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COVER NOTE

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

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

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 7.12.2020 on amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards deleting Mongolia from the table in point I of the Annex

Delegations will find attached document C(2020) 8386 final/2 without marking.

Encl.: C(2020) 8386 final/2 without marking



Brussels, 7.12.2020
C(2020) 8386 final/2 without marking

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

of 7.12.2020

on amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards deleting Mongolia from the table in point I of the Annex

(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, as amended by Directive (EU) 2018/843, third-country jurisdictions which have strategic deficiencies in their Anti-Money Laundering/Counter Terrorist Financing (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. 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 Union. This Delegated Regulation was subsequently amended by Delegated Regulation (EU) 2018/105, Delegated Regulation (EU) 2018/212, Delegated Regulation (EU) 2018/1467 and Delegated Regulation (EU) 2020/855.

Following the amendment of Article 9 by Directive (EU) 2018/843, the Commission Staff Working Document which was published on 22 June 2018¹ sets out the methodology that the Commission applies for the identification of high-risk third countries.

On 13 February 2019, the Commission adopted a Delegated Regulation identifying third-country jurisdictions pursuant to Article 9 of Directive (EU) 2015/849 and applying the methodology issued for this purpose. On 7 March 2019, the Council objected to this Delegated Regulation on procedural grounds, as "not established in a transparent and resilient process that actively incentivises affected countries to take decisive action while also respecting their right to be heard"². The European Parliament in its resolution of 14 March 2019³, while commended the Commission's work, called on the Commission to ensure "a transparent process with clear and concrete benchmarks for countries which commit to undergo reforms so as to avoid being listed" and to "engage with the Member States to increase the Council's ownership over the Commission's proposed methodology".

In this context, a revised methodology for identifying high-risk third countries, which supersedes the previous one, has been published on 7 May 2020⁴. Its key new elements are an increased interaction with the Financial Action Task Force listing process; an enhanced engagement with the third countries; and reinforced consultation of Member States and the European Parliament. The European Commission has started the engagement process with third countries.

¹ SWD(2018) 362 final available at:

² <https://data.consilium.europa.eu/doc/document/ST-6964-2019-REV-1/en/pdf>

³ https://www.europarl.europa.eu/doceo/document/TA-8-2019-0216_EN.html

⁴ Commission Staff Working document, Methodology for identifying high-risk third countries under Directive (EU) 2015/849, SWD(2020) 99.

On the same date, 7 May 2020, Delegated Regulation (EU) 2016/1675 was amended⁵ by adding third countries which have been identified as having strategic deficiencies as well as by removing those that no longer present strategic deficiencies on the basis of the criteria laid down in Directive (EU) 2015/849.

It is necessary to continue to update the Delegated Regulation 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 or published follow-up reports. Since the last amendments to Regulation (EU) 2016/1675, the FATF removed Mongolia from its statement “Improving Global AML/CFT Compliance: On-going process” in October 2020 following the implementation of the action plan agreed with the FATF.

The Commission reviewed the strategic deficiencies of Mongolia, that has recently been delisted by the FATF, based on the requirements of Directive (EU) 2015/849.

The Commission's assessment concluded that, at this stage, Mongolia no longer has strategic deficiencies in its AML/CFT regime considering the available information. Following the measures implemented to address the action plan agreed with the FATF, Mongolia has remedied the strategic deficiencies in its AML/CFT regime and no longer presents a significant AML/CFT threat to the international financial system. Taking into account its relevance under the revised methodology, the Commission considers that this jurisdiction no longer has strategic deficiencies in the AML/CFT framework and does not pose a significant threat to the financial system of the Union.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

On 06/11/2020, the Expert Group on Money Laundering and Terrorist Financing (EGMLTF) was consulted 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 according to article 18a of Directive (EU) 2015/849 with respect to business relationships or transactions involving countries that remain included in the Annex to this Delegated Regulation.

Furthermore, Article 155 (2) of the Financial Regulation⁶ prohibits persons and entities implementing Union funds or budgetary guarantees from entering into new or renewed

⁵ Commission Delegated Regulation (EU) 2020/855 of 7 May 2020 amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards adding the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe to the table in point I of the Annex and deleting Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia from this table.

⁶ 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).

operations with entities incorporated or established in countries included in 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 factors⁷. Implementing partners must transpose those requirements also in their own contracts with selected financial intermediaries.

⁷ 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.

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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/EC (1)⁸, and in particular Article 9(2) thereof,

Whereas:

- (1) The Union has to ensure an 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 provides that the Commission should identify countries which present strategic deficiencies in their regimes on anti-money laundering and countering terrorist financing (“AML/CFT”) that pose significant threats to the financial system of the Union.
- (2) Delegated Regulation (EU) 2016/1675⁹ identifies high-risk third countries with strategic deficiencies. This Regulation should be reviewed where appropriate 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. The Commission should take into account in its assessments new information from international organisations and standard setters, such as those issued by the Financial Action Task Force (FATF).
- (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/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 Union.
- (4) In line with the criteria set out in Directive (EU) 2015/849, the Commission takes into account the recent available information, in particular recent FATF Public Statements, FATF documents "Improving Global AML/CFT Compliance: Ongoing Process

⁸ OJ L 141, 5.6.2015, p. 73.

⁹ 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).

Statement", and FATF reports of the International Cooperation Review Group in relation to the risks posed by individual third countries, in accordance with Article 9(4) of Directive (EU) 2015/849.

- (5) In October 2019, the FATF identified Mongolia as a jurisdiction having strategic AML/CFT deficiencies for which Mongolia had developed an action plan with the FATF. On this basis and in accordance with the latest relevant information, the Commission's assessment in May 2020 concluded that Mongolia should be considered as a third-country jurisdiction which had strategic deficiencies in its AML/CFT regime that posed significant threats to the financial system of the Union, in accordance with the criteria set out in Article 9 of Directive (EU) 2015/849. It was also noted that Mongolia had provided written high-level political commitments to address the identified deficiencies and had developed an action plan with the FATF.
- (6) It is of the utmost importance that the Commission conducts a permanent monitoring of third countries and assesses developments in their legal and institutional frameworks, the powers and procedures of competent authorities, and the effectiveness of their AML/CFT regime, with a view to updating the Annex of Delegated Regulation (EU) 2016/1675.
- (7) The FATF welcomed significant progress made by Mongolia in improving its AML/CFT regime and noted that this country has established the legal and regulatory framework to meet the commitments in its action plan regarding the strategic deficiencies that the FATF had identified. This country is therefore no longer subject to the FATF's monitoring process under its on-going global AML/CFT compliance process. This country will continue to work with the FATF-Style Regional Bodies to further improve its AML/CFT regime.
- (8) The Commission assessed the information relating to the progress in addressing strategic deficiencies of Mongolia.
- (9) The Commission's assessment concluded that, considering the available information, Mongolia no longer has strategic deficiencies in its AML/CFT regime. Mongolia has strengthened the effectiveness of its AML/CFT regime and addressed related technical deficiencies to meet the commitments in its action plan regarding the strategic deficiencies that the FATF had identified. These measures are sufficiently comprehensive and meet the necessary requirements to consider that strategic deficiencies identified under article 9 of the Directive (EU) 2015/849 have been addressed.
- (10) 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 the table under point "I. 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", the following line is deleted:

10	Mongolia
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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, 7.12.2020

For the Commission
The President
Ursula VON DER LEYEN