- 5) the powers and procedures of competent authorities;
- 6) their practice in international cooperation;
- 7) the availability and exchange of information on beneficial ownership of legal persons and legal arrangements;
- 8) implementation of targeted financial sanctions.

The assessment considered not only the legal framework but also the institutional capacity and effective application of those measures by all AML/CFT players. It also took into account the risk profile of the country in order to determine whether the AML/CFT regime presents strategic deficiencies.

When assessing third countries' AML/CTF regimes, the Commission took into account various information sources, including reports from international organisations active in this field. The reviewed information consisted of internal information sources from Commission services, EEAS, Europol, and publicly available information including relevant international ratings and indexes (e.g. Basel AML Index, Transparency International Corruption Perceptions Index, Financial Secrecy Index, and FATF mutual evaluation reports). The Commission also consulted Member States' experts within the framework of the Commission's Expert Group. After being informed of the intended listing, some third countries also provided the Commission with additional information. On the basis of this analysis, the Commission determined the level of deficiencies and identified, where relevant, strategic deficiencies leading to the adoption of this Delegated Regulation.

### **III. Results of the Commission's analysis**

At this stage, the Commission has reviewed the AML/CFT regime of 54 countries against the criteria set in Directive (EU) 2015/849, as amended by Directive (EU) 2018/843 by applying the described methodology. The findings of this assessment are presented below.

#### **3.1. Countries having strategic deficiencies in their AML/CFT regimes for the purpose of Article 9 of Directive (EU) 2015/849.**

Any third country representing a risk to the international financial system, as identified by FATF, is presumed to represent a risk to the EU internal market, subject to the Commission's

own review. This concerns any country publicly identified in the "FATF documents Public Statement" and "Improving Global AML/CFT Compliance: Ongoing Process". The Commission reviewed the information received in the context of FATF relating to these deficiencies and information contained in other relevant information sources. Following review of the available information from FATF (notably the outcome of the FATF plenary meeting of October 2018) and from other relevant sources, the Commission's analysis has concluded that 12 jurisdictions present strategic deficiencies as defined for the purposes of Article 9 of Directive (EU) 2015/849. Those jurisdictions are the following: The Bahamas, Botswana, Ethiopia, Ghana, Iran, Democratic People's Republic of Korea, Pakistan, Sri Lanka, Syria, Trinidad and Tobago, Tunisia, Yemen.

Based on the review of additional information sources, the Commission's analysis has concluded that 11 additional jurisdictions present strategic deficiencies for the purposes of Article 9 of Directive (EU) 2015/849. Those jurisdictions are the following: Afghanistan, American Samoa, Guam, Iraq, Libya, Nigeria, Panama, Puerto Rico, Saudi Arabia, U.S. Virgin Islands, Samoa. The Commission concluded that there are sufficient grounds to consider that those jurisdictions have strategic deficiencies in their AML/CFT regimes, while for other countries there are not sufficient elements to reach this conclusion at this stage (see section below). These 11 jurisdictions all have strategic deficiencies in their AML/CFT when considering the threat level and their risk profile. As described in the recitals of the Delegated Regulation, the strategic deficiencies can cover a range of shortcomings in the legal and institutional framework, as well as a lack of effectiveness of the AML/CFT system in addressing the money laundering or terrorist financing risks faced by the country. With regard to the risk profile of these jurisdictions, it is noted that they are exposed to a higher threat level of money laundering and/or terrorist financing, facing a negative security situation in the country, or exposed to money laundering threats linked to tax crime as a predicate offence (especially jurisdictions on the EU list of non cooperative tax jurisdictions). Therefore it is necessary that preventative measures are put in place in those circumstances.

The Commission and EEAS engaged with third countries in cases where the assessment concluded that their AML/CFT regime presents strategic deficiencies prior to the adoption of the Delegated Regulation. As of 23 January 2019 the Commission informed third countries of its intention to include them on the list of high-risk third countries and provided them with the results of its analysis. The Commission met with representatives of third countries, where requested, to discuss the findings. A number of third countries provided additional information and clarifications, which were taken into account in the Commission's final assessment as appropriate.

According to Article 9(3) of Directive (EU) 2015/849, the Delegated Regulation identifying those countries shall be adopted within one month after the identification of the strategic deficiencies. Therefore the Commission needs to act urgently in order to ensure that preventative measures are put in place.

### **3.2. Findings with regard to other countries**

With regard to the other reviewed countries, the Commission's analysis concluded that for a number of countries, no sufficient grounds for identifying strategic deficiencies were found at this stage. However, the Commission will continue to keep those countries under further review. The Commission will re-assess those countries in light of further analysis where needed, developments in the countries and/or as soon as new information sources become available, in particular FATF or FSRB mutual evaluation reports, that will contain more substantiated and updated information, and other relevant information relating to money

laundering and terrorist financing risks (for instance relating to risk indicators on tax crime and commitments to the EU on tax good governance). The Commission will also engage at bilateral level with countries to ensure that identified shortcomings are addressed, inter alia, in the context of political dialogues and will continue monitoring their AML/CFT regimes.

Moreover, the Commission reviewed the strategic deficiencies of other countries listed in Regulation (EU) 2016/1675 that have been delisted since July 2016 by the FATF (Bosnia-Herzegovina, Guyana, Lao People's Democratic Republic, Uganda and Vanuatu) based on the new requirements of Directive (EU) 2015/849, as amended by Directive (EU) 2018/843. The Commission's analysis concluded that, at this stage, Bosnia-Herzegovina, Guyana and Vanuatu do not have strategic deficiencies in their AML/CFT regime considering the available information. Those 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. It will also review those countries when new information sources become available. Similarly the Commission's analysis concluded that Lao People's Democratic Republic and Uganda implemented measures to address the strategic deficiencies identified by FATF and do not present such strategic deficiencies any longer. These jurisdictions are not considered as relevant for the EU financial system based on information received, the absence of an offshore financial centre and their low integration level with the EU financial system. Those countries posed a risk to the EU financial system due to the risks they represented to the international financial system. By addressing their strategic deficiencies threatening the international financial system, those jurisdictions do not pose anymore a specific risk for the EU financial system. Therefore Lao People's Democratic Republic and Uganda are not considered as having strategic deficiencies in their AML/CFT regime at this stage.

#### **IV. Next steps and follow-up**

The Commission will continue its engagement with the countries identified as having strategic deficiencies in the present Delegated Regulation. It will communicate to the listed countries the grounds for the listing, as well as the delisting criteria. This will enable third countries to identify the areas for improvement in order to pave the way for a possible delisting once strategic deficiencies are removed. The Commission will ensure appropriate follow-up of high-risk third countries' progress in improving their AML/CFT regime in view of their possible removal from the EU list once strategic deficiencies will have been addressed and the high risk for the financial system of the Union will have been removed.

In order to delist a country, the Commission should make sure that the country has addressed the identified strategic deficiencies in its AML/CFT regime. To this end, it is necessary to ensure that countries adopt the necessary legal requirements to upgrade their legal and institutional framework. It is equally important to assess that new measures are also effectively applied on the ground. All countries which are relevant for the EU financial system – i.e. which are included in the scope of the EU analysis – will be assessed for delisting based on the same criteria. The exit criteria for being delisted are further described in the methodology as well as the order of the review. In order to be removed from the EU list, the following requirements must be met:

- Firstly, the country needs to be compliant with "fundamental EU criteria", i.e. criminalisation of ML/TF; customer due diligence requirements, record keeping and

reporting suspicious transactions in the financial and in the non-financial sector; transparency of beneficial ownership; international cooperation;

- Secondly, it needs to show effectiveness in applying measures with regard to the availability and exchange of beneficial ownership information. This is particularly relevant since according to international reports and G20, too many countries are lagging behind with respect to transparency on beneficial ownership;
- Thirdly, it needs to demonstrate positive and tangible progress in improving effectiveness in all areas where significant deficiencies have been identified.

The Commission will decide on removal from the list after it receives and reviews information:

- from third countries that adopted relevant legislation which addresses strategic deficiencies and effectively applied it;
- from other reliable sources of information (e.g. FATF, including FSRB, IMF, OECD, etc.) indicating that the strategic deficiencies have been remedied.

In addition, it should be stressed that the assessment process is not a one-off exercise, but an ongoing one, taking due account of new or updated information sources becoming available. Further assessments will be carried out over time in order to cover all countries considered as relevant for the EU. The Commission will start in 2019 the assessment of additional countries ("priority 2" countries). The Commission will prioritise the reviewed jurisdictions listed in "Annex II" with regard to the EU list of non-cooperative jurisdictions for tax purposes which fail to meet their commitments<sup>14</sup>. Countries in this situation will be subject to an accelerated review from 2019. The Commission therefore invites all jurisdictions under "Annex II" that subscribed to commitments towards the Code of Conduct Group (Business Taxation) of the Council to implement them according to the agreed deadline.

The Commission will also further monitor countries already reviewed under its AML/CFT assessment ("priority 1" countries) where the Commission did not identify strategic deficiencies at this stage (see section 3.2.). Further monitoring will be required in light of new information that will become available to the Commission. The Commission will also continue monitoring additional countries that are identified as presenting a risk for the international financial system, by being publicly identified by the FATF.

To fulfil its obligations under Directive (EU) 2015/849, the Commission intends to update its list at regular intervals, with the aim of continuing to identify third-country jurisdictions with strategic deficiencies in their regimes for AML/CFT that pose significant threats to the financial system of the EU. This is necessary in order to ensure ongoing protection of our EU financial system from the risks posed by jurisdictions having deficiencies and reinforce efforts to promote a global approach towards high-risk countries. The Commission will also monitor progress made by listed countries in addressing their strategic deficiencies. The Commission will update this list accordingly. The Commission will also reflect on further strengthening its methodology where needed in light of experience gained, with a view to ensuring effective identification of high-risk third countries.

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<sup>14</sup> See Council conclusions adopted on 5/12/2017 and subsequent Council conclusions updating those Annexes as described under [https://ec.europa.eu/taxation\\_customs/tax-common-eu-list\\_en](https://ec.europa.eu/taxation_customs/tax-common-eu-list_en)

As outlined in the [Action plan for strengthening the fight against terrorist financing<sup>15</sup>](#), the Commission is committed to assisting third countries and to exploring the provision of technical assistance to support implementation of EU requirements, FATF recommendations and relevant UN Security Council Resolutions – which is relevant especially for low capacity countries. Hence, the Commission stands ready to engage with third countries in order to support, through technical assistance and capacity building, the removal of identified strategic deficiencies.

More generally, the Commission will intensify its engagement with third countries to ensure that identified shortcomings are raised, *inter alia*, in the context of political dialogues and it will continue monitoring their AML/CFT regimes.

## 2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Expert Group on Money Laundering and Terrorist Financing (Commission's Expert Group) was consulted on the approach to be followed by the Commission, the methodology to be applied and the specific assessment criteria during the 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> meetings (December 2017 – June 2018). On this basis, the Staff Working Document SWD(2018)643 outlining the assessment methodology was developed.

On 15 September 2018 the Commission's Expert Group was consulted regarding the scope of countries to be assessed and the level of priority. On this occasion, the Commission's Expert Group endorsed the pre-analysis carried out by Commission services in order to determine the scope of countries to be reviewed as well as the level of priority. The results of the scoping and priority level were ultimately published on the Commission website<sup>16</sup> on 15 November 2018.

On 29 October 2018, the Commission's Expert Group was consulted by written procedure on the preliminary assessments concerning a first group of countries ("priority 1 countries"). Expert Group members provided numerous contributions with regard to country specific assessments which were considered by Commission services.

Based on the input received from the Commission's Expert Group, the draft Commission delegated Regulation was prepared.

As of 23 January 2019 the Commission informed third countries of its intention to include them on the list of high-risk third countries and provided them with the results of its analysis. The Commission met with representatives of third countries, where requested, to discuss its findings. A number of third countries provided additional information and clarifications which have been reflected in the final assessment as appropriate.

On 28 January 2019, the Commission consulted the Commission's Expert Group on the draft Commission delegated Regulation by written procedure (28 January 2019 – 1 February 2019). Following this written consultation, the Commission's Expert Group discussed the draft Delegated Regulation at its meeting of 5 February 2019 – where the Commission collected feedback from Member States' experts. Members of the Commission's Expert Group were given a further opportunity to comment in writing by 7 February 2019.

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<sup>15</sup> COM(2016) 50 final

<sup>16</sup> [https://ec.europa.eu/info/sites/info/files/list\\_of\\_scoping-priority-hrtc\\_aml-cft-14112018.pdf](https://ec.europa.eu/info/sites/info/files/list_of_scoping-priority-hrtc_aml-cft-14112018.pdf)

### 3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Delegated Regulation lays down the list of high-risk third countries having strategic deficiencies in their AML/CFT regime as required by Article 9 of Directive (EU) 2015/849. According to Article 9(2) of this Directive, the Commission is empowered to adopt delegated acts in accordance with Article 64 of that Directive in order to identify high risk third countries.

High-risk third countries identified by the Commission are listed in the Annex to this Delegated Regulation.

The legal effects of the publication of the list are governed by the basic act, Directive (EU) 2015/849, in particular Article 18 and Article 18a. Obligated entities must apply enhanced customer due diligence measures when having a business relationship or transaction involving those high-risk third countries. Article 18a provides for the list of mandatory measures that must be applied in those circumstances, as well as additional measures that may be applied by Member States taking into account the level of risk posed by individual third countries and in compliance with the Union's international obligations.

Furthermore, Article 155 (2) of Regulation (EU, Euratom) 2018/1046 prohibits persons and entities implementing Union funds or budgetary guarantees from entering into new or renewed operations with entities incorporated or established in jurisdictions identified as high-risk third countries pursuant to Directive (EU) 2015/849, except when an action is physically implemented in this jurisdiction and subject to the absence of other risk factors<sup>17</sup>. Implementing partners are therefore expected to take account of such requirements also in their own contracts with selected financial intermediaries.

This Delegated Regulation repeals Delegated Regulation (EU) 2016/1675 since it provides for a list of high-risk third countries based on the new legal requirements set in Article 9 of Directive (EU) 2015/849 as amended by Directive (EU) 2018/843. References to the repealed Regulation shall be construed as references to this Regulation.

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<sup>17</sup> This is also relevant for the European External Investment Plan, as the same prohibition is contained in Article 22 (1) of Regulation (EU) 2017/1601 on the European Fund for Sustainable Development and in Regulation (EU) 2017/2396 on the European Fund for Strategic Investment



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

**of 13.2.2019**

**supplementing Directive (EU) 2015/849 of the European Parliament and of the Council  
by identifying high-risk third countries with strategic deficiencies**

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<sup>18</sup>, and in particular Article 9(2) thereof,

Whereas:

- (1) The Union has to ensure an effective protection of the integrity of its financial system and the internal market from money laundering and terrorist financing. It remains essential to ensure the proper functioning of the internal market by defining common protective measures against money laundering and terrorist financing.
- (2) The Union must ensure efficient protection mechanisms for the whole of the internal market, with a view to increase legal certainty for economic operators and stakeholders in general in their relationships with third-country jurisdictions. Those jurisdictions that have in place deficient legal and institutional frameworks with poor standards for controlling money flows pose significant threats to the financial system of the Union. The integrity of financial markets and the proper functioning of the internal market as a whole are seriously threatened by jurisdictions with strategic deficiencies in their national anti-money laundering and terrorism financing frameworks.
- (3) 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.
- (4) All Union obliged entities under Directive (EU) 2015/849 should apply enhanced due diligence measures when having a business relationship or transaction involving high-risk third countries identified by the Commission, thereby ensuring equivalent requirements for market participants across the Union. The specific enhanced due diligence measures to be applied are further specified in Article 18a of the Directive.
- (5) Article 9 of Directive (EU) 2015/849 lays down a list of non-exhaustive criteria for identifying high risk third countries and empowers the Commission to identify high-risk third countries taking into account those criteria.

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<sup>18</sup> OJ L 141, 5.6.2015, p. 73.

- (6) The Commission adopted Delegated Regulation (EU) 2016/1675<sup>19</sup> identifying high risk third countries having strategic deficiencies in their anti money laundering and combating terrorist financing ('AML/CFT') regimes. The Commission regularly reviews the list of high-risk third countries listed in Delegated Regulation (EU) 2016/1675.
- (7) Directive (EU) 2018/843 of the European Parliament and of the Council<sup>20</sup> introduced in Article 9 new criteria to be considered for making that assessment. A broader set of criteria was defined, notably by covering the availability and access to beneficial ownership information, existence of effective, proportionate and dissuasive sanctions in case of breaches of AML/CFT obligations, as well as the third country's practice in cooperation and exchange of information with Member States' competent authorities. As a matter of consequence, it is necessary to review the list of high-risk third countries by repealing Regulation (EU) 2016/1675 and adopting a new list.
- (8) The Commission's assessment is based on clear and objective requirements set in Article 9 of Directive (EU) 2015/849. Those requirements include in particular a review of a jurisdiction's legal and institutional anti-money laundering and countering the financing of terrorism (AML/CFT) framework, the availability of accurate and timely information of the beneficial ownership of legal persons and arrangements to competent authorities, the powers and procedures of the third country's competent authorities for the purposes of combating money laundering and terrorist financing including appropriately effective, proportionate and dissuasive sanctions, as well as the third country's practice in cooperation and exchange of information with Member States' competent authorities and the effectiveness of the anti-money laundering and countering the financing of terrorism (AML/CFT) system in addressing money laundering or terrorist financing risks of the third country.
- (9) Among the criteria added by Directive (EU) 2018/843 for making such assessment, the availability of accurate and timely information of the beneficial ownership of legal persons and arrangements to competent authorities is an important one. The supranational risk assessment issued by the Commission highlights the risks posed by the misuse of legal persons and legal arrangements for facilitating money laundering and terrorist financing. The setting up of opaque structures is a recurrent scheme used by criminals and terrorist networks in order to hide the real beneficiaries of financial transactions in view of facilitating money laundering or terrorist financing. Shell companies and opaque structures are also frequently used for circumvention of terrorism-related sanctions. Urgency to address this risk by all jurisdictions has been recalled by the G20 which adopted the High level principles on transparency of beneficial ownership information. Hence it is necessary to take into account strategic deficiencies of jurisdictions facilitating, supporting or enabling the setting up of legal persons and legal arrangements without ensuring availability of accurate and timely information of the beneficial ownership to competent authorities. In order to reinforce global efforts, the Commission intends to foster increased attention to risk posed by

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<sup>19</sup> 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).

<sup>20</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43).

lack of transparency of beneficial ownership information in the context of the Financial Action Task Force (FATF). The Commission intends to further support international efforts to reinforce implementation of the current standards as well as improving them where needed, since it will have a positive effect in preventing the occurrence of strategic deficiencies in third countries' regimes.

- (10) The identification of high-risk third countries should be based on a fair, robust and objective process with clear assessment criteria. Hence a methodology<sup>21</sup> was designed in order to define the main steps, assessment criteria and follow up process.
- (11) In line with that methodology, the Commission selected 132 jurisdictions to be further analysed until 2025 to identify whether they present strategic deficiencies. Those countries were selected based on objective criteria indicating that they are relevant for the financial system of the European Union. The list of relevant countries to be subject to a review was published on the Commission's website on 15 November 2018.
- (12) The Commission determined the level of priority for the assessment of those selected countries based on factual and objective criteria set in the methodology. The Commission considered as priority those countries which fulfilled at least one of the following criteria: (1) countries exposed to a high level of threat identified by Europol or the European External Action Service (EEAS); (2) countries on the EU list of non-cooperative jurisdictions for tax purposes adopted by the Council (Annex I); (3) countries listed in Regulation (EU) 2016/1675 while they have been de-listed by the Financial Action Task Force between 14 July 2016 and 15 November 2018; (4) countries relevant for the Union based on Europol information when Mutual evaluation reports ('MERs') were available before end of June 2018. Based on those criteria, the Commission selected 47 jurisdictions because they met one or more of those four criteria to be assessed as a matter of priority. In addition, the Commission assessed 7 jurisdictions that have been listed or delisted by the Financial Action Task Force ('FATF'). The list of those 54 priority countries was published on the Commission's website on 15 November 2018.
- (13) On that basis, the Commission started reviewing the AML/CFT regime of that first group of 54 countries as a matter of priority. Other countries should be assessed gradually over time when relevant information sources become available.
- (14) All findings upon which the Commission's decision to include a jurisdiction in the list of high-risk third countries should be based on robust, verifiable and up to date information.
- (15) The Commission and EEAS engaged with third countries in cases where the assessment concluded that their AML/CFT regime presents strategic deficiencies prior to the adoption of the delegated act. As of 23 January 2019, the Commission informed via the EEAS and EU Delegations third countries of its intention to include them on the list of high-risk third countries and provided them with the results of its analysis. The Commission met with representatives of third countries, where requested, to discuss the findings. A number of third countries provided additional information and clarifications, which have been taken into account in the Commission's final assessment as appropriate.
- (16) In accordance with the criteria set out in Directive (EU) 2015/849, the Commission took into account available expert assessments of factors that contribute to making a

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<sup>21</sup> SWD(2018) 362 final, 22.06.2018

country or jurisdiction particularly vulnerable to money laundering, terrorist financing or other illicit financial activity. In particular, the Commission took into account, as appropriate, information from FATF, in particular the most recent FATF Public Statement, FATF documents (Improving Global AML/CFT Compliance: on-going process), FATF reports on International Cooperation Review, the mutual evaluations report carried out by FATF and FATF-style Regional Bodies, reports from other international organisations, information from Europol, Member States, EU Delegations, and internal Commission information sources as well as open sources information in relation to the risks posed by individual third countries in accordance with Article 9(4) of Directive (EU) 2015/849.

- (17) The Commission methodology for identifying high-risk third countries establishes a mechanism ensuring an autonomous assessment by the Commission based on the revised set of criteria defined in Article 9(2) of Directive (EU) 2015/849. A country can be identified as a high-risk third country if it is among: (1) the countries publicly listed by FATF (subject to analysis of additional information by the Commission, where available, including from other sources) or (2) other countries assessed as posing significant threats to the Union's financial system as a result of strategic deficiencies in their AML/CFT regimes based on external sources of information. This approach will therefore reinforce the Commission's efforts in FATF to promote a global approach towards high-risk third countries, while at the same time further protecting the EU financial system from external risks.
- (18) The use of EU funds and budgetary guarantees is subject to stricter provisions in relation to tax good governance and anti-money laundering following the adoption of Regulations (EU) 2017/1601, 2017/2396 and Regulation (EU, Euratom) 2018/1046. These provisions prohibit new or renewed operations with entities in EU listed jurisdictions for tax and anti-money laundering purposes, except when the action is physically implemented in the same jurisdiction and subject to the absence of other risk factors. The Commission will engage with implementing partners, including notably International Financial Institutions, to ensure compliance with these requirements, through regular dialogue and structural due diligence processes, in order to ensure the effective implementation of Union policies in the field of EU external action.
- (19) The Commission will, on the basis of the identified deficiencies, consider how best to support possible remedial action in cooperation with the countries concerned, as appropriate.

#### Countries publicly listed by FATF

- (20) It is essential that the Commission takes into account relevant work already undertaken at international level for identifying high-risk third countries, in particular that of FATF. With a view to ensuring the integrity of the global financial system, it is of the highest importance that the list of third countries laid down at Union level considers the lists agreed internationally in FATF. By promoting a global approach at international level, the Union contributes to enhancing the financial integrity worldwide and better protecting the international financial system from high-risk countries.
- (21) 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 European Union.

- (22) Any third country representing a risk to the international financial system, as identified by FATF, is presumed to represent a risk to the internal market. This presumption concerns any country publicly identified in the "FATF documents Public Statement" and in the FATF document "Improving Global AML/CFT Compliance: Ongoing Process". In order to conduct its autonomous assessment, the Commission analysed available information from FATF and, where appropriate, other sources of information to reach its conclusion. Following review of the available information from FATF and from other relevant sources, the Commission's analysis has confirmed the respective strategic deficiencies as described in recitals 23 to 34.
- (23) In October 2018, FATF identified the Bahamas as a jurisdiction having strategic AML/CFT deficiencies for which the Bahamas has developed an action plan with FATF. The Commission reviewed the latest information received in this context from FATF relating to these deficiencies and other relevant information. Following the review of the available information from FATF and from other relevant sources, the Commission's analysis has concluded that the Bahamas presents strategic deficiencies in the following areas: (1) deficiencies with regard to case management relating to international cooperation; (2) deficiencies in risk-based supervision of non-bank financial institutions; (3) deficiencies with regard to the timely access to adequate, accurate and current basic and beneficial ownership information; (4) deficiencies with regard to the quality of the Financial Intelligence Unit's products to assist law enforcement agencies in the pursuance of money laundering / terrorist financing investigations, specifically complex money laundering / terrorist financing and stand-alone money laundering investigations; (5) deficiencies in ensuring that authorities are investigating and prosecuting all types of money laundering, including complex money laundering cases, stand-alone money laundering, and cases involving proceeds of foreign offences; (6) deficiencies in ensuring that confiscation proceedings are initiated and concluded for all types of money laundering cases; and (7) gaps in the terrorist financing and proliferation financing related targeted financial sanctions' frameworks and their implementation. On this basis, the Bahamas is considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (24) In October 2018, FATF identified Botswana as a jurisdiction having strategic AML/CFT deficiencies for which Botswana has developed an action plan with FATF. The Commission reviewed the latest information received in this context from FATF relating to these deficiencies and other relevant information. Following the review of the available information from FATF and from other relevant sources, the Commission's analysis has concluded that Botswana presents strategic deficiencies in the following areas: (1) risks associated with legal persons, legal arrangements, and non-profit organisations, and lack of a risk-based comprehensive national AML/CFT strategy; (2) lack of risk-based AML/CFT supervisory manuals; (3) low level of analysis and dissemination of financial intelligence by the Financial Intelligence Unit, and unsatisfactory the use of financial intelligence among the relevant law enforcement agencies; (4) low level of CFT strategy, and terrorist financing investigation capacity of the law enforcement agencies; (5) lack of implementation without delay of targeted financial sanctions measures related to terrorist financing and proliferation financing, and (6) lack of applying a risk-based approach to monitoring non-profit organisations. On this basis, Botswana is considered as a country having

strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (25) In February 2017, FATF identified Ethiopia as a jurisdiction having strategic AML/CFT deficiencies for which Ethiopia has developed an action plan with FATF. The Commission reviewed the latest information received in this context from FATF relating to these deficiencies and other relevant information. Following the review of the available information from FATF and from other relevant sources, the Commission's analysis has concluded that Ethiopia presents strategic deficiencies in the following areas: deficiencies in establishing and implementing proliferation financing-related targeted financial sanctions. While Ethiopia has taken steps towards improving its AML/CFT regime with regard to the risk-based supervision for designated non-financial businesses and professions ('DNF business and professions') and non-profit organisations (NPOs) as well as the provision of guidance for the identification, freezing and confiscation of assets, FATF has yet to conduct an on-site visit to confirm whether the process of implementing the required reforms and actions is being sustained. Consequently the Commission does not yet have in its possession information which would enable it to confirm that the strategic deficiencies in these fields were effectively addressed. On this basis, Ethiopia is considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (26) In October 2018, FATF identified Ghana as a jurisdiction having strategic AML/CFT deficiencies for which Ghana has developed an action plan with FATF. The Commission reviewed the latest information received in this context from FATF relating to these deficiencies and other relevant information. Following the review of the available information from FATF and from other relevant sources, the Commission's analysis has concluded that Ghana presents strategic deficiencies in the following areas: (1) lack of a comprehensive national AML/CFT Policy based on the risks identified in the National Risk Assessment, including measures to mitigate money laundering / terrorist financing risks associated with the legal persons; (2) low level of risk-based supervision, insufficient capacity of the regulators and insufficient awareness of the private sector; (3) lack of timely access to adequate, accurate and current basic and beneficial ownership information; (4) lack of focused actions of the Financial Intelligence Unit in accordance with the risks identified by the NRA, and adequate resource allocation to the Financial Intelligence Unit; (5) no adequate and effective investigation and prosecution of terrorist financing; and (6) no risk-based approach for monitoring non-profit organisations. On this basis, Ghana is considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (27) In October 2018, FATF identified in its "Public Statement" Iran as a jurisdiction subject to a FATF call on its members and other jurisdictions to apply enhanced due diligence measures proportionate to the risks arising from the jurisdiction. The Commission reviewed the latest information received in this context from FATF relating to these deficiencies and other relevant information. Following the review of the available information from FATF and from other relevant sources, the Commission's analysis has concluded that Iran presents strategic deficiencies in the following areas: (1) inadequately criminalising terrorist financing, including by having an exemption for designated groups "attempting to end foreign occupation, colonialism and racism"; (2) shortcomings in ensuring identification and freezing of terrorist assets in line with the relevant United Nations Security Council resolutions;

(3) shortcomings in ensuring an adequate and enforceable customer due diligence regime; (4) shortcomings in ensuring the full independence of the Financial Intelligence Unit and requiring the submission of Suspicious Transaction Reports for attempted transactions; (5) shortcomings in ensuring that authorities are identifying and sanctioning unlicensed money/value transfer service providers; (6) lack of ratifying and implementing the Palermo and Terrorist Financing Conventions and shortcomings in the capability to provide mutual legal assistance; (7) shortcoming in ensuring that financial institutions verify that wire transfers contain complete originator and beneficiary information; (8) absence of a broad range of penalties for violations of the money laundering offence; and (9) shortcoming in ensuring adequate legislation and procedures to provide for confiscation of property of corresponding value. Iran has recently made progress in adopting amendments to its AML and CFT Laws with the view to address most of the abovementioned deficiencies. These new laws are being assessed by a dedicated group of international experts including the Commission, within the FATF process. However, those laws were introduced too recently and there is no sufficient publicly available information from reliable sources to confirm whether the identified shortcomings have been addressed. On this basis, Iran is considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive 2015/849.

- (28) In October 2018, FATF identified in its "Public Statement" the Democratic People's Republic of Korea ('DPRK') as a jurisdiction subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing risks. The Commission reviewed the latest information received in the context of FATF relating to these deficiencies and information contained in other relevant information sources. Following the review of the available information from FATF and from other relevant sources, the Commission's analysis has concluded that the DPRK presents strategic deficiencies. DPRK has not committed to the AML/CFT international standards, nor has it responded to the FATF's request for engagement on these issues. Hence, there is a presumption of lack of having a comprehensive AML/CFT regime – which has been confirmed by existing reviews of the AML/CFT regime of DPRK. Indeed, information reviewed from FATF confirms that important deficiencies exist in the areas covered by the requirements of Article 9 of Directive (EU) 2015/849. On this basis, DPRK is considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (29) In June 2018 FATF identified Pakistan as having strategic deficiencies in its AML/CFT regime for which Pakistan has developed an action plan with FATF. The Commission reviewed the latest information received in this context from FATF relating to these deficiencies and other relevant information. Following the review of the available information from FATF and from other relevant sources, the Commission's analysis has concluded that Pakistan presents strategic deficiencies in the following areas: (1) shortcomings in ensuring that terrorist financing risks are properly identified, assessed, and that supervision is applied on a risk-sensitive basis; (2) shortcomings in ensuring that remedial actions and sanctions are applied in cases of AML/CFT violations, and that these actions have an effect on AML/CFT compliance by financial institutions; (3) shortcomings in ensuring that competent authorities are cooperating and taking action to identify and take enforcement action against illegal money or value transfer services; (4) shortcomings in ensuring that authorities identify cash couriers and enforce controls on illicit movement of currency and understand the risk of cash couriers being used for terrorist financing; (5)

shortcoming in ensuring inter-agency coordination including between provincial and federal authorities on combating terrorist financing risks; (6) shortcomings in ensuring that law enforcement agencies identify and investigate the widest range of terrorist financing activity and terrorist financing investigations and prosecutions target designated persons and entities, and persons and entities acting on behalf or at the direction of the designated persons or entities; (7) shortcomings in ensuring that terrorist financing prosecutions result in effective, proportionate and dissuasive sanctions and lack of capacity and support for prosecutors and the judiciary; and (8) lack of effective implementation of targeted financial sanctions (supported by a comprehensive legal obligation) against all 1267 and 1373 designated terrorists and those acting for or on their behalf, including preventing the raising and moving of funds, identifying and freezing assets (movable and immovable), and prohibiting access to funds and financial services; (9) lack of enforcement against targeted financial sanctions violations including administrative and criminal penalties and deficiencies on provincial and federal authorities cooperating on enforcement cases; (10) shortcomings in ensuring that facilities and services owned or controlled by designated person are deprived of their resources and the usage of the resources. On this basis, Pakistan is considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (30) In February 2017, FATF identified Sri Lanka as a jurisdiction having strategic AML/CFT deficiencies for which Sri Lanka has developed an action plan with FATF. The Commission reviewed the latest available information received in this context from FATF relating to these deficiencies and other relevant information. Following the review of the available information from FATF and from other relevant sources, the Commission's analysis has concluded that Sri Lanka presents strategic deficiencies in the following areas: (1) inadequate risk-based supervision of high-risk DNF business and professions, in particular due to lack of prompt and dissuasive enforcement actions and sanctions; (2) Lack of demonstrating effective implementation of its targeted financial sanctions obligations related to proliferation financing. While Sri Lanka has taken steps towards improving its AML/CFT regime notably with regard to competent authorities access to beneficial ownership information, amendments to the requirements on CDD obligations and targeted financial sanctions implementing relevant UNSCRs related to Iran, FATF has yet to conduct an on-site visit to confirm whether the process of implementing the required reforms and actions is being sustained. Consequently the Commission does not yet have in its possession information which would enable it to confirm that the strategic deficiencies in these fields were effectively addressed. On this basis, Sri Lanka is considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (31) In February 2010, FATF identified Syria as a jurisdiction having strategic AML/CFT deficiencies for which Syria has developed an action plan with the FATF. The Commission reviewed the information received in this context from FATF relating to these deficiencies and other relevant information. Following the review of the latest available information from FATF and from other relevant sources, the Commission's analysis concluded that Syria presented strategic deficiencies in the following areas: (1) deficiencies relating to measures to implement and enforce the 1999 International Convention for the Suppression of Financing of Terrorism (Special Recommendation I); (2) deficiencies in adequately criminalizing terrorist financing (Special Recommendation II); (3) deficiencies in implementing adequate procedures for identifying and freezing terrorist assets (Special Recommendation III); (4) deficiencies



in ensuring financial institutions are aware of and comply with their obligations to file suspicious transaction reports in relation to money laundering and terrorist financing (Recommendation 13 and Special Recommendation IV) and (5) deficiencies in adopting appropriate laws and procedures to provide mutual legal assistance (Recommendations 36-38, Special Recommendation V). While the FATF determined that Syria has completed its agreed action plan, due to the security situation, the FATF has been unable to conduct an on-site visit to confirm whether the process of implementing the required reforms and actions has begun and is being sustained. Based on the available information, the Commission's analysis has concluded that the security situation in Syria as of today raises major concerns regarding the effective application throughout the territory of Syria. On this basis, Syria is considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (32) In November 2017, FATF identified Trinidad and Tobago as a jurisdiction having strategic AML/CFT deficiencies for which it has developed an action plan with the FATF. The Commission reviewed the information received in this context from FATF relating to these deficiencies and other relevant information. Following the review of the latest available information from FATF and from other relevant sources, the Commission's analysis has concluded that Trinidad and Tobago presents strategic deficiencies in the following areas: (1) lack of sufficient measures to ensure international cooperation; (2) lack of transparency and beneficial ownership; (3) insufficient level of processing of money laundering charges before the courts; (4) insufficient level of tracing and confiscation of criminal proceeds; (5) not having ensured that targeted financial sanctions are implemented without delay and not having implemented measures to monitor NPOs on the basis of risk; and (6) insufficient framework to counter proliferation financing. In addition, it is found that Trinidad and Tobago is attractive to tax crimes and exposed to a higher threat of money laundering linked to tax crime as a predicate offence. It is noted that Trinidad and Tobago is a jurisdiction listed in Annex I of the EU list of non-cooperative tax jurisdictions due to a number of deficiencies. On this basis, Trinidad and Tobago is considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (33) In November 2017, FATF identified Tunisia as a jurisdiction having strategic AML/CFT deficiencies for which Tunisia has developed an action plan with FATF. The Commission reviewed the information received in this context from FATF relating to these deficiencies and other relevant information. Following the review of the latest available information from FATF and from other relevant sources, the Commission's analysis has concluded that Tunisia presents strategic deficiencies in the following areas: (1) incomplete integration of the DNF businesses and professions into its AML/CFT regime; (2) not maintaining comprehensive and updated commercial registries and insufficient strengthening of the system of sanctions for violations of transparency obligations; (3) low efficiency with regard to suspicious transaction report processing; (4) targeted financial sanctions regime not fully functional and not appropriately monitored in the association sector; and (5) incomplete establishment and insufficient implementation of proliferation finance-related targeted financial sanctions. On this basis, Tunisia is considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849. The Commission provided technical assistance to Tunisia in several areas in order to support addressing swiftly those strategic deficiencies. The Commission

welcomes efforts done by Tunisia in order to reinforce its AML/CFT regime and the positive, continuous and consistent progress shown in this area.

- (34) In February 2010, FATF identified Yemen as a jurisdiction having strategic AML/CFT deficiencies for which Yemen has developed an action plan with FATF. The Commission reviewed the information received in this context from FATF relating to these deficiencies and other relevant information. Following the review of the available information from FATF and from other relevant sources, the Commission's analysis has concluded that Yemen presents strategic deficiencies in the following areas: (1) non-adequate criminalization of money laundering and terrorist financing; (2) no adequate procedures to identify and freeze terrorist assets; (3) insufficient level of customer due diligence and suspicious transaction reporting requirements; (4) lack of guidance; (5) lack of monitoring and supervisory capacity of the financial sector supervisory authorities and the financial intelligence unit; and (6) not fully operational and effectively functioning financial intelligence unit. While the FATF determined that Yemen has completed its agreed action plan, due to the security situation, the FATF has been unable to conduct an on-site visit to confirm whether the process of implementing the required reforms and actions has begun and is being sustained. The FATF will continue to monitor the situation, and conduct an on-site visit at the earliest possible date. Based on the available information, the Commission's analysis has concluded that the security situation in Yemen as of today raises major concerns regarding the effective application throughout the territory of Yemen. On this basis, Yemen is considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

Other countries identified following a Commission analysis on the basis of relevant sources of information

- (35) In addition, the Commission made a comprehensive analysis based on the requirements set in Article 9 of the Directive of the AML/CFT regime of additional countries identified for priority assessment. Hence, the Commission reviewed the risk profile of those countries in order to consider the level of threat to which they are exposed, the legal framework and its effective application in eight key areas which are defined in the methodology ("8 building blocks"). In particular, The Commission analysed the countries' measures in the following areas: (1) criminalisation of money laundering and terrorist financing; (2) customer due diligence requirements, record keeping and reporting of suspicious transactions in the financial sector; (3) customer due diligence requirements, record keeping and reporting of suspicious transactions in the relevant non-financial sector; (4) the existence of dissuasive, proportionate and effective sanctions in case of breaches; (5) the powers and procedures of competent authorities; (6) their practice in international cooperation; (7) the availability and exchange of information on beneficial ownership of legal persons and legal arrangements; (8) implementation of targeted financial sanctions.
- (36) The Commission considers based on its analysis that Afghanistan has strategic deficiencies in its AML/CFT regime as defined under Article 9 of Directive (EU) 2015/849, taking into account the jurisdiction's risk profile, threat level and the security situation in the country. Strategic deficiencies were found in all the areas covered by the analysis. With regard to criminalisation of money laundering and terrorist financing: the law enforcement agencies' capacity and the number of convictions for money laundering and terrorist financing is not proportionate to the level of threat to which Afghanistan is exposed. With regard to customer due diligence requirements ('CDD'), record keeping and reporting of suspicious transactions in the

financial sector: shortcomings in CDD obligations and their effective implementation were found in the financial sector– as well as limitations in ensuring effective application of those rules throughout the country. A number of financial institutions such as foreign exchange dealers, money service providers and microfinance institutions are not licensed and not supervised in parts of the country which is a material deficiency considering that money service providers represent the very large majority of financial transactions in volume. The effectiveness of the reporting regime for suspicious transactions is extremely low (i.e. low number of suspicious transactions reports which is not in line with the country's risk profile) With regard to customer due diligence requirements, record keeping and reporting of suspicious transactions in the relevant non-financial sector: shortcomings in CDD obligations and their effective implementation were found in the relevant non-financial sector – as well as limitations in ensuring effective application of those rules throughout the country. With regard to the existence of dissuasive, proportionate and effective sanctions in case of breaches: the sanctions regime is not considered in practice as sufficiently dissuasive, proportionate and effective. With regard to the powers and procedures of competent authorities: despite important efforts, competent authorities are not yet equipped to effectively perform law enforcement, financial intelligence analysis and supervision in a manner proportionate to the risk; With regard to competent authorities' practice in international cooperation: although the legal framework is overall appropriate on international cooperation, capacity limitations affect the effectiveness in providing international cooperation. With regard to the availability and exchange of information on beneficial ownership of legal persons and legal arrangements: there is no reliable mechanism in place to ensure availability of accurate information on beneficial ownership in a timely manner. With regard to implementation of targeted financial sanctions: the application of targeted financial sanctions raises concerns considering the absence of any amount frozen based on the relevant UNSCR which is not commensurate to the risk posed by designated terrorist organisations operating in the country. Generally the capacity to ensure application of the AML/CFT regime is negatively impacted by the security situation in the country where approximately 40% of the provinces/population are outside the control of the government of Afghanistan or control of the government of Afghanistan is contested. The situation is exacerbated by the presence of terrorist organisations designated by the European Union operating in the country, especially related to the Taliban, Al-Qaida and the Islamic State of Iraq and the Levant ('ISIS') controlling large parts of the territory. On this basis, the Commission concluded that Afghanistan has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (37) The Commission considers based on its analysis that American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands have strategic deficiencies in their AML/CFT regime as defined under Article 9 of Directive (EU) 2015/849, taking into account the jurisdictions' risk profile and threat level. It is found that they are attractive for tax crimes and exposed to a higher threat of money laundering linked to tax crime as a predicate offence. It is noted that American Samoa, Guam and the U.S. Virgin Islands are jurisdictions listed in Annex I of the EU list of non-cooperative tax jurisdictions due to a number of deficiencies. In addition, the U.S. Virgin Islands and Puerto Rico were identified by the U.S. Financial Intelligence Unit (FinCEN) as a High Intensity Financial Crime Area ('HIFCA'). The strategic deficiencies identified are in common to those territories. With regard to criminalisation of money laundering and terrorist financing: while money laundering and terrorist financing offences are broadly criminalised in line with international standards, the regime in place does not

specifically cover tax crimes as predicate offence. With regard to customer due diligence requirements ('CDD'), record keeping and reporting of suspicious transactions in the financial sector: customer due diligence requirements in the financial sector are not comprehensive and effective enough, in particular due to the absence of CDD obligations on Investment Advisers, the lack of appropriate obligations to identify beneficial owners of legal persons/arrangements – and to understand the control structure when entering into a business relationship. Although a new Final CDD rule has been introduced recently with the aim to address this shortcoming, it is not yet clear how far it addresses those concerns (and its impact, notably on competent authorities' access to beneficial ownership information). Limitations are also found in the requirements relating to reporting suspicious transactions where thresholds narrow the reporting obligations and material delay in reporting suspicious transactions are found. With regard to customer due diligence requirements, record keeping and reporting of suspicious transactions in the relevant non-financial sectors: DNF businesses and professions are not subject to any obligations relating to CDD, record keeping and reporting of suspicious transactions except casinos and to a certain extent only dealers in stones and precious metals. Hence, a large portion of high-risk sectors (lawyers, accountants, trust and company services providers, real estate agents) are unregulated. With regard to the existence of dissuasive, proportionate and effective sanctions in case of breaches: the sanctions regime suffers from important limitations in the AML/CFT regime. Financial institutions are not subject to adequate CDD requirements which limits the instances whereby FinCEN/a supervisory authority can issue sanctions for non-compliance. There are no adequate obligations for identifying the beneficial owner of legal persons/arrangements as well as no adequate obligations for understanding the control structure in those situations. The scope of financial institutions is not sufficiently broad since investment advisers (other than those covered indirectly) are not covered by any AML/CFT obligations. No DNF businesses and professions (other than casinos and dealers in precious metals and stones) are covered by any AML/CFT obligations. In practice this means that no sanction regime is applicable with regard to lawyers and other legal professionals, trust & company service providers ('TCSPs'), accountants, real estate agents. This is a material gap considering the threat exposure and the risk posed by lawyers/TCSP. With regard to the powers and procedures of competent authorities: the lack of coverage of DNF businesses and professions is the most significant issue in the overall context of effectiveness of the supervisory process - while supervisory arrangements are in place only for the financial sector following a risk-based approach (although the scope, intensity, and level of sanctions applied is challenging to assess). While there is a functional Financial Intelligence Unit carrying out analysis functions, it needs to prioritise its analysis efforts due to the large number of Suspicious Activity Reports and faces a number of limitations in available information due to shortcomings in the preventative regime. With regard to competent authorities' practice in international cooperation: deficiencies relating to availability on beneficial ownership information limits the capacity of competent authorities to provide international cooperation. Otherwise, the jurisdictions' authorities provides a satisfactory level of international cooperation with foreign counterparts for law enforcement agencies, judicial authorities and supervisory authorities – but the competent Financial Intelligence Unit (FinCen) faces important limitations in providing assistance to the Financial Intelligence Units of Member States on request (no possibility to obtain additional information by obliged entities, cooperation mainly via Mutual Legal Assistance / Law Enforcement Authority channel). With regard to the availability and exchange of information on beneficial ownership of legal persons

and legal arrangements: a major deficiency of the regime in place in is the lack of availability of beneficial ownership information for legal persons and legal arrangements. There is no reliable mechanism to ensure that beneficial ownership information is collected and available at a specified location since neither the companies/trustees, nor State authorities registering companies, nor financial institutions / DNF businesses and professions have any obligation to collect beneficial ownership information in line with international requirements. With regard to implementation of targeted financial sanctions: The regime on targeted financial sanctions is negatively impacted by deficiencies regarding information on beneficial ownership. Those deficiencies increase the risk of circumventions of targeted financial sanctions through the creation of legal persons/arrangements. On this basis, the Commission concluded that American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands have strategic deficiencies in their AML/CFT regimes under Article 9 of Directive (EU) 2015/849.

- (38) The Commission considers based on its analysis that Iraq has strategic deficiencies in its AML/CFT regime as defined under Article 9 of Directive (EU) 2015/849, taking into account the jurisdiction's risk profile, threat level and the security situation in the country. Strategic deficiencies were found in all areas covered by the analysis. With regard to criminalisation of money laundering and terrorist financing: the number of convictions in cases related to terrorist financing and money laundering is rather limited and is not commensurate with the risk profile of the country. Despite the introduction of criminalising legislation in 2015, the main challenge consists in the effective implementation of those provisions. With regard to CDD, record keeping and reporting of suspicious transactions in the financial sector: while recent legislation was passed on CDD actual application of CDD and other preventive measures in the financial sector is uneven and varies widely across Iraq's state-owned and private banks, reporting of suspicious transactions is still very low in the financial sector (especially for currency exchange offices), the risks posed by unlicensed hawala are not sufficiently addressed. With regard to customer due diligence requirements, record keeping and reporting of suspicious transactions in the relevant non-financial sectors: regulation of the designated non-financial businesses and professions sector is still at an initial stage with very scarce information available on the practical implementation of CDD requirements by those entities. On the basis of the available data, there is a quasi-absence of reporting of suspicious transactions reports in the sector. With regard to the existence of dissuasive, proportionate and effective sanctions in case of breaches: it is unclear whether there is any proper supervision and sanctioning regime in place for designated non-financial businesses and professions and the information on sanctions for the financial sector is incoherent. With regard to the powers and procedures of competent authorities: it remains questionable whether competent authorities have appropriate resources at their disposal to address the high money laundering and terrorist financing risks adequately. While authorities are committed and show ongoing efforts, cooperation between the intelligence agencies, the Financial Intelligence Unit, the Central Bank of Iraq, and the judiciary has not yet reached a sufficient level to ensure effective enforcement actions. There are concerns that the supervisory authorities lack adequate personnel and technical capacity to fully monitor financial entities and supervision of the DNF businesses and professions sector is only incipient. There is not enough indication that any specific powers or procedures of the authorities have been set up to counter the high risk posed by the hawala sector. With regard to competent authorities' practice in international cooperation: although the legal framework is overall appropriate on international

cooperation, given that the available numbers are low and in the absence of detailed feedback from authorities, it is difficult to conclude that the information exchange is effective. With regard to the availability and exchange of information on beneficial ownership of legal persons and legal arrangements: while beneficial ownership identification is part of the CDD process, the legal framework does not yet sufficiently focus on the need to ensure adequately transparency of beneficial ownership for both legal entities and legal arrangements. Considering the weaknesses identified in the legal framework, it is not possible, at this stage, to further assess the effectiveness with regard to transparency of beneficial ownership. This also impedes effective international cooperation in this field. With regard to targeted financial sanctions: the system in place for the implementation of the relevant UNSCRs and, in particular, the timeframe for freezing cannot be considered to ensure freezing “without delay”. Overall, the capacity to ensure application of the AML/CFT regime is negatively impacted by the security situation in the country and the main challenge remains that Iraq very recently established control on a big part of its territory. This represents a serious issue with regard to the level of threat in the country, the presence of terrorist organisations listed by the UN and EU operating in its territory, those terrorist organisations still being reported to be present and active, the presence of conflict zones, the country's exposure to money laundering from trafficking and smuggling, and finally its very high exposure to terrorist financing coming from a wide variety of illegal sources as well as from abusing the legal economy. This, combined with a preventative and repressive regime, which are still not fully effective, poses a continuing risk to the EU financial system. On this basis, the Commission concluded that Iraq has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (39) The Commission considers based on its analysis that Nigeria has strategic deficiencies in its AML/CFT regime as defined under Article 9 of Directive (EU) 2015/849, taking into account the jurisdiction's risk profile, the threat level and security situation in the country. With regard to criminalisation of money laundering and terrorist financing: in the absence of detailed, up-to-date, and reliable statistics on the number of investigations, prosecutions, and convictions it is difficult to assess the effectiveness of the system in place. However, the available information indicates conviction rates in cases related to terrorist financing and money laundering are rather limited and not commensurate with the risk profile of the country, despite the fact that the country prioritises the fight against terrorism as such. With regard to customer due diligence requirements (‘CDD’), record keeping and reporting of suspicious transactions in the financial sector and in the relevant non-financial sectors: it should be acknowledged that Nigeria has gone a long way in clarifying the requirements relating to customer due diligence in the financial sector and has put a lot of regulatory, clarification, and outreach efforts towards the DNF businesses and professions sector. However, important requirements are missing from the regulatory framework, such as deficiencies with regard to politically exposed persons or with regard to identification of beneficial owners, and those deficiencies are material in light of the high corruption threat in the country. Deficiencies persist also with regard to the timely reporting of suspicious transactions, in particular in relation to terrorism and terrorist financing, which is rather material given the risk profile of the country. In addition, it has been reported that a sizeable informal sector was not covered under the reporting requirements and it remains unclear to what extent this has been effectively addressed. Despite the efforts of the authorities, the available information is not indicative of an effective system where DNF businesses and professions properly understand and fulfil

their AML/CFT and, in particular, CDD and reporting obligations. With regard to the existence of dissuasive, proportionate and effective sanctions in case of breaches: there seems to be a system of sanctions in place. However, there is insufficient data to assess the effective application of sanctions to date and it is not clear how the regime of administrative and criminal sanctions is articulated in practice. With regard to the powers and procedures of competent authorities: in the absence of detailed, up-to-date, and reliable statistics it is difficult to assess the effectiveness of the AML/CFT system in place and, in particular, that of the supervisory and other competent authorities. Due to the fact that the rule of law is not upheld on the whole territory, it remains unclear how the powers of competent authorities could be effectively applied throughout the country. In particular, it is difficult to suggest that competent authorities' staff could perform their duties freely and securely (e.g., with regard to supervisory authorities' inspections and the law enforcement authorities' activities) in the recently recaptured territories, now under military control. With regard to competent authorities' practice in international cooperation: Nigeria does not seem to have a comprehensive legislation on international cooperation even though there are ongoing efforts of the authorities to address this. Mutual legal assistance related legislation has to be distilled from multiple legislation and various multilateral and bilateral agreements. There is also no information and statistics on the effectiveness of the system to date. With regard to the availability and exchange of information on beneficial ownership of legal persons and legal arrangements: important shortcomings with regard to beneficial ownership transparency seem to remain as Nigeria does not seem to have a functioning system in place to ensure the timely access of competent authorities to accurate, complete, and up-to-date information on beneficial ownership of legal persons and legal arrangements. With regard to implementation of targeted financial sanctions: while Nigeria appears to have a sound framework for applying those sanctions, it is not clear whether sanctions for non-compliance with UNSCR 1373 are effective, proportionate and dissuasive and no funds seem to have been frozen despite the fact that a number of persons or entities with links to Nigeria are currently designated under the relevant UN instruments. While the Nigerian authorities continue making efforts towards improving the AML/CFT regime and bring it in line with international expectations, there is not enough evidence that the system is effective in practice. Generally, the effective application of AML/CFT is negatively impacted by the security situation in the country. According to public sources of information and intelligence, while the authorities have recently recaptured large parts of the territory previously controlled by terrorist groups, in particular Boko Haram, the group has continued to launch deadly attacks and remained a significant threat, and the affected regions remain a patchwork of garrison cities with military escort needed for all movements. The situation is further exacerbated by a civil war-type of ethnic conflicts in the Middle Belt part of the country. This casts significant doubt as to the possibility to have an effective AML/CFT system overall and is a material weakness considering the risk profile of the country. Given the significant risks of money laundering and terrorism financing which the country is faced with and which are not properly mitigated, and the difficult security situation still in progress, the Commission concluded that Nigeria has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849. It is noted that Nigeria had applied for direct membership to the FATF but the process was suspended further to the suspension of Nigeria from the Egmont Group of Financial Intelligence Units. Nigeria has enacted legislation in July 2018 to address the deficiencies identified by Egmont and expressed its high-level engagement in continuing the accession process with the FATF. The

Commission will monitor closely further developments. The Commission welcomes efforts made by Nigeria in order to reinforce its AML/CFT regime.

- (40) The Commission considers based on its analysis that Panama has strategic deficiencies in its AML/CFT regime as defined under Article 9 of Directive (EU) 2015/849, taking into account the jurisdiction's risk profile and threat level. Strategic deficiencies were found in all areas covered by the analysis. With regard to criminalisation of money laundering and terrorist financing: the law enforcement agencies' capacity and the number of convictions for money laundering is not proportionate to the level of threat to which Panama is exposed, especially with regard to money laundering related to predicate offences committed abroad. Considering that Panama did not criminalise tax crimes, neither as a basic offense nor as a predicate offense of money laundering, this shortcoming has had a negative impact on Panama's ability to ensure identification, prosecution and convictions of money laundering related to tax crime – and on obliged entities' capacity to apply preventative measures in that regard. In addition it has represented a significant impediment to international cooperation related to such cases. Panama has recently adopted a new law ("Ley 70") due to enter into force in March 2019 which is expected to remedy the deficiency once effectively applied. With regard to customer due diligence requirements ('CDD'), record keeping and reporting of suspicious transactions in the financial sector: shortcomings were found concerning CDD obligations by financial institutions, in particular with regard to tax crimes, the application of CDD and in the monitoring process in the remittance sector. Deficiencies were also found in the monitoring of clients and transactions by securities remittance agencies (highly exposed to risks related to beneficial ownership) and financial institutions' risk understanding on terrorist financing. The regime for reporting suspicious transactions is not adequate since it does not explicitly cover attempted transactions and allows long delays in reporting. The volume of suspicious transactions reported to the Financial Intelligence Unit by the financial sector is low and not commensurate when considering the importance of the Panamanian banking system, its exposure to money laundering risks and the presence in Panama of a dollarised economy. Panama's recently adopted law ("Ley 70") is expected to remedy deficiencies on CDD and suspicious transactions reporting (STR) once effectively applied. With regard to customer due diligence requirements, record keeping and reporting of suspicious transactions in the relevant non-financial sectors: shortcomings in CDD obligations were also found in the non-financial sector, in particular with regard to beneficial ownership identification obligations by resident agents. Implementation of mitigating measures by the non-financial sector is in incipient stage of development, in particular for high-risk sectors such as lawyers/resident agents, real estate sector and free trade zone. As tax crimes were not criminalised until now, the awareness of money laundering risks by certain sectors has been limited, in particular among lawyers, law firms and accountants. The regime for reporting suspicious transactions in the non-financial sectors is not adequate since it does not explicitly cover attempted transactions and allows long delays for reporting (an issue that would be solved by "Ley 70" once effectively applied). The number of suspicious transactions reported to the Financial Intelligence Unit by the non-financial sectors (especially in the mentioned high-risk sectors) is low and not commensurate with the country's risk profile. With regard to the existence of dissuasive, proportionate and effective sanctions in case of breaches: the sanctions regime is not considered in practice as sufficiently dissuasive, proportionate and effective, given the absence of any sanctions for breaches to AML/CFT obligations by DNF businesses and professions and the limited amounts of fines imposed towards non-compliant financial



institutions. With regard to the powers and procedures of competent authorities: although competent authorities are in place, the effectiveness of law enforcement agencies, customs authorities, asset recovery offices, the Financial Intelligence Unit and supervisors' measures are not considered as adequate considering the risk profile of the country; With regard to competent authorities' practice in international cooperation: important deficiencies were identified with regard to international cooperation, in particular regarding timeliness in replying to Mutual Legal Assistance requests, obstacles to cooperate on tax crime related money laundering cases since tax crime was until recently not criminalised, and limitations in exchanging information on beneficial ownership which is a material gap considering Panama's role as a company formation centre. With regard to the availability and exchange of information on beneficial ownership of legal persons and legal arrangements, there are major shortcomings in availability and access to beneficial ownership information for both legal entities and legal arrangements which is material considering Panama's role as company formation centre. With regard to implementation of targeted financial sanctions, deficiencies in identifying the beneficial owners present a challenge for implementing targeted financial sanctions, taking into account that the terrorist financing risks to which the international financial sector is exposed are not sufficiently considered. On this basis, the Commission concluded that Panama has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849. It is noted that Panama has expressed its political commitment to work constructively to address its strategic deficiencies. Panama is in the process of strengthening the effectiveness of its AML/CFT regime in many areas. The adoption of new legislation ("Ley 70") is a positive development that should contribute, once in force, to address the identified deficiencies.

- (41) The Commission considers based on its analysis that the Kingdom of Saudi Arabia has strategic deficiencies in its AML/CFT regime as defined under Article 9 of Directive (EU) 2015/849, taking into account the jurisdiction's risk profile and threat level. The Kingdom of Saudi Arabia is at an advanced stage of its process to become a member of the FATF and it has committed to an Action Plan to address the remaining deficiencies identified also in its recent mutual evaluation report. However, given the threat level, in particular with regard to terrorist financing, and the fact that most of the national measures to improve the AML/CFT regime have been put in place rather recently and thus their effective application cannot be fully established in practice, it continues to pose a risk for the EU financial system. With regard to criminalisation of money laundering and terrorist financing: while authorities are focused on domestic terrorist and TF offences where a high number of convictions was secured, the assessment could not establish Saudi Arabia's ability to adequately address terrorist financing in relation to funds raised in Saudi Arabia for support of terrorist entities outside the Kingdom as identified in the mutual evaluation report issued by FATF/MENAFATF in September 2018. Although some cases were reported by the country and authorities are addressing the TF risks posed by foreign terrorist fighters, the number and types of cases covering third party/facilitators involved in financing of terrorist entities outside Saudi Arabia is not yet consistent with the country's risk profile. In addition, there is no supporting evidence yet with regard to the effective application of the regime with regard to money laundering criminalisation and application of proportionate and dissuasive sanctions. While recent data show ongoing improvements, it is not yet clear that Saudi Arabia is effectively investigating and prosecuting individuals involved in larger scale or professional money laundering activity – in particular in relation to the number of proceeds-generating crimes.

Approximately 70% to 80% of the proceeds of crime generated in the Kingdom are estimated to leave the jurisdiction but cases pertaining to those proceeds are mostly not pursued nor are there coordinated investigations with other countries. With regard to customer due diligence requirements ('CDD'), record keeping and reporting of suspicious transactions in the financial sector and in the relevant non-financial sectors: the new AML/CFT regulations adopted in November 2017 have strengthened the legal basis for AML/CFT preventive measures in Saudi Arabia; however, there is insufficient information available at this stage to assess the level of effective implementation by financial institutions and designated non-financial businesses and professions alike. Suspicious transaction reports are not submitted in a timely way, and there are a low number of terrorist financing-related suspicious transactions reported, especially by the sectors identified as high-risk in the TF National Risk Assessment. While improvements are ongoing, there are still limitations also in how the Financial Intelligence Unit handles and analyses suspicious transactions reports. Overall, while the preventative framework has been revised to bring it up to par with international expectations in the field, there is a need for a longer reference period in order to assess the effective implementation of those rules by the obliged entities, such as banks and financial institutions. At this stage, important vulnerabilities persist, in particular with regard to TF, and do not appear to be sufficiently mitigated. With regard to the powers and procedures of competent authorities: while elements for risk-based supervision appear to be well established in law, in particular as regards the financial sector, there have been new rules and models, the impact of which could only be assessed on a limited basis given the recent implementation, especially in the non-financial sector. With regard to the availability and exchange of information on beneficial ownership of legal persons and legal arrangements: while authorities are putting efforts in improving their risk understanding, it could not be established that Saudi Arabia's analysis of the risks associated with legal persons and legal arrangements was sufficiently comprehensive enough to prove that risks are low. Legal arrangements, such as waqfs, remain a point of concern due to their vulnerability to abuse and some gaps in regulation and supervision. Saudi Arabia uses various mechanisms to obtain or determine the beneficial ownership of legal entities, although these may not be sufficient to ensure the availability of beneficial ownership information in all cases and, in particular, it is too early to confirm the effectiveness of the new beneficial ownership register for some entities. Projects are ongoing in order to improve data availability and accuracy of beneficial ownership that should contribute in addressing this concern. With regard to competent authorities' practice in international cooperation: although progress is ongoing to improve international cooperation, it is not clear whether there are procedures in place that ensure the confidentiality of the process and whether adequate case management systems are in place, or that prioritisation of requests was properly taking place, both as regards formal mutual legal assistance and other forms of international cooperation. The outcome of international cooperation provided to other countries is not clear, in terms of the reported failure to conduct coordinated investigations with other countries which is significantly limiting the confiscation of criminals' assets, given a large proportion of the proceeds of crime are estimated to leave the country. With regard to the implementation of targeted financial sanctions: material shortcomings remain in the regime for the implementation of targeted financial sanctions related to terrorism and terrorist financing. Among others, it is unclear whether the measures in place ensure that the sanctions would be implemented without delay in all cases. It is not yet confirmed whether all natural and legal persons in Saudi Arabia are required to freeze the funds and assets of designated persons. It is not yet confirmed whether Saudi

targeted financial sanctions mechanisms do not specifically prohibit nationals and persons within the jurisdiction from making any funds and other assets available to designated individuals and entities, although the criminal legislation in part mitigates this issue. Saudi Arabia faces a high and diverse risk of terrorist financing, linked to terrorism committed both within Saudi Arabia, and to countries experiencing conflicts within the region but also linked to countries beyond the region. Against this background, and given that the relatively newly introduced AML/CFT framework aiming at mitigating the remaining important vulnerabilities has not yet been demonstrated to be fully effective, Saudi Arabia is considered to pose a high risk to the EU financial system. On this basis, the Commission concluded that the Kingdom of Saudi Arabia has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849. It is noted that Saudi Arabia is in the process of further strengthening the effectiveness of its AML/CFT regime and reiterated its high level political commitment in this regard.

- (42) The Commission considers based on its analysis that Samoa has strategic deficiencies in its AML/CFT regime as defined under Article 9 of Directive (EU) 2015/849, taking into account the jurisdiction's risk profile and threat level. It is found that Samoa is attractive for tax crimes and exposed to a higher threat of money laundering linked to tax crime as a predicate offence. It is noted that Samoa is a jurisdiction listed in Annex I of the EU list of non-cooperative tax jurisdictions due to a number of deficiencies. Strategic deficiencies were found in all the areas covered by the analysis, with the exception of the practice with international cooperation. With regard to criminalisation of money laundering and terrorist financing: whereas the inclusion of tax evasion as predicate offence of money laundering is a welcomed development, the uncertainty concerning the coverage of other serious tax offences as predicate crimes represent a relevant technical shortcoming in the light of the threat related to the Samoan offshore centre. This is particularly material when considering that the framework of investigations, prosecutions and convictions for money laundering and terrorist financing does not display the traits of an effective system; with regard to customer due diligence requirements ('CDD'), record keeping and reporting of suspicious transactions in the financial sector: CDD requirements in the financial sector present some outstanding deficiencies, and the reporting of suspicious transactions is not implemented effectively; with regard to customer due diligence requirements, record keeping and reporting of suspicious transactions in the relevant non-financial sector: CDD requirements in the non-financial sector show some strategic deficiencies, and the suspicious transactions reporting from the non-financial sector is unsatisfactory, in particular concerning trust and company service providers. With regard to the existence of dissuasive, proportionate and effective sanctions in case of breaches: the available sanctions regime is not considered proportionate and dissuasive and it has not been implemented effectively. With regard to the powers and procedures of competent authorities: despite a good licensing framework, the frequency and intensity of the supervision is unsatisfactory. The power of the supervisors to apply sanctions is also insufficient. With regard to the availability and exchange of information on beneficial ownership of legal persons and legal arrangements: there are no sufficient safeguards in place to ensure transparency on beneficial ownership information and in particular the accuracy of beneficial ownership information, which represents a material deficiency, considering the potential risk of International business companies" to be misused as conduit for money laundering; with regard to implementation of targeted financial sanctions: the effectiveness of the targeted financial sanctions regime appears to be limited by technical deficiencies in the

mechanisms provided under the Samoan law. On this basis, the Commission concluded that Samoa has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (43) The Commission considers based on its analysis that Libya has strategic deficiencies in its AML/CFT regime as defined under Article 9 of Directive (EU) 2015/849, taking into account the jurisdiction's risk profile and threat level. Libya is a member of MENAFATF – the FATF Style Regional Body responsible for the Middle East and North Africa Region. Despite this, Libya has never been subject to a mutual evaluation process in the context of this organization, neither gave an agreement to be reviewed by a specific date in such a process. In accordance with the methodology, when there is no mutual evaluation report or equivalent report or where the third country does not participate in a FATF Style Regional Body in view of being evaluated, the third country will be presumed as presenting strategic deficiencies, due to serious uncertainty around the compliance of its AML/CFT regime with AML/CFT standards. This is necessary since it demonstrates a lack of commitment in implementing internationally agreed standards in that field – and would otherwise leave such countries in a more favourable position than other countries undergoing an international evaluation process. This presumption was further confirmed by the Commission's analysis and information received from Europol confirming that the country presents a ML/TF risk from a law enforcement perspective. Consequently, considering the available information and available body of evidence, the Commission's analysis confirms that Libya presents strategic deficiencies in its AML/CFT regime in accordance with Article 9 of Directive (EU) 2015/849. On this basis, the Commission concluded that Libya has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (44) It is essential to invite all third-country jurisdictions identified as high-risk to fully cooperate with the Commission and international bodies with a view to addressing the strategic deficiencies identified in their anti-money laundering and terrorism financing regimes.
- (45) It is of the utmost importance to conduct a permanent monitoring of developments in the assessment of third countries AML/CFT regimes with a view to updating the list of high-risk third countries with strategic deficiencies. Therefore it is necessary for the Commission to follow up progress made by third countries having strategic deficiencies, monitor countries already assessed when new information sources become available, and assess additional countries to assess whether their AML/CFT regime have strategic deficiencies. Hence additional countries should be reviewed as soon as relevant information becomes available.
- (46) The Commission intends to further monitor progress made by identified third countries in addressing their strategic deficiencies. Countries which have strategic deficiencies presenting a risk for the international system should implement corrective measures agreed with international organisations competent in the field of AML/CFT. The effective implementation of internationally agreed actions plans is a necessary prerequisite in view of ensuring that strategic deficiencies are removed. In addition, it is essential that all countries which are relevant for the EU financial system are assessed based on common criteria in view of their possible removal from the list. The Commission should assess whether countries adopted the necessary legal requirements to upgrade their legal and institutional framework, but it remains equally important to assess whether those measures are also effectively applied in practice. In order for a country to be removed from the list, an assessment whether it meets following

requirements should be made: (1) firstly whether it complies with criteria on criminalisation of money laundering/terrorist financing; customer due diligence requirements, record keeping and suspicious transactions reporting in the financial and in the non-financial sector; transparency of beneficial ownership; and international cooperation; (2) to the extent that the first requirement is met, whether the country shows- effectiveness in applying measures with regard to availability and exchange of beneficial ownership information; (3) to the extent that the two first requirements are met, whether the country demonstrate positive and tangible progress in improving effectiveness in all areas where significant deficiencies were identified. The Commission intends to decide on the possible removal from the list after it receives and reviews information from third countries that adopted relevant legislation which addresses strategic deficiencies, but also from other reliable sources of information which should be required in order to allow the Commission to reach a conclusion in its analysis. The Commission is committed to supporting countries concerned in addressing identified deficiencies, where appropriate, with a view to their eventual de-listing on the basis of the above criteria. This should be facilitated notably through dedicated discussions, but also through the Union's political dialogues and consultations with countries concerned. It could be accompanied by targeted use of the Union's instruments, including development cooperation where applicable, for example through technical assistance, capacity building, exchange of expertise and best practices.

HAS ADOPTED THIS REGULATION:

#### *Article 1*

The list of third-country jurisdictions which have strategic deficiencies in their anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union ("high-risk third countries") , as set out in the Annex, is adopted.

#### *Article 2*

Delegated Regulation (EU) 2016/1675 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation.

#### *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*.

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

Done at Brussels, 13.2.2019

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*