

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2022/229

of 7 January 2022

on amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards adding Burkina Faso, Cayman Islands, Haiti, Jordan, Mali, Morocco, the Philippines, Senegal, and South Sudan to the table in point I of the Annex and deleting the Bahamas, Botswana, Ghana, Iraq and Mauritius from this 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/EC ⁽¹⁾, 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. Hence, 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) Commission Delegated Regulation (EU) 2016/1675 ⁽²⁾ identifies high-risk third countries with strategic deficiencies. This Regulation should be reviewed 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. 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 and 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.

⁽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).

- (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, 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, in line with Article 9(4) of Directive (EU) 2015/849.
- (5) In February 2021, Burkina Faso made a high-level political commitment to work with the FATF and West Africa Money Laundering Group (GIABA) to strengthen the effectiveness of its AML/CFT regime. Since the completion of its Mutual Evaluation Report (MER) in 2019, Burkina Faso has made progress on a number of its MER recommended actions to improve technical compliance and effectiveness, including by adopting a national AML/CFT strategy in December 2020. Burkina Faso will work to implement its action plan, including by: (1) adopting and implementing follow-up mechanisms for monitoring actions in the national strategy; (2) seeking mutual legal assistance (MLA) and other forms of international cooperation in line with its risk profile; (3) strengthening of resource capacities of all AML/CFT supervisory authorities and implementing risk based supervision of financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs); (4) maintaining comprehensive and updated basic and beneficial ownership information and strengthening the system of sanctions for violations of transparency obligations; (5) increasing the diversity of Suspicious Transaction Report (STR) reporting; (6) enhancing the Financial Intelligence Unit's (FIU) human resources through additional hiring, training and budget; (7) conduct training for law enforcement authorities (LEAs), prosecutors and other relevant authorities; (8) demonstrating that authorities are pursuing confiscation as a policy objective; (9) enhancing capacity and support for LEAs and prosecutorial authorities involved in combatting terrorist financing (TF), in line with the TF National Strategy; and (10) implementing an effective targeted financial sanctions regime related to terrorist financing and proliferation financing as well as risk-based monitoring and supervision of non-profit organisations (NPOs). On this basis, Burkina Faso should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (6) In February 2021, the Cayman Islands made a high-level political commitment to work with the FATF and Caribbean Financial Action Task Force (CFATF) to strengthen the effectiveness of its AML/CFT regime. The Cayman Islands should continue to work on implementing its action plan to address its strategic deficiencies, including by: (1) imposing adequate and effective sanctions in cases where relevant parties (including legal persons) do not file accurate, adequate and up-to-date beneficial ownership information in line with those requirements; and (2) demonstrating that they are prosecuting all types of money laundering cases in line with the jurisdiction's risk profile and that such prosecutions are resulting in the application of dissuasive, effective, and proportionate sanctions. On this basis, Cayman Islands should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (7) In June 2021, Haiti made a high-level political commitment to work with the FATF and CFATF to strengthen the effectiveness of its AML/CFT regime. Haiti will work to implement its action plan, including by: (1) developing its ML/TF risk assessment process and disseminating the findings; (2) facilitating information sharing with relevant foreign counterparts; (3) addressing the technical deficiencies in its legal and regulatory framework that impede the implementation of AML/CFT preventive measures and implementing risk-based AML/CFT supervision for all financial institutions and DNFBPs deemed to constitute a higher ML/TF risk; (4) ensuring basic and beneficial ownership information are maintained and accessible in a timely manner; (5) ensuring a better use of financial intelligence and other relevant information by competent authorities for combatting ML and TF; (6) addressing the technical deficiencies in its ML offence and demonstrating authorities are identifying, investigating and prosecuting ML cases in a manner consistent with Haiti's risk profile; (7) demonstrating an increase of identification, tracing and recovery of proceeds of crimes; (8) addressing the technical deficiencies in its TF offence and targeted financial sanctions regime; (9) conducting appropriate risk-based monitoring of NPOs vulnerable to TF abuse without disrupting or discouraging legitimate NPO activities. On this basis, Haiti should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (8) In October 2021, Jordan made a high-level political commitment to work with the FATF and Middle East and North Africa Financial Action Task Force (MENAFATF) to strengthen the effectiveness of its AML/CFT regime. Since the adoption of its MER in November 2019, Jordan has made progress on a number of the MER's recommended actions to improve its system, including by finalising their National Risk Assessment (NRA). Jordan will work to implement its FATF action plan by: (1) completing and disseminating the ML/TF risk assessments of NPOs, legal persons and virtual assets; (2) improving risk based supervision and applying effective, proportionate, and dissuasive sanctions for non-compliance; (3) conducting training and awareness raising programmes for DNFBBPs on their AML/CFT obligations, particularly with regard to filing and submitting STRs; (4) maintaining comprehensive and updated basic and beneficial ownership information on legal persons and legal arrangements; (5) pursuing money laundering investigations and prosecutions, including through parallel financial investigations, for predicate offences in line with the risk identified in the NRA; (6) creating a legal obligation for confiscating instrumentalities used or intended to be used in ML crimes; (7) developing and implementing a legal and institutional framework for targeted financial sanctions; and (8) developing and implementing a risk-based approach for supervision of the NPO sector to prevent abuse for TF purposes. On this basis, Jordan should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (9) In October 2021, Mali made a high-level political commitment to work with the FATF and GIABA to strengthen the effectiveness of its AML/CFT regime. Since the adoption of its MER in November 2019, Mali has made progress on a number of the MER's recommended actions to improve its system, including by adopting its National Risk Assessment (NRA). Mali will work to implement its FATF action plan by: (1) disseminating the results of the NRA to all relevant stakeholders including by conducting awareness raising activities with the highest risk sectors; (2) developing and starting to implement a risk based approach for the AML/CFT supervision of all FIs and higher risk DNFBBPs and demonstrating effective, proportionate and dissuasive sanctions for non-compliance; (3) conducting a comprehensive assessment of ML/TF risks associated with all types of legal persons; (4) increasing the capacity of the FIU and the LEAs and enhancing their cooperation on the use of financial intelligence; (5) ensuring relevant competent authorities are involved in investigation and prosecution of ML; (6) strengthening the capacities of relevant authorities responsible for investigation and prosecution of TF cases; (7) establishing a legal framework and procedures to implement targeted financial sanctions; and (8) implementing a risk-based approach for supervision of the NPO sector to prevent abuse for TF purposes. On this basis, Mali should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (10) In February 2021, Morocco made a high-level political commitment to work with the FATF and MENAFATF to strengthen the effectiveness of its AML/CFT regime. Morocco has taken steps towards improving its AML/CFT regime, including by providing FIU with financial and human resources to enhance analytical capabilities in order to fulfil its core mandate of operational and strategic analysis. Morocco should continue to work to implement its action plan to address its strategic deficiencies, including by: (1) improving risk-based supervision and taking remedial actions and applying effective, proportionate and dissuasive sanctions for non-compliance; (2) ensuring that beneficial ownership information, including information of legal persons and foreign legal arrangements is adequate, accurate and verified; (3) increasing the diversity of suspicious transactions reporting; (4) prioritising the identification, investigation and prosecution of all types of ML in accordance with the country's risk profile; and (5) monitoring and effectively supervising the compliance of FIs and DNFBBPs with targeted financial sanctions obligations. On this basis, Morocco should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (11) In June 2021, the Philippines made a high-level political commitment to work with the FATF and Asia/Pacific Group on Money Laundering (APG) to strengthen the effectiveness of its AML/CFT regime. Since then, the Philippines has taken steps towards improving its AML/CFT regime, by developing and implementing guidance on delistings and the unfreezing of assets for targeted financial sanctions related to PF. The Philippines should work to implement its action plan, including by: (1) demonstrating that effective risk-based supervision of DNFBPs is occurring; (2) demonstrating that supervisors are using AML/CFT controls to mitigate risks associated with casino junkets; (3) implementing the new registration requirements for MVTS and applying sanctions to unregistered and illegal remittance operators; (4) enhancing and streamlining LEA access to BO information and taking steps to ensure that BO information is accurate and up-to-date; (5) demonstrating an increase in the use of financial intelligence and an increase in ML investigations and prosecutions in line with risk; (6) demonstrating an increase in the identification, investigation and prosecution of TF cases; (7) demonstrating that appropriate measures are taken with respect to the NPO sector (including unregistered NPOs) without disrupting legitimate NPO activity; and (8) enhancing the effectiveness of the targeted financial sanctions framework for both TF and PF. On this basis, the Philippines should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (12) In February 2021, Senegal made a high-level political commitment to work with the FATF and GIABA to strengthen the effectiveness of its AML/CFT regime. Senegal should continue to work on implementing its action plan to address its strategic deficiencies, including by: (1) ensuring consistent understanding of ML/TF risks (in particular related to the DNFBP sector) across relevant authorities through training and outreach; (2) seeking MLA and other forms of international cooperation in line with its risk profile; (3) ensuring that Financial Institutions and DNFBPs are subject to adequate and effective supervision; (4) updating and maintaining comprehensive beneficial ownership information on legal persons and arrangements and strengthening the system of sanctions for violations of transparency obligations; (5) continuing to enhance the FIU's human resources to ensure that it maintains effective operational analysis capacities; (6) demonstrating that efforts aimed at strengthening detection mechanisms and reinforcing the capability to conduct ML/predicate offences investigations and prosecutions activities are sustained consistently in line with the Senegal's risk profile; (7) establishing comprehensive and standardised policies and procedures for identifying, tracing, seizing and confiscating proceeds and instrumentalities of crime in line with its risk profile; (8) strengthening the authorities understanding of TF risks and enhancing capacity and support for LEAs and prosecutorial authorities involved in TF in line with the 2019 TF National Strategy; and (9) implementing an effective targeted financial sanctions regime related to terrorist financing and proliferation financing as well as risk-based monitoring and supervision of NPOs. On this basis, Senegal should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.
- (13) In June 2021, South Sudan made a high-level political commitment to work with the FATF to strengthen the effectiveness of its AML/CFT regime. South Sudan will work to implement its action plan, including by: (1) applying and engaging with the Eastern & Southern Africa Anti-Money Laundering Group (ESAAMLG) for membership and committing to undergo a mutual evaluation by ESAAMLG or other assessment body; (2) conducting a comprehensive review of the AML/CFT Act (2012), with the support of international partners, including technical assistance, to comply with the FATF Standards; (3) designating an authority/authorities in charge of coordinating the national ML/TF risks assessments; (4) becoming a party to and implementing the 1988 Vienna Convention, the 2000 Palermo Convention, and the 1999 Terrorist Financing Convention; (5) competent authorities should be suitably structured and capacitated to implement a risk-based approach to AML/CFT supervision for financial institutions; (6) developing a comprehensive legal framework to collect and verify the accuracy of beneficial ownership information for legal persons; (7) operationalising a fully functioning and independent FIU; (8) establishing and implementing the legal and institutional framework to implement targeted financial sanctions in compliance with United Nations Security Council Resolutions on terrorism and proliferation financing; and (9) commencing implementation of targeted risk-based supervision/monitoring of NPOs at risk of TF abuse. On this basis, South Sudan should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

- (14) In accordance with the latest relevant information, the Commission's assessment concluded that Burkina Faso, Cayman Islands, Haiti, Jordan, Mali, Morocco, the Philippines, Senegal, and South Sudan should be considered as third-country jurisdictions 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. It is noted that these countries have provided written high-level political commitments to address the identified deficiencies and have developed action plans with the FATF.
- (15) 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 regimes, with a view to updating the Annex of Delegated Regulation (EU) 2016/1675.
- (16) The Commission is committed to provide technical assistance, where appropriate, to third countries included in the Annex of Delegated Regulation (EU) 2016/1675 in order to assist them to remedy the identified strategic deficiencies.
- (17) The Commission reviewed progress in addressing strategic deficiencies of countries listed in Regulation (EU) 2016/1675 that have been delisted in June or October 2021 by the FATF or reviewed by the Commission in line with its revised methodology to identify high risk third countries based on the new requirements of Directive (EU) 2015/849, as amended by Directive (EU) 2018/843 ⁽³⁾. The Commission concluded the review of progress made by the Bahamas, Botswana, Ghana, Iraq and Mauritius.
- (18) The Commission's assessment concluded that the Bahamas has addressed the strategic deficiencies in its AML/CFT regime identified by the Commission in line with its methodology for identifying high risk third countries. The Bahamas has recently taken a number of measures in order to reinforce its AML/CFT framework and in particular the transparency aspects of its beneficial ownership regime. These measures address the additional benchmarks set by the Commission. The Commission will continue to work in collaboration with the FATF and CFATF to monitor the evolution of the Bahamas' AML/CFT regime.
- (19) The Commission's assessment concluded that Iraq has made sufficient progress in addressing the strategic deficiencies in its AML/CFT regime identified by the Commission in line with its methodology for identifying high risk third countries. Iraq has recently taken a number of measures in order to reinforce its AML/CFT framework. These measures address the concerns identified by the Commission in its preliminary assessment. The Commission will continue to work in collaboration with the FATF and MENAFATF to monitor the evolution of Iraq's AML/CFT regime.
- (20) The FATF welcomed significant progress made by Botswana, Ghana and Mauritius in improving their AML/CFT regime and noted that Botswana, Ghana and Mauritius have established the legal and regulatory framework to meet the commitments in their action plans regarding the strategic deficiencies that the FATF had identified. Botswana, Ghana and Mauritius are therefore no longer subject to the FATF's monitoring process under its on-going global AML/CFT compliance process. Botswana, Ghana and Mauritius will continue to work with the FATF Style Regional Bodies to improve further their AML/CFT regime.
- (21) The Commission's analysis concluded that the Bahamas, Botswana, Ghana, Iraq and Mauritius do not have strategic deficiencies in their AML/CFT regime anymore considering the available information. The Bahamas, Botswana, Ghana, Iraq and Mauritius have strengthened the effectiveness of their AML/CFT regime and addressed related technical deficiencies to meet the commitments in their action plan regarding the strategic deficiencies that the FATF identified and the additional benchmarks or preliminary concerns set by the Commission.

⁽³⁾ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36 (OJ L 156, 19.6.2018, p. 43).

(22) 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 lines are added:

'Burkina Faso
Cayman Islands
Haiti
Jordan
Mali
Morocco
the Philippines
Senegal
South Sudan'

Article 2

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 lines are deleted:

'the Bahamas
Botswana
Ghana
Iraq
Mauritius'

Article 3

In the Annex to Delegated Regulation (EU) 2016/1675, 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' is replaced by the following:

No	High-risk third country
1	Afghanistan
2	Barbados
3	Burkina Faso
4	Cambodia

5	Cayman Islands
6	Haiti
7	Jamaica
8	Jordan
9	Mali
10	Morocco
11	Myanmar
12	Nicaragua
13	Pakistan
14	Panama
15	the Philippines
16	Senegal
17	South Sudan
18	Syria
19	Trinidad and Tobago
20	Uganda
21	Vanuatu
22	Yemen
23	Zimbabwe'

Article 4

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 January 2022.

For the Commission
Mairead MCGUINNESS
Member of the Commission
