

Chapter 1

Commission Delegated Regulation (EU) 2019/758

Preamble

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, and in particular Article 45(7) thereof,

01/01/2021

Whereas:

(1) Credit institutions and financial institutions are required to identify, assess and manage the money laundering and terrorist financing risk to which they are exposed, particularly when they have established branches or majority-owned subsidiaries in third countries or because they are considering whether to establish branches or majority-owned subsidiaries in third countries. Directive (EU) 2015/849 therefore sets standards for the effective assessment and management of money laundering and terrorist financing risk at group level.

(2) The consistent implementation of group-wide anti-money laundering and countering the financing of terrorism policies and procedures is key to the robust and effective management of money laundering and terrorist financing risk within the group.

(3) There are, however, circumstances where a group operates branches or majority-owned subsidiaries in a third country whose law does not permit the implementation of group-wide anti-money laundering and countering the financing of terrorism policies and procedures. This can be the case, for example, where the third country's data protection or banking secrecy law limits the group's ability to access, process or exchange information related to customers of branches or majority-owned subsidiaries in the third country.

(4) In those circumstances, and in situations where the ability of competent authorities effectively to supervise the group's compliance with the requirements of Directive (EU) 2015/849 is impeded because competent authorities do not have access to relevant information held at branches or majority-owned subsidiaries in third countries, additional policies and procedures are required to manage money laundering and terrorist financing

risk effectively. These additional policies and procedures may include obtaining consent from customers, which can serve to overcome certain legal obstacles to the implementation of group-wide anti-money laundering and countering the financing of terrorism policies and procedures in third countries where other options are limited.

(5) The need to ensure a consistent, Union level response to legal obstacles to the implementation of group-wide policies and procedures justifies the imposition of specific, minimum actions credit and financial institutions should be required to take in those situations. However, such additional policies and procedures should be risk-based.

(6) Credit institutions and financial institutions should be able to demonstrate to their competent authority that the extent of additional measures they have taken is appropriate in view of the money laundering and terrorist financing risk. However, should the competent authority consider that the additional measures a credit institution or financial institution has taken are insufficient to manage that risk, the competent authority should be able to direct the credit institution or financial institution to take specific measures to ensure the credit institution's or financial institution's compliance with its anti-money laundering and countering the financing of terrorism obligations.

(7) Regulation (EU) No 1093/2010 of the European Parliament and of the Council, Regulation (EU) No 1094/2010 of the European Parliament and of the Council and Regulation (EU) No 1095/2010 of the European Parliament and of the Council empower the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA), respectively, to issue joint guidelines to ensure the common, uniform and consistent application of Union law. When complying with this Regulation credit institutions and financial institutions should take into account the joint guidelines issued in accordance with Article 17 and Article 18(4) of Directive (EU) 2015/849 on simplified and enhanced customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions and make every effort to comply with those guidelines.

(8) The provisions of this Regulation should be without prejudice to the duty of competent authorities of the home Member State to exercise additional supervisory actions as stipulated in Article 45(5) of Directive (EU) 2015/849 in cases where the application of additional measures defined by this Regulation will prove insufficient.

(9) The provisions of this Regulation should also be without prejudice to the enhanced due diligence measures credit institutions and financial institutions are required/obliged to take when dealing with natural persons or legal entities established in countries identified by the Commission as high risk pursuant to Article 9 of Directive (EU) 2015/849.

(10) Credit institutions and financial institutions should be given sufficient time to adjust their policies and procedures in line with this Regulation's requirements. To this end, it is appropriate that the application of this Regulation be deferred by three months from the date on which it enters into force.

(11) This Regulation is based on draft regulatory technical standards developed by the European Supervisory Authorities (the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority), submitted to the Commission.

1

(12) The European Supervisory Authorities have conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

HAS ADOPTED THIS REGULATION: