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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	24 November 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	C(2016) 7495 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 24.11.2016 amending Commission Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 by identifying high-risk third countries with strategic deficiencies

Delegations will find attached document C(2016) 7495 final.

Encl.: C(2016) 7495 final



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

of 24.11.2016

amending Commission Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 by identifying high-risk third countries with strategic deficiencies

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

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

- (a) Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("the Directive"), and
- (b) Regulation (EU) 2015/847 on information accompanying transfers of funds ("the Regulation").

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

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

On 14 July 2016, the European Commission adopted the Delegated Regulation (EU) 2016/1675 which identifies for the first time high risk third countries with strategic deficiencies. The Commission took into account, as appropriate, the most recent FATF Public Statement, FATF documents (Improving Global AML/CFT Compliance: on-going process), FATF reports on International Cooperation Review, and the mutual evaluations report carried out by FATF and FATF-style regional bodies (FSRBs) in relation to the risks posed by individual third countries in line with Article 9(4). As a result of this assessment, the Commission identified 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. Hence those countries were included in the Delegated Regulation provided under article 9 of the Directive.

This list needs to be reviewed by the Commission where appropriate. As stressed in Recital 28 of the Directive, the Commission will adapt its assessments to the changes made to information sources from international organisations and standard setters, such as those issued by FATF. Hence the Commission aims at updating this list to reflect progress (or lack of progress) made by those high risk third countries in removing the strategic deficiencies. Based on this information, the Commission may identify additional high risk third countries presenting strategic deficiencies, or may move already identified high risk third countries from one section of the list to another one, or remove them altogether depending on a country's progress (or lack of progress). In this context the Commission considered the outcome of the FATF 28th Plenary meeting and the newly available information sources.

According to this latest available information, it was found that Guyana has made significant progress on AML/CFT matters. On the basis of progress made, with Guyana substantially completing all its action plan items agreed with the FATF, FATF decided to conduct an on-site visit to Guyana in order to confirm that implementation has begun and that there is political commitment to continue to strengthen the AML/CFT regime. FATF on-site visit has concluded that Guyana has a legal and institutional framework in place, which addresses the strategic deficiencies of its AML/CFT regime. Guyana has therefore been removed from the FATF document called "improving global AML/CFT Compliance: ongoing process".

Based on these information sources, the Commission considers that Guyana does not meet anymore the criteria set in article 9(2) of the Directive. Hence Guyana should be removed from the list of high risk third countries presenting strategic deficiencies in their AML/CFT framework.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

No public consultations were held by the Commission given the fact that the list of high-risk third countries corresponds to that agreed internationally.

On 25 October 2016, the Expert Group on Money Laundering and Terrorist Financing (EGMLTF) was consulted on the draft delegated act by written procedure.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

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

The legal effects of the publication of the list are governed by the basic act, Directive (EU) 2015/849. As a consequence, obliged entities in Member States will not be bound anymore to apply enhanced customer due diligence measures (ECDD) when dealing with natural persons or legal entities established in Guyana according to article 18 of the Directive as far as it refers to the obligations relating to the third countries identified by the Commission as high risk third countries.

This is without prejudice to the application by obliged entities of the provisions of the Directive with regard to customer due diligence and the relevant risk-based measures to be applied.

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

of 24.11.2016

amending Commission Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 by identifying high-risk third countries with strategic deficiencies

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC¹, and in particular Article 9(2) thereof,

Whereas:

- (1) The Union must ensure an effective protection of the integrity and proper functioning of its financial system and the internal market from money laundering and terrorist financing. Hence Directive (EU) 2015/849 provides that the Commission should identify high risk third countries which present strategic deficiencies in their regimes on anti-money laundering and countering terrorist financing that pose significant threats to the financial system of the Union.
- (2) The Commission has adopted Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 by identifying high-risk third countries with strategic deficiencies². The Commission should review the list of high risk third countries at appropriate times in light of the progress made by those high risk third countries in removing the strategic deficiencies in their regime on anti-money laundering and countering terrorist financing (AML/CFT). The Commission should adapt its assessments to the changes made to information sources from international organisations and standard setters, such as those issued by the Financial Action Task Force (FATF).
- (3) In line with the criteria set out in Directive (EU) 2015/849, the Commission took into account the most recent available information in particular the most recent FATF Public Statement and FATF document "Improving Global AML/CFT Compliance: ongoing process", and FATF reports of the International Cooperation Review Group in

¹ OJ L 141, 5.6.2015, p. 73.

² OJ L 254, 20.9.2016, p. 1.

relation to the risks posed by individual third countries in line with Article 9(4) of Directive (EU) 2015/849.

- (4) The FATF considered in the above documents that Guyana has implemented the necessary measures to address the strategic deficiencies of its regime on AML/CFT and removed this country from FATF document "Improving Global AML/CFT Compliance: ongoing process".
- (5) On the basis of this latest relevant information, the Commission's analysis has similarly concluded that Guyana should no longer be considered as a third-country jurisdiction which has strategic deficiencies in its AML/CFT regime that pose significant threats to the financial system of the Union.

HAS ADOPTED THIS REGULATION:

Article 1

The table in point I Annex to Regulation (EU) No 2016/1675 is amended by the deletion of the line:

3	Guyana
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Article 2

This Regulation shall enter into force on the 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, 24.11.2016

For the Commission
The President
Jean-Claude JUNCKER