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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 19.12.2022 amending Delegated Regulation (EU) 2016/1675 as regards adding Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and United Arab Emirates to the table I of the Annex to Delegated Regulation (EU) 2016/1675 and deleting Nicaragua, Pakistan and Zimbabwe from that table

Delegations will find attached document C(2022) 9649 final.

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

of 19.12.2022

amending Delegated Regulation (EU) 2016/1675 as regards adding Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and United Arab Emirates to the table I of the Annex to Delegated Regulation (EU) 2016/1675 and deleting Nicaragua, Pakistan and Zimbabwe from that table

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

According to Article 9(1) of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, third-country (i.e. non-EU country) jurisdictions which have strategic deficiencies in their anti-money laundering and countering the financing of terrorism (AML/CFT) regimes that pose significant threats to the financial system of the European 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 strategic deficiencies into account, and lays down the criteria on which the Commission's assessment is to be based. The delegated acts must be adopted within one month after the identification of the strategic deficiencies. Article 18a of Directive (EU) 2015/849 obliges Member States to require obliged entities to apply enhanced customer due diligence measures when establishing business relationships or carrying out transactions involving high-risk third countries identified by the Commission.

On 14 July 2016, the Commission adopted Delegated Regulation (EU) 2016/1675 which 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 European Union. This Delegated Regulation was subsequently amended by Delegated Regulation (EU) 2018/105, Delegated Regulation (EU) 2018/212, Delegated Regulation (EU) 2018/1467, Delegated Regulation (EU) 2020/855, Delegated Regulation (EU) 2021/37 and Delegated Regulation (EU) 2022/229.

The Commission published a revised methodology for identifying high-risk third countries, which supersedes the previous one, on 7 May 2020⁽¹⁾. Its key new elements are increased interaction with the Financial Action Task Force (FATF) listing process; enhanced engagement with third countries; and reinforced consultation of the Member States and the European Parliament.

Since the last amendment to Delegated Regulation (EU) 2016/1675, the FATF has updated its list of 'Jurisdictions under Increased Monitoring' as follows:

- at its plenary meeting in March 2022, the FATF added United Arab Emirates to its list and deleted Zimbabwe from its list;
- at its plenary meeting in June 2022, the FATF added Gibraltar to its list;
- at its Plenary meeting of October 2022, the FATF added Democratic Republic of the Congo, Mozambique and Tanzania to its list and deleted Nicaragua and Pakistan from its list.

It is necessary to continue to update Delegated Regulation (EU) 2016/1675 in order to take into account information from international organisations and standard setters in the field of AML/CFT (e.g. the FATF's public statements, mutual evaluation or detailed assessment reports, and published follow-up reports). The changing nature of money laundering and

¹ Commission staff working document on a methodology for identifying high-risk third countries under Directive (EU) 2015/849, SWD(2020) 99 final.

terrorist financing threats, which are facilitated by the constant evolution of technology and the means at the disposal of criminals, requires quick and continuous adaptations of the legal framework as regards high-risk third countries in order to efficiently address existing risks and prevent new ones from arising. Considering the extent to which financial systems are integrated, the internal market would be exposed to serious risks of money laundering and terrorist financing if the EU were not to add jurisdictions identified by the FATF to the EU list.

Delegated Regulation (EU) 2016/1675 should therefore be amended by adding third countries which have been identified as having strategic deficiencies and by removing those that no longer have strategic deficiencies on the basis of the criteria laid down in Directive (EU) 2015/849.

A. Additions to the list of Delegated Regulation (EU) 2016/1675

The Commission has taken into account relevant information from international organisations and standard setters in the field of AML/CFT; the recent FATF public statements, the FATF list of ‘Jurisdictions under Increased Monitoring’, the FATF reports of the International Cooperation Review Group; and mutual evaluation reports carried out by the FATF and the FATF-style regional bodies in relation to strategic deficiencies of individual third countries. This is consistent with Article 9(4) of Directive (EU) 2015/849.

In particular, the Commission has concluded that Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and United Arab Emirates have strategic deficiencies in their AML/CFT regimes. The Commission has also taken into account the fact that these countries were identified in the FATF list of ‘Jurisdictions under Increased Monitoring’ in March, June and October 2022.

The Commission therefore considers that Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and United Arab Emirates meet the criteria set in Article 9(2) of Directive (EU) 2015/849. These countries must therefore be added to the list in the Delegated Regulation (EU) 2016/1675 of countries with strategic deficiencies in their AML/CFT regimes that pose significant threats to the financial system of the European Union.

Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and United Arab Emirates have made written high-level political commitments to address the identified deficiencies and developed action plans with the FATF for this purpose. The Commission welcomes these commitments and calls on these jurisdictions to complete the implementation of their respective action plans expeditiously and within the proposed timeframes. The FATF will closely monitor the implementation of the action plans. Having considered the level of commitment that has been demonstrated in the FATF context, these high-risk third countries are listed in the table in point I of the Annex to Delegated Regulation (EU) 2016/1675 (‘High-risk third countries which have provided a written high-level political commitment to address the identified deficiencies and have developed an action plan with FATF’).

According to Articles 18 and 18a of Directive (EU) 2015/849, Member States must require obliged entities to apply enhanced customer due diligence measures to manage and mitigate those risks appropriately with respect to business relationships or transactions involving countries included in Delegated Regulation (EU) 2016/1675.

B. Deletions from the list of Delegated Regulation (EU) 2016/1675

It is necessary to continue to update Delegated Regulation (EU) 2016/1675 in order to take into account information from international organisations and standard setters in the field of AML/CFT, such as FATF public statements, mutual evaluation or detailed assessment reports, and published follow-up reports. Since the last amendment to Regulation (EU) 2016/1675, the FATF removed Zimbabwe from its list of ‘Jurisdictions under Increased Monitoring’ in March 2022. It also removed Nicaragua and Pakistan in October 2022, following the implementation of their respective action plans agreed with the FATF.

On the basis of these elements, the Commission has reviewed progress in addressing the strategic deficiencies of Nicaragua, Pakistan and Zimbabwe, based on the requirements of Directive (EU) 2015/849.

Following the measures implemented to address the action plans agreed with the FATF, Nicaragua, Pakistan and Zimbabwe have remedied the strategic deficiencies in their respective AML/CFT regimes and no longer pose a significant AML/CFT threat to the international financial system. Taking into account their relevance under the revised methodology, the Commission considers that these jurisdictions no longer have strategic deficiencies in their respective AML/CFT frameworks and do not pose a significant threat to the financial system of the European Union.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

On 07/12/2022, the Commission consulted the Expert Group on Money Laundering and Terrorist Financing (EGMLTF) on the draft delegated regulation by written procedure.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Delegated Regulation amends the Annex of Delegated Regulation (EU) 2016/1675.

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

As a direct consequence of the adoption of this Delegated Regulation, obliged entities in all Member States are bound to apply enhanced customer due diligence measures in accordance with Article 18a of Directive (EU) 2015/849 with respect to business relationships or transactions involving countries that are included in the Annex to this Delegated Regulation.

Furthermore, Article 155 (2) of the Financial Regulation⁽²⁾ prohibits persons and entities implementing European Union funds or budgetary guarantees from entering into new or renewed operations with entities incorporated or established in countries included in the Annex to this Delegated Regulation pursuant to Directive (EU) 2015/849, except when an action is physically implemented in these countries and subject to the absence of other risk factors. Implementing partners must also transpose those requirements into their own contracts with selected financial intermediaries.

² Regulation (EU, Euratom) 2018/1046 of 18 July 2018 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p.1.).

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amending Delegated Regulation (EU) 2016/1675 as regards adding Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and United Arab Emirates to the table I of the Annex to Delegated Regulation (EU) 2016/1675 and deleting Nicaragua, Pakistan and Zimbabwe from that table

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC³, and in particular Article 9(2) thereof,

Whereas:

- (1) The Union has to ensure the effective protection of the integrity and proper functioning of its financial system and the internal market from money laundering and terrorist financing. Directive (EU) 2015/849 therefore provides that the Commission should identify countries which have strategic deficiencies in their regimes on Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) that pose significant threats to the financial system of the Union.
- (2) Commission Delegated Regulation (EU) 2016/1675⁽⁴⁾ identifies high-risk third countries with strategic deficiencies.
- (3) Considering the high level of integration of the international financial system, the close connection of market operators, the high volume of cross-border transactions to and from the Union, and the degree of market openness, any AML/CFT threat posed to the international financial system also represents a threat to the financial system of the Union.
- (4) In line with Article 9(4) of Directive (EU) 2015/849, the Commission takes the recent available information into account, in particular recent Financial Action Task Force

³ OJ L 141, 5.6.2015, p. 73.

⁴ 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).

(FATF) Public Statements, the FATF list of ‘Jurisdictions under Increased Monitoring’, and FATF reports of the International Cooperation Review Group in relation to the risks posed by individual third countries.

- (5) Since the latest amendments to Regulation (EU) 2016/1675, the FATF has significantly updated its list of ‘Jurisdictions under Increased Monitoring’. At its plenary meeting in March 2022, the FATF added United Arab Emirates (UAE) to its list and deleted Zimbabwe from its list. At its plenary meeting in June 2022, the FATF added Gibraltar to its list. At its plenary meeting in October 2022, the FATF added Democratic Republic of the Congo (DRC), Mozambique and Tanzania to its list and deleted Nicaragua and Pakistan from its list. All those changes were assessed by the Commission in line with Article 9 of Directive (EU) 2015/849.
- (6) In February 2022, UAE made a high-level political commitment to work with the FATF and the Middle East and North Africa Financial Action Task Force to strengthen the effectiveness of its AML/CFT regime. Since then, UAE demonstrated positive progress, including by providing additional resources to the Financial Intelligence Unit (FIU) to strengthen the FIU analysis and providing financial intelligence to Law Enforcement Authorities and the Public Prosecutors for combating of high-risk ML threats. UAE should continue to work to implement its FATF action plan by: (1) demonstrating through case studies and statistics a sustained increase in outbound Mutual Legal Assistance requests to help facilitate investigation of Terrorism Financing (TF), Money-Laundering (ML), and high-risk predicates; (2) enhancing and maintaining a shared understanding of the ML/TF risks between the different DNFBP sectors and institutions; (3) showing an increase in the number and quality of STRs filed by FIs and Designated Non-Financial Businesses and Professions (DNFBPs); (4) ensuring a more granular understanding of the risk of abuse of legal persons and, where applicable, legal arrangements, for ML/TF; (5) demonstrate greater use of financial intelligence to pursue high-risk ML threats; and demonstrating a sustained increase in effective investigations and prosecutions of different types of ML cases consistent with UAE’s risk profile; and (6) proactively identifying and combating sanctions evasion, including by demonstrating a better understanding of sanctions evasion among the private sector. Despite that commitment and progress, the concerns that led to the listing of UAE by the FATF have not yet been fully addressed. UAE should therefore be considered as a country that has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (7) In June 2022, Gibraltar made a high-level political commitment to work with the FATF and MONEYVAL, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism of the Council of Europe, to strengthen the effectiveness of its AML/CFT regime. Since the adoption of its MER in December 2019, Gibraltar has made progress on a significant number of its MER’s recommended actions, such as completing a new national risk assessment, addressing the technical deficiencies in relation to Beneficial Owner-related recordkeeping, introducing transparency requirements for nominee shareholders and directors, strengthening the financial intelligence unit, and refining its ML investigation policy in line with risks. Gibraltar should work on implementing its action plan, including by (1) ensuring that supervisory authorities for non-bank financial institutions and DNFBPs use a range of effective, proportionate, and dissuasive sanctions for AML/CFT breaches; and (2) demonstrating that it is more actively and successfully

pursuing final confiscation judgements, through criminal or civil proceedings based on financial investigations. Despite that commitment and progress, the concerns that led to the listing of Gibraltar by the FATF have not yet been fully addressed. Gibraltar should therefore be considered as a third-country jurisdiction that has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (8) In October 2022, Democratic Republic of the Congo made a high-level political commitment to work with the FATF and the '*Groupe d'Action contre le Blanchiment d'Argent en Afrique Centrale*' (GABAC), a FATF-style regional body, to strengthen the effectiveness of its AML/CFT regime. Since the adoption of its MER in October 2020, DRC has made progress on some of the MER's recommended actions including making confiscation of proceeds of crime a policy priority. DRC will work to implement its FATF action plan by: (1) finalising the National Risk Assessment on ML and TF and adopting an AML/CFT national strategy; (2) designating supervisory authorities for all DNFBP sectors, and developing and implementing a risk-based supervision plan; (3) adequately resourcing the FIU, and build its capacity to conduct operational and strategic analysis; (4) strengthening the capabilities of authorities involved in the investigation and prosecution of ML and TF; and (5) demonstrating effective implementation of TF and Proliferation Financing-related Targeted Financial Sanctions. Despite that commitment and progress, the concerns that led to the listing of DRC by the FATF have not yet been fully addressed. DRC should therefore be considered as a country that has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (9) In October 2022, Mozambique made a high-level political commitment to work with the FATF and the Eastern and Southern Africa AML Group (ESAAMLG) to strengthen the effectiveness of its AML/CFT regime. Since the adoption of its MER in April 2021, Mozambique has made progress on some of the MER's recommended actions to improve its system including by finalising its National Risk Assessment and strengthening its asset confiscation efforts. Mozambique will work to implement its FATF action plan by: (1) ensuring cooperation and coordination amongst relevant authorities to implement risk-based AML/CFT strategies and policies; (2) conducting training for all Law Enforcement Authorities (LEAs) on mutual legal assistance to enhance the gathering of evidence or seizure/confiscation of proceeds of crime; (3) providing adequate financial and human resources to supervisors, developing and implementing a risk-based supervision plan; (4) providing adequate resources to the authorities to commence the collection of adequate, accurate and up-to-date beneficial ownership information of legal persons; (5) increasing the human resources of the FIU as well as increasing financial intelligence sent to authorities; (6) demonstrating LEAs' capability to effectively investigate ML/TF cases using financial intelligence; (7) conducting a comprehensive TF Risk Assessment and beginning to implement a comprehensive national CFT strategy; (8) increasing awareness on TF and Proliferation Financing-related Targeted Financial Sanctions; and (9) carrying out the TF risk assessment for Non-Profit Organizations in line with the FATF Standards and using it as a basis to develop an outreach plan. Despite that commitment and progress, the concerns that led to the listing of Mozambique by the FATF have not yet been fully addressed. Mozambique should therefore be considered as a country that has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (10) In October 2022, Tanzania made a high-level political commitment to work with the FATF and ESAAMLG to strengthen the effectiveness of its AML/CFT regime. Since the adoption of its MER in April 2021, Tanzania has made progress on some of the MER's recommended actions to improve its system including by developing legal framework for TF and Targeted Financial Sanctions (TFS) and disseminating FIU strategic analysis. Tanzania will work to implement its FATF action plan by: (1) improving risk-based supervision of Financial Institutions and DNFBPs, including by conducting inspections on a risk-sensitive basis and applying effective, proportionate, and dissuasive sanctions for non-compliance; (2) demonstrating authorities' capability to effectively conduct a range of investigations and prosecutions of ML in line with the country's risk profile; (3) demonstrating that Law Enforcement Authorities are taking measures to identify, trace, seize, and confiscate proceeds and instrumentalities of crime; (4) conducting a comprehensive TF Risk Assessment and beginning to implement a comprehensive national CFT strategy as well as demonstrating capability to conduct TF investigations and pursue prosecutions in line with the country's risk profile; (5) increasing awareness of the private sector and competent authorities on TF and PF-related TFS; and (6) carrying out the TF risk assessment for Non-Profit Organizations in line with the FATF Standards and using it as a basis to develop an outreach plan. Despite that commitment and progress, the concerns that led to the listing of Tanzania by the FATF have not yet been fully addressed. Tanzania should therefore be considered as a country that has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (11) The Commission's assessment therefore concludes that Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania, and UAE should be considered as third-country jurisdictions which have strategic deficiencies in their AML/CFT regimes 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.
- (12) The Commission has reviewed progress in addressing the strategic deficiencies of the countries that were listed in Regulation (EU) 2016/1675 but were delisted in March, June and October 2022 by the FATF. In order to update the Annex to Delegated Regulation (EU) 2016/1675 as required by Article 9 of Directive (EU) 2015/849, the Commission has reviewed the progress made by Nicaragua, Pakistan and Zimbabwe.
- (13) The FATF has welcomed the significant progress made by Nicaragua, Pakistan and Zimbabwe in improving their respective AML/CFT regimes. It has noted that Nicaragua, Pakistan and Zimbabwe have established the legal and regulatory frameworks to meet the commitments in their respective action plans regarding the strategic deficiencies that the FATF had identified. Nicaragua, Pakistan and Zimbabwe are therefore no longer subject to the FATF's monitoring process under its ongoing global AML/CFT compliance process. Nicaragua should continue to work with the '*Grupo de Acción Financiera de Latinoamérica*' (GAFILAT), the FATF-style regional body, to improve further its AML/CFT regime, including by ensuring its oversight of non-profit organisations (NPOs) is risk-based and in line with the FATF Standards. Pakistan will continue to work with the Asia Pacific Group, the FATF-style Regional Body, to further improve its AML/CFT system. Zimbabwe should continue to work with ESAAMLG to improve further its AML/CFT system, including by ensuring its oversight of NPOs is risk-based and in line with the FATF Standards.

(14) The Commission's assessment of the information available leads it to conclude that Nicaragua, Pakistan and Zimbabwe no longer have strategic deficiencies in their AML/CFT regimes. Nicaragua, Pakistan and Zimbabwe have strengthened the effectiveness of their AML/CFT regimes and addressed related technical deficiencies to meet the commitments in their action plans regarding the strategic deficiencies that the FATF had identified.

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

HAS ADOPTED THIS REGULATION:

Article 1

The table in point I of the Annex to Delegated Regulation (EU) 2016/1675 is replaced by the table in the Annex to this Regulation.

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, 19.12.2022

For the Commission
The President
Ursula VON DER LEYEN