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COVER NOTE

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

date of receipt: 13 December 2017

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

No. Cion doc.: C(2017) 8320 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 13.12.2017
amending Delegated Regulation (EU) 2016/1675 supplementing Directive
(EU) 2015/849 of the European Parliament and of the Council, as regards
adding Sri Lanka, Trinidad and Tobago and Tunisia to the table in point I of
the Annex

Delegations will find attached document C(2017) 8320 final.

Encl.: C(2017) 8320 final



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

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

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

- (a) Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("the 4AMLD"), and
- (b) Regulation (EU) 2015/847 on information accompanying transfers of funds ("FTR").

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 4AMLD, 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 4AMLD 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 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.

The Commission is currently working towards a new methodology to identify high risk third countries that does not rely only on external information sources to identify jurisdictions presenting strategic deficiencies in tackling money laundering and financing of terrorism. This methodology will clarify the process for carrying out the assessment, the listing criteria and the follow-up procedure – including the involvement of Member States experts and engagement with the European Parliament throughout the process. The Commission will engage with the European Parliament and the Council regarding the establishment of this methodology once the listing criteria in article 9 which are currently being re-negotiated, are finalised. Pending the final outcome of the revision of article 9, the Commission is committed to consider relevant AML/CFT criteria when making its assessment based on the new methodology, including the availability and information exchange on beneficial ownership information. In line with the Roadmap that the Commission delivered to the European Parliament on 29 June 2017, the Commission expects to adopt a delegated Regulation based on the new methodology by the end of 2018.

Pending the completion of the Commission assessment under the new methodology, it is necessary to continue to update the list in order to ensure EU rules apply to third countries internationally identified as being of high risk. As stressed in Recital 28 of the 4AMLD, the changing nature of money laundering and terrorist financing threats, facilitated by a constant evolution of technology and of the means at the disposal of criminals, requires that quick and continuous adaptations of the legal framework as regards high-risk third countries be made in order to address efficiently existing risks and prevent new ones from arising. Considering the level of financial systems' integration, the internal market would be exposed to serious risks of money laundering and terrorist financing if the EU does not add high risk jurisdictions

identified by FATF to the EU list. The EU AML/CFT framework would also fall short of complying with international commitments and contravene EU efforts to promote a global approach towards high risk countries.

Following a precautionary principle, in the period before assessments can be made under the new methodology, it seems appropriate to add to the list additional third countries which meet the criteria set out in article 9(2) of the 4AMLD, whilst the adaptation of the list to take account of third countries which are progressing in addressing the strategic deficiencies should take place once the assessment under the new methodology is complete. Therefore the Commission did not decide at this stage to remove Guyana, Lao PDR, Afghanistan and Uganda as further assessment needs to be made on the basis of the new methodology. In line with the precautionary principle, enhanced due diligence measures towards Guyana, Lao PDR, Afghanistan and Uganda will continue to be applied.

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

The Commission took into account, as appropriate, the recent FATF Public Statements, FATF documents (Improving Global AML/CFT Compliance: on-going process), FATF reports on International Cooperation Review, and the mutual evaluations report carried out by FATF and FATF Style Regional Bodies (FSRBs) in relation to the risks posed by individual third countries in line with Article 9(4) 4AMLD. In particular, it considered the outcome of the FATF 29th Plenary meeting and the high-risk countries identified by FATF¹. On this occasion, Sri Lanka, Trinidad and Tobago and Tunisia were identified as presenting strategic deficiencies in its AML/CFT regime.

Based on these information sources, the Commission considers that Sri Lanka, Trinidad and Tobago and Tunisia meet the criteria set in article 9(2) of the 4AMLD. Hence Sri Lanka, Trinidad and Tobago and Tunisia should be added on the list of high-risk third countries presenting strategic deficiencies in their AML/CFT regime that pose significant threats to the financial system of the Union. Therefore these countries should be included in the Delegated Act provided under article 9 of 4AMLD.

Sri Lanka, Trinidad and Tobago and Tunisia provided a written high-level political commitment to address the identified deficiencies and have developed an action plan with FATF, in view of fulfilling the requirements laid down in Directive (EU) 2015/849. The Commission welcomes this commitment and calls on these jurisdictions to complete the implementation of the action plan expeditiously and within the proposed timeframes. The implementation of the action plan will be closely monitored. In order to take into account the level of commitment that has been demonstrated by these high-risk third countries, in the context of the FATF, to correct the identified weaknesses, these third countries are listed in the corresponding section of the annex to the Delegated Act.

B. Consequence

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

¹ <http://www.fatf-gafi.org/publications/fatfgeneral/documents/plenary-november-2017.html>

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

No public consultations were held by the Commission.

On 22 November 2017, the Expert Group on Money Laundering and Terrorist Financing (EGMLTF) was consulted on the draft delegated act by written procedure.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

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

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

As a direct consequence of the establishment of the list, obliged entities in all Member States will be bound to apply enhanced customer due diligence measures (ECDD) according to article 18 of 4AMLD when dealing with natural persons or legal entities established in high-risk third countries. Such obligations therefore also apply with regard to the countries added to the Annex - namely Sri Lanka, Trinidad and Tobago and Tunisia.

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(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/EC², 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 should review the list of high risk third countries listed in Delegated Regulation (EU) 2016/1675³ at appropriate times in light of the progress made by those high risk third countries in removing the strategic deficiencies in their regime on anti-money laundering and countering terrorist financing ("AML/CFT"). The Commission should take account in its assessments of new information from international organisations and standard setters, such as those issued by the Financial Action Task Force (FATF). In light of this information, the Commission should also identify additional high-risk third countries presenting strategic deficiencies in their AML/CFT regime.
- (3) In line with the criteria set out in Directive (EU) 2015/849, the Commission took into account the recent available information in particular recent FATF Public Statements and FATF document "Improving Global AML/CFT Compliance: ongoing process", and FATF reports of the International Cooperation Review Group in relation to the risks posed by individual third countries in line with Article 9(4) of Directive (EU) 2015/849.

² OJ L 141, 5.6.2015, p. 73.

³ Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1).

- (4) The FATF identified Sri Lanka, Trinidad and Tobago and Tunisia as having strategic AML/CFT deficiencies that pose a risk to the international financial system, for which they have developed an action plan with the FATF.
- (5) Considering the high level of integration of the international financial system, the close connection of market operators, the high volume of cross border transactions to or from the Union, as well as the degree of market opening, the Commission hence considers that any AML/CFT threat posed to the international financial system also represents a threat for the Union financial system.
- (6) In accordance with the latest relevant information, the Commission's analysis has concluded that Sri Lanka, Trinidad and Tobago and Tunisia should be considered third-country jurisdiction which have strategic deficiencies in their AML/CFT regime that pose significant threats to the financial system of the Union in accordance with the criteria set out in Article 9 of Directive (EU) 2015/849. However, these countries have provided a written high-level political commitment to address the identified deficiencies and have developed an action plan with FATF, which would allow the requirements laid down in Directive (EU) 2015/849 to be met. The Commission will reassess these countries' status in the light of the implementation of the above commitment.
- (7) Delegated Regulation (EU) 2016/1675 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Delegated Regulation (EU) 2016/1675, the table in point I is amended as follows:

- (a) the following lines are inserted:

"

11	Sri Lanka
12	Trinidad and Tobago
13	Tunisia

"

Article 2

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

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

Done at Brussels, 13.12.2017

For the Commission
The President
Jean-Claude JUNCKER