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 (Text with EEA relevance)

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

(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 that pose significant threats to the financial system of the Union.

(2) Commission Delegated Regulation (EU) 2016/1675[(2)] identified high-risk third countries with strategic deficiencies. That 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 ('AML/CFT'). 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). In light of that information, the

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/855. (See end of Document for details)*

Commission should also identify additional countries presenting strategic deficiencies in their AML/CFT regime.

(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) It is thus essential to take into account relevant work already undertaken at international level for identifying countries, in particular that of the FATF. With a view to ensuring the integrity of the global financial system, it is of the highest importance that the Union duly considers the countries identified as having strategic deficiencies in their AML/CFT regime in the FATF at Union level. In line with the criteria set out in Directive (EU) 2015/849, the Commission took into account the recent available information, in particular recent FATF Public Statements, FATF documents 'Improving Global AML/CFT Compliance: Ongoing Process Statement', 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) Any third country representing a risk to the international financial system, as identified by the FATF, is presumed to represent a risk to the internal market. That presumption concerns any country publicly identified in the FATF documents 'Public Statement' and in the FATF documents 'Improving Global AML/CFT Compliance: Ongoing Process Statement'.

(6) In order to conduct its autonomous assessment, the Commission assessed available information from the FATF and, where appropriate, other sources of information to reach its conclusion. Following that assessment, the Commission's analysis has confirmed the respective strategic deficiencies described in recitals 8 to 19.

(7) In October 2018, the FATF identified the Bahamas as a jurisdiction having strategic AML/CFT deficiencies for which the Bahamas has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The Bahamas has taken steps towards improving its AML/CFT regime and in February 2020, the FATF has made the initial determination that the Bahamas has substantially completed its action plan and warrants an on-site assessment to verify that the implementation of the Bahamas' AML/CFT reforms has begun and is being sustained, and that the necessary political commitment remains in place to sustain implementation in the future. The FATF has yet to carry out such assessment to confirm its initial determination. Therefore, the Commission does not have in its possession information which would enable it to confirm at this stage that the strategic deficiencies have been effectively addressed. The future assessment will focus on the following areas: (1) developing of a comprehensive electronic case management system for international cooperation; (2) demonstrating risk-based supervision of non-bank financial institutions; (3) ensuring the timely access to adequate, accurate and current basic and beneficial ownership information; (4) increasing the quality of the Financial Intelligence Unit's products

to assist Law Enforcement Authorities in the pursuance of Money Laundering (ML)/ Terrorist Financing (TF) investigations, specifically complex ML/TF and stand-alone ML investigations; (5) demonstrating that authorities are investigating and prosecuting all types of money laundering, including complex ML cases, stand-alone money laundering, and cases involving proceeds of foreign offences; (6) demonstrating that confiscation proceedings are initiated and concluded for all types of ML cases; and (7) addressing gaps in the Terrorist Financing and Proliferation Financing Targeted Financial Sanctions' frameworks and demonstrating implementation. On this basis, the Bahamas should be considered as a country having strategic deficiencies in its AML/ CFT regime under Article 9 of Directive (EU) 2015/849.

(8) In February 2020, the FATF identified Barbados as a jurisdiction having strategic AML/ CFT deficiencies for which the Barbados has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) lack of effective risk-based supervision for financial institutions and Designated non-financial businesses and professions ('DNFBPs'); (2) deficiencies relating to measures for preventing legal persons and arrangements from being misused for criminal purposes, and deficiencies in ensuring that accurate and up-to-date basic and beneficial ownership information is available on a timely basis; (3) deficiencies relating to the capacity of the Financial Intelligence Unit ('FIU') in providing financial information to further assist law enforcement authorities in investigating money laundering or terrorism financing; (4) deficiencies relating to money laundering investigations and prosecutions which are not in line with the country's risk profile and backlog of prosecutions; (5) deficiencies in pursuing confiscation in relation to money laundering cases, including limited assistance requested from foreign counterparts. On this basis, Barbados 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 2018, the FATF identified Botswana as a jurisdiction having strategic AML/ CFT deficiencies for which Botswana has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) shortcomings in the assessment of risks associated with legal persons, legal arrangements, and non-profit organisations; (2) lack of implementation of risk-based AML/CFT supervisory manuals; (3) the level of analysis and dissemination of financial intelligence by the FIU; (4) shortcomings in the implementation of a CFT strategy, and insufficient capacity of the law enforcement agencies in relation to investigations of terrorist financing; (5) inability to ensure the implementation without delay of targeted financial sanctions measures related to terrorist financing and proliferation financing; and (6) shortcomings in the application of a risk-based approach to monitoring non-profit organisations. On this basis, Botswana 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 2019, the FATF identified Cambodia as a jurisdiction having strategic AML/CFT deficiencies for which Cambodia has developed an action plan with the

FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) lack of a broad legal basis for Mutual Legal Assistance and of relevant training to law enforcement authorities; (2) lack of implementation of risk-based supervision to the real estate sector and casinos; (3) lack of implementation of risk-based supervision to banks, including through prompt, proportionate and dissuasive enforcement actions, as appropriate; (4) technical compliance deficiencies in the AML/CFT Law; (5) the level of analysis of suspicious transaction reports and related disseminations to law enforcement authorities; (6) insufficient results in terms of Money Laundering investigations and prosecutions; (7) insufficient results in terms of freezing and confiscation of criminal proceeds, instrumentalities, and property of equivalent value; (8) lack of legal framework and implementation of United Nations targeted financial sanctions related to Proliferation Financing, as well as insufficient understanding of sanctions evasion. On this basis, Cambodia should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

(11) In October 2018, the FATF identified Ghana as a jurisdiction having strategic AML/CFT deficiencies for which Ghana has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) lack of implementation of a comprehensive national AML/CFT Policy based on the risks identified in the National Risk Assessment, including measures to mitigate Money Laundering/Terrorism Financing risks associated with the legal persons; (2) shortcomings in risk-based supervision, including insufficient capacity of the regulators and insufficient awareness of the private sector; (3) shortcomings in ensuring timely access to adequate, accurate and current basic and beneficial ownership information; (4) deficiencies as regards the need to ensure that the FIU is focusing its activities on the risks identified in the National Risk Assessment, and that adequate resources are allocated to the FIU; and (5) shortcomings in the application of a risk-based approach for monitoring non-profit organisations. On this basis, Ghana 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 2020, the FATF identified Jamaica as a jurisdiction having strategic AML/CFT deficiencies for which Jamaica has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) lack of a comprehensive understanding of its money laundering/terrorism financing risk; (2) failure to include all financial institutions and DNFBPs in the AML/CFT regime and to ensure adequate risk-based supervision in all sectors; (3) lack of appropriate measures to prevent legal persons and arrangements from being misused for criminal purposes, and to ensure that accurate and up-to-date basic and beneficial ownership information is available on a timely basis; (4) lack of proper measures to increase the use of financial information and to increase money laundering investigations and prosecutions, in line with the country's risk profile; (5)

failure to demonstrate the implementation of targeted financial sanctions for terrorist financing without delay; and (6) deficiencies in implementing a risk-based approach for supervision of its non-profit organisation sector to prevent abuse for terrorism financing purposes. On this basis, Jamaica should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

(13) In February 2020, the FATF identified Mauritius as a jurisdiction having strategic AML/CFT deficiencies for which Mauritius has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) deficiencies in demonstrating that the supervisors of its global business sector and DNFBPs implement risk-based supervision; (2) failure to ensure access to accurate basic and beneficial ownership information by competent authorities in a timely manner; (3) failure to demonstrate that law enforcement authorities have capacity to conduct money laundering investigations, including parallel financial investigations and complex cases; (4) failure in implementing a risk-based approach for supervision of its non-profit organisation sector to prevent abuse for terrorist financing purposes; and (5) failure to demonstrate adequate implementation of targeted financial sanctions through outreach and supervision. On this basis, Mauritius should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

(14) In October 2019, the FATF identified Mongolia as a jurisdiction having strategic AML/CFT deficiencies for which Mongolia has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. While Mongolia has taken steps towards improving its AML/CFT regime outstanding deficiencies include: (1) shortcomings in the sectoral money laundering/terrorism financing risk understanding by DNFBP supervisors, as well as in the application of a risk-based approach to supervision, particularly in relation to dealers in precious metals and stones; (2) need to demonstrate increased investigations and prosecutions of different types of money laundering activity in line with identified risks; and (3) inadequate monitoring of compliance by financial institutions and DNFBPs with their targeted financial sanctions obligations related to proliferation financing, and insufficient application of proportionate and dissuasive sanctions. On this basis, Mongolia should be considered as a country having strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

(15) In February 2020, the FATF identified Myanmar/Burma as a jurisdiction having strategic AML/CFT deficiencies for which Myanmar/Burma has developed an action plan with the FATF. The Commission assessed the latest information received in this context from the FATF relating to these deficiencies and other relevant information. The deficiencies include: (1) failure to demonstrate an improved understanding of money laundering risks in key areas; (2) failure to ensure the supervisory body for DNFBPs is sufficiently resourced, onsite/offsite inspections are risk-based, and hundi operators are registered and supervised; (3) failure to demonstrate enhancements in the use of financial intelligence in investigations by the law enforcement authorities,