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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 17.5.2023 amending Delegated Regulation (EU) 2016/1675 as regards adding Nigeria and South Africa to the table in point I of the Annex and deleting Cambodia and Morocco from that table

Delegations will find attached document C(2023) 3247 final.

Encl.: C(2023) 3247 final



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

of 17.5.2023

amending Delegated Regulation (EU) 2016/1675 as regards adding Nigeria and South Africa to the table in point I of the Annex and deleting Cambodia and Morocco from that table

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Under Article 9(1) of Directive (EU) 2015/849¹, third-country jurisdictions which have strategic deficiencies in their anti-money laundering/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) empowers the Commission to adopt delegated acts to identify those high-risk third countries, taking into account strategic deficiencies, and laying down the criteria on which the Commission's assessment is to be based. The delegated acts 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 EU. 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, Delegated Regulation (EU) 2022/229 and Delegated Regulation (EU) 2022/9649.

The Commission published a revised methodology for identifying high-risk third countries on 7 May 2020². The main new elements are an increased interaction with the Financial Action Task Force (FATF) listing process, strengthened engagement with third countries, and reinforced consultation of the Member States and the European Parliament.

The FATF has updated its list of 'Jurisdictions under Increased Monitoring' since the last amendments to Delegated Regulation (EU) 2016/1675. At its plenary meeting in February 2023, the FATF added Nigeria and South Africa to its list and deleted Cambodia and Morocco from its list.

It is necessary to continue to update the Delegated Regulation 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. The changing nature of money laundering and terrorist-financing threats, which are facilitated by the constant evolution of technology and the means at the disposal of criminals, requires quick and continuous adaptation of the legal framework on high-risk third countries to efficiently address existing risks and prevent new ones. Considering the extent to which financial systems are integrated, the internal market would be

¹ 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 (OJ L 141, 5.6.2015, p. 73).

² Commission staff working document on a methodology for identifying high-risk third countries under Directive (EU) 2015/849, SWD(2020) 99.

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-country jurisdictions 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. Addition 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 in line with Article 9(4) of Directive (EU) 2015/849. This information includes recent FATF public statements, the FATF list of ‘Jurisdictions under Increased Monitoring’, FATF reports of the International Cooperation Review Group, and mutual evaluation reports carried out by the FATF and the FATF-style regional bodies (FSRBs) in relation to strategic deficiencies of individual third countries

In particular, the Commission considers that Nigeria and South Africa have strategic deficiencies in their respective 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 February 2023.

The Commission therefore considers that Nigeria and South Africa meet the criteria set in Article 9(2) of Directive (EU) 2015/849. These countries should therefore be added to the list in 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 EU.

Nigeria and South Africa have made written high-level political commitments to address the identified deficiencies and have 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 time frames. 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’).

Article 18 of Directive (EU) 2015/849 requires obliged entities in all Member States to apply enhanced customer due diligence measures to manage and mitigate risks appropriately. With respect to business relationships or transactions involving high-risk third countries identified pursuant to Article 9(2) of that Directive, Article 18a sets out the enhanced customer due diligence measures that Member States are to require obliged entities to apply in that context.

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

It is necessary to continue to update Delegated Regulation (EU) 2016/1675 to take into account information from international organisations and standard-setters in the field of AML/CFT, such as recent FATF public statements, mutual evaluation or detailed assessment reports, and published follow-up reports. Since the last amendments to Delegated Regulation (EU) 2016/1675, the FATF removed Cambodia and Morocco in February 2023, following the implementation of their respective action plans agreed with the FATF.

The Commission has reviewed progress in addressing the strategic deficiencies of Cambodia and Morocco, based on the requirements of Directive (EU) 2015/849.

Following the measures implemented to address the action plans agreed with the FATF, Cambodia and Morocco 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 EU.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

On 14/04/2023, the Commission consulted the Expert Group on Money Laundering and Terrorist Financing on the draft delegated regulation by written procedure.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Delegated Regulation amends the Annex to 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 Regulation³ prohibits persons and entities implementing EU funds or budgetary guarantees from entering into new or renewed operations with entities incorporated or established in countries included in this Delegated Regulation under 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.

³ 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).

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

of 17.5.2023

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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/EC¹, 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 high-risk third 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) 2016/1675² 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, as well as the degree of market openness, any AML/CFT threat posed to the international financial system is also a threat to the financial system of the Union.
- (4) In accordance with Article 9(4) of Directive (EU) 2015/849, the Commission takes into account recent available information, in particular the recent Financial Action

¹ OJ L 141, 5.6.2015, p. 73.

² Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1).

Task Force (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 Delegated Regulation (EU) 2016/1675, the FATF has updated its list of ‘Jurisdictions under Increased Monitoring’. At its plenary meeting in February 2023, the FATF added Nigeria and South Africa to that list and deleted Cambodia and Morocco from that list. Given those changes, the Commission has conducted an assessment for the identification of high-risk third countries in accordance with Article 9 of Directive (EU) 2015/849.
- (6) In February 2023, Nigeria made a high-level political commitment to work with the FATF and the *Groupe Intergouvernemental d’Action contre le Blanchiment d’Argent en Afrique de l’Ouest* (GIABA), which is its FATF-style regional body (FSRB), to strengthen the effectiveness of its AML/CFT regime. Since the adoption of its mutual evaluation report in August 2021, Nigeria has made progress on some of the actions recommended in that report to improve its system, including by improving its AML/CFT legislative framework and updating its assessment of inherent money laundering/terrorism financing/proliferation financing risks, and has strengthened its implementation of targeted financial sanctions. Nigeria will work to implement its FATF action plan by: (1) completing its residual money laundering/terrorism financing risk assessment and updating its national AML/CFT strategy to ensure alignment with other national strategies relevant to high-risk predicate offences; (2) enhancing formal and informal international cooperation in line with money laundering/terrorism financing risks; (3) improving AML/CFT risk-based supervision of financial institutions and designated non-financial businesses and professions, and enhancing implementation of preventive measures for high-risk sectors; (4) ensuring that competent authorities have timely access to accurate and up-to-date beneficial ownership information on legal persons, and applying sanctions for breaches of beneficial ownership obligations; (5) demonstrating an increase in the dissemination of financial intelligence by the Financial Intelligence Unit and its use by law enforcement authorities; (6) demonstrating a sustained increase in money laundering investigations and prosecutions in line with money laundering risks; (7) proactively detecting violations of currency declaration obligations, and applying appropriate sanctions and maintaining comprehensive data on frozen, seized, confiscated and disposed assets; (8) demonstrating a sustained increase in investigations and prosecutions of different types of terrorism financing activities in line with risk, and enhancing inter-agency cooperation on terrorism financing investigations; and (9) conducting risk-based and targeted outreach to non-profit organisations at risk of terrorism financing abuse and implementing risk-based monitoring for the subset of non-profit organisations that are at risk of terrorism financing abuse without disrupting or discouraging legitimate activities of non-profit organisations.
- (7) In February 2023, South Africa made a high-level political commitment to work with the FATF and the Eastern and Southern Africa AML Group (ESAAMLG), which is its FSRB, to strengthen the effectiveness of its AML/CFT regime. Since the adoption of its mutual evaluation report in June 2021, South Africa has made significant progress on many of the actions recommended in that report to improve its system, including by developing national AML/CFT policies to address higher risks and newly amending the legal framework for terrorism financing and targeted financial sanctions, among others. South Africa will work to implement its FATF action plan by:

(1) demonstrating a sustained increase in outbound mutual legal assistance requests that help facilitate money laundering/terrorism financing investigations and confiscations of different types of assets in line with its risk profile; (2) improving risk-based supervision of designated non-financial businesses and professions, and demonstrating that all AML/CFT supervisors apply proportionate and effective sanctions for noncompliance; (3) ensuring that competent authorities have timely access to accurate and up-to-date beneficial ownership information on legal persons and arrangements, and applying sanctions for breaches of violation by legal persons to beneficial ownership obligations; (4) demonstrating a sustained increase in law enforcement agencies' requests for financial intelligence from the Financial Intelligence Centre for its money laundering/terrorism financing investigations; (5) demonstrating a sustained increase in investigations and prosecutions of serious and complex money laundering and the full range of terrorism financing activities in line with its risk profile; (6) enhancing its identification, seizure and confiscation of proceeds and instrumentalities of a wider range of predicate crimes, in line with its risk profile; (7) updating its terrorism financing risk assessment to inform the implementation of a comprehensive national counter financing of terrorism strategy; and (8) ensuring the effective implementation of targeted financial sanctions and demonstrating an effective mechanism to identify individuals and entities that meet the criteria for domestic designation.

- (8) The Commission's assessment therefore concludes that Nigeria and South Africa 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 EU. Nigeria and South Africa should therefore be added to the table in point I of the Annex to Delegated Regulation (EU) 2016/1675.
- (9) The Commission has reviewed the progress in addressing the strategic deficiencies of Cambodia and Morocco. These are countries listed in Delegated Regulation (EU) 2016/1675 but deleted from the FATF list of 'Jurisdictions under Increased Monitoring' in February 2023.
- (10) The FATF has welcomed the significant progress made by Cambodia and Morocco in improving their AML/CFT regimes and has noted that these countries have established legal and regulatory frameworks to meet the commitments in their respective action plans on the strategic deficiencies identified by the FATF. Cambodia and Morocco are therefore no longer subject to the FATF's monitoring process under its ongoing global AML/CFT compliance process and will continue to work with their FSRBs to further strengthen their AML/CFT regimes.
- (11) As Cambodia and Morocco have strengthened the effectiveness of their AML/CFT regimes and addressed technical deficiencies to meet the commitments in their action plans on the strategic deficiencies identified by the FATF, the Commission's assessment of the available information leads it to conclude that Cambodia and Morocco no longer have strategic deficiencies in their AML/CFT regimes. It is therefore appropriate to delete Cambodia and Morocco from the table in point I of the Annex to Delegated Regulation (EU) 2016/1675.
- (12) Delegated Regulation (EU) 2016/1675 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Delegated Regulation (EU) 2016/1675, in point I, the table 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, 17.5.2023

For the Commission
The President
Ursula VON DER LEYEN