



Brussels, 14.3.2024
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COMMISSION DELEGATED REGULATION (EU) .../...

of 14.3.2024

amending Delegated Regulation (EU) 2016/1675 as regards adding Kenya and Namibia to the table in point I of the Annex and deleting Barbados, Gibraltar, Panama, Uganda and the United Arab Emirates 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 lays down the criteria on which the Commission's assessment is to be based. The delegated acts must be adopted within 1 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 such high-risk third countries. This delegated regulation has subsequently been 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, Delegated Regulation (EU) 2023/410, Delegated Regulation (EU) 2023/1219, Delegated Regulation (EU) 2023/2070 and Delegated Regulation (EU) 2024/163.

The Commission published a revised methodology for identifying high-risk third countries on 7 May 2020². The three main new elements are 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 2024, the FATF added Kenya and Namibia to its list and removed Barbados, Gibraltar, Uganda and the United Arab Emirates from its list.

Uganda should continue to work with the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), which is its FATF-style regional body (FSRB), to sustain improvements in its AML/CFT system, including by ensuring its oversight of non-profit organisations (NPOs) is risk-based and in line with the FATF Standards rather than classifying all NPOs as obliged entities. Uganda is strongly encouraged to continue cooperating with the ESAAMLG on this issue.

The FATF removed Panama from its list in October 2023, but Panama remained identified by the EU as a high-risk third country due to further strategic deficiencies, notably with regard to transparency of beneficial ownership. Available information sources have since enabled the Commission to conclude that Panama has now addressed such deficiencies.

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.

It is necessary to continue to update Delegated Regulation (EU) 2016/1675 in order to take account of 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 development of technology and the means at the disposal of criminals, requires quick and continuous adaptation of the legal framework on high-risk third countries in order to efficiently address existing risks and prevent new ones.

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 account of 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 Kenya and Namibia 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 2024.

The Commission therefore considers that Kenya and Namibia 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 high-risk third countries.

Kenya and Namibia 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, Kenya and Namibia are now included 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 the Directive, Article 18a of the Directive 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

Since the last amendments to Delegated Regulation (EU) 2016/1675, the FATF removed Barbados, Gibraltar, Uganda and the United Arab Emirates from the FATF list in February

2024, following the implementation of the respective action plans they had agreed with the FATF.

The Commission has reviewed progress in addressing the strategic deficiencies of Barbados, Gibraltar, Uganda and the United Arab Emirates, based on the requirements of Directive (EU) 2015/849.

Following the measures implemented to address the action plans agreed with the FATF, Barbados, Gibraltar, Uganda and the United Arab Emirates 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.

Panama was removed by the FATF from its list in October 2023 but remained identified by the EU as a high-risk third country due to further strategic deficiencies. Available information sources have since enabled the Commission to conclude that Panama no longer has strategic deficiencies in its AML/CFT framework and does not pose a significant threat to the financial system of the EU.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

On 28 February 2024, 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 required 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 Delegated Regulation (EU) 2016/1675.

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).

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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, 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 is to identify third-country jurisdictions 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 ('high-risk third countries').
- (2) Commission Delegated Regulation (EU) 2016/1675 ² 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 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.

¹ OJ L 141, 5.6.2015, p. 73, ELI: <http://data.europa.eu/eli/dir/2015/849/oj>.

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, ELI: http://data.europa.eu/eli/reg_del/2016/1675/oj).

- (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 2024, the FATF added Kenya and Namibia to that list and deleted Barbados, Gibraltar, Uganda and the United Arab Emirates from that list. Given those changes, the Commission has conducted an assessment to identify high-risk third countries in accordance with Article 9 of Directive (EU) 2015/849.
- (6) In February 2024, Kenya made a high-level political commitment to work with the FATF and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), 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 September 2022, Kenya has made progress on some of the actions recommended in the mutual evaluation report by making amendments to its AML/CFT legislation to bring its framework in closer compliance with the FATF recommendations and establishing a case management system to better manage its international cooperation requests. Kenya will work to implement its FATF action plan: completing a terrorism financing (TF) risk assessment and presenting the results of the national risk assessment and other risk assessments in a consistent manner to competent authorities and the private sector and updating the national AML/CFT strategies; improving risk-based AML/CFT supervision of financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) and adopting a legal framework for the licensing and supervision of virtual asset service providers; enhancing the understanding of preventive measures by FIs and DNFBPs, including to increase suspicious transaction reports filing and implement targeted financial sanctions (TFS) without delay; designating an authority for the regulation of trusts and collection of accurate and up-to-date beneficial ownership information and implementing remedial actions for breaches of compliance with transparency requirements for legal persons and arrangements; improving the use and quality of financial intelligence products; increasing money laundering (ML) and TF investigations and prosecutions in line with risks; bringing the TFS framework in compliance with FATF Recommendations 6 and 7 and ensure its effective implementation; and revising the framework for non-profit organisations (NPO) regulation and oversight to ensure that mitigating measures are risk-based and do not disrupt or discourage legitimate NPO activity. Despite that commitment and progress, Kenya has not yet fully addressed the concerns that led to Kenya being added to the FATF’s list of ‘Jurisdictions under Increased Monitoring’. Kenya should therefore be considered a third-country jurisdiction that has strategic deficiencies in its AML/CFT regime that pose significant threats to the financial system of the Union as referred to in Article 9(1) of Directive (EU) 2015/849.
- (7) In February 2024, Namibia made a high-level political commitment to work with the FATF and the ESAAMLG, which is its FSRB, to strengthen the effectiveness of its AML/CFT regime. Since the adoption of its mutual evaluation report in September 2022, Namibia has made progress on some of the actions recommended in the mutual evaluation report to ensure a common understanding of ML/TF/proliferation risks (PF) risk across key stakeholders as well as improve international cooperation. Namibia will work to implement its FATF action plan by: strengthening its AML/CFT risk based supervision through enhancing the human and resource capacities, conducting offsite and onsite inspections informed by supervisory risk assessment tools and applying effective, proportionate and dissuasive sanctions for breaches of AML/CFT obligations; enhancing preventive measures through inspections and outreach to ensure that FIs and DNFBPs apply enhanced due diligence measures as well as TFS

obligations related to TF and PF without delay; increasing the filing of beneficial ownership information of legal persons and arrangements, and applying remedial actions and/or effective, proportionate and dissuasive sanctions against breaches of compliance with beneficial ownership obligations; providing the financial intelligence unit (FIU) with adequate human and financial resources, as well as trainings, to improve operational and strategic analysis; improving the cooperation between the FIU and law enforcement agencies (LEAs) to enhance the use and integration of financial intelligence in investigations; enhancing the operational capabilities of authorities involved in ML and TF investigations and prosecutions by providing them with adequate resources and targeted trainings; demonstrating the LEAs' capabilities to effectively investigate and prosecute ML/TF cases; and approving the amended National Counter Terrorism Strategy. Despite that commitment and progress, Namibia has not yet fully addressed the concerns that led to Namibia being added to the FATF's list of 'Jurisdictions under Increased Monitoring'. Namibia should therefore be considered a third-country jurisdiction that has strategic deficiencies in its AML/CFT regime that pose significant threats to the financial system of the Union as referred to in Article 9(1) of Directive (EU) 2015/849.

- (8) The Commission therefore concludes that Kenya and Namibia should be considered third-country jurisdictions which have strategic deficiencies in their AML/CFT regimes that pose significant threats to the financial system of the Union. Kenya and Namibia 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 of Barbados, Gibraltar, Panama, Uganda and the United Arab Emirates in addressing their strategic deficiencies. Those jurisdictions are identified as high-risk third-country jurisdictions in Delegated Regulation (EU) 2016/1675 but were deleted from the FATF list of 'Jurisdictions under Increased Monitoring' in October 2023 (Panama) and February 2024 (Barbados, Gibraltar, Uganda and the United Arab Emirates).
- (10) The FATF has welcomed the significant progress made by Barbados, Gibraltar, Panama, Uganda and the United Arab Emirates in improving their AML/CFT regimes and has noted that those jurisdictions have established legal and regulatory frameworks to meet the commitments in their respective action plans on the strategic deficiencies identified by the FATF. Barbados, Gibraltar, Panama, Uganda and the United Arab Emirates 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) Barbados, Gibraltar, Panama, Uganda and the United Arab Emirates 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 Barbados, Gibraltar, Panama, Uganda and the United Arab Emirates no longer have strategic deficiencies in their AML/CFT regimes. It is therefore appropriate to delete Barbados, Gibraltar, Panama, Uganda and the United Arab Emirates 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, 14.3.2024

For the Commission
The President
Ursula VON DER LEYEN