

INTER-GOVERNMENTAL ACTION GROUP AGAINST
MONEY LAUNDERING IN WEST AFRICA

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

BENIN

MAY 2010

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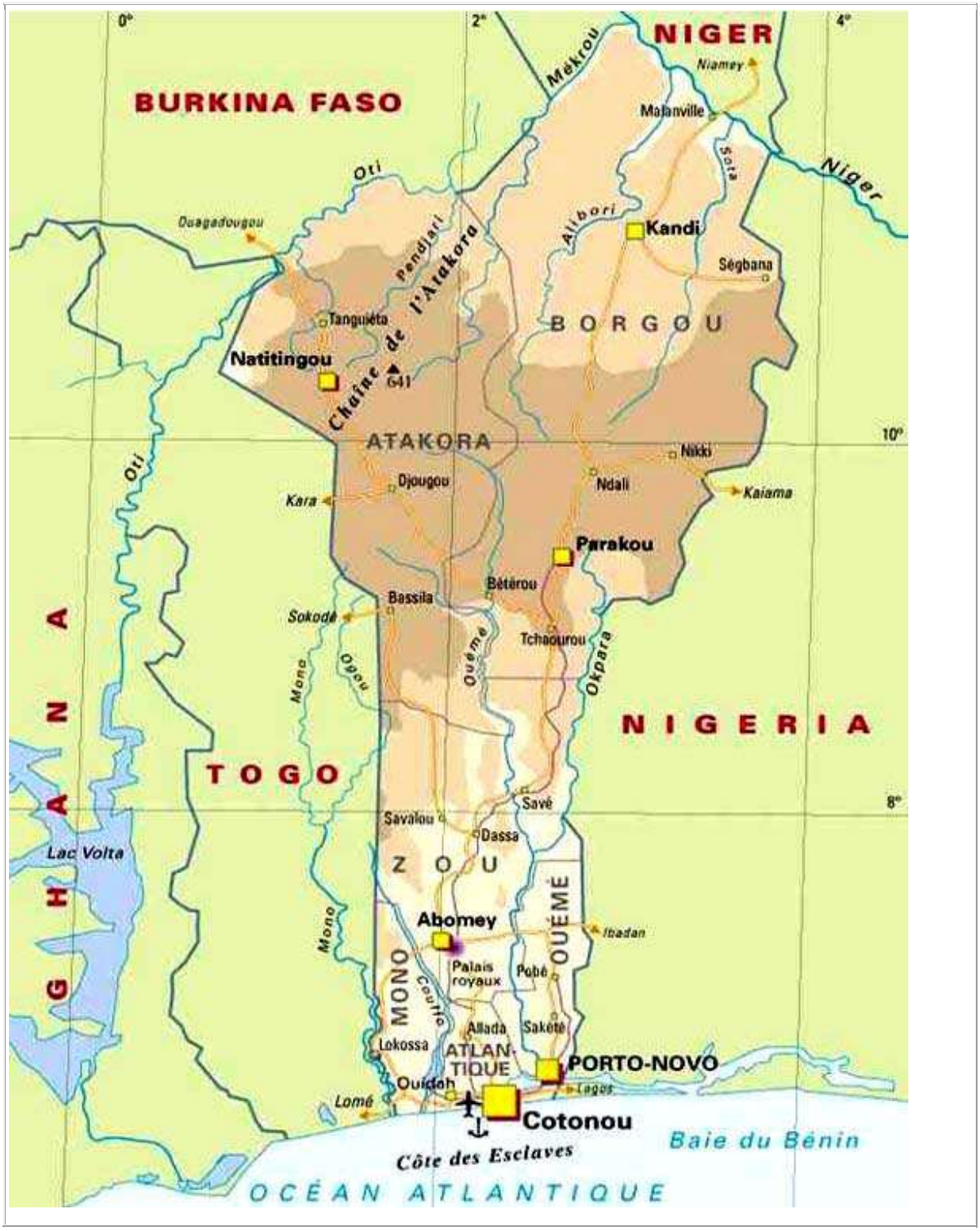
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LIST OF ABBREVIATIONS AND ACRONYMS

€	Euro
ACAB	Association of Insurance Brokers of Benin
AML/FT	Anti-Money Laundering and Financing of Terrorism
APBEF	Professional Association of Banks and Financial Institutions
ASA-Bénin	Association of Insurance Companies of Benin
ASSB	Association of Insurance Companies of Benin
AU	African Union
BC	Banking Commission
BCEAO	Central Bank of West African States
BRVM	Regional Stock Market
C	Compliant
CENTIF	National Financial Information Processing Unit
CIMA	Inter-African Conference of Insurance Markets
CRCA	Regional Insurance Supervision Commission
CREPMF	Regional Council on Public Savings and Financial Markets
CSDFS	Control and Surveillance Unit for Decentralized Financial Systems
DC/BR	Central Depository/Settlement Bank
DMC	Directorate of Money and Credit
DMFA	Directorate of Monetary and Financial Affairs
DNFBP	Designated Non-Financial Businesses and Professions
RSO	Reporting of Suspicious Operations
ECOWAS	Economic Community of West African States
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FTRO	FATF-Type Regional Organization
FZ	Franc Zone
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
IDCC	Inter-ministerial Drug Control Committee
IFI	International Financial Institutions
IOIC	International Organization of Insurance Controllers
LC	Largely Compliant
MEQ	Mutual Evaluation Questionnaire
MER	Mutual Evaluation Report
NA	Not Applicable
NC	Non Compliant
NCCT	Non-Cooperative Countries and Territories
OCRTIS	Central Bureau for Repression of Illicit Drug Trafficking
OHADA	Organization for Harmonization of Business Law in Africa
OICV	International Organization of Securities Controllers
ONECCA	National Order of Chartered Accountants and Authorized Public Accountants
UNODC	United Nations Office on Drug and Crime
PC	Partially Compliant
PEP	Politically Exposed Persons

R	Recommendation
SR	Special Recommendation
UNO	United Nations Organization
USD	United States Dollar
WAEMU	West African Economic and Monetary Union
WAMU	West African Monetary Union
ZF	Franc Zone

Map of Benin


NIGER
BURKINA FASO
Mékrou
Niamey
Malanville
Niger
Sota
Oti
Ouagadougou
Pendjari
Chaîne de l'Atakora
Alibori
Kandi
Ségbana
BORGOU
Tanguiéta
Natitingou
641
ATAKORA
10°
Nikki
Djougou
Ndali
Kara
Kaiama
Parakou
Bétérou
Bassila
Sokodé
Tchaourou
Ouémé
Okpara
Mono
Ogou
NIGERIA
TOGO
GHANA
8°
Savé
Savalou
Dassa
Lac Volta
ZOU
OUÉMÉ
Abomey
Ibadan
Palais royaux
Pobé
Couffo
MONO
Allada
Sakété
Lokossa
ATLAN-TIQUE
PORTO-NOVO
Ouidah
Lagos
Lomé
Cotonou
Baie du Bénin
Côte des Esclaves
OCÉAN ATLANTIQUE

INTRODUCTION

GENERAL INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF BENIN

1. The evaluation of the Anti-money Laundering and Financing of Terrorism (AML/FT) system of Benin was based on the Forty Recommendations of 2003 and the Nine Special Recommendations of 2001 on Terrorism Financing as well as the 2004 Methodology developed by the Financial Action Group (FATF).

2. The evaluation was based in particular on legal texts from international, community and national sources made available to the Team of Evaluators by the Secretariat of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), the authorities and other private national actors of the AML/FT system.

3. The data collected during the onsite visit conducted from 15 to 30 June 2009 to Cotonou and Porto Novo among officials and representatives of the competent government agencies and the private sector concerned, and who feature on the list attached as an annex to this report, were also used in the evaluation.

4. The evaluation was conducted by a team of experts commissioned by GIABA, who are nationals of member-States and all of whom received from it prior training as evaluator.

5. Those who participated in this evaluation included Mrs Fatoumata KONE, Secretary General of CENTIF of Côte d'Ivoire, (Financial Expert), Mrs Aminata SEMDE OUEDRAOGO, Head of Money and Loans Department at the Ministry of Finance of Burkina (Financial Expert), Mr Biyao IDRISSOU KOLOU MOUSTAFA, Research Officer at the Office of the Minister of Justice of Togo (Legal Expert), Mr Modibo SYLLA, President of CENTIF of Mali (Operations Expert), Mr Mamadou THIANDOUM, Director of the Judicial police at the Ministry of Interior of Senegal (Operations Expert), Mr Elpidio FREITAS, Legal Expert at GIABA (Coordinator of the mission) and Ms Mariame TOURE, Officer in charge of Evaluation, Research and Documentation at GIABA.

6. The report proposes a synthesis of AML/FT measures in force in Benin as at the time of the onsite visit or immediately after. It describes and analyses them, and makes Recommendations on actions to be taken to strengthen certain aspects of the system (Cf. Table 2). It also indicates the level of compliance of Benin with 40+9 Recommendations of FATF (Cf. Table 1).

7. In accordance with the Methodology for evaluating compliance with the 40 Recommendations and the 9 Special Recommendations of FATF3, the community Regulations and national laws were considered as "laws and regulations", the Instructions of BCEAO and CREPMF as "other constraining means" and the community Guidelines as non-constraining, during the rating of compliance with the different Recommendations of FATF.

8. It should be noted that Benin has been evaluated in the framework of the African Peer Review Mechanism (APRM) of the African Union to which it has subscribed. Despite the request to the authorities, the mission could not have access to the report prepared at the end of this evaluation on good governance, which, in any case, contains no component on AML/FT.

Consequently, this mutual evaluation is the very first of its kind in Benin.

EXECUTIVE SUMMARY

General Information

9. This report presents a synthesis of measures taken in the area of AML/FT by the Republic of Benin, as at the time of the field visit, conducted from 15 to 30 June 2009, and shortly after. It describes and analyzes these measures and makes recommendations on how certain aspects of the AML/FT could be strengthened. It also indicates the level of Benin's compliance with the 40 + 9 Recommendations of GAFI.

10. Covering an area of about 114.763 km², Benin is situated in West Africa and extends from the Atlantic Ocean to River Niger. It has an estimated population of 8,400,000 inhabitants. Its capital is Porto Novo.

11. Benin is ranked 161st (out of 181 countries) on the Human Development Index (HDI), according to the 2009 Report of the United Nations Development Programme (UNDP).

12. Since its accession to national sovereignty, on **1st August 1960**, the Republic of Benin has experienced successive changes of regimes and governments. With the adoption, by Referendum on 2 December 1990, of the Constitution, promulgated by Act 90-32 of 11 December 1990, the people opted for a Rule of Law and multi-party democracy.

13. According to the Constitution, the President of the Republic, Head of State and Head of Government is elected for a period of 5 years, renewable once. He is the holder of the Executive power. He determines and conducts the policy of the Nation and exercises the regulatory power.

14. Parliament is constituted by a single Chamber called the National Assembly, composed of 83 MPs elected for 4 years and eligible for re-election. It exercises the legislative power and controls the action of the Government.

The Judicial Power is exercised by the Supreme Court, the Courts and Tribunals.

15. The territorial administrative division of Benin comprises 12 Departments, 77 Communes, and 546 Districts.

16. Benin is considered in the sub-region as a country where child trafficking is prospering (reception, appeal, transit). These movements of people are often illicit and carried out in disregard of the legal provisions in force, especially the obligation to obtain permission to leave the national territory for minors under (18) years. There is, however, a general awareness (public authorities and civil society) about combating child trafficking in general and that of young girls in particular.

17. Besides, Benin is a transit country for drug trafficking, especially cocaine, like most countries in the sub-region, with the related risk of laundering the proceeds from drug trafficking.

18. With the creation of the Central Bureau for Repression of Illicit Drug Trafficking (OCRTIS), actions were undertaken by the Beninese Government, which resulted in the seizure of large quantities of drugs (423,245 grams of cocaine seized in 2007).

19. Corruption is also perceived at a high level in the country. According to some authorities met, corruption is the main source of money laundering in Benin.

20. The business environment seems to harbour all money laundering acts, backed by the existence of a dynamic informal sector, though the real impact could not be assessed and the widespread use of cash as means of payment. Benin is, in fact, the main destination of the re-export trade, particularly vehicles to other States of the sub-region.

Legal system and related institutional measures

21. The legal system governing Anti-Money Laundering and Financing of Terrorism (AML/FT) was established in Benin on the basis of legal norms adopted at the community (Guidelines, Regulations and Decisions and Instructions of bodies of WAEMU and CIMA, in particular) and national (Law, Decrees, Orders and other derived texts) levels.

22. Criminalization and sanctioning of money laundering were introduced into the Beninese Criminal Law by Article 102 of Act 97-025 of 18 July 1997 on Control of Drugs and Precursors. But, this provision, which covered the material elements of conversion, transfer, concealment, disguise, acquisition, possession and use, only targeted laundering of money from drug trafficking.

23. It was Act 2006-14 of 31 October 2006 on anti-money laundering, referred to hereinafter as the AML Act, adopted in transposition of Guideline 07/2002/CM/UEMOA of 19 September 2002 on anti-money laundering in WAEMU member-States, which completed the provision by harmonizing it with the prescriptions of the Vienna and Palermo Conventions, particularly extending widely the scope of offence to cover any crime or offence.

24. However, the annexed to this law on modalities of client identification in case of distance financial operations does not seem to have been formally adopted by the legislator. This situation must be corrected.

25. The AML Act specifies, on the one hand, a preventive and operational framework, particularly that of the Financial Information Unit (CENTIF), as well as the legal framework of international cooperation (legal mutual assistance and extradition) and, on the other, sanctions applicable to both individual and moral entities, guilty of money laundering. It also provides for measures for freezing, seizure as well as confiscation of the proceeds of the offence and means used to commit it.

26. This legal provision, however, contains some weaknesses. Hence, it makes no provision for terrorism financing as a predicate money laundering offence and does not criminalize this offence or stock market offences, such as insider trading and market manipulation. Besides, the legal basis of prosecution for money laundering of the author of the predicate offence (self-laundering) does not appear clearly. Authorities should criminalize the above-mentioned offences as recommended by GAFI.

27. The efficiency of the AML Act has not been assessed ever since it came into force and no case of money laundering has been brought before the courts.

28. There are no statistics or mechanisms for regular assessment of the efficiency of the AML Act. Necessary measures should be taken to render effective the application of the law, particularly through wider dissemination among the authorities that are supposed to enforce it, accompanied by appropriate training.

29. Concerning freezing, seizure and confiscation of the proceeds of crime, particularly in the framework of Combating the Financing of Terrorism (CFT), community Regulation 14/2002/CM/UEMOA institutes a mechanism for freezing funds and other financial resources in application of Resolutions 1267 (1999) and 1373 (2001) of the United Nations Security Council. This Regulation, which is directly applicable in States of the zone, is quite incomplete and does not authorize the freezing of all funds and other property belonging to individuals and entities designated by the Sanctions Committee. Furthermore, it does not target the lists established by the Security Council and does not institute decision procedures on autonomous lists or those submitted by third-party States. Hence, it does not enforce Resolution 1373 (2001) of the Security Council.

30. The WAEMU Council of Ministers adopted a guideline on 4 July 2007, fixing the outline of a mechanism for preventing and punishing terrorism financing to be incorporated into the domestic law. However, since Benin has not yet adopted the ad hoc transposition law, there seems to be a legal vacuum in that respect.

31. Furthermore, there is no specific provision on confiscation of property of equivalent value.

32. The authorities should adopt the necessary measures, particularly for including in the legislation, the provisions on property of equivalent value, to facilitate the freezing, seizure and confiscation of property associated with the financing of terrorism, by criminalizing this offence into the domestic law, to prepare and maintain adequate statistics.

33. Benin established the National Financial Information Processing Unit (CENTIF), in application of Article 16 of the AML Act. CENTIF, which is a central administrative structure mainly in charge of receiving and treating reported suspicious money laundering acts, became operational on 20 June 2008, the date of the swearing in of its members appointed by decree on 7 May 2008. However, the attributions of CENTIF do not cover Terrorism Financing, as its correspondents in the administrations have not yet been formally appointed. Moreover, the suspicious reporting model fixed by ministerial decree has not been disseminated in all the institutions subject to it, while the financial and human resources of CENTIF seem inadequate to ensure its real autonomy. The subscription of CENTIF to the Egmont Group is not yet effective, which constitutes for it an obstacle in the area of international cooperation.

34. The attributions of CENTIF should be extended to terrorism financing. The dissemination of the suspicion reporting model fixed by ministerial decree must be extended to all institutions subject to the act. The subscription to the Egmont Group should be effective in order to facilitate the action of CENTIF in the area of international cooperation.

35. The investigation and criminal proceedings authorities in the area of AML/FT are the same as those competent in common law. There is no specialization of AML/FT in the police, customs or justice departments. Generally, money laundering offence is not clearly apprehended. There are no specific provisions that allow the competent investigation authorities to defer or abstain from arresting people or seizing funds in the context of AML.

36. The resources and training of the investigation and criminal prosecution authorities are inadequate.

37. Specialized structures should be created at the level of the jurisdictions, particularly for the instruction of AML/FT cases. The entire resources of the investigation and criminal proceedings authorities in the area of AML/FT should be significantly strengthened. A specific and pertinent training in anti-money laundering and financing of terrorism should be organized for these authorities, while

including topics covering, in particular, the scope of predicate offences, typologies of money-laundering, investigation techniques that should help identify financial channel**s.**

38. Furthermore, Benin has not yet instituted a specific system for reporting or communicating information in the context of AML/FT, as required by GAFI. There is no computerized database for monitoring cross-border transportation of money and negotiable securities and a mechanism for automatic transmission of the relevant information to CENTIF.

Preventive measures – Financial institutions

39. The draft of a national AML/FT strategy seems to have been initiated by the Beninese authorities and the development of an action plan at the national level is ongoing.

40. The identification of the risks and vulnerabilities to ML/FT should be envisaged by Benin in order to define an action plan for their reduction.

41. The legislation in force effectively imposes on subjected financial institutions due diligence obligation, even if these obligations do not cover all financial institutions. GAFI's requirement relating to the imposition of certain relative obligations, particularly with regard to due client diligence duty by legal instruments equivalent to the "law or regulation" is not always respected.

42. The legislation in force does not formally and specifically ban the keeping of anonymous or numbered accounts or accounts under fictitious names. The obligations on identification of the effective beneficiary are not clear and there is no constant due diligence obligation towards the clients or vigilance of existing clients. Moreover, the total removal of the due diligence obligation in favour of certain subjected institutions, due to their domiciliation in the WAEMU space does not conform to the relevant recommendations.

43. The legislation makes no provision for due diligence towards politically exposed persons and bank correspondent relations.

44. Generally, the financial sector seems as the best impregnated with AML measures, as some AML obligations are now being applied, even if there are some weaknesses in the practice.

45. Micro-finance institutions have not adopted significant measures to ensure the application of the legislation on AML, even if the risk of money laundering seems low in this sector because of the smallness of the amounts deposited in individual savings accounts,

46. Although endowed with a more complete regulation, national actors operating in the insurance sector do not seem to have knowledge, less still clear awareness of the AML/FT obligations imposed on them.

47. There are no policies for ensuring the effective implementation of the measures required on the one hand and for preventing the abusive use of the new technologies and on the other, for controlling specific risks associated with business relations or transactions that involve the physical presence of the parties, in the framework of AML/FT.

48. The use of third parties and intermediaries is frequent but there are no clear and complete requirements concerning this type of relations as far as AML/FT is concerned.

49. The nature and availability for the competent authorities of documents to be kept by financial institutions are not specified.

50. The activities of transfer of funds through banks have developed rapidly over the past years. Even if they meet a higher expectation on the part of economic operators, their rapid growth is creating concerns with regard to risks of money laundering. Many local banks have indeed delegated to sub-agents like Western Union or MoneyGram but also to other less well structured intermediaries for that purpose (travel agencies, micro-finance institutions, etc.), the reception/transmission of fund transfers. Yet, neither the delegated banks, nor their supervisors seem to exercise appropriate controls in the framework of AML/FT on these delegated institutions, despite the existing potentially high risk of money laundering.

51. The Beninese authorities should adopt measures to regulate the "delegation" of authorization for the transfer of funds and securities by authorized intermediaries, particularly by requesting for prior authorization to operate (or an authorization) by the competent authorities (BCEAO, Ministry of Economy and Finance), request banks and their supervisors to put in place a mechanism for controlling the activities of these entities with particular emphasis on the obligations relating to AML.

52. The actors operating informally in the sector should be identified and eventually invited to regularize their situation or to put an end to their activities, on pain of the sanctions provided for by the legislation.

53. The Mandatory Declaration of Suspicion (RSO) is limited to money laundering and does not seem to extend to other crimes and offences.

54. There is no obligation to declare operations associated with FT, except in the case where they concern money laundering operations.

55. Attempted offences are not subjected to a RSO.

56. Apart from credit institutions, the other financial institutions subjected to the AML act are unaware of their RSO duties.

57. There is lack of effectiveness, since the number of RSOs received is limited and no RSO has yet been fully treated.

58. There is no visibility study and usefulness of the implementation of a system of declaration of cash transactions of a certain ceiling to the national central agency equipped with a computerized database.

59. The existing guidelines are incomplete while certain financial institutions do not have them. The feedback conditions are not in conformity with the requirements.

60. The internal programmes and provisions on AML are only being implemented in Banks. Even in these cases, problems of resources and autonomy seem to exist.

61. Virtually all financial institutions have not implemented continuing staff training programmes on AML/FT.

62. Financial institutions are under no obligations to ensure that their branches and subsidiaries abroad comply with the AML/FT measures and inform the supervisory authorities when a branch or subsidiary abroad is incapable of complying with the AML/FT measures.

63. There is no specific ban on the establishment of fictitious banks or the pursuit of their activities to establish or pursue bank correspondent relations with fictitious banks.

64. Concerning the control of banks and other financial institutions, the supervisory authorities have been appointed and have extended powers, including sanctions for accomplishing their AML/FT missions.

65. But the actual exercise of these powers does not seem satisfactory, particularly in terms of on the spot controls which are inadequate in both number and quality. The AML component is not even taken into account by these controls, particularly in the stock market, micro-finance and insurance sectors.

66. Moreover, no sanction for violation of the AML act has been applied by the supervisory authorities since the coming into force of the act, whether for administrative or disciplinary reasons.

67. The supervisory agencies need to intensify their controls and their resources particularly by organizing adequate and in-depth training on AML/FT for their staff. The prescribed sanctions must be applied if an offence is committed.

Preventive measures – Designated non-financial enterprises and professions

68. The AML Act specifically, but without limitation, subjects to obligations of prevention and detection of ML a series of Designated Non-Financial Enterprises and Professions (EPNFD) the list of which extends beyond the list kept by GAFI, even if Chartered Accountants are not specifically mentioned (the law mentions Auditors).

69. But, apart from the fact that some of them are neither regulated nor controlled, these EPNFD are aware of the AML Act and therefore their obligations resulting from it.

70. The weaknesses mentioned at the level of the financial sector are also valid for the EPNFD (limited due diligence obligations, lack of guidelines, lack of money laundering control programmes, lack of implementation, non application of the laid down sanctions).

71. The Beninese authorities should ensure vast dissemination of the AML Act and establish guidelines to assist EPNFD to apply and respect their obligations in the area of money laundering.

72. The competent authorities should ensure the respect of the obligations in the area of money laundering and financing of terrorism by casinos and other categories of designated non-financial businesses and professions.

Moral persons and legal arrangements

73. The OHADA law and provisions of the domestic law established a complete legal framework for the constitution, functioning and control of commercial companies.

74. However, the lack of control of the respect of the obligations of the OHADA law and the lack of reliability of the information contained in the RCCM whose data are not regularly updated, make it impossible to know, particularly the real holders of the capital or the effective beneficiaries.

75. There seems to be no legal arrangement of the trust type in Benin.

76. The legislation in force does not seem to avoid dishonest use of moral entities that issue bearer shares to launder money.

77. These authorities should adopt measures to implement all the provisions of the OHADA text, notably in the area of updating the data featuring in the RCCM.

78. Bearer actions should be particularly monitored in order to avoid a situation where moral entities that issue bearer shares are used to launder money or finance terrorism.

Non-Profit Organizations (NPOs)

79. By virtue of the legislative and regulatory provisions in force in Benin, non-profit institutions are obliged, for the exercise of their activities, to be registered either at the Ministry of Interior or in the prefectures or the City Halls and publish them in the Gazette.

80. The AML Act subjects Non-Governmental Organizations (NGOs) to the obligations contained in it, notably those related to vigilance, conservation and communication of documents.

81. But the NPOs are not aware of the AML Act and the obligations contained in it. No sensitization campaign has been conducted for them.

82. There is no adequate surveillance and control of NPOs, in the framework of AML. Only financial controls of a fiscal nature are carried out, when an NPO, benefits from public funds or tax exemptions.

83. Due to the legal vacuum in the area of the control of terrorism financing, legal action cannot be taken in case they are used to finance terrorism.

84. The authorities should conduct a specific study to assess the vulnerability of the NPO sector to risks of AML/FT and transpose as early as possible into the domestic law, the UEMOA Guideline on FT control, particularly to fix the provisions in the area of control and regulation of NGOs and dissuade their abusive use for financing terrorism in the framework of their activities.

85. Sensitization actions should be conducted among NPOs in the area of AML/FT.

86. Adequate surveillance of NPOs should be exercised to ensure the respect of the AML obligations fixed by law.

Internal and International Cooperation

87. There are no formal mechanisms for cooperation and coordination at the national level, the sharing of information and cooperation between departments seems weak or even non-existent.

88. The competent authorities should formally institute efficient mechanisms for cooperation and coordination of the activities of the departments at the national level in the area of AML/FT and regularly assess the effectiveness of these mechanisms.

89. At the international level, Benin has ratified the Vienna and Palermo Conventions and the International Convention for the Repression of Terrorism Financing. But the implementation of these Conventions is either incomplete or non-existent (Convention on the Financing of Terrorism).

90. Resolution 1267 (1999) has been partially implemented whereas Resolutions 1373 (2001) has not yet been implemented.

91. The necessary provisions should be adopted to ensure the implementation of the above-mentioned Conventions and Resolutions.

92. In accordance with the pertinent provisions of International Agreements and Conventions on the one hand and domestic texts, particularly the AML Act and the Decree on creation of CENTIF on the other hand, the competent Beninese authorities can grant to their foreign counterparts, the widest possible international cooperation in the area of legal mutual assistance on condition that a request is made by these countries subject to reciprocity.

93. The lack of criminalization of FT, however, constitutes a real obstacle to the other forms of international cooperation.

94. Furthermore, the lack of a system for data collection and lack of statistics on international cooperation in the area of AML/FT do not make it possible to assess the effectiveness and efficiency of this international cooperation.

95. The law on transposition of the WAEMU Guideline on the fight against FT should be quickly adopted and statistics on legal mutual assistance and extradition, kept.

Other Subjects

96. The lack of resources often appeared as a major concern for the actors of the AML/FT system.

97. In this regard, it would be necessary to increase the financial and human resources allocated to CENTIF and the investigation and legal proceedings authorities to enable them to adequately accomplish their missions.

98. Besides, the training of these authorities as well as the control and supervisory bodies should also be strengthened in a significant manner.

99. The general lack of statistics on AML/FT observed at all the levels makes it difficult to assess the efficiency of the ad hoc system put in place.

100. In this regard, the Beninese authorities should put in place mechanisms for collection, processing and dissemination of quantified data and ensure that statistics on ML/FT are kept.

GENERAL INFORMATION

1.1 GENERAL INFORMATION ON THE COUNTRY AND ITS ECONOMY

101. Covering an area of about 114,763 km², Benin is situated in West Africa and stretches from the Atlantic Ocean to River Niger. Its population is estimated at 8,400,000 inhabitants in 2009. Its capital is Porto Novo.

102. Benin is limited in the North by River Niger, which separates it from the Republic of Niger, in the North-West by Burkina-Faso, in the West by Togo, in the East by Nigeria and in the South by the Atlantic Ocean.

103. Benin is ranked 161st (out of 181 countries) on the Human Development Index (HDI), according to the 2009 Report of the United Nations Development Programme (UNDP).

104. At the economic level, the **primary sector** is dominated by Agriculture, which represents more than 71% of its value added. Thanks to the extension efforts of rural intervention agencies, new techniques and new forms of organization of farming activities have been introduced in the campaigns, which have brought about qualitative transformations in traditional living conditions. An important limestone mine situated at Onigbolo constitutes the only mining resource currently exploited.

105. Cottage industry service is particularly booming in the big towns and large villages. Better equipped, it transforms imported raw materials and carries out various repairs in make-shift workshops established along the roads. The cottage industry sector is, however, facing many problems, the most important being the operation, production and marketing.

106. The **secondary sector** is characterized by the predominance of light industries and the quasi-absence of heavy industries. Its development is thwarted by many obstacles, namely:

- Location of the industries, their supply in raw materials and the choice of basic technologies;
- Relatively high production costs and the non-renewal of materials used;
- Training of the technical managers and retraining of staff currently in place;
- Narrowness of the domestic market and the problem of commercial outlets;
- Lack of capital and absence of national initiatives.

107. The **tertiary sector** is characterized by:

- A domestic trade dominated by a traditional channel for local agricultural produce mainly sold on the market, and a modern channel for imported and local manufactured products. Hawkers ensure the coordination between the two channels;
- An external trade, which is characterized by inexpensive and untransformed agricultural raw materials, and acquisition of capital goods, manufactured products and food products at high prices.

Benin’s economy thus appears to be an extraverted economy.

Political and Administrative Organization

Political Organization

108. Dahomey, proclaimed a Republic on 04 December 1958, became the People's Republic of Benin on 30 November 1975. Following the National Conference of the Civil Society, held in Cotonou from 19 to 28 February 1990, the country was renamed the Republic of Benin.

109. Since its accession to national sovereignty, on **1st August 1960**, the Republic of Benin has experienced successive changes of regimes and governments. With the adoption, by Referendum on 2 December 1990, of the Constitution, promulgated by Act 90-32 of 11 December 1990, the people opted for a Rule of Law and multi-party democracy, in which basic human rights, public liberties, the dignity of the human person and justice are guaranteed.

110. By virtue of the 1990 Constitution, the **President of the Republic** is the Head of State. He is the elected leader of the Nation and embodies the national unity. He is the guarantor of the national independence, the territorial integrity and the respect of the Constitution, international treaties and agreements. He is elected for a 5-year mandate, renewable once. The President of the Republic is the holder of the Executive Power. He is the Head of Government, and in that capacity, he determines and conducts the policy of the Nation. He exercises regulatory power.

111. He appoints, after advisory opinion from the Bureau of the National Assembly, members of the Government, sets forth their attributions and terminates their appointment. The members of the Government report to him.

112. The **Parliament** is constituted by a **single Chamber** called **National Assembly,** whose members carry the title of MP. Its exercises Legislative Power and controls government action. MPs are elected for 4 years and may be re-elected. The National Assembly is currently composed of 83 members.

Judicial Power is exercised by the Supreme Court, Courts and Tribunals.

113. The **Constitutional Court** is the **highest jurisdiction of the State in constitutional matters**. It rules on the constitutionality of the law and guarantees fundamental human rights and liberties. It is the regulatory body for the functioning of the institutions and activity of public authorities. The Court is composed of seven (07) members, four (04) of whom are appointed by the National Assembly and three (03) by the Head of State, for a mandate of 5 years renewable once.

114. The **Supreme Court** is the **highest jurisdiction of the State in administrative, judiciary matters and accounts of the State**. It has jurisdiction over litigation surrounding local elections. The decisions of the Supreme Court are final. They are binding on the Executive Power, the Legislative Power, as well as all the jurisdictions.

115. The **High Court of Justice** has jurisdiction to try the President of the Republic and members of the Government for acts described as high treason, offences committed in the performance or on the occasion of the performance of their duties, as well as their accomplices in case of a plot against state security.

Territorial administrative organization

116. The table below presents the territorial administrative organization of Benin.

Territorial division		**Deliberating body**	**Executive body**	**Deconcentra-ted/ responsible body**
Designation	***Nber***			
Department	12	*Conseil Départements de Concertation and de Coordination (CDCC)*	*Prefect*	DGAT, MD
Commune*	77	****Communal Council***	*Mayor**	Prefect
District	546	*District Council*	District Chief	Mayor
Area/Village	3628	Village and area council	Area Chief	Mayor

117. The table shows that the territorial administrative division of Benin comprises three levels: Departments (12), Communes (77) and Districts (546). Villages and Areas (3628) do not represent administrative levels as such.

118. Each **Department** is headed each by a prefect, representing the Government and each of the ministers. The prefectoral authority provides assistance and counselling to the communes, as well as support and harmonization of their actions with those of the State, controls the legality of actions taken by the City Council and the Mayor. As the responsible authority, the prefect exercises a priori control on the 10 most important acts of communal life, as well as a posteriori controls on all actions of the commune.

119. The **Communes** are upgraded to Territorial Communities and endowed with legal personality and financial autonomy, with elected Communal Council and Mayor, in charge of local development and the education (nursery and primary), health (primary healthcare) sectors, commercial (markets) and road (tertiary roads) infrastructure, etc.

120. The **Districts** are administrative constituencies but only have powers delegated by the mayor (for example district chiefs, who are elected during communal elections, can provide proximity Registry services).

121. The **Villages and Areas** are administered by **Village and Area Councils** constituted by Village Chiefs and Village Councillors, who have advisory status to handle the management of current affairs such as mobilization of the inhabitants to maintain roads, settlement of certain land disputes and others caused by the ramblings of domestic animals, etc.

122. Benin is a member of the West African Monetary Union (WAMU), the West African Economic and Monetary Union (WAEMU), the Economic Community of West African States (ECOWAS), the Inter-governmental Action Group against Money Laundering in West Africa (GIABA), the Organization for the Harmonization of Business Law in Africa (OHADA), the Franc Zone, the African Union (AU) and the United Nations Organization (UNO).

123. GIABA was created in 1999 by the ECOWAS Conference of Heads of State and Government to combat money laundering and financing of terrorism in its member-States. Its mandate was extended in 2006 to cover the fight against the financing of terrorism.

Overview of the macro-economic, monetary and financial framework

124. At the macro-economic level, the geographical situation of Benin, placed between Togo and Nigeria, is particularly not comfortable with regard to the options of these two countries in the area of international trade. Togo has remained faithful to its open-door policy, which enabled it in the past to play the role of a hub for redistribution of certain import products in the sub-region. Nigeria, though representing, by its large population, a highly attractive potential market, has transformed itself, under the effect of exchange rate distortions, into Benin's supplier of inexpensive products like fuel, certain materials, various household appliances, etc.

125. Moreover, the length and permeability of Benin's borders constitute a natural handicap which can only facilitate irregular crossings which occur spontaneously from the moment there are imbalances between the currencies of tariff regimes of countries of the sub-region.

126. Benin is a member of the West African Monetary Union (WAMU), instituted by the Treaty of 14 November 1973 and which comprises eight (8) States. This Union is mainly characterized by the transfer of the power of currency issue (Francs of the African Financial Community - CFA, a common currency unit), to a common Issue Institute, the Central Bank of West African States (BCEAO), which also manages the foreign exchange reserves of member-States.

127. Benin is also a member of the Franc Zone (FZ), which is characterized by the following four principles:

- Convertibility of currencies issued by the different institutes of the franc Zone is guaranteed without limit by the French Treasury;

- Fixed parity: the currencies of the Zone are convertible, at fixed parities, without limitation of amounts. It also has a fixed parity with the Euro, the common European currency;

- Free transferability: transfers are, in principle, free within the Zone, both for current transactions and capital flows;

- Centralization of foreign exchange reserve: in compensation for the unlimited convertibility guaranteed by France, African central banks are under obligation to deposit part of their foreign exchange reserve (with the exception of amounts required for their current treasury and those regarding their transactions with the International Monetary Fund) at the French Treasury, on the operations account opened in the name of each of them. Since 1975, these holdings enjoy exchange guarantee *vis-à-vis* the Special Drawing Right (SDR).

128. Benin is signatory to the Treaty of 10 January 1994 instituting the West African Economic and Monetary Union (WAEMU) aimed at completing the WAMU Treaty, which comprises the same member-

States. Decisions of WAEMU bodies are directly applicable when they are the form of a Regulation or Decision. The Treaties instituting WAMU and WAEMU still coexist since their merger, though planned, has not yet materialized. According to the terms of the Constituent Treaty, "without prejudice to the objectives defined in the conditions laid down by this Treaty, the Union pursues the achievement of the objectives below:

a. Enhancing the competitiveness of the economic and financial activities of member-States in the framework of an open market and a rationalized and harmonized legal environment;

b. Ensuring convergence of the performances and economic policies of member-States through the institution of a multilateral surveillance procedure;

c. Creating between member-States a common market based on free movement of people, goods, services, capital and the right of establishment of persons exercising an independent or salaried activity, as well as on a common external tariff and a common trade policy;

d. Instituting a coordination of national sector policies, through the implementation of joint actions and eventually common policies, especially in the following areas: human resources, land use management, transport and telecommunications, environment, agriculture, energy, industry and mines;

e. Harmonizing, as much as possible the efficient functioning of the common market, the legislations of member-States and particularly the tax system.

129. Like the other WAMU countries, Benin is a member of the Economic Community of West African States (ECOWAS), which comprises fifteen (15) States of the West African sub-region. Created in 1975, ECOWAS was entrusted with the mission of promoting economic integration in "all areas of economic activity, in particular industry, transportation, telecommunications, energy, agriculture, natural resources, trade, monetary and financial issues, social and cultural issues.

130. Generally, the 2008 economic conditions did not basically affect the dynamics of the national economy. Hence, the resumption of the economic activity initiated in 2006, was pursued in 2008 under the combined effect of the following factors:

- Improvement of cotton spinning activities, despite the results obtained during the two farming seasons, which were below expectations;
- Pursuit of the major works initiated by the Government of Benin (construction of roads, high passages, new administrative buildings, extension of the Cotonou Airport, etc.);
- Improvement and strengthening of economic cooperation ties with Nigeria, the main destination of the re-export trade. Improvement of telecommunications, with the arrival of a fifth mobile phone operator in the sector.

131. The nominal growth rate for the year 2008 was estimated at 12.6%. The Gross Domestic Product (GDP) at constant price increased from CFAF 2.641 billion in 2007 to 2.974 billion in 2008. According to the multilateral surveillance report of the WAEMU Commission, the actual growth rate reached 5.3% in 2008, as against 4.6% in the previous year.

132. The sector's contributions to growth are: 1.6 percentage points for the primary sector, 0.5 point for the secondary sector and 1.8 points for the tertiary sector. The contribution from the tertiary sector remains preponderant and driven by commercial activities, particularly those involving re-export to Nigeria as well as the improvement in port activities. This sector also benefits from an increase in activities of the "Transport and communications" sector aided by the increase in transit activities, and mobile phone companies, following the reforms introduced in this area and the arrival of a new operator in 2008.

133. On the demand side, economic growth is driven by the consumption of households, which represented the greater share of consumption (86.4%) in 2008, as against 86.1% in 2007. It also constitutes the main component of uses of the GDP. With a relative weight of 75.3% of GDP, it was estimated at 2,329.9 billion in 2008, representing an increase of 11.8%, as compared to its 2007 level.

134. Furthermore, the rate of domestic savings represented 7.1% of GDP, while the global investment rate was estimated at 20.7% of GDP, as against 20.6% in 2007.

135. At the regional level, and according to figures released by the National Economic Policy Committee (CNPE), all first and second rank conversion criteria were respected, except those relating to the average inflation rate (estimation of 8.1% for a standard below 3%) and global external deficit, excluding grants to the nominal GDP (estimation of 5.1% for a standard below 5%).

136. Benin's economy is basically dominated by the informal sector, according to the economic and social report of the 1st quarter of 2008 prepared by the National Institute of Statistics and Economic Analysis (INSAE). The document specifies that in 2007 "the informal sector contributed for more than 2/3 to the creation of national wealth", representing 67.3% of the Gross Domestic Product (GDP), as against 32.7% for the formal sector.

137. According to the 2008 Report of the Banking Commission, overall use of funds in banks and financial institutions amounted to CFAF 980 billion.

138. Loans to customers amounted to 626 billion. The share of short-term loans represents 382 billion while that of medium-term loans represents 221 billion and that of long-term loans 19 billion.

139. Loans granted by banks for funding the Government's (5) strategic development poles amounted to CFAF 333.4 billion at the end of December 2008, or 48.45% of outstanding bank loans. The distribution of these loans per pole is as follows:

- Pole A "Transport, Logistics and Trade": 33.06%;
- Pole B "Cotton and Textiles": 4.96%;
- Pole C "Agro-Food, Fisheries, Fruits, Vegetables and Food Products": 5.06%;
- Pole D "Tourism, Culture and Cottage Industry": 0.31%;
- Pole E "Civil Works, Construction Materials and Wood": 5.04%.

140. The debit conditions of banks show a rate bracket of between 7.5% and 18%, and the average cost of resources mobilized by banks ranges between 2 and 5.79%.

1.2 GENERAL SITUATION REGARDING MONEY LAUNDERING AND FINANCING OF TERRORISM

141. Benin is considered in the sub-region as a country where child trafficking is prospering (reception, appeal, transit). These movements of people are often illicit and carried out in disregard of the legal provisions in force, especially the obligation to obtain permission to leave the national territory for minors under (18) years. A significant part would be associated with the practice of placing children in foster care, and movements for matrimonial reasons. There is, however, a general awareness (public authorities and civil society) of the need to combat child trafficking in general and that of young girls in particular.

142. The business environment seems to conceal, for its part, acts of money laundering, against the backdrop of illicit drug trafficking (see statistics on drug seizures in Section 2.3 of this Report). Benin is also the hub of the re-export trade, particular that of vehicles.

143. Moreover, corruption is also practised at a high level nationally. Indeed, according to some of the authorities met, corruption is alleged to be the main source of money laundering in Benin.

144. In its World Report on Corruption, Transparency International ranks Benin 96th (over 180) in the corruption table established in 2008.

145. Since his election, the new President of the Republic of Benin, Dr Boni YAYI, has made corruption its hobby-horse. Various initiatives have been taken in this sense, ranging from a symbolic march of all the members of Government, to the establishment of an Observatory on the Fight against Corruption (OLC) and institution of a National Day against Corruption, and publication of a blank book of corruption in Benin, containing strong recommendation to the Leaders. On the occasion of the examination, by Heads of State of the African Union, of the report of the peer review mission prepared after an onsite visit, the President of the Republic of Benin affirmed to the press that Benin was declaring a war on corruption.

146. The mission of the Observatory on the Fight against Corruption, whose operational budget forms part of the General Budget, is to:

- Search for and analyze acts of corruption and related offences at all levels, with the assistance of state agencies in particular;
- Handle corruption or fraud cases and make the necessary investigations;
- Institute legal proceedings through the constitution of plaintiff;
- Inform state institutions and the general public about cases it is aware of and take appropriate measures.

147. During the meeting with the mission, the OLC officials placed the emphasis on the magnitude of the phenomenon, which spares no sector of activity (public or private). The most affected areas in the public sector are the Justice and Customs Departments. But, heavy penalties were recently imposed on those convicted. To ensure its autonomy, the OLC pointed out that a creation by law (and not by decree as is presently the case) would be more appropriate.

148. Still, according to views collected on site, the lack of a law against illicit enrichment is a flaw in the mechanism for combating corruption.

149. Unfortunately, the mission could not obtain figures to assess the magnitude of proceeds derived from these offences and which could be attributed to money laundering.

150. Concerning the **Fight against Financing of Terrorism,** the authorities met were of the view that terrorism is unknown in Benin. These authorities consider as low the risk of terrorism financing and, therefore, have not carried out an analysis of the adequacy of the legislation in force applicable to actors of DNFBPs in particular, especially associations and NGOs, nor conducted specific studies to assess the sector's vulnerability of to this risk.

151. The Beninese authorities do not rule out the fact that the bases or dormant networks of terrorism exist to serve the active networks of other African countries.

152. The AML Act makes no provision for considering the financing of terrorism as an underlying money laundering crime. No legislative or regulatory provision criminalizes terrorism financing offence in the internal legal order of Benin.

153. The law that should transpose the WAEMU Guideline on the fight against the financing of terrorism into the national law has not yet been adopted. The mission observed that the bill was being examined for opinion by the Supreme Court.

1.3 OVERVIEW OF THE FINANCIAL SECTOR

154. The financial sector in Benin is composed of lending institutions (banks and financial institutions), microfinance institutions, insurance companies, manual foreign exchange operators and actors of the regional financial market.

The national banking system comprises twelve (12) banks and one (1) financial institution.

Table of Banks and Financial Institutions in activity in Benin as of 31-12-2008

(Source: 2008 Annual Report, WAMU Banking Commission)

Institution	Equity (in CFAF million)	Total Balance (in CFAF million)	Number of branches and windows	Number of accounts	Staffing
1. Bank of Africa –Benin	8000	428.399	16	132.971	314
2. ECOBANK-Benin	3500	282.489	29	125.633	224
3. Société Générale de Banques au Bénin	7000	106.303	16	15.504	198
4. Diamond Bank Benin	13.000	139.520	13	18.533	188
5. Financial Bank	2500	61.643	7	10.185	111
6. Banque Internationale du Bénin	9000	59.626	9	20.847	164
7. Continental Bank Benin	3600	70.799	12	37.703	183
8. BanqueAtlantique Bénin	5000	65.379	9	9336	105
9. Banque Sahélo-Sahélienne pour l'Investissement et le Commerce-Bénin	5000	27.588	2	3536	76
10. Banque Régionale de Solidarité du Bénin	2000	12.544	4	12.576	44
11. African Investment Bank	2500	13.563	1	798	28

12. Banque de l'Habitat du Bénin	2250	14.883	1	6414	17
13. Total Banks: 12		1.282.736	-		1652
14. 1- *Equipbail-Bénin*	700	8363		N/A	10
15. Total Financial Institutions: 1		8363	1	N/A	10
16. GRAND TOTAL	13	1.291.099			1662

155. According to the 2009 Report of the Banking Commission, the total balance of lending institutions established in Benin amounted to CFAF 1,291,099 million at the end of December 2008.

156. The Bank of Africa (BOA) appears to be the leading institution in the sector, particularly in terms of the size of its balance, followed by Ecobank.

157. The total balance of the sole financial institution was estimated at CFAF 8,363 million at the end of December 2008, with collected deposits of 375 million and loans granted amounting to CFAF 7,243 million.
The rate of bankarization seems low in Benin (about 6%, like the other WAEMU member-States.

158. The WAMU Council of Ministers decided, at its Ordinary Session of 17 September 2007, to increase the minimum equity applicable to banks to CFAF 10 billion and financial institutions to 3 billion.

159. By Notice 01/2007/RB of 2 November 2007, the BCEAO clarified this Decision in the following terms:

- "The minimum equity was initially fixed at 5 billion for banks and 1 billion for financial institutions, from 1st January 2008. Banks and financial institutions in activity should comply with these new ceilings latest by 31 December 2010;
- The new ceilings are applicable to requests for authorization to operate as a bank or financial institution submitted from the date of entering into force of the measure;
- Banks and financial institutions already authorized are requested to communicate to the Minister of Finance, the BCEAO and the WAMU Banking Commission, within six (6) months starting from 1st January 2008, an action plan and a time-table, indicating measures to be taken by chief executives in this first phase, in order to eventually comply with the minimum equity rules".

160. In its 2008 Annual Report, the Banking Commission classified lending institutions into two categories, according the level of compliance with the new regulatory minimum equity requirements:

- First category Institutions, representing 45.6% of the total bank assets of the WAEMU zone and of which attention is drawn, in particular to the consideration in their financial strategy of the minimum capital ceilings of 10 and 3 billion targeted in the second phase.
- Second category institutions under close supervision for adopting solutions to ensure compliance with the new minimum equity requirements should specify the strategies adopted, including merging of institutions or even their take-over by investors.

161. Deposits collected by banks amounted to CFAF 941,249 million as at 31 December 2008, compared to 803,600 at the end of December 2007, representing an increase of 17.12%. The trend in fixed-term deposits shows an increase of 12.24%, which amounted to CFAF 449,788 million, and 21.98% with a level of 491,461 million at the end of December 2008 for call deposits.

162. Loans distributed by banks as at the end of December 2008 amounted to CFAF 688,642 million, comprising short-term loans (CFAF 386,265 million), medium-term loans (CFAF 220,282 million), long-term loans (CFAF 18,521 million) and CFAF 15 million for financial lease and similar instruments.

163. These loans mainly served to finance the following branches of activity: whole sale and retail trade, restaurants (CFAF 278,926 million), services provided to the community (CFAF 184,927 million), manufacturing industries (CFAF 47,062 million), transport, warehousing and cargo handling (CFAF 43,850 million), civil works (CFAF 40,051 million). To a less extent the electricity, gas and water, agriculture, forestry and fisheries, insurance and real estate sectors were also financed by the banks.

164. As at 31 December 2008, there were still unpaid loans, amounting to CFAF 63,559 million as against CFAF 50,982 million for the previous year.

165. Presently, the twelve commercial banks established in Benin are working hard to extend their network of branches in the city of Cotonou and the other departments of the country. For example, Continental Bank-Benin, in the month of July 2007, increased the number of its functional agents to ten with the opening of 4 new branches at Akpakpa, Cadjèhoun, Porto-Novo and Ouidah. Like it, all the commercial banks in Benin are strengthening their development potential, not only in terms of opening new branches, but also introducing new bank products on the market. Their efforts in the field to conquer new market shares resulted in a 16.5% increase in their total resources in 2008, as compared to 2007.

166. Lending institutions (banks and financial institutions) are governed both by the common laws of commercial companies defined by a supranational body, the Organization for Harmonization of Business Law in Africa (OHADA) and by Framework Law 90-018 of 27 July 1990 on banking regulation in the Republic of Benin, called the Banking Act. These texts fix, in particular the rules governing their constitution, functioning and dissolution. They contain no specific provision on Anti-Money Laundering and Combating the Financing of Terrorism.

167. Article 3 of the Banking Act of Benin acknowledges as banks, “businesses that have as their usual profession to receive funds, which may be accessed by cheques or transfers and which they use, for their own account or for the account of others, in credit or investment operations”.

168. As for financial institutions, they are defined in Article 4 of the same act as “natural or legal persons that have made it their usual profession to carry out, for their own account, credit, sale on credit or exchange activities, or that usually receive funds, which they use for their own account in investment transactions, or that usually operate as intermediaries such as commission agents, brokers, or otherwise in all or part of these transactions”.

169. The Banking Act does not consider as banks or financial institutions, insurance companies, pension institutions, foreign exchange agents, notaries and officers of justice who exercise the relevant functions.

170. Article 5 of the Banking Act defines as credit operations, “lending, discount, repurchase, loan acquisition, guarantees, funding of credit sale and sale on credit operations; and as investment operations, equity participation in existing businesses or under creation and all acquisition of securities issues by public or private persons”.

171. No electronic money institution authorized by the Central Bank of West African States has been established since the entering into force of the BCEAO Instruction on, in particular the conditions of creation of this type of financial entity.

172. The control of activities of lending institutions is within the competence of the BCEAO, the Banking Commission and the Ministry of Finance.

173. Documentary controls are carried out by both the BCEAO and the Banking Commission, particularly concerning compliance with implementation of the Bank Chart of Accounts, the banking conditions and prudential ratios. There too, the issue of anti-money laundering and financing of terrorism is not subjected to systematic control.

174. Seven (7) banks received a general auditing onsite mission from the WAMU Banking Commission in 2008. The recommendations of these missions concern mainly corporate governance, business strategy and plan, information and accounting system, quality of the portfolio and risk management, financial situation and prudential ratios. On the other hand, it contains no aspect regarding the control of anti-money laundering measures.

175. The **Decentralized Financial Systems (DFS)** are the main actors of the microfinance sector. These institutions offer proximity (financial and non-financial) services to population groups who find it difficult to obtain bank loans to fund their economic activities.

176. The Government of Benin has also instituted a Pro-Poor Micro Credit programme (MCPP), which consists in introducing small loans (a maximum of CFAF 30,000 per beneficiary, at an annual interest rate of 5%) to poor population groups. Launched on 27 February 2007 and financed by the National Microfinance Fund, this programme is implemented through technical partners, with a total equity of CFAF 25 billion. In this regard, the Millennium Account Challenge (MAC), a US Government financial aid programme, comprises a component on "Financial Services Project", in the sum of about 20 million dollars. One of the objectives of the project is to improve the surveillance of Microfinance Institutions (MFIs).

177. In this regard, the mission was informed that the controls made by the Control and Surveillance Unit for Decentralized Financial Systems (CSDFS) on MFIs are partly financed with these funds.

178. The main actors registered in the sector are: FECECAM, PADME, PAPME, VITAL FINANCE, FINANDEV, ASSEF, CPEC, CFAD, UNACREP, MDB, RENACA (CBDIBA) and PEB Co (BETHESDA). These actors operate from three hundred and forty-seven (347) service points on the entire national territory.

179. Deposits collected by the DFS as at 31 December 2008 amounted to CFAF 47,877 million. On that same date, outstanding loans amounted to CFAF 59,012 million. Resources mobilized by the DFS from the banking system amounted to CFAF 11,451 million, mainly by three structures, which obtained bank loans to the tune of CFAF 11,451 million. Bad debts in the sector stood at CFA 4,270 million as at the end of December 2008.

180. To accompany DFS in their loan recovery actions, a National Commission for Recovery of Loans from microfinance institutions was created by Presidential Decree 2006-480 of 30 October 2007. This Commission was installed on 14 August 2008, but as at 31 December 2008, had no operational structure.

181. During the year 2008, several difficulties were noted in the DFS sector, in particular:

- Governance problems that prevent these institutions from achieving their objectives;
- Unfair competition that institutions operating outside the law meet out to their authorized sister-institutions;
- Low performance of the information system of DFS, making it impossible to inform managers on the strategic choices to be made in the improvement of the performances of their institutions;
- High costs associated with the implementation of guarantees by the DFS;
- Lack of medium and long-term resources that would enable DFS to grant loans for similar periods.

182. Controls were made during the year 2008 in the DFS sector by the Control and Surveillance Unit for Decentralized Financial Systems (CSDFS). These documentary and onsite controls also concerned analysis of operation authorization dossiers. During the fourth quarter of 2008, thirty-one (31) audit missions were conducted, but none of them concerned anti-money laundering and financing of terrorism.

183. **Postal financial services** are governed by the AML Act. In Benin, the *Société La Poste du Benin*, a private law company, with the State as sole shareholder, carries out financial activities (Savings, Transfer). Its clientele is mainly composed of salaried workers, especially of the public sector (civil servants and government agents or Local Communities).

184. The Post Office proposes savings products with a minimum deposit of ten thousand (10,000) CFA francs and a maximum of five (5) million CFA francs for natural persons but increased to twenty-five (25) million for legal persons.

185. In the area of transfers, it signed representation contracts with Money Express and Western Union sub-representation with Ecobank. An individual ceiling of four (4) million CFA francs per week was fixed for the transmission and reception of transfers.

186. The Postal Service in Benin is placed under the responsibility of the Ministry of Communication New Information Technologies. By virtue of its statutes, it is subjected to the double control of the General State Inspectorate and the Chamber of Accounts of the Supreme Court. The mission could not obtain the elements on the content and frequency of the controls made but which, according to information collected onsite, did not concern compliance with the obligations set forth in the AML Act.

187. A ***Fonds de Dépôts et Consignations*** exists but the mission could not get a copy of the texts concerning its creation and functioning. According to the information received orally, the Fund was constituted with deposit accounts with the Treasury for the benefit of projects funded by the State and donor agencies. The Fund also contains accounts on which are deposited small amounts representing

salary or pension disputes or sureties paid. Risks of money laundering concerning public accounts are virtually non-existent.

188. There is also a ***Caisse Autonome d'Amortissement*** **(CAA)** but the mission did not obtain information on the conditions of its creation nor its functioning. The risks of laundering funds held by this bank are low for the same reasons as those given by the *Caisse de Dépôt et Consignations*.

189. The **Insurance Sector** is constituted by general insurance companies, insurance and reinsurance brokers, whose activities are controlled at the national level by the Insurance Supervision Department of the Ministry of Economy and Finance, and regulated by a supra-national organization, the Inter-African Conference of Insurance Markets (CIMA). There is risk of money laundering in this sector, even if, in practice, discussions with the ASA-Bénin and insurance companies indicated that the AML/FT risk is not high because of the marginal number of life insurance contracts subscribed and the individual amounts guaranteed.

190. Insurance companies established in Benin cover two main insurance branches, namely: Fire, Automobile and Various Risks (IARD) and Life Insurance. At the end of December 2008, twelve (12) insurance companies were regularly established in Benin. Five (5) intervene in the IARD field (*Africaine des Assurances*, NSIA Benin, FEDAS, GAB, AGF-BENIN and SAARB), and seven (7) in the Life Insurance branch (UBA VIE, ARGG, COLINA VIE BENIN, AVIE, NSIA VIE BENIN, SADES and AFRICAINE-VIE).

191. As at 31 December 2008, the provisional turnover of all the insurance companies amounted to CFA 28,873 million as against CFA 25,717 million in 2007. This level of business is divided between the two branches as follows: IARD CFA 21,630 million and VIE CFA 7,243 million.

192. The Council of Ministers of Insurance (CMA), established by Regulation 001/CIMA/PCMA/PCE/SG/2007 stipulates that insurance companies and mutual insurance companies should have a minimum equity of CFA 1,000 million and an establishment fund of CFA 800 million. A period of three (3) years was given to companies whose equity or establishment fund is below the new amount retained to comply with the Guideline. The period ends on 03 April 2010.

193. There is a **Regional Stock Market** for all WAEMU member-States, comprising two poles:

- A public pole, constituted by the Regional Council of Public Savings and Financial Markets (CRPMF) representing the general interest in charge of guaranteeing the security and integrity of the market and exercising authority over the actors;
- A private pole, constituted by the Regional Stock Market (BRVM) and the Central Depositor/Settlement Bank (DC/BR) having a status of specialized financial institutions exempted from the Banking Act and enjoying exclusively a public service concession on the entire UEMOA space. The Headquarters of these Institutions are based in Abidjan, but the BRVM, has national branches in each member-State of the Union.

194. The BRVM and the DC/BR are structures of the market. The other actors are Commercial Operators (Management and Intermediation Companies (SGI), Wealth Management Companies (SGP), Business Finders (BFs) and Soliciting Dealers

195. As at 31 December 2008, there were four (4) management and intermediation companies operating in Benin, namely SGI BENIN, AFRICABOURSE BENIN, ACTIBOURSE and BFS. The Management and Intermediation Companies (SGI), constituted into business corporations, are mainly involved in negotiation of securities on the stock market for the account of their customers. Incidentally, they also carry out management activities under mandate, operate as Investment Advisers.

1.4 OVERVIEW OF THE DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS (DNFBP) SECTOR

196. The Beninese authorities estimate as low the risk of terrorist financing and have not embarked on an analysis of the legislation in force applicable to actors of the DNFBP sector, particularly associations and NGOs, nor conducted a specific studies to assess the vulnerability of the sector to this risk.

197. Moreover, in the absence of transposition into the national law of the WAEMU Guideline on CFT, and whose article established developments in the *OBNL*, there is no provision in terms of control and regulation of NGOs, which could be misused for purposes of financing of terrorism by virtue of their activities.

198. Regarding DNFBPs, among the actors subject by law to the AML obligations, they noted the existence of:

i. Casinos: there are currently two (2) casinos in activity. Their opening and exploitation are regulated by Inter-ministerial Order 078/MISAT/MF/MCAT/DC/DAI of 02/06/97. The activity is marginal and functions mainly when tourists and businessmen visit Benin. Contrary to the Benin National Lottery, whose activities constitute state monopoly, games in casinos are like gambling granted by the State. There is very little control over the sector, which contributes to make them a likely place for money laundering.

ii. Estate agents: their exact number is unknown and their activity is neither defined nor regulated.

iii. Real Estate agents: (their subjection to the AML Act is not explicit), who are professionals in real estate, carrying out activities with great credit standing; huge government projects. They are few in number and placed under the authority of the Ministry of Urban Planning, Habitat, Land Reform and Coast Erosion Control.

iv. Lawyers: There are 150 of them in Benin and their profession is regulated by the Act of 29 April 1965 instituting the Beninese Bar, By-laws of the Bar Association and the Decree of 23 January 1988 on organization of the *Certificat d'Aptitude à la Profession d'Avocat* (CAPA). They are under the control of the Bar Council, sitting as the Discipline Council with jurisdiction to prosecute and punish, as a disciplinary measure, offences committed by Lawyers registered at the Bar and on the internship list. They are under the authority of the Ministry of Justice.

v. Notaries: There are 25 of them and appointed by decree passed in Cabinet on the proposal of the Keeper of the Seals, Minister of Justice after opinion of the Commission in charge of expressing opinions or making recommendations on the location of notary offices, according to the needs of the public, the geographical situation and the demographic and economic trends. They are public officers of court instituted to receive all deeds and contracts which the parties should and wish to establish as authentic deeds issued by the Public Authority. They

are in charge of ensuring the date of these deeds and contracts, to conserve the registration and issue engrossed copies and official copies.

Public Accountants and Chartered Accountants: Their profession is regulated by Act 2004-033 of 27 April 2006 on creation of the *Ordre des Experts Comptables et Comptables Agréés* in the Republic of Benin (OECCA-Benin), which has 71 members. The Public Accountant has jurisdiction to verify, appreciate, review and adjust the accounts of businesses and agencies to which it is not linked by an employment contract, certify the regularity and sincerity of the synthesis financial statements required from businesses under the legislative and regulatory provisions in force, finally conduct accounting and financial audits.

The AML Act used the term "Statutory Auditors" but it appears practically that access to this profession necessarily depends on qualification as a Public Accountant.

vi. Non-Governmental Organizations, governed by the 1901 Act on Associations, grouped as a Collective.

vii. Dealers in precious metals and precious stones, whose exact number is not known.

viii. Money Courier Companies.

1.5 OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS APPPLICABLE TO LEGAL PERSONS AND ARRANGEMENTS

199. The OHADA Uniform Act, related to the Right of Commercial Companies and Economic Interest Groups, which came into force on 1st January 1998, sets forth all the rules governing, in particular, the legal form of commercial companies and EIGs.

In this regard, the different possible legal forms of commercial companies are:

- General Partnership;
- Partnership with Stakeholders;
- Limited Liability Company;
- Business Corporation;
- Joint Venture;
- Economic Interest Group.

200. These legal persons should request for their registration within the month of their constitution, with the Trade and Personal Credit Registry (RCCM) at the registry of the Jurisdiction where its headquarters is based.

201. The application should mention the following:

- Corporate name;
- Eventually, trade name, acronym or sign;
- Activity or activities carried out;

- Form of company or legal person;
- Amount of equity with indication of the amount of cash contributions and evaluation of the contributions in kind;
- Address of the headquarters, and eventually, that of the main establishment and of each of the other establishments;
- Life time of the company or legal person as fixed by its statutes;
- Surnames, first names and personal residence of the partners held indefinitely and personally liable for partnership debt, with indication of their date and place of birth, their nationality, the date and venue of their marriage, the matrimonial regime adopted and restrictive clauses opposable to third parties of the free disposal of the property of the spouses or the lack of clauses as well as the requests in separation of property;
- Surnames, first names, date and place of birth, and residence of the managers, executive directors or partners having the general power of engaging the company or the legal person;
- Surnames, first names, date and place of birth, and residence of the auditors, when their designation is provided for in the Uniform Act on the right of commercial companies and economic interest groups.

202. It is important to underline that the Uniform Acts are of direct implementation and are imperative, notwithstanding all contrary provisions of national law.

1.6 OVERVIEW OF THE STRATEGY TO PREVENT MONEY LAUNDERING AND THE FINANCING OF TERRORISM

1.6.1 AML/FT strategies and priorities

203. The mission noted a general awareness, on the part of the national authorities, of the harmful effects of ML/FT and a strong political will to curb these scourges. But, it did not observe the existence of a national control strategy, organized into programmes and action plans with clearly defined priorities.

204. It should be noted that in the framework of the AML/FT, Benin is party to universal international conventions (Vienna, Palermo, New-York, Merida Conventions under the aegis of the United Nations) or regional conventions (OAU Conventions and later the African Union and ECOWAS Conventions).

205. Community Guideline 07/2002, adopted by the WAEMU Council of Ministers on 19 September 2002, instituted anti-money laundering in the West African sub-region. Indeed, on the proposal of the BCEAO, a Uniform Act was adopted on 20 March 2003 by the Council of Ministers for:

- Facilitating adoption of anti-money laundering acts in each member-State of the Union, and
- Ensuring harmonization of the general principles in member-countries of the Zone.

206. In application of the community provisions, Act 2006-14 of 31 October 2006 on anti-money laundering in Benin (AML Act) was promulgated, thus ensuring the transposition of the above-mentioned

Guideline into the national law of Benin. However, it seems the annex to the Act does was not adopted by the National Assembly.

207. The AML Act is the main reference framework of the strategy of the Beninese Government for combating money laundering.

208. This act came to complete initiatives taken at the sub-regional level by ECOWAS (fight against laundering of money derived from drug trafficking, in particular with the creation of GIABA in 1999) and by WAEMU as mentioned above.

209. This act is implemented through several initiatives, namely:

- Decree 2006-752 of 31 December 2006 on creation, attribution, organization and functioning of the National Financial Information Processing Unit (CENTIF);
- Decree 2008-248 of 07 May 2008 on appointment of members of CENTIF;
- The offer of a secured building to host the headquarters of CENTIF;
- The provision of a budget for the functioning and equipment of CENTIF;

1.6.2 Institutional AML/FT Framework

210. Per Decision A/DEC/9/12/99, the Conference of ECOWAS Heads of State and Government created the Inter-governmental Action Group against Money Laundering in West Africa (**GIABA**), having as a mission, in particular, to protect financial and banking systems of member-States against crime money and ensure the adoption, in a harmonized and concerted manner, appropriate measures for combating money laundering. This mission was extended in 2006 to combating the financing of terrorism. Having acceded to FAFT-Type Regional Organization (ORTG), GIABA proceeded, on the basis of its statutes, reviewed, in particular the evaluation of the AML/FT System of its member-States, regarding the FATF Recommendations as well as the relevant norms and standards. GIABA also conducts typology studies on ML/FT. Mutual evaluation reports and typology studies are available on the web site (giaba.org).

211. At the national level, an **Inter-ministerial Anti-Money Laundering Committee** has been instituted on the recommendation of GIABA. Created in 2007, this Committee is composed of representatives from Ministries of Justice and Security. It holds meetings (a total of 5 since its creation).

212. The mission met members of the Committee who informed it that the Committee's programme of actions included the development of a global AML/FT strategy at the national level in the form of a national AML/FT programme. Furthermore, collaboration ties have been established with CENTIF since the establishment of the latter, particularly in terms of sensitization and training of the actors of the AML/FT mechanism.

Agencies of the Financial Sector

- **Ministries or agencies responsible for issuing authorizations, registrations or other authorizations to financial institutions**

213. Pursuant to Article 12 of the Convention on creation of the Banking Commission of the West African Monetary Union, authorizations are granted to banks and financial institutions by decree of the Minister of Finance on the recommendation of the Banking Commission.

- **National Regulation, Responsible and Control Authorities of Financial Institutions**

Ministry of Finance

214. It is the Ministry of Finance that is mainly in charge of the AML dossier at the national level. By virtue of the Anti-Money Laundering Act, the CENTIF, placed under the authority of the Ministry of Finance, constitutes the core of the AML system in Benin.

Directorate of Monetary and Financial Affairs

215. In accordance with the provisions of Order 1188/MF/DC/SGM/DA on Attributions, Organization and Functioning of the General Treasury and public Accounts Directorate (DGTCP), the Department of Monetary and Financial Affairs (DAMF) ensures:

- The management of the public treasury;
- The analysis and financial syntheses in collaboration with the general directorate of economic affairs;
- The search for public funding;
- The issue and negotiation of government papers;
- Equity participation and management;
- The follow-up of problems associated with the balance of payments;
- The determination and monitoring of the exchange policy;
- The follow-up of enterprises of the public and semi-public sector;
- The relations with banks;
- The monitoring of the amortization of the public debt (outside the scope of the caa);
- The study of macro-economic aggregates in liaison with the economic forecasting directorate.

• The directorate of monetary and financial affairs is sub-divided into four offices:

- The treasury and budget affairs office (btab);
- The debt and financing office (bdf);
- The money and credit office (bmc);
- The office of international financial relations (brfi).

216. The BTAB is in charge of: the management of the government treasury, the analysis of financial syntheses, the monitoring of enterprises of the public and semi-public sector, the study of macro-economic aggregates in liaison with the DPC.

217. The BDF is in charge of the search for public funding, the issue and negotiation of government papers and equity management.

218. The BMC is in charge of monitoring primary banks and financial establishments and ensuring, in relation with the BCEAO, the respect of the banking regulation.

219. The BRFI ensures the monitoring of the exchange policy and preparation of balance of payments in liaison with the BCEAO.

220. At the national level, it is the DAMF that is in charge of supporting the policy of the Regional public Savings and Financial Markets Council, a body of the West African Monetary Union, created on 3 July 1996 by decision of the WAEMU Council of Ministers and whose headquarters is based in Abidjan (Côte d'Ivoire).

221. The CREPMF ensures the protection of the savings invested in securities and in any other investment entailing public offering on the entire territory of the West African Monetary Union.

222. On that basis, it is solely empowered to:

- Regulate and authorize, through the issue of a certificate, public offering procedures through which an economic agent issues securities or offers investment products within the Union, whether or not the latter are listed on the Regional Stock Market;
- Formulate, eventually, a veto on the issue and investment by public offering of new financial products that can be traded on the stock market.
- Empower and control all the intermediaries of the market. To that end, it approves the Regional Stock Market, the Central Depository/Control Bank as well as commercial actors: management and intermediation companies, wealth management companies, business finders, consultants in securities and canvassers;
- Authorize agents of private structures to engage in stock trading, through the issue of professional cards.

Directorate of Insurance

223. The Directorate of Insurance was initially created by Decree 88-528 of 29 December 1988**. Since then, several** amending legislations have been issued by the competent Authority. It is today, by virtue of Order 098/MFE/DC/SGM/DGE of 1st March 2006, an operational department of General Directorate of the Economy. But, in the framework of the execution of its attributions, it is subjected to the provisions set forth in Annex II of the Treaty of the Inter-African Conference of Insurance Markets (CIMA), which lays down the attributions of National Insurance Directorates.

224. Hence, like all the National Insurance Directorates of ICIM member-countries, an integration institution of the insurance sector in the zone, the Insurance Directorate of Benin serves as a relay for the action of the Regional Insurance Supervision Commission (CRCA), supranational body for regulation of insurance markets in the zone.

225. Pursuant to Order 098/MFE/DC/SGM/DGE of 1st March 2006 aforementioned, the Insurance Directorate comprises the following departments:

- Regulation and Litigation Department (SRC);
- Research and Control Department (SEC);
- Cooperation Department;
- Professional Insurance Training Centre.

226. Apart from these departments, the Directorate has an Administrative Secretariat and an Accountant for the accomplishment of its missions.

227. To execute its attributions, the Insurance Directorate uses a body of sworn Insurance controllers.

228. The Insurance Directorate is the structure that handles the different insurance issues in the Public Administration. In that regard, it is in charge of:

- the conception and surveillance of the application of the national regulation in the area of insurance;
- the study and proposal to the Government of all measures likely to ensure and complete the promotion of the national insurance market;
- the representation of the State within international cooperation agencies in the area of insurance;
- the management of the Insurance Professional Training Centre (CPFA) of Benin, a decentralized pedagogical unit of the International Insurance Institute (IIA) of Yaounde;
- the exercise of the oversight role of the Ministry of Finance over the insurance sector;
- encouraging the insurance sector to increase its participation in national economic development.

Surveillance Unit for Decentralized Financial Systems –CSDFS-

229. The WAEMU regulation granted to the Monetary and Financial Authority of each member-State, i.e. the Ministry of Finance, prerogatives for supervision of the Decentralized Financial Systems.

230. In Benin and most countries of the zone, the Ministry of Finance has established a Microfinance Monitoring Unit, in charge of documentary and onsite audit of DFS.

Ministry of Microfinance

231. The mission of the Ministry of Microfinance and Youth and Women Employment, created in 2006, is to propose and implement government policies in the areas of microfinance, promotion of small and medium enterprises and employment. This Ministry lightens the task of the Ministry of Finance, but especially prevents it from playing the double role of judge and defendant, of regalia trusteeship and support of the microfinance sector.

232. The high growth of the sector and the difficulties encountered by the national monetary authorities in the implementation of the 1993 Regulation compelled the WAEMU Council of Ministers to review the first distribution of supervision tasks in 2007 in order to further involve the BCEAO and the Banking Commission. The entire sector and some institutions in particular had indeed attained a critical volume of activity, which gave them some importance in the systemic balance of the region, thus justifying the intervention of the regional authorities. In particular, the new 2007 Act, not yet adopted by Benin, proposes to set a ceiling for a volume of activities beyond which the BCEAO automatically assumes the role of oversight institution: "The Central Bank and the Banking Commission shall proceed, after information from the Minister, to control any decentralized financial system whose level of activities attains a ceiling to be determined by instruction from the Central Bank". This Instruction had not yet been published by the BCEAO as of June 2009, and the ceiling is yet to be determined.

233. During the discussions, the Officials met informed the mission that they were not aware of the existence of the AML Act. Cooperation ties exist with the Ministry of Finance, which is in charge of supervising DFS. In this regard, the reports of the onsite mission prepared by the said Ministry are transmitted to the MMF, which provides support to the DFS for implementation of the Recommendations of these reports.

Ministry of Commerce, Cottage Industry and Tourism

234. The Ministry of Commerce, Cottage Industry Tourism is in charge of the implementation of the general policy of the State in the commercial, cottage industry and tourist sectors. It has jurisdiction to issue, in particular to Travel Agencies, authorization to exercise their commercial activities.

Ministry of Interior

235. The Ministry of Interior and Public Security is in charge of internal security on the entire national territory and, in that regard, ensures the protection of people and property. In collaboration with the Ministry of Defence and the other Ministries intervening in the economic and financial sector, it is in charge of protecting the national economy against smuggling, fraudulent imports and other economic and financial crimes.

236. The Minister of Interior has authority over the Police apart from the exercise of the Judicial Police for which police officers, particularly Judicial Police Officers (JPO) report to the State Prosecutor. It has at its disposal the National *Gendarmerie* for administrative police activities, maintenance of law and order and the judicial police.

237. Within the General Directorate of the National Police has been created the Economic and Financial Brigade (BEF), placed under the authority of the Judicial Police Directorate (DPJ), responsible for conducting extensive investigations on economic and financial crimes and offences. Even before the

advent of the Uniform Act on Anti-money Laundering and Financing of Terrorism, a ministerial decree entrusted to the BEF the prerogative of receiving suspicious transaction reports from banks in order to combat fraud and money laundering, even if the latter offence was only criminalized in the case of illicit trafficking of narcotic drugs and psychotropic substances.

238. The Ministry of Interior, through the gambling services and in collaboration with the Ministries of Commerce and Economy and Finance, supervises gambling houses and casinos. There are three casinos on the entire national territory, two of which are functional. These casinos are all established in Cotonou, the economic Capital.

Ministry of Justice, Legislation and Human Rights

239. Decree 2007-491 of 02 November 2007 on attributions, organization and functioning of the Ministry of Justice, Legislation and Human Rights sets forth the institutional framework of the said ministry. In accordance with this decree, the Ministry is headed by the Keeper of the Seals, Minister of Justice, Legislation and Human Rights. It is the depository of the seals and armouries of the State and Head of Administrative Services of the Justice Department. The mission of this Ministry is to:

- Propose to Government the national and international state policy in the area of justice as well as the Administration of Justice, prison services and correctional education, to conduct and monitor the implementation of policies adopted by the Government;
- Suggest to Government, on its initiative or in concert with other ministerial departments, an appropriate legislation policy;
- Conduct and ensure efficient execution of the national human rights policy defined by Government.

240. To ensure efficient functioning, the Ministry comprises Services directly attached to the Minister, namely the Office of the Minister, the General Secretariat of the Ministry, the Central Departments, the Technical Departments, the Appeal Courts and Tribunals, External Services, the Commissions and Committees under its control.

241. The judicial authority is guaranteed by the Constitution and according to Act 2001-37 of 27 August 2002 on Judicial Organization in the Republic of Benin, it is exercised by the Supreme Court, Courts and Tribunals created in accordance with the Constitution. Benin has one Supreme Court, based in Cotonou (at the time of the visit, the authorities were preparing to transfer it to Porto-Novo); three (3) Appeal Courts in Cotonou, Abomey and Parakou; eight (8) Courts of First Instance and Conciliation Tribunals instituted per district in towns with specific status (Art. 21 of the Act).

Ministry of Foreign Affairs

242. The Ministry of Foreign Affairs was created in Benin by Decree 387 of 30 December 1960. Its name has been changed several times over the years as well as its attributions, organization and functioning.

243. Today, it is called the Ministry of Foreign Affairs, African Integration, *Francophonie* and Beninese Abroad, and is governed by Decree 2007-653 of 31 December 2007. Under this Decree, the Ministry of Foreign Affairs is "in charge of the implementation of the Government's foreign policy, the conduct of international bilateral and multilateral cooperation, coordination at the international level of decentralized cooperation, promotion and management of African integration, promotion of *francophonie*, protection of Benin's interests abroad and those of Benin nationals abroad".

244. The International Organizations Department is one of the technical departments of this Ministry. It is in charge of "handling and monitoring issues relating to Benin's participation in activities of the United Nations as well as its specialized agencies and other universal international organizations". In that regard, it deals in particular with the ratification of UN conventions on the fight against financial crime and monitors the implementation of the operational activities and resolutions of the Security Council, in collaboration with the national structures concerned.

OPERATIONAL AGENCIES AND CRIMINAL JUSTICE

National Financial Information Processing Unit (CENTIF)

245. CENTIF was established in 2009. It is an administrative service, endowed with financial autonomy and autonomous decision-making power on issues that fall within its jurisdiction. Its mission is to collect and process financial information on money laundering networks. In this regard, it:

- Is in charge, in particular, of receiving analyzing and processing information for the purpose of establishing the origin of transactions or the nature of operations that have been the subject of suspicious reports imposed on persons subject to the act;
- Also receives all other useful information, necessary for accomplishing its mission, in particular, those communicated by the control authorities, as well as judicial police officers;
- May request for the disclosure, by persons subject to that act, as well as by all natural and legal persons, information held by them and which are likely to help enrich suspicious transaction reports;
- Conducts or ensure the conduct of periodic studies on the trend of the techniques used in money laundering on the national territory.

246. It expresses views on the implementation of government policy on anti-money laundering. In that regard, it proposes all necessary reforms for enhancing the effectiveness of the fight against money laundering.

247. It prepares periodic reports (at least once per semester) and an annual report, which analyze the trend of anti-money laundering activities at the national and international levels, and evaluates the reports collected. These reports are then presented to the Minister of Finance.

Investigation and Criminal Proceedings Authorities

248. The criminal proceedings authorities in charge of appropriate investigations on money laundering and financing of terrorism offences are those of common law set out in the Code of Criminal Procedure. By virtue of the provisions of the Code of Criminal Procedure, the judiciary police are in charge of searching for and observing violations of the criminal law, as long as an inquiry is not opened. It is exercised under the Direction of the State Prosecutor. Within the competence of the Appeal Court, it is placed under the supervision of the State Prosecutor and under the control of the Grand Jury.

249. *Gendarmerie* Officers and Non-Commissioned Officers, in particular, are considered as Judicial Police Officers (JPOs) performing the functions of Brigade Commander, Commissioners, and Police Inspectors. Judicial Police Officers are soldiers from the *Gendarmerie* and members of the Police forces when they do not have the quality of JPO.

250. The Principal State Prosecutor represents the State Prosecutor at the Appeal Court and the Court of Assizes. He is in charge of ensuring the application of the criminal law within the scope of competence of the Appeal Court and has authority over all the Attorneys within the competence of the Appeal Court.

251. The State Prosecutor represents in person or through his deputies the Principal State Prosecutor at the Courts of 1st Instance. He receives complaints and denunciations and assesses the follow-up actions to be taken. He carries out, or ensures the carrying out of, all necessary actions for the research and prosecution of violations of the criminal law.

Competent Judicial Authorities

252. The judicial authority comprises magistrates of the State Prosecutor's Office and headquarters. Responsibility for investigation and prosecution of economic and financial crimes and offences rests on the State Prosecutor's Office. It is the national Police and *Gendarmerie* that are empowered to conduct investigations under the direction of the State Prosecutor. By Decree 2005-812 of 29 December 2005, the Second Preliminary Investigation Office is specifically in charge of investigating economic offences.

253. The State Prosecutor, in its sphere of competence, receives cases handled by CENTIF and requests an examining judge to immediately open a criminal investigation (cf. Art. 29 of Act 2006-14 of 31 December 2006). The State Prosecutor may also, in the framework of these normal prosecution prerogatives, initiate an AML procedure on the basis of information received from JPOs and through any other channel apart from CENTIF.

254. The examining judge is empowered to prescribe interim measures, in accordance with the law by ordering, at the expense of the State, in particular the seizure or freezing of property related to the offence, generally the subject of the investigation.

255. The tribunals are competent to order the confiscation of proceeds derived from the offence for the benefit of the Public Treasury, in particular,.

Customs Services

256. The Fraud Control Department is in charge of the fight against money laundering and financing of Terrorism.

257. The Fraud Control Department centralizes all information on AML at the level of the Customs Department.

Specialized Agencies in the Control of Narcotic Drugs Trafficking

National Police

258. The body of the National Police in charge of leading the fight against drug trafficking is the Central Office for Repression of Illicit Trafficking of Drugs and Precursors (OCERTID). Created by Decree 99-141 of 15 March 1999, the OCERTID did not effectively start its activities until 2000. It is specifically in charge of:

- Coordinating and organizing all operations aimed at repressing this trafficking;
- Combating the laundering of profits generated by this activity;
- Supporting and coordinating the action of the Police, *Gendarmerie*, Customs, Forests and Natural Resources Departments and all other structures involved in the fight against the use and illicit trafficking of narcotic drugs.

259. It should be noted that the coordination with the other above-mentioned services in the fight against the trafficking of narcotic drugs is not effective, since at the OCERTID, the planned offices allocated to Liaison Officers of the *Gendarmerie*, Customs and Water and Forests Departments have to date not been occupied. The OCERTID, considered only as police civil servants, intervenes on the basis of information, especially and routine controls, in the city of Cotonou and surrounding areas, at the Cotonou International Airport, at the Cotonou Port Authority and in some private express-mail services.

260. At the end of the control operations, cannabis or Indian hemp is the leading drug seized. It is followed by cocaine as a hard drug. Regarding heroine, it occupies the third position. It should be noted that there was an explosion of cocaine seizure in 2007 (cf. Table of Statistics R 32).

261. Cannabis is cultivated in the centre of Benin and is often smuggled across land borders or consumed locally in the populous districts of towns. Hard drugs (cocaine and heroin) come from countries of South America and transit through West African countries en route to Europe. Cannabis is transported in bags or small bags.

262. This hard drug is often concealed in objects that apparently contain no prohibited products, such as, for example, soles of shoes, large buttons fixed on new clothes, guitar handle, etc. (cf. Statistics on seizures in Section 2.3 of the Report). The technique consisting in swallowing drug balls is widely used, especially with cocaine. The relevant statistics are communicated by the Police to UNODC annually through the Inter-Ministerial Committee for Control of Drugs and Psychotropic Substances (CILAS), but the reliability leaves something to be desired in the absence of centralization.

263. Some traffickers are specialized in the trafficking of drug balls, which they swallow prior to their departure for Europe. On arriving at their destination, they vomit the balls and deliver the product to their beneficiaries against high remuneration, and use the money for their shopping (second-hand vehicles from France, ready-made goods, etc.), which they ship to Benin by creating front businesses for laundering the proceeds from drug trafficking.

National Gendarmerie

264. The National *Gendarmerie* has no structure specifically in charge of combating illicit drug trafficking. Alternative to its traditional missions, it contributes to the fight against trafficking of narcotic drugs **(cf. statistics of seizures from 2005 to 2008 in paragraph 2.3.1).**

Self-Regulatory Agencies of Lending institutions

The Professional Association of Banks and Financial Institutions (APBEF)

265. The main aim of the Association is to:

- Represent banks and financial institutions in the political, administrative and monetary authorities;
- Defend the material and moral interests of the profession;
- Define the rules of healthy and fair competition between members of the profession and ensure the respect of these rules;
- Promote the role of savings and credit as engine of economic growth and development of the country, make all suggestions of general interest in these areas to the Government and monetary authorities;
- Develop confraternity ties among members;
- Undertake all actions aimed at enhancing the image of banks;
- Pool information on solvency and morality of their customers;
- Amicably resolve differences that could arise between members;
- Intervene in cases set out in the legislative or regulatory texts.

Organization and Self-regulation of Designated Non-Financial Businesses and Professions (DNFBPs)

Casinos

266. There are two casinos in Benin, established in hotels. They are placed under the joint control of the Ministry of Security, the Ministry of Finance and the Ministry of Commerce.

Public Accountants

267. The AML Act is targeted at Auditors and not specifically Public Accountants. **The profession of Public Accountant** is regulated by Act 2004-033 of 27 April 2006 on creation of the *Ordre des Experts Comptables et Comptables Agréés* in the Republic of Benin (OECCA-Benin).

Estate Agents and Real Estate Promoters

268. The profession of estate promoter is regulated, which is not the case of Estate Agent.

Dealers in precious metals and stones

269. Their activity is regulated by Act 2006-17 of 17 October 2006 on the Mining Code in the Republic of Benin. Controls are carried out by the Ministry of Mines (Mines Department) on the quantity and quality of the gold to be exported, but the origin of the gold is not controlled, as well as the amount of the transactions.

Notaries

270. All Notaries practising in Benin are automatically members of the **National Notarial Association**. This Association is placed under the responsibility of the Minister of Justice. The Bureau of this Chamber is composed of a Chairman, a Vice-Chairman, a Secretary and a Treasurer.

Lawyers

271. The legal profession is regulated in Benin by: the Act of 29 April 1965 instituting the Beninese Bar, the By-laws of the Bar and the Decree of 23 January 1988 on organization of the *Certificat d'Aptitude à la Profession d'Avocat (CAPA).*

272. The **Bar Council**, sitting as a Trial Committee, prosecutes and reprimands, as a disciplinary measure, offences committed by Lawyers at the Bar and on the internship list.

These functions are either automatic, or performed at the request of the State Prosecutor, or on the initiative of the President of the Bar. He gives a ruling in all cases by a reasoned decree and pronounces, where necessary, one of the disciplinary penalties. The State Prosecutor ensures and supervises the execution of these disciplinary penalties.

Situation since the Last Evaluation

273. It should be underlined that this mutual evaluation of the AML/FT provision is the first of its kind conducted in Benin. The mission was informed that the country had been evaluated in the framework of the African Peer Review Mechanism (APRM) of the African Union to which it subscribed. However, the mission could not have access to the report of that evaluation**.**

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

2.1 CRIMINALIZATION OF MONEY LAUNDERING (R.1 & 2)

2.1.1 Description and Analysis

Legal Framework

274. The legal provision of anti-money laundering and financing of terrorism established, at community level, by the authorities of WAEMU and BCEAO and the Government of Benin at the national level, is based on the following main instruments:

- Guideline 07/2002/CM/UEMOA of 19 September 2002 on anti-money laundering in WAEMU member-States;
- Regulation 14/2002/CM/UEMOA of 19 September 2002 on freezing of funds and other financial resources in the framework of combating the financing of terrorism in WAEMU member-States;
- Act 97-025 of 18 July 1997 on control of Drugs and Precursors;
- Act 2006-14 of 31 October 2006 on anti-money laundering;
- Decree 2006-752 of 31 December 2006 on creation, attributions, organization and functioning of a National Financial Information Processing Unit (CENTIF);
- Decision 14/2006 CM/UEMOA of 08/09/2006 on amendment of Decision 12/2005/CM/UEMOA of 04/07/2005: on the list of persons, entities or agencies targeted by the freezing of funds and other financial resources in the framework of combating the financing of terrorism in WAEMU member-States;
- Guideline 04/2007/CM/UEMOA of 4 July 2007 on combating the financing of terrorism in WAEMU member-States;
- Instruction 01/2007/RB of BCEAO of 2 July 2007 on anti-money laundering;
- Convention on creation of the Banking Commission of the West African Monetary Union;
- The Criminal Code;
- The Code of Criminal Procedure.

Recommendation 1

275. Criminalization and sanctioning of money laundering were introduced into the Beninese Criminal Law by Article 102 of Act 97-025 of 18 July 1997 on Control of Drugs and Precursors. But, this

provision, which covered the material elements of conversion, transfer, concealment, disguise, acquisition, possession and use, only targeted laundering of money from drug trafficking.

276. It is Act 2006-14 of 31 October 2006 on anti-money laundering, hereinafter called the AML Act that came to complete the provision, by harmonizing it with the Vienna and Palermo Conventions, in particular by extending widely the scope of offence to cover any crime or offence.

Physical and Material Elements of the Offence (C. 1.1)

277. Article 2 of the Anti-Money Laundering Act makes money laundering a criminal law and describes the physical and material elements of the offence, in accordance with the prescriptions of the Vienna and Palermo Conventions, by stipulating that: "In the sense of this act, money laundering is defined as one or more of the intentionally committed actions enumerated hereafter:

- The conversion, transfer or manipulation of property, knowing that such property derives from a crime or offence or from an act of participation in such crime or offence, for purposes of concealing or disguising the illicit source of the said property or assisting any person involved in the commission of such a crime or offence to escape from the legal consequences of his actions;

- The concealment or disguise of the nature, source, location, disposal or movement or of the true ownership of or rights with respect to property, knowing that such property is derived from a crime or offence as defined in the national legislations of member-States or from an act of participation in such a crime or offence;

- The acquisition, possession or use of property, knowing, at the time of receipt, that the said property was derived from a crime or offence or from an act of participation in such a crime or offence".

Types of property to which money laundering offence applies (C. 1. 2)

278. The property targeted, without specification of value, by Article 2 of the AML Act is a type of property to which money laundering offence applies. They are defined in Article 1 as: "assets of any kind, whether physical or nothing, movable or immovable, tangible or intangible, fungible or non fungible, as well as legal instruments or documents evidencing title to this property or the corresponding rights".

279. The AML Act does not specify that the said property should represent directly or indirectly proceeds from crime. However, by virtue of its article that explicitly provides for the confiscation of indirect proceeds, it may be admitted that the property from the commission of a predicate offence covers assets that represent directly or indirectly proceeds of the crime.

280. The money laundering offence is committed, even if the assets are converted.

281. "Money laundering is deemed to exist, even if the acts that are at the origin of the acquisition, possession and transfer of the assets to be laundered, are committed on the territory of a member-State or that of a third-party State". Unless the predicate offence has been the subject of an amnesty law, money laundering is deemed to exist, even if the perpetrator of the crimes or offences has not been prosecuted, or convicted (Art.3 al 2).

Prerequisite for conviction for predicate offence (C. 1.) 2. 1)

282. According to law, one does not need to be sentenced for a predicate offence to prove that a property constitutes proceeds from crime. Indeed, money laundering is deemed to exist, even if the perpetrator of the crimes or offences has not been prosecuted, nor sentenced or if it lacks a condition for taking legal action following the said crimes or offences unless the predicate offence has been the subject of an amnesty law (Art.3 al 2 of the AML Act).

Main Offences (C. 1. 3 and 4)

283. Concerning the scope of money-laundering offences, Article 2 of the AML Act targets crimes and offences without limitation. The qualification of crime or offence helps to cover a very wide range of predicate offences.

284. Furthermore, the Penal Code (PC) and specific repressive texts criminalizing and sanctioning as crimes or offences the 24 categories of offences designated by the FATF as follows:

Categories of offences	References, repression text	Sanctions Observations
1-Participation in an organized criminal group - Racket:	Art. 265 PC	
2-Terrorism, including its financing	Lack of incrimination	See developments related to SR II
3-Human trafficking and illicit migrant trafficking	Decree 12-1905 (Repression of Trafficking) Decree 23-8-1912 enforcing the Convention of 4 May 1910 (Women trafficking) Act 2006-04 of 5 April 2006 on condition of displacement of minors and repression of child trafficking	
4-Sexual exploitation, including that of children	Art. 334 and subsequent articles of the CP	6 months to 2 years in prison; Fine of CFAF 400,000 to 4 million.

5-Illicit trafficking of narcotic drugs and psychotropic substances	Art. 95-025 and subsequent articles of the Act of 18 July 1997 on control of drugs and precursors	10 to 20 years in prison; Fine of CFAF 500,000 - 5 million
6-Arms trafficking	Art. 27 of Decree 61-39 PR/MI of 7 February 1961	1 - 5 days in prison; Fine of CFAF 1000 to 1200
7-Illicit trafficking of stolen goods and other goods	Art. 460 and subsequent articles of the PC	
8-Corruption	Art. 177 and subsequent articles of the PC Order 79-23 of 10 May 1979 punishing, under the criminal code, embezzlements, corruption, misappropriation and similar offences committed by permanent government agents. Order of 8 February 1945 punishing corruption of public servants and employees of private businesses.	5 - 10 years in prison with hard labour for civil servants and permanent government employees 1 - 3 years in prison for private sector employees Fine of CFAF 90,000 – 900,000 for civil servants. Fine of CFAF 60,000 – 600,000 for private sector employees Confiscation
9-Fraud and Swindle	Art. 405 PC	1 - 5 years in prison (increased to 10 years in case of public offering); Fine of CFAF 240,000 to 2,400,000 (increased to 12 million in case of public offering)
10-Currency forgery	Art.132 and subsequent articles PC Art. 1 and subsequent articles Act 2003-21 of 11 November 2003	Life imprisonment with hard labour; Fine increased tenfold of the value of the forged signs with a minimum of

		CFAF 20 million
11-Forgery and piracy of products	Art. 58 AIPO Accord of 2 March 1977 (Industrial Property) Art. 90 and subsequent articles Act 2005-30 of 5 April 2006 on protection of copyright and neighbouring rights	
12-Crimes against the environment	Art.15, 112 and subsequent articles Art. 98-030 of 12 February 1999 on the framework law on the environment in the Republic of Benin	Penalty of 1 - 3 years in prison, doubled in case of repeat offence; Fine of CFAF 1 - 10 million, doubled in case of repeat offence
13-Murders and serious body harm	Art. 295 and subsequent articles of the PC	Death sentence or life imprisonment with hard labour
14-Kidnapping, sequestration and hostage taking	Art. 341 and subsequent articles of the PC	Penalty of hard labour for a period of time or death sentence in case of torture of the persons sequestrated .
15-Stealing	Art.379 and subsequent articles of the PC	Penalty of hard labour for a period, for life or death in case of aggravating circumstances
16-Smuggling	Art. 353 and subsequent articles of the Customs Code	Penalty of 3 months to 1 year in prison; Fine representing twice or four times the value Confiscation
17-Extorsion	Art. 400 PC	Hard labour for a period of time
18-Forgery	Art.145 and subsequent articles PC	Hard labour for a period of time or for life in case of civil servants or public officers
19-Piracy	Art. 271 and 272 of Order 38PR/MTPTPT of 18 June 1968	Death sentence, Hard labour or Life

	on the Shipping Code	imprisonment
20-Insider dealing and market manipulation	Art.19 Banking Act	Lack of penalty for insider dealing and market manipulation on the Regional Stock Market

285. It is important to note the significant lack of criminalization of terrorism and its financing, as well as insider dealing and market manipulation. The illegal trafficking of migrants is occasionally criminalized. As an autonomous offence, illegal trafficking of migrants should be governed by a complete system of criminalization and sanctions, in accordance with the Protocol annexed to the United Nations Convention of Repression of Terrorism Financing.

286. For the Beninese authorities met by the mission, the Convention on creation of the Regional Council on Public Savings and Financial Markets (CREPMF) offers a framework for punishing insider trading (Art. 36 of the annex). Hence, for them, the laundering of proceeds derived from insider trading and market manipulation is susceptible for prosecution on the basis of the more general offences of fraud, for example.

287. The fact remains that, in the absence of an internal legal text, this offence cannot, in practice, be sanctioned.

288. The draft of Benin's new Criminal Code under examination and whose objective is to be in harmony with international standards is likely to help remedy this situation.
The table below presents the different types of most common crimes.

TABLE OF STATISTICS OF THE MOST COMMON PREDICATE OFFENCES FROM 2006 TO 2008 (Source National Police: DSP – DPJ)

Years / Nature of offence	2006	2007	2008	TOTAL
FRAUDS	2757	2510	2501	7768
COMPOUND ROBBERY	793	815	975	2583
BREACH OF TRUST	8862	6812	8131	23803
FORGERY AND PIRACY	24	21	18	63
CYBERCRIME	107	-	-	107

289. It appears from these statistics that the most common offences concern cases of fraud and breach of trust. It should be noted that cyber-criminality is on the increase in Benin, although the statistics produced are for the year 2007.

290. It is unfortunate that these statistics globally did not take into account the financial counter-values to ensure better appreciation of the eventual recycling base of the proceeds from these illicit activities.

Acts committed outside the Beninese territory (C.1.5)

291. According to Article 2 sub-paragraph 2, "Money laundering is deemed to exist, even if the acts that are at the origin of the acquisition, possession and transfer of assets to be laundered are committed on the territory of another member-State or on that of a third-party State".

292. The text does not specify the need for prior criminalization of the said acts in the third-party State (double criminalization).

Self-money laundering (C. 1. 6)

293. According to the authorities met by the team of the evaluation mission, the provisions of the law on anti-money laundering do not exclude the fact that the same person can be the perpetrator of main offence, may be prosecuted and sentenced for laundering the asset from the latter, as no other national legislation or legal principle can oppose such measure. But in the hypothesis of a combination of offences, le principle of non-accumulation of penalties is retained and only the heaviest sentence shall be applicable.

294. For the moment, no such jurisprudence exists in Benin.

Related Offences (C.1.7)

295. The Anti-Money laundering Act also provides for related offences. According to Article 3 of the said act, "the agreement to or participation in an association to commit an act constituting money laundering; association to commit the said act, attempts to perpetrate it; aid, incitement or advice to a natural or legal person, with a view to executing it or of facilitating its commission also constitute money laundering offence".

Additional elements – Proceeds from predicate offence committed outside Benin and ML offence (C.1.8)

296. Under the terms of Article 2 sub-paragraph 2 of the AML Act: "Money laundering is deemed to exist, even if the acts at the origin of the acquisition, possession and transfer of assets to be laundered, are committed on the territory of another member-State or that of a third-party State".

297. This article does not pose the principle of double criminalization, since it does not say that there has been an offence of ML, when the proceed of the crime is obtained following a conduct occurring in another country, which does not constitute *an offence in this other country, but which would have constituted a predicate offence in Benin.*

298. On the other hand, Article 553 of the Code of Criminal Procedure (CCP) stipulates that "Any Benin national, who outside the territory the Republic, is found guilty of an act described as offence according to Beninese Law, may be prosecuted and tried by Beninese jurisdictions, if the act is punished under the legislation of the country where it has been committed". This provision, which imposes the condition of double incrimination, seems to oppose the prosecution for money laundering in case of predicate offence not incriminated in the country of its commission.

Recommendation 2

Liability of natural persons (C.2.1)

299. Money laundering offence presupposes wrongdoings like conversion, transfer or manipulation of assets, dissimulation, disguise, acquisition, possession or use of assets … committed intentionally. The criminal liability of natural persons is set out in the AML Act since Article 5 relating to the scope of application of the said act targets "any natural person … ". Furthermore, Article 37 of the AML Act provides for criminal penalties applicable to natural persons found guilty of a money laundering offence.

Intentional Element (C. 2.2)

300. As specified above, the definition of incrimination of money laundering takes into account the intentional element of the offence. It is the awareness of the illicit origin of the good to be laundered at the time of the act (Art 2). This element is supremely appreciated by the trial judge according to the circumstances of the cause.

301. The act does not mention specifically that the intentional element of the offence of money laundering may be deduced from "objective factual circumstances".

302. However, the provisions of Articles 2 (wrongdoings committed intentionally), 3 (related offences), 39 (aggravating circumstances) and 40 (sanction for specific money laundering offences) should ensure that the knowledge, intention or motivation as elements of offences of money laundering can be deduced from objective factual circumstances.

Criminal liability of legal persons (C.2.3)

303. According to Article 42 of the Act: "Legal persons other than the State, for the account and benefit of which a money laundering offence or one of the offences set out in this act has been committed by one of the bodies or representatives, shall be punished by a fine equal to five times that incurred by natural persons, without prejudice to the sentencing of the latter as perpetrators or accomplices of the same

acts". This article, therefore, affirms the principle of liability of legal persons and sets forth the penalties applicable to them.

Other penalties imposed on legal persons (C.2.4)

304. The fact of subjecting legal persons to criminal liability for money laundering does not exclude the possibility of initiating parallel procedures.
Apart from the fine, legal persons other than the State may be sentenced to one or several of the following penalties:

- Exclusion from public markets, permanently or for a maximum period of (5) years;
- Confiscation of the good that served or was intended serve to commit the offence or the good which is the proceed from it;
- Placement under judicial surveillance for a maximum period of five (5) years;
- Banning, for good, or for a period of five (5) years, from exercising directly or indirectly one or several professional or social activities on the occasion of which the offence was committed;
- Closing down, permanently or for a period of five (5) years, of the establishments or one of the establishments of the business that served to commit the incriminated acts;
- Dissolution, when they were created to commit the incriminated acts;
- Posting of the decision pronounced or dissemination of the latter by the written press or by any audio-visual means of disclosure at the cost of the legal person convicted".

305. Financial entities subjected to a supervision authority having a disciplinary power are exempted from the penalties provided for under points 3 through to 7 mentioned above. This situation is explained by the fact that the competent supervisory authority, to which the State Prosecutor has referred any court action against a financial entity, may impose appropriate penalties, in accordance with specific legislative and regulatory texts in force (paragraphs 3 and 4 of Article 42).

306. The criminal penalties do not harm other types of administrative or civil actions, in particular those relating to request for damages.

Efficient, proportionate and dissuasive nature of the penalties (C.2.5)

307. Pursuant to Article 37 of 2006-14 of 31 October 2006, natural persons convicted of a money laundering offence, are sentenced to a prison term of three (3) to seven (7) years and a fine equal to three times the value of the assets or fund which resulted from the laundering operations. Attempted laundering shall be punished with the same penalties.

308. Article 39 of the same Act prescribes that these penalties be doubled in the following aggravating circumstances:

- When the money laundering offence is committed in a habitual manner or by using facilities procured from the exercise of a professional activity;

- When the perpetrator of the offence is a repeat offender; in this case, the sentences handed down abroad are taken into account in establishing the repeat offence;

- When the offence of laundering is committed in an organized band.

309. When the money laundering crime or offence from which the property or sums of money involved in the money laundering offence (predicate offence) are derived is punishable by imprisonment for a period exceeding that of the prison term imposed in application of Article 37 of the AML Act, the money laundering offence is punishable by penalties attached to the predicate offence of which the perpetrator was aware and, if this offence is accompanied by aggravating circumstances, by penalties attached only to the circumstances of which he was aware. On that basis, money laundering, which is an autonomous offence, may be punishable by penalties attached to the predicate offence if the perpetrator of the money laundering offence was aware of it. Moreover, if this offence is accompanied by aggravating circumstances, it is only the penalties attached to the circumstances of which he was aware alone that shall be applied.

310. This was the reading made by the law application authorities met of Article 39, sub-paragraph 2. Such a reading does not provide clarification of the proportionality of penalties.

311. Furthermore, the proportional and dissuasive nature of AML penalties seems below the penalties provided for in the case of offences associated with drug trafficking. Indeed, Articles 95 and subsequent articles of the act on drugs and precursors provide for a prison term of 10 to 20 years whereas Article 37 of the Anti-Money Laundering Act only provides for a prison term of 3 to 7 years. Even so, it cannot be deduced, mechanically, that the AML sanctions are not proportional or dissuasive.

312. Additional penalties are set forth in Articles 41, relating to additional optional criminal penalties applicable to natural persons, and 45 relating to mandatory confiscation of proceeds derived from money laundering under the AML Act. The additional penalties are of two types: compulsory additional penalties and optional additional penalties.

313. The compulsory additional penalty is common to natural persons and legal persons and involves confiscation “of the proceeds of the offence, of movable or immovable assets into which these proceeds are transformed or converted and, up to the level of their value, of legitimately acquired property with which the said proceeds are commingled, as well as revenues and other benefits derived from these proceeds, properties into they are transformed or invested or property into which they are commingled, whichever person to whom these proceeds and assets belong, unless their owner establishes that he is unaware of their fraudulent origin” (Art. 45 of the Anti-Money Laundering Act).

314. These optional additional penalties apply both natural and legal persons. The optional additional penalties stipulated for natural persons are aimed at: restricting their freedom of action, in particular temporary or permanent prohibition on entering, staying in, or leaving the national territory, restriction of civic or civil rights, the exercise of certain professional activities, check-writing capabilities or limiting their prerogatives with regard to certain property (prohibition on driving any terrestrial motor vehicle, water craft or aircraft, possessing or carrying a weapon, the confiscation of all or part of their illegally

acquired property, of the property used for or intended to be used for the commission of the offence (See paragraph. 154 above).

Analysis of effectiveness

315. Penalties effectively pronounced by the courts may alone help to estimate, in particular, the dissuasive impact of the penalties and the effectiveness of the provision of repression of money laundering. However, this is not yet the case in Benin, nearly three years after the entry into force of the AML Act.

316. In fact, since the adoption of the Act, no case has been brought before the courts to be tried. Statistics available during the visit of the evaluation mission concern seizures of drugs made both by the Police and *Gendarmerie* Services and the Customs Department.

317. The authorities met during the visit were of the view that the legal framework set by the AML Act, which punished laundering offence and predicate offences already constituted a major step.

318. In this regard, they mentioned the case of suspicious transactions brought before the Cotonou Court of First Instance. In the absence of anti-money laundering text at that time, this case could not prosper and the declaring bank had to retract its statement. It should, therefore, be hoped that the effective enforcement of this act can have a dissuasive impact on those who would be tempted to commit the money laundering offence. But this presupposes better knowledge of this act by those in charge of its enforcement, in particular magistrates, which is not yet the case in Benin.

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2.1.2 ***Recommendations and Comments***

319. On the basis of the above observations, the mission recommends to the Beninese Authorities to:

- Criminalize in a more extensive manner migrant trafficking (by targeting the case of adults);
- Criminalize terrorism and its financing, insider trading and market manipulation;
- Clarify the offence of self-money laundering;
- Adopt necessary measures to render effective the enforcement of the act, in particular through wider dissemination among the authorities charged with its enforcement through appropriate training;
- Adopt necessary measures to help assess the effectiveness of the provision for repression of ml.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of Factors Underlying Rating
R 1	***PC***	Unduly restrictive criminalization of migrant trafficking Lack of criminalization, at national level, of the financing of terrorism, insider trading and market manipulation

		Lack of clarity on the offence of self-money laundering Enforcement of the act not efficient Difficulty in assessing the effectiveness of the provision on repression of money laundering.
R 2	***LC***	Enforcement of the act not efficient.

2.2 CRIMINALIZATION OF THE FINANCING OF TERRORISM (SR.II)

Special Recommendation II

2.2.1 DESCRIPTION AND ANALYSIS

320. The legislation on financing of terrorism does not exist yet and according to the Beninese authorities, no offence of this type had been committed to warrant punishment. On the other hand, these authorities, who estimate that the risk of terrorism and its financing is low in Benin, affirmed that Benin ratified:

- The Convention for the Repression of Terrorist Bomb Attacks on 31 July 2003;
- The International Convention for the Repression of the Financing of Terrorism on 30 August 2004.

However, at the time of the visit, the team of the evaluation mission could not have access to the ratification instruments (See R35 below).

321. The WAEMU Council of Ministers adopted Guideline 04/2007/CM/UEMOA of 07 July 2007 on combating the financing of terrorism in WAEMU member-States in order to define the legal framework for combating the financing of terrorism in member-States, in accordance, in particular with the 1999 International Convention for repression of the financing of terrorism and its annexes. The analysis of the Guideline helped to observe that criminalization of the financing of terrorism is in line with the said Convention.

322. On the basis of this WAEMU Guideline, a uniform bill was prepared. It was adopted in Cabinet and according to the authorities of the Supreme Court met by the mission, the President of the Republic requested the Supreme Court to express its views on the said draft bill. In this regard, an Adviser is in charge of drafting a report, which will be presented to the Plenary Assembly of the Supreme Court (constituted by the Judicial Chamber, the Administrative Chamber and the Chamber of Accounts) to express a view. At the time of the visit, the Adviser had not yet submitted his report. As soon as the report is presented and the Plenary Assembly has expressed a view, the bill will be transmitted to the President of the Republic who will transmit it to the National Assembly for adoption.

2.2.2 *Recommendations and Comments*

323. Even if they consider as low the risk of financing of terrorism, the Beninese authorities should implement internally the commitments made at the international level in order to facilitate the pursuit and repression of this type of offence in their country.

324. To that end, the procedure to be followed to ensure the adoption of the FT Act seems long and the Beninese authorities are invited to take appropriate measures to accelerate the said procedure to ensure the adoption as early as possible of the said act on the financing of terrorism.

2.2.3 *Compliance with Special Recommendation II*

	Rating	Summary of Factors Underlying the Rating
R S II	***NC***	Lack of criminalization of the financing of terrorism, for lack of transposition of the relevant WAEMU Guideline.

2.3 CONFISCATION, FREEZING AND SEIZURE OF THE PROCEEDS OF CRIME

2.3.1 DESCRIPTION AND ANALYSIS

- Articles 102, 111 and 113 of Act 97-025 of 18 July 1997 on control of drugs and precursors, under which money laundering is punishable by mandatory confiscation, and seizure in its Article 118;

- Act 2006-14 of 31 October 2006 on anti-money laundering sets forth in its Articles 36, 41 points 9 and 10, 42 point 2, 45, 33 ultimately, 63 on confiscation, freezing and seizure of proceeds of crime;

- Order 79-23 of 10 May 1979 punishing under the Criminal Code, embezzlements, corruption, misappropriation and assimilated offences committed by permanent state agents.

325. All the texts mentioned above organize confiscation, freezing and seizure in the context of the fight against money laundering in Benin.

Confiscation of property constituting proceeds generated through the commission of money laundering offence, financing of terrorism or other predicate offences, including property of equivalent value (C.3.1).

326. Mandatory confiscation of property constituting proceeds generated through the commission of the money laundering offence is provided for in Article 45 of the AML Act. This article stipulates that: “in all cases of conviction for money laundering offence or attempted money laundering, the courts order the confiscation to the public treasury, proceeds derived from the offence, movable or immovable property into which these proceeds are transformed or converted and, up to their value, property legitimately acquired into which the said proceeds are commingled, as well as revenues and other benefits derived from these proceeds, property into which they are transformed or invested or property into which they are commingled to any person to whom these proceeds belong, unless their owner established that he was unaware of their fraudulent origin”.

327. Moreover, Article 41, paragraph 10 provides as an optional additional criminal sanction applicable to natural persons for the “confiscation of the property or the item that served or was intended to serve to commit the offence that constituted the proceeds thereof, with the exception of items susceptible for restitution”.

328. Article 42 paragraph 2 provides, as optional additional sanction applicable to legal persons, for the “confiscation of the property or item that served or was intended to serve to commit the offence or the proceeds thereof”.

329. The possibility of confiscating the property of an equivalent may be deduced from the provisions of Articles 36 sub-paragraph 1 (on precautionary measures) and 63 sub-paragraph 2 (on the request for confiscation). Indeed, under the terms of Article 36 sub-paragraph 1, the examining judge may order the seizure or confiscation of the property in relation with the offence, the subject of the investigation and all the elements to help identify them, as well as the freezing of the sums of money and financial operations concerning the said property.

330. Article 63 sub-paragraph 2 specifies, for its part, that the decision on confiscation must target a property, constituting the proceeds or the instrument of one of the offences targeted by the act or consisting in the obligation to pay a sum of money corresponding to the value of this property.

331. The combined interpretation of these two texts helps to deduce the confiscation of a property or an amount of money corresponding to the value of a property that constitutes the proceeds generated by the commission of a money laundering offence.

The other property subject to confiscation (C.3.1.1)

332. The Anti-Money Laundering Act, therefore, includes as property subject to confiscation, proceeds generated by the commission of the money laundering offence, the instruments used or intended to be used to commit the offence, the property derived directly or indirectly from the proceeds of the offence, including revenues and other benefits derived from these proceeds, movable and immovable property into which the proceeds of the offence are commingled or transformed and up to the equivalent of their value if this property has been legitimately acquired.

Property from predicate offences

333. It should also be noted that Articles 111 to 113 of the 1997 Act on the control of drugs and precursors provide for mandatory confiscation.

334. Furthermore, Article 180 of the Criminal Code prescribes: "The corruptor shall not be made to surrender items delivered to him, nor their value; they shall be confiscated for the benefit of the Public Treasury.

335. Concerning property associated with terrorism, the lack of criminalization of this offence in the national law does not allow for their confiscation.

336. Statistics on seizures made in the framework of drug control were communicated to the mission. No link could be established between these figures and AML.

SUMMARY TABLE OF DRUG SEIZURES FROM 2006 TO 2008 - SOURCE: NATIONAL POLICE (OCERTID – DSP) (Weights expressed in grams)

YEAR	CANNABIS	COCAINE	HEROIN
2006	172,328.26	45,738.226	400,425
2007	147,171.63	446,717.07	3,590,539
2008	18,005,846	45,219,708	4,168,394

337. The statistics show that if seizures of cannabis and cocaine fell drastically between 2007 and 2008, (from 147,172 g to 18,006 g for cannabis, and from 446,717 g to 45,219 g for cocaine), those of heroin increased from 3,590 g to 4,168 g.

338. The high level of seizures made in 2007 shows a significant increase in cocaine smuggling in 2007. Indeed, Benin seems to constitute a transit country for cocaine smuggling like most countries in the sub-region, hence the risk of laundering proceeds from drug trafficking.

Provisional measures (C.3.2)

339. Article 36 of the AML Act contains provisional measures:

- "The examining judge may prescribe precautionary measures, in accordance with the act ordering, at government expense, in particular the seizure or confiscation of the property associated with the offence, the subject of the investigation and all elements that can help to identify them, as well as the freezing of the sums of money and financial operations concerning the said property".
- The fact that Article 36 of the AML Act mentions, among the precautionary measures, that confiscation does not seem judicious. In fact, precautionary measures are taken by the examining judge at the stage of investigation. At this stage the guilt of the accused person is not yet established and, therefore, his property cannot be confiscated. The confiscation involves permanent dispossession of the property of the perpetrator of the offence for the benefit of the State. The confiscation is ordered by a court decision. It is, therefore, legally ineffective at the investigation stage.

340. The mission questioned the Beninese authorities about the practical modalities of the confiscation at the investigation stage. The latter indicated that according to legal principles in force in Benin, it is impossible to effect confiscation at the investigation stage and that, in fact, it is an error contained in the Uniform Act. If that is the case, then the error should be corrected.

341. Concerning the predicate offences, the Code of Criminal Procedure (CPP) settles the issue in its Articles 43 (crimes and fragrant offences), 84 and subsequent articles (transport, searches and seizures). Indeed, by virtue of these provisions, the examining judge has power of seizure of objects and documents useful for establishing the truth.

The effect of all these provisional measures is to block any transaction, transfer of assets subject to confiscation.

Deposit *ex parte* or without prior notice of a request for freezing or seizure of property subject to confiscation (C.3.3)

342. The AML Act does not specifically provide for the obligation for the examining judge or the State Prosecutor to proceed to the deposit *ex parte* or without prior notice a request for freezing or seizure or property subject to confiscation. The Code of Criminal Procedure also makes no mention of any provision in that regard.

Prerogatives for detection and retracing of the origin of property subject to confiscation (C.3.4) and Measures aimed at preventing or cancelling actions that are prejudicial to the capacity of the authorities to recover property subject to confiscation (C.3.6)

343. In order to establish proof of the original offence and proof of the offences associated with money laundering, the examining judge may order, in accordance with the law, for a fixed period, without the professional secrecy being opposed to him, various actions, in particular:

- Placing under surveillance of bank accounts and accounts assimilated with bank accounts, when serious indices make one suspect that they are used or likely to be used for operations associated with the original offence or offences set out in this act;
- Access to computer systems, networks and servers used or likely to be used by persons against whom exist serious indices of participation in the original offence or offences set out in this act;
- Disclosure of authentic acts or under private signature, of bank, financial and commercial documents.

344. He may also order the seizure of the above-mentioned deeds and documents.

345. However, the Anti-Money Laundering Act does not explicitly confer these prerogatives on criminal prosecution authorities and all the more so the CENTIF of Benin.

346. However, the CCP confers on the criminal prosecution authorities, extensive investigation powers, which may be used in the framework of the AML.

347. Concerning CENTIF, Article 28 of the said act grants it the possibility to oppose the execution of a transaction, on the basis of reliable, serious and corroborating information for a maximum period of 48 hours.

348. Regarding the possibility for the criminal authorities to adopt measures aimed at preventing or cancelling contractual or other actions in which the persons involved knew or should have known that these actions would affect the capacity of the authorities to recover the goods subject to confiscation, there is no explicit provision in the AML Act. Nevertheless, the authorities met by the mission affirm that no contractual obligation (whose legality is the basic condition of validity) can, a priori, constitute an obstacle to the confiscation or seizure. The authorities met also felt that the civil or commercial judge can prevent or annul the effects of an illegal contract in enforcement of Articles 1131 and 1133 of the Civil Code. **(See above and also** Sections 2.5 and 2.6 of this Report).

C.3.5 Protection of third parties in good faith

349. The AML Act contains no specific provisions protecting third parties of good faith, as required under the Palermo Convention. However, Article 45 ultimately excludes confiscation of property belonging to persons who have established that they were unaware of the fraudulent origin of the proceeds derived from the money laundering offence. In this case, it is the responsibility of these persons to prove their good faith. Moreover, Article 86, sub-paragraph 1 CPP offers this protection by providing that: "The accused person, the defendant or any other person who claims having right over an object placed in the hands of the justice system can claim its restitution from the examining judge".

2.3.2 *Recommendations and Comments*

350. The Beninese authorities should take measures to:

- Complete the legislation by including it in the provisions relating to property of equivalent value;
- Make possible the freezing, seizure and confiscation of property associated with the financing of terrorism;
- Establish statistics on confiscation, freezing and in the area of the fight against money laundering.

2.3.3 *Compliance with Recommendation 3*

	Rating	Summary of Factors Underlying Rating
R 3	**PC**	Lack of arrangements for assets of corresponding value Impossibility of freezing, seizure and confiscation of assets associated with the financing of terrorism, due to lack of criminalization of this offence in the national law Lack of implementation of the freezing, seizure and confiscation mechanisms in connection with money laundering Lack of statistics

2.4 FREEZING ASSETS USED TO FINANCE TERRORISM (SR.III)

2.4.1 Description and Analysis

Legal Framework

- Regulation 14/2002/CM/UEMOA of 19 September 2002 on freezing of funds and other financial resources in the framework of combating the financing of terrorism in WAEMU member-States (this Regulation is of direct application);

- Decision 14/2006 CM/UEMOA of 08/09/2006 on amendment of Decision 12/2005/CM/UEMOA of 04/07/2005 on the list of persons, entities or agencies targeted by the freezing of funds and other financial resources in the framework of combating the financing of terrorism in WAEMU member-States;

- Guideline 04/2007/CM/UEMOA of 04 July 2007 on combating the financing of terrorism in WAEMU member-States.

351. These texts organize the freezing of funds used for financing of terrorism in application of Resolutions 1267 (1999) and 1373 (2001).

352. It should be noted that Benin ratified the International Convention for Repression of the Financing of Terrorism on 30 August 2004. But it has not yet introduced the provisions of this convention into its legal order for lack of a national law.

SR III.1 Freezing assets under UN Resolution 1267 (1999)

353. Article 4 of Regulation 14/2002 of 19 September 2002, on Conditions of implementation of the measures for freezing funds and other financial resources: "All funds and other financial resources belonging to any natural or legal person, any entity or agency designated by the Penalties Committee, shall be frozen".

354. To that end, the WAEMU Council of Ministers establishes the list of persons, entities and agencies whose funds must be frozen. Concerning persons and entities subject to the freezing measures, the Regulation only targeted those explicitly designated by the Penalties Committee. Yet, Resolution 1267 also demands that assets of persons acting for the account and on instructions of persons and entities registered on the summary list be frozen.

355. It should be noted that sessions of the UEMOA Council of Ministers be held quarterly and, consequently, the Regulation empowers the Chairman of the Council of Ministers, on the proposal of the Governor of the BCEAO to amend or complete the list of persons, entities or agencies whose assets must be frozen, subject to subsequent validation by the said Council.

356. During the entire period of suspension measure, these funds or other financial resources should not be put, directly or indirectly at the disposal or used for the benefit of the persons, entities or agencies concerned.

357. Under Article 8 on monitoring of the application of the Regulation, "this Regulation shall be applicable; notwithstanding the existence of the rights conferred or obligations imposed by virtue of any international agreement, any contract signed or all authorizations or permits granted before the coming into force … the BCEAO and the Banking Commission are charged with the monitoring of the application of this Regulation".

358. In practice, like the provision for dissemination of the lists retained by Regulation 14/2002, there is an informal mechanism for transmission of the lists through embassies. Hence, the Embassy of Benin at the UNO transmits the list to the Ministry of Foreign Affairs, which notifies the updated lists to the Ministry of Economy and Finance, which, in turn, is in charge of transmitting it to its competent structures, in particular the Monetary and Financial Affairs Department and CENTIF, for wide dissemination. However, only banks affirm to have knowledge of these lists of which they receive disclosure. All the other entities subject to the act are unaware of them.

359. Furthermore, the heads of credit agencies met complained about the difficulty in exploiting the lists of the United Nations.

SR III.2 Freezing of Funds targeted by Resolution 1373 (2001)

360. Regulation 14/2002 targets both Resolution 1267 (1999) and Resolution 1373 (2001) of the Security Council of the United Nations Organization. However, only Resolution 1267 was mentioned in Article 2 of the said Regulation. Benin has no provision enabling it to prepare its own lists of persons and entities whose assets must be frozen and, consequently, proceed to freeze them. There are no specific provisions for implementing Resolution 1373 (2001).

SR III.3 Freezing mechanism adopted by other countries

361. Laws and procedures making it possible to analyze initiatives taken as freezing mechanisms of other countries and enforce them, eventually, have not been put in place by Benin.

SR III.4 and 5 Application of the freezing measures to funds and other property controlled by the persons targeted and their disclosure to the financial sector

362. These measures have not been put in place by Benin.

SR III.7 Requests for withdrawal from list and freezing of funds

363. In Benin, there are no efficient procedures known to the public for timely examination of requests for withdrawal from the list of persons targeted and unfreezing of funds or other property of persons or entities withdrawn from the lists, in accordance with international commitments.

SR III.8 Procedures for releasing funds of persons inadvertently affected by a freezing mechanism

364. Regulation 14/2002 does not institute procedures that could be brought to the knowledge of the public for releasing within the shortest possible time funds or other property of persons or entities inadvertently affected by a freezing mechanism, after verification that the person or entity is not the one targeted.

SR III.9 Access to funds to cover basic expenditures

365. The above-mentioned Regulation does not institute adapted procedures for authorizing access to funds or other property that have been frozen by virtue of Resolution S/RES/1267 and of which it would be decided that they would be used to cover basic expenditures, payment of certain types of commissions, fees and remunerations for services as well as extraordinary expenditures. Certainly, the last paragraph of Article 4 of the Regulation stipulates that the freezing does not apply to funds and financial resources that are the subject of a derogation granted by the Penalties Committee and that these derogations may be obtained through the Central Bank, but makes no provision for a detailed procedure to do so.

SR III.10 Procedures for contesting the freezing with a view to its review by a court

366. The lack of appropriate procedures allowing a person or an entity whose funds and other property have been frozen to contest this measure with a view to its review by a court is explained by the lack of a legal system for implementing Resolutions, especially Resolution 1373.

SR III.11 Freezing, seizure and confiscation in other circumstances

367. The freezing, seizure and confiscation measures provided for in the framework of money laundering should also be taken in the case of terrorism financing.

368. According to the authorities met, the relevant common law mechanisms could eventually be used. But there is no law on the fight against the financing of terrorism.

SRI II.12 Protection of the rights of third parties of good faith

369. Article 8 of the International Convention for the Repression of Financing of Terrorism provides for the protection of the rights of third parties of good faith. Measures to be taken to that end should be in line with the provisions of this article. However, Benin does not have a legislation on the financing of terrorism and, therefore, such protection does not exist.

SR III.13 Monitoring the respect of the obligations set out in SR III

370. According to Article 8 of Regulation 14/2002/CM/UEMOA, the BCEAO and the Banking Commission are charged with monitoring its enforcement. In that regard, they may impose penalties for the non respect by banks and financial institutions of the system put in place. The banks met confirmed that the control is done and that they transmit their reports on regular basis.

371. However, the evaluation mission could not have access to these reports, which are transmitted directly to the BCEAO headquarters through its National Agency.

372. There is also a need to underline the fact that the Regulation applies only to financial institutions and that, in practice, nothing is provided for the other subjected institutions.

373. This is explained by the fact that the system put in place for Resolution 1267 is not yet well oiled, and by the absence, in Benin, of a legal provision for implementing Resolution 1373 of the UN Security Council.

2.4.2 *Recommendations and Comments*

374. Among all the entities concerned met by the evaluation mission, only the banks affirmed being aware of the lists disseminated by the BCEAO or the Ministry of Economy and Finance. Hence, there seems to be a need for increased information and sensitization of the other persons subject to the act.

375. The Beninese authorities should:

- Complete the mechanism for the freezing of funds under Resolution 1267 (1999);
- Implement Resolution 1373 (2001).

2.4.3. *Compliance with Special Recommendation III*

	Rating	Summary of Factors Underlying Rating
R S III	***NC***	Highly incomplete nature of the system for freezing funds under Resolution 1267 (1999) Lack of implementation of Resolution 1373 (2001)

2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26, 30 & 32)

2.5.1 DESCRIPTION AND ANALYSIS

Legal Framework

- Act 2006-14 of 31 October 2006 on combating ML;
- Decree 2006-752 of 31 December 2006 on creation, organization and functioning of CENTIF;
- Decree 2008-248 of 7 May 2008 on appointment of members of CENTIF;

- Ministerial Order 2008 120/MEF/CENTIF of 18 February 2009, fixing a model of Suspicious Transaction Report (S.T.R);
- By-Laws of CENTIF approved by the Ministry of Economy and Finance, on 19 February 2009;
- Order 171/MEF/CENTIF of 19 February 2009 on delegation of signature by the Ministry of Economy and Finance.

Establishment of the FIU (C.26.1)

376. Article 16 of Act 2006-14 of 31 October 2006 on anti-money laundering in Benin, hereinafter called AML Act, stipulates as follows: "It is hereby instituted by decree a National Financial Information Processing Unit (CENTIF), placed under the responsibility of the Minister of Finance". CENTIF is a central structure.

377. In application of this article, Decree 2006-752 of 31 December 2006 on creation, organization and functioning de CENTIF was issued. This text is based on the provisions of the AML Act relating to CENTIF and specifies its scope.

378. Article 17 of the Act fixing the attributions of CENTIF indicates that CENTIF is an administrative service endowed with financial autonomy and autonomous decision-making powers on issues within its competence. Its mission is to collect and process financial information on money laundering circuits.

379. CENTIF, which thus appears like a central structure, has been operational since 20 June 2008, date of the swearing in of its members.

380. By virtue of Article 17 of the Act, CENTIF receives all other necessary information for the accomplishment of its mission, in particular, those communicated by the oversight authorities, as well as any natural or legal person other than Judiciary Police Officers. CENTIF may also request for the disclosure by the entities as well as any natural or legal person, of information held by them and likely to help enrich the suspicious transaction reports.

381. It should be noted that the attributions of CENTIF do not yet cover the aspect concerning the fight against the financing of terrorism. The CFT Guideline of WAEMU requests member-States to take appropriate measures to extend the attributions of CENTIF to enable it to collect and process information on the financing of terrorism. But, the law for transposing the Guideline has not yet been adopted in Benin.

382. A By-law, approved by the Ministry of Economy and Finance, on 19 February 2009, sets forth the operational rules of CENTIF.

383. This Regulation gives the powers of direction of CENTIF to its President who supervises, coordinates and boosts its activities and is the sole holder of signing authority for various documents and takes any action that should engage the responsibility of the Unit. The President may delegate his powers in specific areas to other members of the Unit.

384. By Order 171/MEF/CENTIF of 19 February 2009 on delegation of signature, the Minister of Finance has given authority to the President to sign on his behalf all administrative acts that fall within his attributions within CENTIF, apart from those of financial nature.

Advice on the STR procedures (C. 26.2)

385. By Ministerial Order 2008 120/MEF/CENTIF of 18 February 2009, a model of Suspicious Transaction Report (S.T.R) was instituted, in application of the provisions of Articles 26 and 27 of the AML Act. The form contains three sheets. The first sheet is the presentation page (presentation of the declarant, general information), the second is for detailed analysis of the key facts and elements (money laundering analysis and indices) and the third is for identification of the person(s) suspected (information on the person who is the subject of suspicion).

386. The suspicious transaction reports should be prepared according to this model, but in case of emergency the reports may be made by telephone or sent by any other electronic medium subject to a written confirmation within forty-eight hours (Article 27 of the AML Act).

387. The procedures to be followed in case of reports are specified in the By-Laws of CENTIF, approved by the Ministry of Economy and Finance.

Access to information from criminal prosecution authorities (C. 26-3)

388. Under Article 17 of the Act, CENTIF receives all necessary information for the accomplishment of its mission, in particular information communicated by the supervisory authorities, as well as judicial police Officers. CENTIF may also request for disclosure by persons subject to the act, as well as any natural or legal person, information held by them and likely to help enrich the suspicious transaction reports. The latter are contacted by administrative letter or often by requisition.

389. The AML Act also stipulates that in the exercise of its attributions, CENTIF may use correspondents within the Police, *Gendarmerie*, Customs Services, as well as government judicial services and any other service that can make necessary contribution in the framework of the AML Act (Article 19). These correspondents collaborate with CENTIF, in the exercise of its attributions, in particular for the collection of information. Although they have already been designated by the interested Services, their appointment decrees had not yet been issued and they had not yet been sworn in at the time of the mission's visit.

Additional information (C. 26-4)

390. In addition to its extended powers of access to information mentioned above, CENTIF may request for additional information from the declarant as well as any other public or regulatory authority the treatment of STR (Article 28 of the AML Act).. **Dissemination of information to the authorities for investigation purposes (C. 26-5)**:

391. Article 29 sub-paragraph 1 of the AML Act stipulates that, when the transactions highlight acts likely to constitute the money laundering offence, CENTIF transmits a report on these acts to the State Prosecutor, who immediately refers the case to the examining judge.

392. Under the terms of the By-Laws of CENTIF, it is the President who refers cases to the territorially competent State Prosecutor, after due notice of the Committee on Analysis of Case Dockets, of acts likely to constitute the money laundering offence. The Committee is composed of all members appointed from CENTIF and meets at least once a week. Its decisions are taken by the simple majority of votes cast (the Regulation is silent on this point) and in case of a tie, the President will cast the winning vote.

393. In case of emergency and if there is sufficient evidence, the President may refer the case to the Principal State Prosecutor, without the a priori view of the Committee.

394. No case was referred to the Principal State Prosecutor by CENTIF during the passage of the mission.

Operational independence and autonomy (C.26-6)

395. Article 17 of the Act stipulates that CENTIF is an administrative service endowed with financial autonomy and autonomous decision-making power on matters within its competence.

396. The expenditures of CENTIF are the subject of a budgetary allocation, for which the necessary amounts are put at its disposal by the financial services of the Ministry of Economy and Finance. These expenditures are executed in accordance with the procedures governing public finance in Benin.

Protection of information (C. 26-7)

397. Article 20 of the Act on confidentiality stipulates that the members and correspondents of CENTIF swear an oath before assuming office. They are under obligation to respect the secrecy of the information collected, which may not be used for other purposes than those provided for in the said Act. The members of the Unit swore an oath before the Cotonou First Class Court of First Instance on 20 June 2008.

398. In accordance with Article 24, CENTIF may, subject to reciprocity, exchange information with the financial intelligence services of third-party States, in charge of receiving and treating suspicious transaction reports when the latter are subjected to similar professional secrecy obligations.

399. The security of the CENTIF premises is ensured by two unarmed agents of a security company. The members of CENTIF informed the mission about the consent of the authorities to provide them with security agents to ensure the security of the premises. Hence, discussions are ongoing with SAGAM for installation of a video surveillance system. Copies of the different proforma invoices were presented to the mission.

400. The STRs are kept in a safe held by the President of CENTIF. Article 10 of Decree 2006-752 of 31 December 2006 on creation, attributions …of CENTIF provides for the creation a databank for useful information concerning STRs. For the moment, the data bank is not operational.

Publication of periodic reports (C. 26-8)

401. Under the terms of Article 17 sub-paragraph 7 of the Act, CENTIF prepares periodic reports (at least one report per quarter) and an annual report, which analyzes the trend of anti-money laundering activities at the national and international levels.

402. CENTIF transmitted to the responsible authority and the national branch of BCEAO, the 2008 Annual Report, which covered all the activities carried out from June to 31 December 2008. It presented copies of the 2008 Report and that of the 1st quarter 2009 to the mission. The two reports give account of activities carried out in capacity building, sensitization, statistics and analysis of ML typologies on the basis of the STRs received.

403. CENTIF exchanged information with two CENTFIs in WAEMU countries.

404. A request for signing a bilateral cooperation agreement was sent to TRACFIN, in France, for exchange of information. France has approved in principle the request subject to ensuring compliance with the requisite confidentiality and security standards.

Membership of the EGMONT Group (C.26-9 and C.26-10)

405. CENTIF has not yet submitted a request for membership of the Egmont Group. However, the officials of CENTIF informed the mission about a request sent to the Secretariat of GIABA about the relevant procedure to be followed.

406. The conditions of membership should be quickly observed in order to address the difficulties faced by CENTIF in conducting its investigations abroad (international cooperation), due to lack of recognition (cf. Section 6.5- Exchanges among FIUs).

Recommendation 30

Resources, staff, financial and operational autonomy (C.30-1)

407. Article 22 of the AML Act stipulates that "the resources of CENTIF are derived mainly from contributions by the State, WAEMU institutions and development partners".

408. For the moment, the financial resources of CENTIF are derived solely from the National Budget. These resources made it possible for CENTIF to start its activities. They could be completed as the Unit develops its activities. It benefited from a budget line for 2009. The amount of the budget represents a contribution from the Government, but does not cover expenditures relating to the financing of all the mission entrusted to CENTIF (training, sensitization and creation of the computerized database).

409. CENTIF draws its members from various administrations (Customs, Police, Justice, Treasury). They were appointed after carrying out a morality investigation on them based on their professional skills by Decree 2008-248 of 7 May 2008, as follows:

- President: Senior official from Ministry of Economy and Finance;
- 1 Magistrate specialized in financial issues from the Ministry of justice;
- 1 Police Commissioner seconded by the Ministry of Interior and Security;
- 1 Representative from BCEAO, ensuring the Secretariat;
- 1 Customs Inspector in charge of investigations seconded by the Ministry of Economy and Finance;
- 1 Principal Police Inspector seconded by the Ministry of Interior and Security.

410. The By-Laws define the structure of CENTIF, which comprises, apart from the Presidency, the General Secretariat, three Departments and five Divisions. CENTIF may also recruit administrative and technical staff on the basis of the Collective Agreement of banks and financial institutions or provided by the administrative authorities. Provision is made for the emoluments for its appointed members.

On the whole, it appears necessary to increase the staff, particularly by recruiting analysts, computer scientists and support staff.

Respect of standards of confidentiality, integrity and skills of staff (C. 30-2)

411. By virtue of Article 20 of the AML Act, the members and correspondents of CENTIF swear an oath prior to assuming office. They are bound by the respect of the secrecy of the information collected, which may not be used for other purposes than those of this Act.

412. The Judicial Police Officers who contribute to judicial investigations in liaison with CENTIF are related to the obligation of professional secrecy, in accordance with Article 11 of the Code of Criminal Procedure.

413. Furthermore, all the appointed members of CENTIF subscribed to, in the form of a commitment by signature, an “Operational Charter of CENTIF” organized into ten “cardinal values”, including in particular, Confidentiality, Professional Secrecy, Sense of Ethics, Professionalism, Efficiency and Efficient Management of Conflicts of interest.

Staff training (30-3)

414. In the framework of the strengthening of its operational capacities, CENTIF has provided for a series of training courses for its members and sensitization workshops for actors involved in the fight against money laundering.

415. Members of CENTIF participated in training courses organized by GIABA in collaboration with IMA/ADB, the French Treasury, the American Treasury, World Bank, IMF and other Development Partners. The training received covered LFT, notwithstanding the existence of a national ad hoc law.

416. The training situation is presented as follows:

- 2008: seminar of money laundering organized in Paris, for FIUs of Francophone member-countries of GIABA, in collaboration with the French Treasury;
- 2008: study tour to CENTIF of Senegal;
- 2008: workshop seminar organized in Tunis by IMA/ADB, for FIUs;
- 2009: study tour to CENTIF Belgium;
- 2009: seminar organized in Abidjan by GIABA for investigators of FIUs;
- 2009: seminar organized in Abidjan by GIABA in collaboration with the American Treasury and the Commonwealth Secretariat, for analysts of FIUs from member-countries of GIABA.

417. It should be noted that CENTIF organized, in the framework of the preparation of the mutual evaluation, a seminar that brought together both public and private agencies intervening in the process of anti-money laundering and combating the financing of terrorism.

418. A confidence relationship was established between CENTIF and all declaring entities at the end of this seminar, thus creating a favourable environment for a more efficient development of the preventive system.

419. In the framework of the cooperation between the FIU and the different anti-money laundering actors, sensitization and information sessions on the methods, trends and techniques of Money laundering were initiated by members of CENTIF. On the occasion of these meetings, forms of collaboration between CENTIF and the concerned Structure are also defined.

420. In this context, CENTIF visited the following structures:

- Professional Association of Banks and Financial Institutions;
- The *Parquet d'Instance de Première Classe de Cotonou*;
- The Police;
- The *Gendarmerie*;
- The Customs.

The pursuit of meetings with the other actors of the control system is programmed.

C. 30-4 Prospects for training the actors

421. CENTIF has developed a training plan for actors involved in the fight against ML

Recommendation 32

422. Benin has no system for verifying regularly the efficiency of its AML system.

423. CENTIF received seven suspicious transaction reports from banks and the Police. Some dockets are being treated while others have already been transmitted to the State Prosecutor of the Cotonou First Class Court.

424. It appears through the statistics of STRs that further efforts should be deployed in the sensitization of the entities concerned in the honour of their obligations.

YEAR	No. of STRs	Declaring entity	Equivalent in CFA	Indices	Level of treatment of the docket
2008	02	Bank-Police	136,000,000	Support documents of doubtful transfers – Forgery	Being treated at CENTIF
1st Quarter 2009	02	Bank	4,009,772,268	Forged transfers – Lack of convincing support documents – Forgery	Being at CENTIF
2nd Quarter 2009	03	Bank	1,701,769,792	Forged transfers – Lack of convincing support documents – Forgery	Being at CENTIF
TOTAL	**07**	**5,847,542,060**			

2.5.2 *Recommendations and Comments*

425. CENTIF constitutes a key element in the anti-money laundering system. The majority of services and agencies visited share this established fact.

426. CENTIF has, since its creation, carried out several activities, in particular:

- Development of the By-laws fixing the internal rules of its functioning;
- Development of the operations charter of CENTIF which serves as code of ethics;
- Organization of sensitization seminars for entities concerned;
- Development of a model of suspicious transaction report.

These activities helped to launch the bases of anti-money laundering.

427. However, other actions are required in order to intensify the fight. They include:

- Adoption of the Act on the financing of terrorism by transposing Guideline 4/CM/UEMOA relating to the financing of terrorism, in order to extend the attributions of CENTIF to FT.
- Intensification of the sensitization campaign among all the entities concerned;

- Formal appointment of correspondents in the Administrations by order to be issued by the responsible Ministers;
- Implementation of the necessary requirement for membership of the Egmont Group, in particular by soliciting the sponsorship of a FIU member of the Group.
- Implementation of the provisions for protecting the building housing CENTIF and the data by ensuring the protection of the premises by security agents, filtering of entries to the building, installing a camera video system and constitution of a computerized database;
- Strengthening the staff position, in particular with the recruitment of analysts, computer specialists, and support staff;
- Development of a manual of procedures for treating STRs;
- Enrichment of the training programme by introducing topics covering the field of predicate offences, typologies of money laundering, freezing, seizure, confiscation and techniques for tracing assets that constitute proceeds of criminal acts;
- Institution of a mechanism to enable it to carry out a self-evaluation and evaluation of the AML/FT system and advise more entities subject to the act, in particular in the drafting of STRs.
- Computerization of its statistics management system and approaching AML/FT actors in order to regularly obtain statistics on predicate offences so as to efficiently assess the money laundering risk in the country.
- Establishment of a system for verifying the effectiveness of the AML system.
- Membership of the Egmont Group, in particular to facilitate the necessary international cooperation, especially for investigations in connection STRs.

2.5.3 *Compliance with Recommendation 26*

	Rating	**Summary of Factors Underlying Rating**
R 26	***PC***	Powers of CENTIF do not cover the financing of terrorism; Dissemination of a model of suspicious transaction report fixed by ministerial order not disseminated to all liable entities; Lack of observation of the required security standards for access to the premises, protection of the members and an information held by the Unit; No guarantee of autonomy as a result of inadequate credit allocated and procedure used No Egmont Group membership Inadequacy of human resources

2.6 AUTHORITIES CHARGÉD WITH INVESTIFGATIONS, CRIMINAL PROSECUTION AUTHORITIES AND OTHER COMPETENT AUTHORITIES – FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF THE OFFENCE AND THAT OF CONFISCATION AND FREEZING (R.27, 28, 30 & 32)

2.6.1 DESCRIPTION AND ANALYSIS

LEGAL FRAMEWORK

- Act 97-025 of 18 July 1997 on the fight against illicit trafficking of drugs and precursors (Articles 102 to 108);
- Act 2006-14 of 31 October 2006 on the fight against ML;
- Order 25/PR/MJL of 7 August 1967 on the Code of Criminal Procedure:
- Criminal Code of French West Africa;
- Order 54/PR/MFAE/DD of 21-11-1966 on the Customs Code in the Republic of Benin;
- Code of Criminal Procedure;
- Customs Code;
- Decree 99-141 of 15 March 1999 on creation and attributions of the Central Bureau for Repression of Illicit Trafficking of Drugs and Precursors (OCERTID);
- Decree 2005-812 of 29 December 2005 on appointment of Magistrates.

Recommendation 27

Designation of the criminal prosecution authorities (C. 27.1)

428. The criminal prosecution authorities in charge of conducting appropriate investigations on money laundering and financing of terrorism offences are those of common law set out in Order 25 PR/MJLH, on the Code of Criminal Procedure.

429. Pursuant to the provisions of Article 14 of the Code of Criminal Procedure, the Judicial Police is charged with recording violations of the criminal law, gathering the evidence and looking for the perpetrators, as long as an inquiry is not opened. It is exercised under the direction of the Principal State Prosecutor. Falling within the competence of the Appeal Court, it is placed under the surveillance of the Principal State Prosecutor and under the supervision of the Court of Criminal Appeal.

430. Considered as Judicial Police Officer (JPO) are:

- Officers, Warrant Officers Class 1, Warrant Officers, Master Sergeants of the *Gendarmerie*, Sergeants of the *Gendarmerie*, holders of at least the *Brevet d'Etudes du Premier Cycle* or

equivalent certificate, or having accumulated a minimum of five years of service in the *Gendarmerie* appointed by name, after a professional examination, by joint order of the Ministers of Justice and Defence;

- Police Commissioners and police Officers, Police Inspectors, holders of at least the *Brevet d'Etudes du Premier Cycle* or equivalent certificate, or having accumulated five years of service in the Police, appointed by name, after a professional examination, by joint order of the Ministers of Justice and Interior.

431. The Principal State Prosecutor represents in person or through his assistants the State Prosecutor in each Appeal Court and in the Court of Assizes.

432. In accordance with Article 28 of the Code of Criminal Procedure, he is in charge of ensuring the enforcement of the criminal law within the entire competence of the Appeal Court. To that end, each Principal State Prosecutor sent him, every month, the status of cases within his competence. Also, in the performance of his duties, he has the right to request the help of the law enforcement authority.

433. The Principal State Prosecutor represents in person or through his assistants the State Prosecutor in each Court of First Instance (Article 32 of the Code of Criminal Procedure). He receives complaints and denunciations and assesses the follow-up action (Article 33 paragraph 1 of the Code of Criminal Procedure). Hence, he takes or ensures the taking of all necessary actions for the search and prosecution of violations of the criminal code (Article 34 paragraph 1 of the Code of Criminal Procedure).

434. By Decree 2005-812 of 29 December 2005 on appointment of Magistrates, an examining judge was appointed at the Cotonou First Class Court of First Instance to handle **economic and financial crimes**. He is the judge of the 2nd Investigation Chamber. It should be underlined, on the one hand, that the notion of economic and financial crime is not defined and that in case of offence (and not crime), the jurisdiction of this magistrate does not seem likely to be exerted. Moreover, this judge has no national territorial jurisdiction. On the other hand, it is important to note the lack of specialization of an investigation chamber in the area of AML/FT in all the Courts of 1st Instance.

435. Moreover, there is, within the Management of the Judicial Police, an Economic and Financial Brigade, which is a Service with national jurisdiction, in charge of the prevention, research and repression of economic and financial offences.

Ability to postpone/waive arrest of suspects or seizure of property (C. 27.2)

436. Act 97-025 of 18 July 1997 on the fight against trafficking of illicit drugs and precursors and Decree 99-141 of 15 March 1999 on creation and attribution of the OCERTID specifically provide for the possibility of waiving the arrest of suspicious persons and/or seizure of funds, or not proceeding to such arrests and seizures in a judicial investigation.

Additional Elements

Authorization of special investigative techniques (controlled deliveries, stake-outs and wiretapping, etc.) (C.27.3)

437. Special techniques like supervised delivery are used in investigations relating to drug control. These techniques are at the discretion of the competent authorities but they are not specifically targeted at

AML/FT. However, according to the authorities met, they may be used in case of need in investigations relating to AML/FT. The Beninese authorities admitted that, for greater efficiency, it would be necessary to include these techniques in the AML/FT texts.

Power to compel production of and search for all documents and information (C. 28.1)

438. The examining judge to whom a money laundering case has been referred may in the framework of his investigational powers and by virtue of Article 33 of the AML Act:

- Place under surveillance bank accounts and assimilated accounts in relation with the case treated;
- Access computer systems, networks and servers used or likely to be used by the persons involved;
- Request for the disclosure of deeds or documents necessary for establishing the truth and order the seizure of the deeds and documents in question.

439. Apart from these powers of the examining judge**,** the competent authorities in charge of conducting investigations on acts of money laundering or financing of terrorism and on other corresponding predicate offences, are given the necessary prerogatives to search the homes or facilities, search for, seize and obtain documents pertaining to cases of money laundering and financing of terrorism and other predicate offences in accordance with Articles 33 of the AML Act, Articles 34,43,65,131,132 and 133 of the Code of Criminal Procedure and Articles 118 and 119 of Act 97-025 of 18 July 1997 on the control of drugs and precursors as well as Article 53 of Order 54/PR/MFAE/DD of 21 November 1966 on the Customs Code for Benin.

C.28.2 Power to take and use witnesses' statements

440. The competent authorities in charge of conducting investigations on acts of money laundering or financing of terrorism are empowered, by virtue of Articles 34 of the AML Act, 49 and 69 of the Code of Criminal Procedure, **to obtain and use testimonies** in the framework of investigations and prosecution on act mentioned above. CENTIF, for its part, has power to request for additional information to enrich the suspicious transaction reports and complete the instruction of cases referred to it.

Recommendation 30 (the authorities in charge of enforcement of the Act and criminal prosecution)

Operational independence and autonomy (C.30.1) –Professional standards, integrity (C.30.2)- Formation (C.30.3.)

441. **The Customs**, an institution of the competent authorities involved in the fight against ML/FT, is structured in accordance with Order 217/MF/DC/CC of 09 July 1993 on the attribution, organization and functioning of the Customs Administration.

442. Financed by the national budget, it has a staff and enjoys some operational autonomy.

443. It is the Fraud Control Department that centralizes all the information relating to AML at the Customs Branch, but, for the moment, it has no adequate human resources to allocate staff to AML/FT alone.

444. According to Article 43 sub-paragraph1 of Order 54/PR/MFAE/DD of 21 November 1966 on the Customs Code "customs officers of any grade should swear an oath before the court of First Instance in the jurisdiction of which is found the residence where they are appointed"; which imposes on them an obligation of confidentiality and integrity.

445. Similarly, Decree 93-103 of 10 May 1993 on the particular status of customs officers classifies the latter into different categories of customs officers and determines their area of jurisdiction.

446. The Customs staff benefit from continuing training in areas within its competence. These training courses are mainly organized by the World Customs Organization**.** Nevertheless, a specific training on AML/FT has not yet been organized for customs officers taking all grades together.

447. **Police officers and soldiers of the *Gendarmerie*** are recruited by competitive examination. They are subjected to morality investigation and attend training courses on professional ethics both at the initial training level and in the course of their career in the performance of their duties. Appropriate penalties are imposed on dishonest officers who may even be expelled from their corps.

448. Concerning the staffing position, it is largely inadequate, especially in the National Police Service. In fact, the Economic and Financial Brigade in charge, among other things, to conduct investigations on money laundering offences has only thirteen (13) officers whereas it has jurisdiction over the entire national territory. It should, however, be noted that the police has increased its staff significantly with the effective recruitment of five hundred (500) agents in 2007 and the ongoing recruitment of one thousand three hundred (1300) agents, who were under training when the mission visited the National Police Academy.

449. The National *Gendarmerie* has about 3000 agents.

450. During the meetings with the competent authorities, CENTIF had sensitization sessions with officials of the Justice, Customs Administrations, the National Police, the National *Gendarmerie*, as well as the Professional Association of Banks and Financial Institutions. On these occasions, CENTIF informed each of these structures that it can ensure their training on the fight against money laundering and financing of terrorism. But, it should be noted that CENTIF has not established a time-table for this training. It is at the stage of establishing contacts with international and sub-regional organizations that could assist it to put in place the training programme.

451. However, there are still challenges to be met in the area of capacity building. Indeed, there is still a major need for training in the area of AML/FT for the actors involved in the fight.

452. Eventually, it should be agreed that, for the moment, no training on AML/FT has been implemented for criminal prosecution and investigation agents.

453. The independence of the Justice system is guaranteed by the Constitution. The general assemblies of the Justice Department held in 1996 helped to identify a number of dysfunctions of the Judicial Institution. A conceptual and formalized framework has been established in "Plan for Enhancing the Independence and Accountability of Magistrates". This document presents the situation, a diagnostic analysis of the issues and an operational strategy through a triennial action plan. The mission could not obtain information on the status of implementation of this ambitious plan.

454. The discussions, in particular with the General Inspectorate of the Ministry (IGM), revealed the lack of State Prosecutors in some jurisdictions and inadequate number of Examining judges. Also, the number of Court Clerks, Assistant Court Clerks and inspector-Magistrates is inadequate.

455. Furthermore, because of the risks of corruption, training activities in the area of AML through the enhancement of professional code of ethics should be envisaged. In this regard, a Plan on the Independence and Accountability of Magistrates has been developed and its implementation should be funded with the help of the American Government (Millennium Challenge Account –MCA) and the European Union. A bill aimed at instituting the autonomy of Appeal Courts is also being examined.

456. It should finally be noted that the project "Access to Justice" of MCA-Benin, whose objective is to improve the functioning of the Beninese Justice System took charge of the construction of about ten infrastructural facilities, in particular a Legal Documentation Centre in Cotonou, an Appeal Court at Abomey and eight courts of first instance at Abomey-Calavi, Allada, Comè, Pobè, Adjohoun, Savalou, Nikki and Malanville.

2.6.2. *Recommendations and Comments*

457. It is recommended to the Beninese authorities to implement the following measures:

- Waiving of arrest of persons or seizures, or refraining from effecting such arrests or seizures should be specifically prescribed in the area of AML/FT;
- Extending to Money Laundering and Financing of Terrorism the possibility offered to the prosecution and investigation authorities to waive the arrest of a suspicious person or seizure of funds. Indeed, this possibility is only specifically provided in investigation of cases of trafficking of narcotic drugs and psychotropic substances;
- Specialization of AML/FT structures;
- Increasing human, technical and material resources of structures involved in the fight against money laundering and the financing of Terrorism;
- Specific and pertinent training in AML/FT for the investigation and prosecution authorities.

2.6.3 *Compliance with Recommendations 27, 28, 30*

	Rating	Summary of Factors Underlying Rating
R 27	***PC***	The waiving of arrests of persons or seizures, or refraining from effecting such arrests or seizures is not specifically prescribed in the fight against money laundering. Lack of jurisdiction in the area of CFT Lack of specialization of the control structures Inadequacy of resources and training
R 28	***LC***	Lack of effectiveness

2.7 DECLARATION OR DISCLOSURE OF CROSS-BORDER TRANSACTIONS (SR.IX)

2.7.1 DESCRIPTION AND ANALYSIS

Legal Framework

- Act 2006-14 of 31 October 2006 on the AML (Article 6);
- Act 97-025 of 18 July 1997 on control of drugs and precursors;
- Guideline 04/2007/CM/UEMOA, (Article 17);
- Regulation R09/CM/UEMOA of 20/12/1998 on external financial relations of WAEMU member-States (Articles 22 - 29);
- Act 86-05 of 26 February 1986 concerning litigations over exchange control offences;
- Customs Code;
- Cooperation Agreement in the area of Criminal Police within ECOWAS;
- Protocol on creation of the Criminal Investigation Bureau within ECOWAS (2006).

System to detect physical cross-border transportation of currency and negotiable bearer instruments in connection with ML/FT from and to abroad (information declaration or disclosure system) (C.IX-1)

458. Benin is a member of the franc zone, the West African Monetary Union and the West African Economic and Monetary Union. For this reason, its financial relations with the external world are governed by Community Regulation R09/98/CM/UEMOA of 20/12/1998 relating to the external financial relations of WAEMU member-States and its annexes, but also by Act 86-05 of 26 February 1986 relating to litigations over exchange control offences.

459. Article 6 Act 2006-14 of 31 October 2006, hereinafter called ML Act, stipulates that “exchange transactions, capital flows and settlements of any nature with a third-party State should be done in accordance with the exchange regulations in force”.

460. Regulation R09/CM/UEMOA of 20/12/1998 relating to foreign financial relations of WAEMU member-States instituted a system of declaration for non-residents. In fact, the non-residents are under obligation to declare all means of payment on leaving and entering the territory.

461. On the other hand, by virtue of the free movement of monetary signs within the Union, residents are not obliged to make a declaration for the manual transportation within member-States of monetary signs issued by the BCEAO. In practice, the customs require a declaration when amount exceeds CFAF 2,000,000. This is justified by the fact that means of payment are likened to goods.

462. In accordance with the provisions of Chapter 4 of the said Regulation (Art. 22 to 27) relating to the issue of allocations in foreign currency and customs control of means of payment carried by travellers, residents travelling to non member-States of the Union are under obligation to make declaration when the amount carried per person exceeds the counter value of two million (2,000,000) CFA francs but in bank

notes other than CFA notes. Sums in excess of this ceiling may be carried in the form of traveller's cheques, certified cheques or other means of payments.

463. The analysis of the two systems above shows that the system used in Benin is not in line with Special Recommendation IX.

Communication of information on the origin and use of currency (C.IX-2)

464. The Customs Code (Articles 49 to 54) confers on customs agents the right to inspect goods and officers the disclosure of documents and information. They have the right to search, ask for additional information, interrogate and investigate acts of customs offences.

Stopping and restraining of currency or bearer negotiable instruments (C. IX-3)

465. With regard to the provisions of Articles 28 sub-paragraph 2 and 36 of the same Act, the competent authorities may, in case of a false declaration, block or retain for a fixed period the bearer cash or instruments.

466. CENTIF may, on the basis of serious and reliable information on a suspicious transaction-stop the transaction, the subject of declaration for a period of 48 hours (Art. 28 sub-paragraph 2) before transmitting a report to the State Prosecutor (Art. 29 sub-paragraph 2). On its part, Article 118 of Act 97-025 of 18 July 1997 on control of drugs and precursors contains the same provisions.

Retention of information on amounts of currency or instruments obtained through declarations or discovered (C. IX-4).

467. The information obtained from declarations to the customs corridor are kept and manually centralized for statistics purposes.

Communication of information to CENTIF (C. IX-5)

468. There is no formal framework for transmission of **information to CENTIF.**

469. According to the authorities met, observations of violations of the Customs Code may lead to the discovery of money laundering cases, which could get, in some cases, the customs Administration to contact CENTIF or even the territorially competent Prosecutor's Office for adequate treatment of the said docket. Concerning CENTIF, the information could reach it through the channel of the institutional correspondent designated by ministerial order.

470. For the moment, no suspicious declaration from the customs has been registered.

Cooperation among Customs, Immigration and other competent authorities (C. IX-6)

471. At the national level, there is no text that organizes the coordination of activities between the customs, immigration and other competent authorities in the context of cross-border declarations. However, according to the authorities interviewed, collaboration ties exist in practice between the customs, immigration and *Gendarmerie* services (see above developments).

Extension of the international cooperation and mutual assistance framework (C. IX-7)

472. Benin is a member of the International Criminal Police Organization (Interpol). In the vein, one can mention the provisions of Order 004/MISPAT/DGPN of 28 February 1991 on attribution, organization and functioning of the Judicial Police Directorate, which, in its Article 3 18, defines the relationship between the National Central Interpol Bureau and the International Criminal Police Organization (ICPO).

473. A quadripartite agreement exists between Benin, Togo, Ghana and Nigeria in criminal matters. The National *Gendarmerie* is a member of the Organization of African *Gendarmerie*s. Even if these frameworks promote mutual assistance between the different authorities, the fact still remains that anti-money laundering is not explicitly mentioned.

Application of the essential criteria of Recommendation 17 to legal persons that make false declarations or communicate false information (C. IX-8)

474. Legal persons that make false declarations or communicate false information incur penalties for committing a customs crime. The sanctions applicable depend on the classification of the offence (there are three classes of customs offences). They comprise the fine, confiscation and imprisonment of up to three years.

Application of the basic criteria of Recommendation 17 to persons who physically transport across border, cash or bearer negotiable instruments related to money laundering or financing of terrorism (C. IX-9)

475. In the absence of a criminalization text, Recommendation 17 cannot be applied to carriers of cash and negotiable instruments related to the financing of terrorism.

Confiscation of property of persons transporting currency or negotiable instruments (C. IX-10)

476. According to customs practice, a fine representing 20% of the amount is imposed on the convicted person depending on the procedure of the customs litigation used. The offence is considered as exclusively customs and there is no particular investigation of the existence of a link between the cash or bearer negotiable instruments transported and the financing of terrorism. In any case, in the absence of a legal text criminalizing terrorism financing, no procedure of provisional measures or of ad hoc confiscation can prosper.

Freezing, seizure under the terms of UN Resolutions (C. IX-11)

477. Benin sent Reports to the UN Security Council to present the status of implementation of Resolutions 1267 (1999) and 1373 (2001). The authorities indicated their commitment to the implementation of these resolutions. The lists approved by the Council concerning Resolution 1267 (1999) have been received but are transmitted to banks and financial institutions, which have not yet had the opportunity to effect freezing and seizures.

478. As for Resolution 1373 (2001), it has not yet been implemented.

Notification to the country of origin of the discovery of gold or precious metals (C. IX-12)

479. The AML Act made no provision for notification to the country of origin of the discovery of gold and precious metals.

480. Since Benin has not yet voted a law against the financing of terrorism, no provision exists for the moment in that regard. In the absence of bilateral agreement in the area, any discovery of transportation of gold, metals or precious stones is treated in accordance with the Customs Code of Benin.

Protection of information on cross-border transactions (C. IX-132)

481. The management of information is done manually. There is no computerized database.

The information held by the customs and security services are centralized internally, their use is subject to prior authorizations from the supervisory authorities.

Additional elements - Implementation of best international practices (C.IX-14 and 15)

482. The country plans to examine the possibility of implementing the measures stated in accordance with the relevant international practices.

2.7.2 ***Recommendations and Comments***

483. Benin, like the other WAEMU countries, has adopted two-pronged declaration system (residents and non-residents). Hence, residents are not subjected to the obligation of declaration when they transport within WAEMU member-States monetary signs issued by the BCEAO. This system is not in conformity with Special Recommendation IX. Besides, terrorism financing is not yet criminalized in the legal provision of Benin.

484. The Beninese authorities are invited to:

- Ensure that the declaration system put in place is in conformity with the required demands;
- Institute a formal framework for collaboration between the Customs Services and CENTIF for communication of statistics on declarations relating to physical cross-border transportation of cash and negotiable instruments;
- Organize, formally, the coordination of the activities between the customs, immigration and the other competent authorities;
- Ensure the full implementation of Resolution 1267 (1999) and implementation of Resolution 1373 (2001);
- Proceed to the transposition as early as possible of Guideline 04/2007/CM/UEMOA;
- Establish a computerized database for monitoring cross-border transportation of cash and negotiable instruments and a mechanism for automatic transmission of information to CENTIF.

2.7.3 *Compliance with Special Recommendation IX*

	Rating	Summary of Factors Underlying Rating
SR IX	**NC**	Declaration system in place not in conformity with required demands; Lack of formal framework for collaboration between the Customs Services and CENTIF for communication of statistics on declarations relating to physical cross-border transportation of cash and negotiable instruments; Lack of a text organizing formally the coordination of activities between customs, immigration and the other competent authorities Non adoption of the Act on terrorism financing; Incomplete implementation of Resolution 1267 (1999) and lack of freezing or seizure under this Resolution; Lack of implementation of Resolution 1373 (200) on freezing or seizure

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS (DUTY OF CUSTOMER DUE DILIGENCE AND KEEPING OF DOCUMENTS)

3.1 RISK OF MONEY LAUNDERING OR FINANCING OF TERRORISM

485. The mission noted some initial awareness of the AML Act in Benin on the part of some of the persons subject to it, thanks *and Comptables* in particular to the sensitization and training activities carried out by the National Financial Information Processing Unit, called CENTIF. Some actors of the system justify this situation by the recent nature of the establishment of the legal and institutional framework.

486. According to information gathered by the mission, the geographical situation of Benin makes the country vulnerable to illicit trafficking of narcotic drugs (predicate offence to money laundering crime). Actions had already been taken by the Government of Benin in the early 2000 to curb this scourge. The national police body in charge of leading the fight against drug trafficking: Central Bureau for Repression of Illicit Trafficking of Drugs and Precursors (OCERTID) was created by decree in 1999 and its activities started in 2000. This body is charged, among others, with coordinating and leading operations aimed at repression of this trafficking. The OCERTID is supposed to collaborate with the *Gendarmerie*, the customs; the forestry and natural resources services. This collaboration is obviously not effective.

487. Despite the existence of vulnerabilities to money laundering in Benin, the AML risk approach was not envisaged by the Beninese authorities.

488. The authorities seem to have started preparing a draft of a national AML/FT strategy, but the mission had no elements to confirm its development.

489. The identification of the risks and vulnerabilities to ML/FT should be envisaged by Benin in order to define action plans for their reduction.

3.2 OBLIGATION OF CUSTOMER DUE DILIGENCE, INCLUDING ENHANCED OR REDUCED IDENTIFICATION MEASURES (R.5 TO 8)

3.2.1 DESCRIPTION AND ANALYSIS

Legal Framework

- -Act 2006-14 of 31/10/2006 on anti-money laundering;
- - BCEAO Instruction 01 /2007/RB of 02/07/2007 relating to the fight against money laundering within agencies;
- - BCEAO Instruction 01/2006/SP of 31 July 2006 relating to the issue of electronic money issued in enforcement of Regulation 15/2002/CM/UEMOA of 19 September 2002 relating to payment systems in WAEMU member-States;
- -Regulation 14/2002/CM/UEMOA of 19/09/2002 relating to freezing of funds and other financial resources in the framework of combating terrorism financing in member-States of the West African Economic and Monetary Union (WAEMU);
- -Guideline 04/2007/CM/UEMOA of 4 July 2007 relating to the combating terrorism financing in WAEMU member-States;
- Regulation 00004/CIMA of 04/10/2008 relating to anti-money laundering and combating the financing of terrorism in member-States of CIMA.

490. **Act 2006-14 of 31/10/2006** on anti-money laundering, called the AML Act, transposing Guideline 07-02/CM/UEMOA of 19 September 2002 relating to the fight against money laundering in WAEMU member-States, hereinafter called, AML Act, subjects to obligations of prevention and detection of money laundering (cf. Articles 1 and 5 of the Act) any natural or legal person who, in the framework of his profession, carries out, controls or offers advice on operations leading to deposits, exchanges, investment, conversions or all other capital flows or all other assets, namely, concerning financial institutions, Public Treasury, the BCEAO, financial entities (banks and financial institutions, Post Office financial services, *Caisse des Dépôts et Consignations* or assimilated agencies, insurance and reinsurance companies, insurance and re-insurance brokers, mutual or cooperative savings and lending institutions, BRVM, DC/BR, SGI, SGP, UCITS, EICF, authorized manual foreign exchange agencies).

491. **BCEAO Instruction 01/2007/RB of 02/07/2007** relating to the fight against money laundering within financial entities, hereinafter called BCEAO AML Instruction, specifies the modalities of enforcement of the Act. It applies to the financial entities listed in Article 3, as follows: banks and financial institutions, Post office financial services, *Caisse des Dépôts et Consignations* or assimilated agencies, mutual or cooperative savings and lending institutions, structures or organizations not constituted in the form of mutual or cooperative agencies and having as an objective the collection of savings and/or granting of credit, authorized manual exchange agencies.

492. It sets forth for financial entities general obligations of vigilance (in particular, Identification of customers, Detection of suspicious transactions) as well as specific enhanced vigilance obligations (Monitoring of typical transactions, Obligations relating to occasional financial transactions, Surveillance of electronic transactions, Enhanced vigilance with regard to uncooperative countries and territories as well as persons targeted by measures on freezing of funds (Articles 4 and 6 to 10).

493. Regulation **14/2002/CM/UEMOA of 19/09/2002** relating to the freezing offends and other financial resources in the context of combating terrorism financing in member-States of the West African Economic and Monetary Union (WAEMU) establishes the principle of freezing of funds of persons and entities featuring on the list prepared by the UN Security Council under Resolution 1267 (1999).

494. Guideline **04/2007/CM/UEMOA of 4 July 2007** relating to combating the financing of terrorism (not transposed as at the time of the mission and, therefore, having no binding force in Benin) orders the said States to put in place internal ad hoc mechanisms.

495. Regulation **00004/CIMA of 04/10/2008**, hereinafter called, the CIMA Regulation, constitutes a supra-national text, of direct application, defining the procedures applicable by insurance agencies in member-States of CIMA in the context of the fight against money laundering and financing of terrorism. It aims at specifying the modalities of enforcement of the regulatory provisions of anti-money laundering and combating terrorism in member-States of the Inter-African Conference Insurance Markets. It is based in particular on Guideline 07/2002/CM/UEMOA of 19 September 2002 relating to the fight against money laundering in member-States of the West African Economic and Monetary Union (WAEU) and on the Uniform Act of 20 March 2003 relating to the fight against money laundering in member-States of the West African Economic and Monetary Union (WAEMU).

496. This Regulation is applicable to insurance and re-insurance companies as well as insurance and re-insurance brokers of member-States of CIMA (Art. 3). It subjects the concerned persons to obligations of vigilance (Title III, Art. 8 knowledge of the customer, Art. 9 monitoring of client activities, Art. 11 surveillance and verification of means of payment, Art. 12 anonymous capitalization bonds). Although the Regulation, in principle, is of immediate enforcement, an enforcement time-table accompanies the text of the Regulation and sets deadlines for its gradual enforcement. Hence, the date of 1st July 2009 was fixed for the effective enforcement of the Regulation in all the subsidiaries.

Recommendation 5

Prohibition of anonymous accounts (C.5.1)

497. The legislative or regulatory provisions define the conditions of an account in financial institutions without, for that matter specifically banning them from keeping anonymous accounts, under fictitious names or numbered accounts. During the discussions, the evaluators were informed of the non-existence of these types of accounts in the portfolios of banks.

Framework for application of due diligence requirements (C.5.2)

498. Article 7 of the AML Act stipulates that “financial entities should be sure about the identity and address of their customers before opening an account for them, pay particular attention to securities, stocks or bonds, assigning them a safe deposit box or establishing with them all other business relations”.

499. Article 8 of this Act stipulates, in paragraph 1, the identification of occasional customers "for any transaction involving a cash amount equal to or above CFAF 5,000,000 or the counter-value of which in CFAF is equivalent to or exceeds this amount" (about 7623 euros).

500. Paragraph 2 of this article specifies that it is the same in case of repetition of distinct transactions for an individual amount below the amount provided for in the preceding paragraph or when the licit origin of the funds is not certain.

501. Article 8 of the BCEAO AML Instruction also stipulates that financial entities "should, in accordance with Articles 7 and 8 of the Uniform Act, be sure of the identity of any occasional customer who demands to effect an operation of an amount equivalent to or higher than CFAF 5 million or the counter-value of which in CFAF is equal to or exceeds this amount".

502. Article 9 of this Instruction further specifies that financial entities that authorize the execution of transactions by Internet or by any other electronic means should have an adapted surveillance system for these transactions.

503. The AML Act provides for cases of exemption from identification of the customer: when the latter is a financial entity subjected to this act, (Article 9).

504. In the case of remote financial transactions, financial entities carry out the identification of natural persons, in accordance with the principles set forth in the annex to the AML Act.

505. It should be pointed out that the mission could not have evidence of the formal adoption by the National Assembly of the annex to the AML Act, relating to remote financial relations.

506. Only the Instruction provides for **constant vigilance** on the part of subjected agencies. It should be noted that **in the sense of the FATF, the Instruction has no force of law and does not cover the other financial institutions which do not fall within its sphere of application.**

507. **The WAEMU Guideline on combating the financing of terrorism, yet to be transposed into Benin's domestic law,** specifies the obligations of identification of occasional customers, which should be imposed on financial entities. It invites member-States (i) to extend to all transactions exceeding CFAF 5 million, including non-cash transactions, and (ii) specifies that they should be applied to any exceeding the above-mentioned ceiling "whether it is done in one or several transactions between which there seems to be a link" (Art. 11-1). It also stipulates that member-States require that financial entities request for the identification of customers as soon as there is suspicion of FT (Art. 11-4).

508. The CIMA Regulation**, for its part, stipulates in its Article 8 that "**Insurance agencies should, before establishing a contractual relationship or assisting their customer in the preparation or realization of a transaction, to make sure of the identity of their contracting party".

Due vigilance measures required

Identification measures and sources of verification (C.5.3)

509. The AML Act provides for measures for identification of the **natural person**. In this case, the identity is verified through the presentation of a national identity card or any other official document serving as ID card, still valid and bearing a photograph, of which a copy is made. The verification of the professional and residential address is effected by the presentation of any document that can prove the facts. If it is a natural person trader, the latter is under obligation to provide, in addition, any document testifying to his registration on the RCCM. (Art.7).

510. The identification of the **legal person** is also prescribed by the act, which stipulates in Art. 7 paragraph 3: "the identity of a legal person or a branch is verified through the provision; on the one hand, of the original, duplicate or certified true copy of any deed or extract from the Trade and Personal Property Credit Register, attesting to its legal form and headquarters".

511. The CIMA Regulation recommends to insurance, re-insurance companies, and their brokers, in particular to note the identity of all the co-contracting parties, natural persons (surname, first name(s), date and place of birth, nationality) irrespective of the amounts paid, to request for each co-contracting parties, a convincing identity card, make a photocopy and carry out all necessary verifications (examine the document (recto verso for the identity card) in order to confirm its authenticity, compare the person with his photograph, compare the person with his description: sex, age, etc., compare the signature with the one featuring on the cheque or on any other contractual or pre-contractual document signed by the person.

Verifications concerning legal persons or legal structures (C.5.4)

512. Concerning persons acting on behalf of a legal person (officials, employees, legal representative), paragraph 4 of Art.7 of the Act states that fiscal entities must verify their identity and address in the same conditions as those set forth in paragraph 3 mentioned above. These persons must, in addition, produce documents attesting, on the one hand, to the delegation of power of mandate given to them, and on the other, the identity and address of the economic beneficiary.

513. For legal structures (trust funds and assimilated structures in the sense of the FATF), the AML Act does not provide for specific obligations for financial entities (i) to verify that any person claiming to act on behalf of the customer is authorized to do so, or *a fortiori* to identify and verify the identity of this person, (ii) to verify the legal status of the legal structure.

514. Articles 8.2 and 8.3 of the CIMA Regulation contain specific provisions for identification of legal persons. When their headquarters is based in a country within the CIMA space, the agencies should note the name of the executives (chairman, executive directors, main managers), demand, examine and make a copy, in particular, of an identity card of the executives, representatives of legal persons with their power, decisions that designated the legal representatives and defined the powers of the other legal representatives. In the case of foreign legal persons, it is important to note the names of the executives, executive directors, main managers), if it is a **trust**, verify that the trustee has powers to subscribe to an insurance contract, if it is a **foundation**, demand, examine and make copies of all documents necessary for identifying the trust, the trustee and the beneficiary of the trust.

515. It should be underlined that the evaluators did not have elements to determine that the legislation makes no provision for the existence of Trusts in Benin, even if Art. 5 of the AML Act mentions "trust funds or similar structures" and that the CIMA Regulation targets the trust (cf. previous paragraph).

Measures for identification and verification of beneficial owners (C.5.5)

516. Article 9 of the AML Act stipulates that: “if the customer is not acting on his own behalf the financial entity must verify all means the identity of the person on whose behalf he is acting” (Article 9, paragraph 1).

517. There is no obligation for financial entities to verify the identity of the person on whose behalf their customer is acting, when the latter is a financial entity subjected to the AML Act.

518. Thus, there is no obligation for financial institutions to take reasonable measures (i) to understand the ownership and control structure of the customer, (ii) to identify the natural person(s) who ultimately own or control the customer (including identification of persons who exercise as a last resort effective control over a legal person or a legal structure), (iii) to verify the identity of the beneficial owners with the help of pertinent information or data obtained from a reliable source, so that the financial institution would have satisfactory knowledge of the beneficial owner.

519. The evaluators noted that the Act makes no provision for specific measures to be observed by financial entities to determine the beneficiary owner and understand the ownership and control structure of the customer and determine natural persons who ultimately own or control the customer.

520. The measures applicable to trust funds, trusts and other legal arrangements are not provided or by the AML Act.

521. Article 8-4 of the CIMA Regulation on the insurance sector stipulates that: « When a transaction appears to have been made on behalf of a third person, the insurance company must verify the true identity of this third party ». Furthermore, Article 14 of this Regulation institutes the case of “aggravated suspicion», to be traced back to the anti-money laundering official when « one of the identities (co-contracting party or beneficiary) is concealed by a legal person posing as a front (trust, trust fund, foundation, etc.)”.

Information on the purpose and intended nature of the business relationship (C.5.6)

522. Financial institutions are not obliged to obtain information on the purpose and intended nature of business relationship in the AML Act. However, under Article 13 of the said act financial entities are obliged to develop internal programmes for combating money laundering within their institutions. This programme, specifies Article 6 of Instruction 01/2007/RB, must at all times, allow the provision of specific information on the identity of the actual originator and the actual beneficiary in the contact of detection of suspicious transactions.

Ongoing due diligence of the business relationship (C.5.7)

523. Under the AML Act financial institutions are under no obligation (i) to exercise ongoing due diligence on their business relationships, (ii) to scrutinize transactions undertaken throughout the course of their relationships to ensure that the transactions being conducted are consistent with the institution’s knowledge of their customers and their business activities, risk profiles and, where necessary, the source of their funds, (iii) to ensure that documents, data and information collected under the customer due diligence process are kept up-to-date, by undertaking reviews of existing records, particularly for higher-risk categories of customers or business relationships.

524. Only some aspects related to the exercise of due diligence are indirectly dealt with, particularly the aspects associated with suspicious translation reporting provided for in Article 26 of the AML Act or the provisions related to a special examination as stipulated in Article 10. For these cases, some amount of vigilance is required.

525. The BCEAO Instruction specifies that the "know your customer" procedures should be applied not only to new relationships but also to existing customers. It should be noted, however, that the instruction is only applicable to part of the subjected person and has no force of law.

Enhanced due diligence measures for higher-risk categories (C.5.8)

526. The AML Act does not specifically indicate that financial institutions should be obliged to take enhanced due diligence measures for high-risk categories (non-resident customers, legal structure, companies with capital represented by bearer shares, etc.). Article 7 of the BCEAO Instruction (Monitoring of unusual transactions), on the other hand, provides for situations in which specific enhanced due diligence should be adopted by agencies subjected to the instruction. A non exhaustive list of the type of transactions that deserve special attention features in Article 7. These obligations impose on financial entities to develop a mechanism for analyzing transactions and customer profile to enable them to track and closely monitor unusual financial movements and transactions (Article 7, paragraph 1) and define the types of customers that they cannot accept (Article 4, paragraph 3).

527. Concerning occasional operations and electronic transactions, the BCEAO Instruction provides in some cases enhanced due diligence measures for certain operations. This article stipulates that electronic money issuers and distributors should institute an automatic system for monitoring unusual transactions using electronic money as support.

The implementation of these measures could not be verified by the mission, which was, moreover, informed about the non-existence of an electronic money company.

Reduced or simplified measures C.5.9)

528. The AML Act (Article 9 paragraph 4) exempts subjected financial entities from observing enhanced due diligence measures when the customer is a financial entity subjected to the AML Act. In other words, a financial entity is not required to obtain information of the identity of natural and legal persons and legal structures on behalf of which another financial entity not subjected to the AML act is acting.

This total exemption from obligation of identification does not seem consistent with the requirements of the FATF which requires the observation of a minimum of due diligence.

529. Considering that the AML Act originates from a WAEMU community Guideline, it may be deduced that the scope of application of Article 9 extends to all financial entities established in member-States of the Union. The provisions of the annex to the act provide that the measures for identification of natural persons are not required for remote operations when the counterpart is situated in the Union. This interpretation seems to be the one retained by the competent authorities.

530. Article 3 of the annex to the AML Act, however, stipulates that these simplified provisions cannot be applied if a financial entity has doubts over the transaction and thinks that direct contact is voluntarily avoided with the objective of concealing the identity of the actual customer.

Limitation of the simplified customer due diligence of countries complying with the FATF Recommendations (C.5.10)

531. The annex to the AML Act related to remote financial relationships prescribes that when the counterpart is established outside the Union, the financial entity should verify its identity by consulting a reliable financial directory (see Recommendation 8.2 below). The financial entity is also obliged to take "reasonable measures" to obtain information on the customer of its counterpart, namely the effective beneficiary of the transaction, in accordance with Article 9 of the AML Act. These "reasonable measures" may be limited - when the country of the counterpart applies equivalent identification obligations, ask for the name and address of the customer, but may be applied, when these obligations are not equivalent, request from the counterpart a certificate confirming that the identity of the customer has been duly verified and registered.

Case of ML/FT suspicion or higher risk (C.5.11)

532. In the cases concerned by this criterion, the acceptance of simplified measures of due client diligence is not acknowledged.

However, since the AML Act establishes an exempting from verification, when the client is a financial institution subject to the act, compliance with this criterion cannot be assured.

Compliance with Instructions of the competent authorities (C.5.12)

533. The AML Act does not specifically authorize financial entities to determine the scope of the due diligence measures to be applied according to the risks presented. They must, in any case, comply with the provisions of Article 7 of the said act and Article 4 of the BCEAO Instruction related the identification measures (general due diligence obligation).

Timing of verification – General Rule (C.5.13)

534. Article 7 of the AML Act stipulates that financial entities must determine the identity and address of their customers before opening an account for them, paying due attention, particularly to securities, stocks or bonds, assigning them a safe deposit box or establishing with them any other business relationship. Article 4 of the BCEAO Instruction stipulates that financial institutions, before establishing a contractual relationship or assisting them in the preparation or realization of transaction, must verify the identity of the co-contracting party.

535. Concerning occasional customers, the identification is done under conditions provided by the relevant provisions of Article 7 of this Act and Article 8 of the BCEAO Instruction.

536. The CIMA Regulation **provides that "**Insurance agencies must, before establishing a contractual relationship or assisting their customer in the preparation or realization of a transaction, verify the identity of their contracting party" (Art.8).

Timing of verification – Special Circumstances (C.5.14)

537. When verification of the identity of the customer and the beneficiary owner is required, there is no provision authorizing financial institutions to complete the identification after establishing the business relationship.

538. The evaluators were informed by the financial institutions that, in practice, business relationships are only established when all identification measures have been taken.

539. Concerning insurance companies, the mission was informed during the discussions with one insurance company met that the insurance premium is mandatorily paid in the presence of the beneficiary owner.

Failure to comply with due diligence obligations before initiation of the relationship (C.5.15)

540. Article 4 paragraph 3 of the BCEAO Instruction stipulates that "to efficiently prevent itself against reputation and counterpart risks, financial entities, targeted by this Instruction, must define the types of customers that they cannot accept, in view, in particular, the prescriptions of the above paragraphs, and refrain from entering into any relationship, prior to having satisfactorily determined their identity, their address and type of operations authorized with the said customers". It is not explicitly indicated that if the FI has not complied with the due diligence measures, it should particularly not open the account or establish business relationship.

541. Article 9 of the AML Act stipulated in paragraph 2 "that when doubt persists, following verification of the identity of the economic beneficiary, the financial entity must make a suspicious transaction report in accordance with Article 26 to CENTIF, under the conditions set forth in Art. 27". The texts do not clarify that the FI must envisage an STR if it cannot fulfil the due diligence obligations.

542. The CIMA Regulation provides the following clarifications on this point: "If the information obtained does not permit him to be certain about the identity of the persons for whose profit the operation is carried out, the insurance company must make a suspicious transaction report to the Financial Intelligence Unit, irrespective of its own option of refusing the operation" (Art.8.4).

Failure to comply with due diligence obligations, following initiation of the relationship (C.5.16)

543. When a financial institution has already established a business relationship and that it cannot meet all the identification measures required, there is no mechanism to compel it to end the business relationship and consider making a suspicious transaction report.

Existing customers – Due diligence (C.5.17)

544. The AML Act provides no vigilance obligation for existing customers depending on the importance of the risks they represent or implement vigilance measures for relationships with them at the opportune time.

545. Article 4, paragraph 4 of the BCEAO Instruction, related to anti-money laundering within financial entities stipulates that the « know your customer » procedures must be applied, not only to new relationships, but also to existing customers, particularly those on which hang doubts as to the reliability of the information gathered previously. However, no specification is given at the opportune time to implement the due diligence measures nor defines the notion of "know your customer" procedures. The conditions in which the procedures must be applied to existing customers are not clearly defined.

546. Point 13 of Circular 01-2001/CB of 03 April 2001 of the Banking Commission on Recommendations for improving business management in banks and financial institutions of WAMU requires on the part of each institution a code of ethics on customer relationships and necessary due diligence in the detection of illicit and fraudulent operations.

It is necessary to also note that neither the BCEAO Instruction nor Circular of the Banking Commission have force of "law or regulation" in the sense of the FATF.

Existing customers –Anonymous accounts (C.5.18)

547. Financial institutions should be under no obligation to apply due diligence measures to their existing customers if they are customers to which Criterion 5.1 is applicable (Existing customers – anonymous accounts).

548. The AML Act contains no provision requiring financial institutions to apply due diligence measures to their existing customers if they hold anonymous accounts, under fictitious names or numbered accounts.

549. However, Article 4, paragraph 4 of the BCEAO Instruction, related to anti-money laundering within financial entities stipulates that the "know your customer" procedures should be applicable not only to new relationships, particularly those on which hangs doubts as regards the reliability of the information previously collected.

550. However, it should be pointed out that Act 90-018 of 27 July 2007 on bank regulation in the Republic of Benin, does not provide for keeping accounts under fictitious names or anonymous accounts.

Recommendation 6:

Obligation to identify Politically Exposed Persons (PEPs) (C.6.1)

551. There is no legal provision in Benin requiring financial institutions to identify PEPs.

552. Financial institutions are, therefore, under no obligation to have a risk-management system in order to determine whether a customer, a potential customer or the beneficiary owner is a Politically Exposed Person.

553. Article 15 of the draft uniform CFT Act stipulates that “each member-State must adopt measures requiring financial entities to apply, based on their assessment of the risk, enhance due diligence on transactions or business relationships with PEPs residing in another member-State or in a third-party State, particularly for purposes of preventing or detecting transactions linked to the financing of terrorism. To this end, it shall take appropriate steps to determine the origin of the wealth or funds”. The bill contains no provision creating a direct obligation for financial institutions to put in place appropriate risk management systems to determine whether a potential customer or beneficiary owner is a PEP.

554. The mission was informed about the establishment by certain banks of a system of classifying customers by category. This system helps to identify politically exposed persons. However, for most banks, these persons are not necessarily perceived as high-risk customers for money laundering.

555. Article 14 of the CIMA Regulation applicable insurance agencies in member-States of CIMA, recommends to persons in contact with customers, file managers and internal control officials to adopt measures aimed at detecting doubtful or suspicious operations and high-risk customers.

Authorization of business relationships with PEPs by Senior Management (C.6.2)

556. Financial institutions are under no obligation to obtain Senior Management approval before entering into a business relationship with a PEP, or continue the business relationship when a customer has been accepted and the customer or beneficiary owner is subsequently found to be, or subsequently becomes a PEP.

557. However, the mission was informed that, in practice, in some banks, the internal officials in charge of implementation of anti-money laundering programmes solicit the authorization of their Senior Management before establishing a business relationship with a PEP. Even if the account is opened first, no movement is authorized before the approval of the Senior Management.

Identification of the source of wealth and source of funds of PEPs (C.6.3)

558. Financial institutions are under no obligation to take all reasonable measures to identify the source of wealth and source of funds of customers and beneficial owners identified as PEPs.

Enhanced ongoing monitoring of the relationship with a PEP-(C.6.4)

559. Financial institutions are under no obligation to undertake enhanced and constant monitoring of the business relationships they have entered into with a PEP.

Additional element

Application of R.6 to domestic PEPs (C.6.5)

560. Under the legislation in force, financial institutions are under no obligation to identify domestic PEPs.

Transposition of the Merida Convention (C.6.6)

561. The mission was informed about the signing and ratification of the 2003 United Nations Convention on Combating Corruption by Benin. However, no information concerning its transposition into the domestic law was communicated to the evaluators. The same is true of the African Union Convention on Combating Corruption, which Benin had ratified.

Recommendation 7

Sufficient information on cross-border bank correspondents (C.7.1)

562. The AML Act provides no obligation for financial institutions to gather sufficient information on the respondent institution to understand fully the nature of its business and to determine from publicly available information, the reputation of the institution and the quality of supervision, including whether it has been the subject of a money laundering or terrorism financing investigation or regulatory action.

563. No clause of the AML provides for the following measures related to bank correspondents:

- That FIs must gather sufficient information on bank correspondents.
- That FIs must evaluate the controls put in place by bank correspondents on the mechanism for combating money and the financing of terrorism.
- That FIs must obtain authorization from Senior Management before entering into business relationships with bank correspondents on the mechanism for combating money and the financing of terrorism.
- That FIs must specify the respective responsibilities on the AML/FT of each correspondent.
- That FIs must ensure that bank correspondents have applied all usual due diligence measures to these customers.
- That FIs must ensure that bank correspondents can provide relevant identification data on these customers at the request of the FI.

564. The annex to the AML Uniform Act on anti-money laundering in WAEMU member-States deals with the modalities of identification of customers (natural persons) by financial entities in the case of remote financial transactions. The identification of the correspondent bank is not an obligation clearly defined by this annex. The Beninese authorities could not prove to the evaluators that the annex was adopted at the same time as the AML Act.

565. According to the officials of the banks met, the legal constraints weighing, at the national level, on their correspondent banks usually established in developed countries necessarily impose on them to observe, in practice, minimal due diligence measures.

Assessment of controls put in place by correspondents (C.7.2)

566. The diligences required when the customer is a financial entity do not cover control systems put in place by the financial entity customer for anti-money laundering and the financing of terrorism, irrespective of the country in which the financial entity customer is established.

567. Financial entities are under no obligation to verify the relevance or effectiveness of the assessment of the control measures put in place.

Approval from Senior Management before entering into a bank correspondent relationship / respective responsibilities of each institution (C.7.3 and 7.4))

568. Financial institutions are under no obligation to obtain Senior Management approval before entering into new bank correspondent relationships and specify in writing the respective responsibilities in the fight against money laundering and the financing of terrorism of each counterpart.

569. The evaluators were informed about the practical modalities followed by the banks with regard to correspondent banking. They also have trace of the form to be completed by the Beninese bank before entering into a correspondent relationship. The reverse is not applied to foreign banks.

Rules pertaining to "payable-through accounts" (C.7. 5)

570. When a correspondent relationship involves the maintenance « payable through accounts », financial institutions are under no obligation to determine whether (i) their customer (the respondent financial institution) has performed all the normal due diligence obligations set out in Recommendation 5 on those of its customers that have direct access to the accounts of the financial institution, and (ii) the other respondent financial institution is able to provide relevant customer identification data upon request of the correspondent financial institution.

Recommendation 8

Prevention of the misuse of new technologies (C.8.1)

571. The AML Act contains no specific provisions relating to the abusive use of new technologies, which constitutes a weakness of the provision. Article 7 of Instruction /2006/SP of 31 July 2006 on the issue of electronic money and electronic money institutions stipulates: "issuing institutions or electronic money distributing institutions must put in place an automatic system for monitoring unusual transactions using electronic money as support".

572. However, Article 9 of the BCEAO Instruction, related to anti-money laundering within financial entities stipulates that "financial entities that authorize the execution of transactions by Internet or by any electronic means must have an adapted system for monitoring these transactions. They are also under obligation to centralize and analyze unusual transactions by internet or by any other electronic medium". It is important to underline that given the fact that the BCEAO Instruction is applicable only to financial entities, financial institutions not covered by the said instruction are under no obligation to have policies in place or take such measures as may be needed to prevent the misuse of technological development in money laundering and financing of terrorism schemes.

Management of risks linked to the physical absence of the parties (C.8.2)

573. The concerns over the management of risks linked to the physical absence of the parties are taken into account in the last paragraph of Article 7 of the AML Act, which stipulates that in case of non face-

to-face financial transactions, financial entities must identify natural persons, in accordance with the principles set forth in the annex to this act. (cf. point 5 of the annex).

574. This annex which, according to its title concerns only natural persons, specifies that the identification procedures must ensure appropriate identification of the customer, that they may be applied provided that there is no reasonable cause to believe that direct (i.e. face-to-face) contact is being avoided in order to conceal the true identity of the customer and that no money laundering is suspected and finally that they must not be applied to transactions involving the use of cash; the said annex also specifies the rule the financial institution must observe, according to the following two cases;

1. The counterpart of the financial entity performing the operation is a customer;
2. The counterpart of the contracting financial entity is another institution acting on behalf of a customer

575. In the first case, the customer is directly identified by the branch or representation office of the contracting financial entity that is closest to the customer.

576. In the second case, the identification obligation is waived if the financial entity is located in the WAEMU zone (cf. Article 9 of the AML Act). If it is situated outside the WAEMU, the financial entity must verify its identity by consulting a reliable financial directory, and in case of doubt, request confirmation of its identity from the competent oversight authority of the third-party country. The financial entity must also take "reasonable measures" to verify the identity of the customer of its counterpart, namely the beneficiary owner of the transaction.

577. For the insurance sector, the CIMA Regulation demands, in its Article 8.5 on distance sale (by correspondence, telephone, internet), that the following measures be taken, particularly: request for a copy of an identity card and a bill dating less than 3 month testifying to a residence; R.I.B. (statement of account information) to verify the correspondence between the cheque and the R.I.B., transmission of the contract by registered mail with acknowledgement of receipt, while verifying the consistency of the address, etc..

Analysis of Effectiveness (Recommendations 5 to 8)

578. The mission met with the Professional Association of Banks and Financial Establishments of Benin (APBEF-B), two (2) banks and one (1) financial institution, one insurance company, one (1) money transfer company, one (1) microfinance institution, one (1) management and intermediation company and the national branch of the BRVM.

579. The officials of the APBEF-B indicated that the initiation of the activities of CENTIF has facilitated the sensitization and training activities in the profession. In this regard, the Association participated in a seminar for explaining the Mutual Evaluation Questionnaire sent by GIABA to the Authorities prior to the arrival of the mission. The expression "Compliance Officers" is gradually gaining ground in the profession. Concerning identity checks, the mission was informed about the existence of real difficulties associated with the lack of reliability of the identity cards, associated with the dysfunctions of the public registry service. One of the consequences is the tendency to extend the use of false identity cards. However, ongoing activities, under the aegis of the BCEAO, for the establishment of an Outstanding Payments Centre offer financial institutions the opportunity to update their client-indices. The mission also deplored the lack of feedback and apparent absence of criminal penalties against perpetrators of money laundering attempts previously handed over to the Police (Economic and Financial Brigade) and the BCEAO.

580. The evaluators noted that, generally, the banking sector is better impregnated with the AML measures. In most banks, customer identification due diligence depends mainly on agents in charge of opening accounts, and should follow written procedures. Some banks extend the vigilance to the review at higher levels. In these banks, it is necessary to have approval from a higher authority before opening a new account. For legal persons, most banks verify the legal status or the legal structure and the managers, as well as the provisions governing the authority to engage the legal person. Most of the banks carry out correct identification of their customers, natural and legal persons, because they have developed internal identification rules, which seem to be applied in practice. Concerning the permanent due diligence obligation, even if the BCEAO Instruction does not impose specific obligations on the subject, in practice, banks undertake periodic review of their client portfolio in order to update the information on natural or legal person customers.

581. Microfinance institutions have not taken significant measures to ensure application of the act and instruction related to AML. However, the risk of money laundering in this sector seems low because of the modest amounts recorded in individual savings accounts.

582. Although endowed with a more complete Regulation, national actors in the insurance sector do not seem to be aware and much less have a clear conscience about their AML/FT obligations.

583. The instruction requests subjected establishments to establish an anti-money unit and transmit to the BCEAO and the BC-WAMU an annual report on implementation of the entire AML mechanism. The working session with the national Agency of the BCEAO, completed by the analysis of a few reports helped to observe a transmission of an annual report by virtually all Lending Institutions.

3.2.2 *Recommendations and Comments*

584. Benin adopted the Anti-Money Laundering Act in October 2006, established the FIU by decree issued in December 2006 and appointed its members by decree issued in May 2008.

585. The act was completed for certain financial professions by BCEAO Instruction 01/2007/RB of 02 July 2007, on the fight against money laundering in financial entities.

586. The CIMA Regulation on the insurance sector brings useful additions to the due diligence requirements, even if its enforcement is not yet effective.

587. Generally, the legal framework defining the obligations of financial institutions contains weaknesses regarding in particular the identification and due vigilance obligations, which are at times too restrictive (difficulty in identifying the beneficiary owner).

588. The onsite visit showed that apart from banks, the other subjected financial professions, ignorant of the act, do not apply the anti-money laundering provisions. The effectiveness of the implementation, too recent, could not be verified by the evaluators.

589. Persons subject to the act have not integrated the risk approach into their scheme; hence, the lack of categorization of the customers, for example, by financial institutions that have not developed a specific due vigilance policy for politically exposed persons.

590. It did not seem obvious to the mission that internal AML/FT measures had been taken at the level of the National Agency of the BCEAO, the regulatory and oversight authority in the financial sector.

591. Concerning the oversight authorities, the banking and insurance sectors are those most covered by texts (often of community origin). However, in reality, the absence of guidelines for persons subject to the act on the anti-money laundering and financing of terrorism component, the weakness or even lack of supervision of specific relevant aspects constitute obstacles to effective implementation of the requirements and explain the lack of compliance of the entire control scheme.

Recommendation

592. Given the weaknesses identified, the mission recommends to the competent authorities to take necessary steps for imposing:

Concerning Recommendation 5

- Review of the AML Act to include the client due diligence obligations, which should naturally feature in it, as prescribed by GAFI;
- The formal and explicit ban of financial institutions to keep anonymous and numbered accounts or under fictitious names;
- Clear obligations for identification of the beneficiary owner;
- The obligation to get, in all cases, information on the purpose and nature of the business relationship;
- The constant due diligence obligation, with verification of the constant update of documents and information on clients;
- The maintenance of a minimum identification measures, even with regard to customers of financial entities subjected to the AML Act;
- The obligation to take enhanced due diligence measures for higher risk categories or reduction of these measures in case of lower risks;
- The obligation of due diligence on existing customers for all subjected financial entities;
- The establishment by the BCEAO, in particular, internal AML/FT provisions and mechanisms;
- The formal adoption of the annex to the AML Act (to be amended to include legal persons) for rendering opposable to persons subject to the act specific obligations on identification in the framework of remote operations.

Concerning Recommendation 6

- Put in place adequate risk management systems to ensure efficient detection and monitoring of politically exposed persons;
- Submit for prior approval the entry into a business relationship with these high-risk persons and obtain information on the source of their funds.

Concerning Recommendation 7

- Collect adequate information on the respondent institution (based on publicly available information) to attest the AML measures observed, prior to entering into any relationship with it;
- Obtain approval from Senior Management before entering into new correspondent banking relationships.
- Assess the control measures put in place by the respondent institution in the area of anti-money laundering and financing of terrorism and ensure their relevance and effectiveness.
- Define in writing the respective responsibilities in the AML/FT scheme of each institution.
- Comply with the prescribed due diligence measures in case of use of "payable through accounts".

Concerning Recommendation 8

593. The adoption of policies and effective implementation of necessary measures, on the one hand, for preventing misuse of new technologies and, on the other, for controlling specific risks associated with business relationships or transactions that involve the physical presence of the parties, in the framework of the fight against money laundering or financing of terrorism.

3.2.3 *Compliance with Recommendations 5 - 8*

	Rating	**Summary of Factors Underlying Rating**
R 5	***NC***	- Partial coverage of financial institutions by the anti-money laundering obligations - No formal and explicit ban on financial institutions to keep anonymous and numbered accounts or under fictitious names; - No clear obligations for identification of the beneficiary owner; - No obligation to collect in all cases information on the intended purpose and nature of the business relationship; - No constant due diligence obligation with the verification of the constant update of documents and information on customers - No obligation to keep minimum identification measures, even for customers of financial entities subjected to the AML Act; - No obligation to adopt enhanced due diligence measures for the high-risk categories or reduction of these measures as a result of reduced risks; - No due vigilance obligation in the case of existing customers; - No opposition to targeted persons subject to the act, for lack of formal adoption of the annex to the AML Act, specific obligations featuring in it

		pertaining to identification in framework of distance operations; - Weak or even lack of knowledge of the AML Act on the part of financial entities other than banks.
R 6	***NC***	No legal or regulatory obligations related to PEPs
R 7	***NC***	No legal or regulatory obligations related to relationships with corresponding banks
R 8	***PC***	No specific provisions on the misuse of new technologies in the AML Act Doubts on formal adoption of the annex to the AML Act on customer identification modalities in case of remote financial transactions Lack of adoption of policies and effective implementation of measures require, on the one hand, for preventing misuse of new technologies and, on the other, for controlling specific risks associated with business relationships or transactions that do not involve the physical presence of the parties, in the framework of AML/FT

3.3 RELIANCE ON THIRD PARTIES AND OTHER INTERMEDIARIES (- R.9)

3.3.1 DESCRIPTION AND ANALYSIS

Legal framework

- Framework Law 90-018 of 27 July 1990 on bank regulation in the Republic of Benin;
- Act 2006-14 of 31/10/2006 on anti-money laundering in Benin;
- Instruction 01/2007/RB of BCEAO of 2 July 2007 concerning AML within financial entities;
- Guideline 04/2007 on combating the financing of terrorism (non transposed as at the time of the mission);
- Regulation 00004/CIMA of 04/10/2008 concerning anti-money laundering and combating the financing of terrorism in member-States of CIMA.

Obligation for FIs to immediately obtain from the intermediaries the necessary information concerning elements of client due diligence measures -C5.3 (**C.9.1**).

594. ***According to*** Article 5 of the Act, intermediaries (business finders) of financial entities (third parties) are subjected in the same way as FIs to the provisions of the AML Act, as they are subjected to these provisions. They are, therefore, under obligation to comply with the due vigilance measures.

595. *Under the terms of* its Article 17, the CIMA Regulation stipulates that "insurance and re-insurance brokers are financial entities. In that regard, they should meet all the obligations imposed on financial entities in the fight against money laundering". The fact that an insurance or capitalization business

complies or not with the AML obligations does not necessarily exonerate the broker, and inversely. Moreover, Article 6.2 of the same Regulation obliges the insurance company to request from the broker a written document, by which it declares having familiarized itself with the regulation on anti-money laundering and financing of terrorism procedures and obligations.

596. It seems that these texts, nor any other, do not impose on FIs, the obligation to obtain immediately from intermediaries the necessary information concerning the elements of client due diligence measures.

FIs are under obligation to adopt adequate measures to make sure of the capacity of the third party to provide within the shortest possible time, copies of the identification data and other documents associated with the due diligence duty (C.9.2).

FIs are under obligation to ensure that the third party is subjected to a regulation and a surveillance (R23, 24 and 29) and that it has taken all due diligence measures required by R5 and R10 (C.9.3).

597. The law does not provide that FIs should make sure that the intermediary or third party is subjected to surveillance with regard to anti-money laundering and financing of terrorism.

The competent Authorities are under obligation to take into account the respect by the country of establishment of the third party, the Recommendations of GAFI prior to any decision on the said country of establishment (C.9.4).

598. There is no legal or regulatory provision imposing on the competent Authorities to take into account the respect by the country of establishment of the third party, the Recommendations of GAFI, prior to any decision on the choice of the said country of establishment**.**

In fine responsibility of FIs using third parties for identification purposes (C.9.5).

599. It seems, in practice, that the due diligence obligation is the main responsibility of the financial institution even if the texts do not explicitly mention that. Indeed, according to Article 7 of the Act, the FI should, in any case, implement the due diligence obligations (identification measures) on all these customers, whether they are brought by third parties or not.

600. However, it is not specified that, eventually, responsibility for the identification and verification of identity should rest on the FI using a third party.

3.3.2 *Recommendations and comments*

601. The financial institutions met in banking, life insurance and financial market sectors indicated using third parties to partly ensure their due diligence obligations in the area of AML, without for that matter exempting them from their own obligations.

602. According to one intermediary met, the SGI (which is itself an intermediary) with which it is in relationship did not specifically delegate to it any due diligence obligation towards clients whose identity it could verify itself (to him, this approach is more a matter of common sense than an obligation).

603. In the light of the above observations, the mission makes the following recommendations:

- The legal texts relating to AML should clearly define the conditions under which the use of third parties and intermediaries in the area of AML/FT is authorized.

- Financial institutions relying on a third party should be required to immediately obtain from the third party the necessary information concerning certain elements of the customer due diligence process (criteria 5.3 through 5.6).
- Financial institutions should be required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the customer due diligence obligation can be made available by the third party upon request and without delay.
- Financial institutions should be required to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendations 23, 24 and 29), and that it has measures in place to comply with the customer due diligence requirements set out in Recommendations 5 and 10.
- In determining which countries the third party that meets the conditions can be based, competent authorities should take into account information available on whether those countries adequately apply the FATF Recommendations.
- The ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party.

3.3.3 Compliance with Recommendation 9

	Rating	**Summary of Factors Underlying Rating**
R.9	**NC**	Absence in the texts of the criteria required in the area of diligence, regulation, surveillance and verification of the respect of GAFI norms by the country of establishment of the intermediaries and third parties. Lack of specification on the ultimate responsibility of FIs in the identification of clients when they delegate this obligation to intermediaries and third parties.

3.4 PROFESSIONAL SECRECY OR CONFIDENTIALITY OF FINANCIAL INSTITUTIONS (R.4)

3.4.1 DESCRIPTION AND ANALYSIS

Legal Framework

- -Framework Law 90-018 of 27 July 1990 on bank regulation in the Republic of Benin;
- -Act 97-027 of 08 August 1997 on regulation of IMCEC;
- -Act 2006-14 of 31/10/2006 on anti-money laundering;
- -BCEAO Instruction 01 /2007/RB of 02/07/2007 on anti-money laundering within financial entities;
- -Guideline 04/2007/CM/UEMOA of 4 July 2007 on combating the financing of terrorism in WAEMU member-States.

Lack of obstacles to implementation of the FATF Recommendations regarding the professional secrecy applicable to financial institutions (C.4.1)

604. Article 42, last paragraph of the **Bank Regulation Act** stipulates that professional secrecy is not opposable either to the Banking Commission, or the Central Bank, or the judicial authority acting in the framework of a criminal procedure.

605. Concerning microfinance institutions, the lifting of the professional secrecy is set out in Article 68 of Act 97-027 of 08 August 1997, which stipulates that "professional secrecy is not opposable either to the Minister, or to the Central Bank, or to the Banking Commission, in the exercise of their mission of surveillance of the financial system. In any case, professional secrecy is not opposable to the judicial authority.

606. Article 34 of the AML Act stipulates that "notwithstanding any contrary legal or regulatory provisions, professional secrecy may not be invoked by the persons referred to in Article 5 (persons subject to the law) for the purpose of refusing to provide information to the oversight authorities and to CENTIF, or refusing to make the reports required by this act. The same is true of information required in the context of an investigation pertaining to money laundering actions, ordered by an examining judge or carried out under that judge's authority, by government agents charged with detecting and preventing offences linked to money laundering".

607. Article 13 of the Constitution of the Regional Insurance Control Commission stipulates that "professional secrecy or confidentiality of commercial documents is not opposable the Commission, or an Insurance Commissioner Controller on mission in an enterprise".

608. On the other hand, there is no specific provision making it possible to ensure that laws on professional secrecy of financial institutions do not hamper the exchange of information between financial institutions when it is required by Recommendations 7 and 9 or Special Recommendation VII.

Analysis of Effectiveness

609. During the discussions held on the occasion of the onsite visit, the mission was not informed about acts impeding the implementation of Recommendation 4.

610. Both the Ministry of Finance and the BCEAO reported good cooperation with financial institutions in giving them access to information covered by professional secrecy, when necessary, for the fulfilment of their mandates. The financial institutions met also mentioned the existence of good collaboration among them and indicated that they communicate easily with the competent authorities acting in the framework of their missions, (CENTIF, Judicial Authorities and Oversight Authorities in particular), information required from them.

3.4.2 *Recommendations and Comments*

611. The mission recommends as follows:

- The authorities should consider establishing provisions making it possible to ensure that the laws on the professional secrecy of financial institutions do not hamper the exchange of information

between financial institutions when this is required by Recommendations 7 and 9 or Special Recommendation VII.

- In addition, given the sensitivity of aspects concerning professional secrecy, the authorities should ensure that access to data covered is strictly limited to needs deriving from the mandates entrusted to AML/FT structures concerned.

3.4.3 *Compliance with Recommendation 4*

	Rating	Summary of Factors Underlying Rating
R 4	***LC***	In practice, there seems to be no obstacle hampering implementation of the GAFI Recommendation associated with the existence of laws on professional secrecy of financial institutions, notwithstanding the lack of specific ad hoc provisions.

3.5 RECORD KEEPING AND RULES APPLICABLE TO ELECTRONIC FUNDS TRANSFERS (R.10 & SR.VII)

3.5.1 DESCRIPTION AND ANALYSIS

Legal Framework

- -Act 2006-14 of 31/10/2006 on anti-money laundering;
- -BCEAO Instruction 01 /2007/RB of 02/07/2007 on anti-money laundering within financial entities;
- -Guideline 04/2007/CM/UEMOA of 4 July 2007 on combating terrorism financing in WAEMU member-States;
- -Regulation 15/2002/CM/UEMOA of 19 September 2002 on payment systems within WAEMU;
- -Regulation 00004/CIMA of 04/10/2008 on anti-money laundering and combating the financing of terrorism in member-States of CIMA;
- -Regulation 09/98/CM/UEMOA on overseas financial relations.

Recommendation 10

Keeping of all documents required for the reconstitution of the different transactions (C.10.1/ C.10.1.1).

612. *Article* 11 of the AML Act requires that "without prejudice to the provisions recommending more constraining obligations, financial entities (i) maintain records and documents pertaining to the identity of

their usual and occasional customers for a period of ten (10) years, from the date of closure of their accounts or the cessation of their relationships with them; and (ii) maintain records and documents pertaining to transactions they have carried out for a period of ten (10) years from the end of the fiscal year during which the transactions occurred".

613. According to Article 10 (last paragraph) of the act and related to particular monitoring of certain transactions, "the main characteristics of the operation, the identity of the originator and beneficiary, eventually, that of the actors of the transaction are kept in a confidential register, with a view to making reconciliations, where necessary".

614. According to Article 5 of the BCEAO Instruction, "financial entities must maintain for ten (10) years from the date of closure of their accounts or cessation of their relationships, documents pertaining to the identity of their regular or occasional customers. They also keep documents on transactions carried out by the latter for ten years from the end of the fiscal year concerned".

615. Article 13 of the CIMA Regulation covering exclusively the insurance sector stipulates as follows: "Financial entities are required to keep, for at least ten (10) years, a trace of their transactions. In the framework of anti-money laundering, it will involve in particular:

- Identity of each of the contracting parties (complete the identification sheet and a copy of an identity card).
- Identity of all persons paying money (complete the identification sheet and a copy of an identity card).
- -Form of payment or withdrawal: cash, transfers, cheque drawn on an account opened in the name of the customer, cheque issued by a third party (notaries, broker, third party without apparent link with the transaction, etc.), bank cheque, etc. in case cheque, keep a copy.
- -Dates and amount of payments or withdrawals.
- -Source or destination of the funds.
- -Full audit trail.
- -Register of reports to the Financial Intelligence Unit.
- -Register of subscribers of anonymous capitalization funds and persons who request for buy-back or reimbursement.

616. It should be noted that compared to the AML Act, this text applicable only to the insurance sector, has the advantage of making 10 years a minimum period and providing more details on the nature of the information to be kept.

Maintenance of identification data, accounts books and business correspondence (C.10.2)

617. Article 11 of the AML Act mentioned above requires financial entities to maintain all records and documents concerning the transaction they have carried out without clarifying their nature, particularly in terms of explicitly including books of account and business correspondence as required by R.10.

618. Regulation 15/2002/CM/UEMOA concerning payment systems in the WAEMU also contains provisions related to the keeping of documents. Hence, in Article 20, it requests banks and financial institutions to keep the documents in electronic form for a period of five (5) years and define the conditions of conservation of documents.

619. The BCEAO Instruction on electronic money adopted in application of Regulation 15 above, stipulates in Article 6 that "the issuing institution ensure the traceability, for two (2) years, of the loading and payments from the electronic money units …".

Putting at the disposal of the national competent authorities for the accomplishment of their mission, at the appropriate time, all documents and information on customers and transactions (C.10.3)

620. Article 12 of the AML Act concerning communication of records and documents stipulates: "the records and documents concerning the identification obligations set forth in Articles 7, 8, 9, 10 and 15 and whose conservation is mentioned in Article 11, shall be communicated, at their request, by the persons mentioned in Article 5, to the judicial authorities, government agents in charge of the detection and repression of offences associated with money laundering, acting in the context of a judiciary mandate, the oversight authorities as well as to CENTIF".

621. Since the notion of availability, which seems to translate the expression "timely" is not specifically taken into account by the legislation, it does not seem that persons subject to the act are requested to deal with this element required under R10.

622. Furthermore, Article 6 of the BCEAO Instruction on electronic money mentioned above indicates that "the issuing institution has information of the loading and payments of electronic money units at the disposal of the monetary and oversight Authorities".

Special Recommendation VII

623. The AML Act and **BCEAO Instruction** contain provisions concerning the customer identification obligation by the persons subjected to the law. In particular, the annex to the act sets forth specific provisions concerning remote operations with their natural person customers.

624. Article 6 of the AML Act stipulates that "exchange transactions, capital flows and regulations of any kind with a third-party State should be carried out in accordance with the exchange regulations in force".

625. Article 4 of **Regulation 09/98/CM/UEMOA** concerning external financial relations stipulates that for the execution of transfers in amount not exceeding three hundred thousand (300,000) CFA francs (about 457 Euros), no support document is required for the operation. However, authorized intermediaries will verify the identity of the originator and the beneficiary so that this provision will not be used to make split payments or to constitute assets abroad.

626. It should be specified that this general provision is based on the exchange regulations **and does not seem to target specifically AML.**

627. **Regulation 15/2002/CM/UEMOA** concerning the payment systems listed in Articles 42, 132, 133, 134 and 135 and agencies authorized to make wire transfers, in particular, and sets forth the obligations of the parties to the operation.

Obtaining and keeping information on the originator of a transfer order (C.VII.1)

628. The identification obligations set forth by the AML Act are enough to obtain in all cases complete information on the originator. This is the case for occasional customers who benefit from a control ceiling of CFA 5,000,000 (five million).

629. Financial entities of the originators are under no obligation to obtain and keep complete information on the originator (name, account number and address) for all transfers equal to or above 1000 Euros/US Dollars.

Inclusion of information on the originator of a domestic transfer (C.VII.2)

630. Article 14 of the WAEMU CFT Guideline requests member-States to take the necessary measures to ensure that any **cross-border** wire transfer is accompanied by accurate information on the originator, **in particular** the account number (the list of information to be provided is, therefore, not exhaustive). But since the law transposing this Guideline has not yet been promulgated, financial entities of the originators are under no obligation to include information on the originator of a domestic transfer.

Inclusion of information on the originator of a domestic transfer (C.VII.3)

631. Article 214 of the WAEMU CFT Guideline requests member-States to ensure that any **domestic** wire transfer includes the same data as in the case of cross-border transfers (see above). But, since the law for transposing this Guideline has not yet been promulgated, financial entities of the originators to obtain and keep information on the originator of a domestic transfer.

Transmission of the transfer order with all the information required (C.VII.4)

632. No beneficiary intermediary or financial institution in the payments chain is under obligation to verify that all the information on the originator required for the transfer are effectively transmitted with the transfer order. This lack of obligation also exists with regard to keeping the information provided by the financial institution of the originator when technical limitations prevent, in the context of a domestic transfer following a cross-border transfer, transmission of complete originator information required for an initial cross-border transfer.

Adoption of efficient control procedures by the institutions based on a risk assessment (C.VII.5)

633. Financial institutions are under no obligation to adopt efficient procedures based on a risk assessment in order to identify and process transfers that are not accompanied by complete originator information.

Existence of efficient measures for controlling the implementation of SR VII (C.VII.6)

634. In the absence of a constraining provision related to the originator, there are no basis and measures for controlling respect of the implementation rules of SR.VII by financial institutions.

Application of criteria 17.1 through to 17.4 in relation to SR VII (C.VII.7)

635. No sanction may be imposed in the absence of any legal obligation accompanied with penalties with regard to transfer originator information.

Analysis of Effectiveness

636. The officials of lending institutions and insurance companies met informed the mission that they kept records and documents out of professional practices or regulatory requirements of other sources, in particular accounting requirements.

637. The banks met with indicated that their primary correspondent relationships were within the European Union, i.e. outside the WAEMU. Because of the standards applicable there, they pointed out that the constraints imposed by these standards are also binding on them since they condition the execution of their transfer orders, in particular in this area.

The mission could, however, not verify the reality of these assertions.

3.5.2 *Recommendations and Comments R10 and SR VII*

638. The current Regulation should be completed so as to specify the nature and availability of documents to be kept by financial entities, in accordance with the requirements of R10

639. Concerning SR VII, transfers represent a significant and growing activity for financial institutions, both within and outside the WAEMU zone. The absence of any measure reflecting the provisions of Recommendation VII is a particularly striking weakness.

640. Benin should adopt as soon as possible legal provisions to facilitate implementation of R.VII, in particular, by adopting as soon as possible the Uniform Act transposing the WAEMU CFT Guideline. This act should, where necessary, be completed so as to compel financial institutions to meet all the criteria required under this Recommendation, particularly:

- Demand, collect and keep for all transfers accurate and complete information (identity, address and account number) on the originator.
- In case of treatment of unusual transactions, financial institutions should ensure individual follow-up of files and not treat them as a single batch.
- Implement efficient control measures in accordance with SR VII.

3.5.3 *Compliance with Recommendation 10 and Special Recommendation VII*

	Rating	Summary of Factors Underlying Rating
R 10	***PC***	Nature and availability of documents to be kept by lending institutions not specified

RVII	***NC***	Lack of a CFT act due to the non transposition of the relevant WAEMU Guideline. Lack of constraining provisions as required under SR.VII, particularly full originator information and control of compliance.

3.6 MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21)

Unusual or suspicious transactions

3.6.1 Description and Analysis

Recommendation 11

Obligation to pay special attention to all complex abnormally large and unusual transactions having no economic or lawful purpose (C.11.1)

641. Article 10 of the AML Act stipulates that any payment in cash or by bearer security of a sum of money, made under normal conditions, involving the unit or total sum of fifty million (50,000,000) CFA francs (about 76,224 Euros) or more must be carefully examined. The same applies to any transaction involving a sum of ten million (10,000,000) CFA francs or more, made in unusually complex circumstances and/or has no apparent economic justification or lawful purpose.

642. Article 7 of the BCEAO Instruction stipulates that "financial entities must make provision for analysis of the transactions and profile of customers to help trace and monitor all particularly unusual financial movements and transactions". A non-exhaustive list enumerates some of the said movements and transactions.

643. For **authorized manual foreign exchange agencies**, Article 14 of the act stipulates that they "should, like banks, pay particular attention to transactions on which no regulatory limit is imposed and which could be carried out for purposes of money laundering from the moment it involves an amount of five million (5,000,000) CFAF francs" (about 7622 Euros).

Examination of the background and purpose and recording the results in writing (C.11.2)

644. Article 10, paragraphs 2 and 3 of the AML Act stipulates that persons subject to the act (namely the FIs) "are required to obtain information from the customer, and/or by any other means, concerning the origin and destination of the sums of money in question, as well as the purpose of the transaction and the identity of the persons involved, in accordance with the provisions of paragraphs 2, 3 and 5 of Article 7. The main characteristics of the operation, the identity of the originator and the beneficiary, eventually, that of the actors of the transaction are recorded in a confidential register, with a view to making comparisons, if necessary".

645. Concerning the **insurance sector**, Article 7.2 of the CIMA Regulation stipulates: "Insurance companies must provide for a mechanism for analyzing the transactions and profile of customers, to help trace and monitor unusual transactions.
To that end, they must:

- -carefully examine contracts registering high and frequent movements.
- -carefully examine transactions remarkable by their amount, their mode of payment, the origin or destination of the funds, their collateral, etc.
- -ensure that the special procedure for unusual transactions has been effectively followed and complied with".

646. Furthermore, Article 10 of this Regulation contains a list "of unusual transactions" and some of which are comparable to procedures for laundering money in the insurance sector.

Providing the competent authorities and auditors with results of the examinations for a period of 5 years (C.11.3)

647. Article 12 of the Act stipulates that the records and documents concerning the relevant identification obligations, in particular this Article 10 and whose conservation is mentioned in Article 11, are communicated upon request by the persons to which it applies, to the judiciary authorities, government employees in charge of the detection and repression of money laundering offences, acting in the framework of a judicial mandate, the oversight authorities, as well as CENTIF. It should be noted that auditors are not among the addressees.

648. Article 11 of the Act concerning the keeping of records and documents by financial entities, stipulates for a period of 10 years, well above the 5 years proposed by the FATF.

649. In the insurance sector, Article 13 of the CIMA Regulation stipulates for a **minimum** period of 10 years for keeping the documents, in particular "the register of subscribers to anonymous capitalization bonds and persons who request for buy-back or reimbursement". Article 12 of the text stipulates that "this register must be represented to the auditors-controllers of insurance companies". **The competent authorities and auditors targeted by R11 are not mentioned**.

Recommendation 21

Special attention to countries that do not or insufficiently apply the FATF Recommendations (C21.1)

The AML Act did not directly address this issue.

650. Article 10 of **BCEAO Instruction 01/2007** stipulates that "financial entities mentioned in Article 3 above are requested to pay particular attention to transactions carried out with countries, territories and/or jurisdictions declared by the FATF as being non-cooperative and by the persons targeted by asset-freezing measures on account of their presumed ties to an organized criminal entity. In this regard, the list of these countries/territories and jurisdictions as well as that of the persons targeted by asset-freezing measures must be regularly updated and communicated to the staff in the forefront of the fight against money laundering within the financial entity".

651. In the insurance sector, Regulation CIMA has established, in its Article 8.3 concerning the due vigilance obligations towards foreign legal persons (including: domiciled abroad), the following non-exhaustive list of "special cases" for which, in the context of specific monitoring if the request for the identity of the economic beneficiary is refused, a suspicious transaction report must necessarily be made to the FIU:

- -International Business Company (Jersey, Guernesey, Isle of Man, Bahamas, Barbados, British Virgin Islands;
- -Exempt Company ((Jersey, Guernesey, Isle of Man,, Gibraltar);
- -Qualifying company (Bermuda, Cayman Islands);
- -*Aruba vrijgestelde vennootschap* (AVV)

652. Concerning the institution of efficient measures to ensure that financial institutions are informed of the above-mentioned concerns resulting from the weaknesses in the AML/FT mechanisms of other countries, there is no provision to that end.

Examination of transactions having no apparent economic or lawful purpose (C21.2)

Analysis of Effectiveness

653. Generally, the onsite visits helped to observe that the prescribed AML obligations, namely the particular monitoring of certain operations of transactions are not well known or sometimes not at all by the actors. Only the banks have started gradually implementing some of the prescribed obligations.

3.6.2 *Recommendations and Comments R11 and R21*

654. The analysis of the texts reveals too many restrictions (texts applicable to financial entities alone) and a certain inconsistency between the AML Act and the BCEAO Instruction, particularly concerning ceilings.

655. The authorities should address the weaknesses identified and consider taking appropriate measures, in particular:
Concerning Recommendation 11

- Request financial institutions to pay particular attention to any type of unusual transactions when they are not economically motivated without a priori limitation of ceilings.
- Include auditors among persons authorized to have access to results of the examination of complex transactions, unusually high amounts or that have no economic or apparent legal purpose.

Concerning Recommendation 21

- Require financial institutions to pay particular attention to business relationships with residents of countries that apply the FATF Recommendations inadequately or not at all.
- Put in place effective measures to advise financial institutions of concerns about weaknesses in the AML/FT systems of other countries.

- Put in place appropriate counter measures that Benin may decide to implement when a country continues to apply FATF Recommendations inadequately or not at all.

3.6.3 *Compliance with Recommendations 11 and 21*

	Rating	Summary of Factors Underlying Rating
R 11	**NC**	Poor knowledge or even ignorance of these obligations Auditors not included in the list of beneficiaries of the result of the points examined Partial implementation by the banks Lack of implementation by the other financial institutions
R21	**NC**	No efficient measures to ensure that financial institutions are informed about the concerns resulting from weaknesses of the AML/FT provisions of other countries No provisions pertaining to countries that apply FATF Recommendations insufficiently or not at all.

3.7 SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Recommendation 13 & Special Recommendation IV

- Act 97-025 of 18 July 1997 on the control of Drugs and Precursors;
- Order 0057/MISAT/DC/SG/DGPN/DPJ/SA of 05 March 1999 on creation of a unit for combating laundering of money of fraudulent origin at the Judicial Police Department;
- Act 2006-14 on anti-money laundering in Benin;
- BCEAO Instruction 01/2007/RB of 27 July 2007;
- BCEAO Instruction /2006/SP of 31 July 2006 on the issue of electronic money and electronic money institutions;
- Regulation 00004/CIMA of 04/10/2008 defining procedures applicable by insurance agencies within member-States of CIMA in the framework of AML/FT;
- Guideline 04/2007/CM/UEMOA of 04 July 2007 on combating the financing of terrorism.

Obligation to make a suspicious transaction report (STR) in the event of suspicion of money laundering or terrorism (13.1, 13.5 (additional elements) and SR IV.1)

656. Article 126 of Act **97-025 of 18 July 1997 on Control of Drugs and Precursors** stipulates as follows: "Persons who, in the exercise of their profession carry out, control or offer advice on transactions involving capital flows, public and private banking and financial institutions, postal services, insurance companies, mutual funds, stock markets and manual foreign exchange operators **are required to inform the competent judicial authority** from the moment they suspect that sums or transactions on these sums are likely to come from offences provided for in Articles 95 through to 97 (cultivation, production, manufacture, high-risk drug trafficking), 100 and 101 (high-risk drugs, precursors, equipment and materials) even if the transaction whose execution it was impossible to suspend has been carried out".

657. By **Order 0057/MISAT/DC/SG/DGPN/DPJ/SA of 05 March 1999**, Benin created a Money Laundering Control Unit attached to the Judicial Police Directorate and entrusted, in particular, with the missions of "receiving reports of suspicious transactions forms banks and lending institutions".

658. Article 7 **of BCEAO Instruction /2006/SP of 31 July 2006** concerning the issue of electronic money and electronic money institutions imposed on electronic money issue or distribution institutions the obligation to report "anomalies" observed in the context of their money laundering control mechanism to CENTIF, as provided for in the WAEMU Guideline and derived texts adopted in accordance with the provisions of this Guideline. The notion of "anomaly" is, however, not specified.

659. **Act 2006-14 on AML** came to enhance this provision. Hence, Article **26 of this Act** stipulates that "persons targeted in Article 5 are requested to report to CENTIF, under the conditions fixed by this act and according to a declaration model fixed by order of the Minister of Finance:

- sums of money and other property that are in their possession, when the latter could come from **money laundering**;
- transactions on property, when the latter could be associated with money a money laundering process;
- sums of money and all other property in their possession, when such items suspected of being intended to **finance terrorism**, appear to derive from ML-related activities".

660. Article 9 of the act also sets forth a suspicious transaction reporting obligation **when doubt persists as to the identity of the economic beneficiary** after the financial entity has made fruitless attempts through all means to obtain information on the identity of the person on whose behalf it is acting.

661. It should be noted that the AML Act makes it an obligation to report suspicions only for transactions associated with money laundering and financing of terrorism. Hence, it does not cover all 20 categories of designated offences considered by the FATF as a minimum.

662. The same provisions are provided for in a restrictive manner in Article 11 of BCEAO Instruction 01/2007/RB. Indeed, this instruction specifies that "financial entities mentioned in Article 3 above (banks and financial institutions, post office financial services, *Caisses de dépôts et consignations* or agencies representing them, mutual-beneficial or cooperative credit and savings institutions, as well as structures or organizations not constituted in the form of mutual-beneficial or cooperative savings and credit institutions having as an objective collection of savings and/or credit, authorized manual foreign exchange agencies) should report suspicious transactions".

663. These reports concern "transactions involving **sums that could be part of a money laundering process**, in particular:

- Sums registered in their books that could derive from **drug trafficking or organized crime activities**;
- Transactions involving sums, when these could derive from drug trafficking or organized crime activities;
- Any transaction where the identity of the originator or beneficiaries is doubtful;
- Notwithstanding the execution of activities in accordance with the provisions of Articles 7 through to 9 of the Uniform Act;
- Operations carried out by financial entities on their own account or on the account of third parties with natural or legal persons, including their subsidiaries or institutions, acting in the form or on behalf of trust funds or any other management tool of an allocation wealth of which the identity of the constituents or beneficiaries is not known.

664. It should be noted that compared to the AML Act, the BCEAO AML Instruction comes to extend the scope of predicate offences that should result in STRs, drug trafficking or "organized crime activities". But, this Instruction has no force of law and is targeted at a limited category of persons subjected to it.

665. The CREPMF Instruction issued in November 2009 comprises the same provisions as those of the BCEAO in the area of STR.

666. Article 15 of the CIMA Regulation stipulates as follows; "The official in charge of the implementation of anti-money laundering programmes must make the necessary suspicious transactions reporting to the Financial Intelligence Unit. In exceptional cases, in particular because of the emergency, any manager or employee of the enterprise can take the imitative of reporting a suspicious transaction to the FIU, even if he is not the internal official in charge of the implementation of anti-money laundering programme". Such an opening must be seriously supervised in order to prevent suspicious transaction reporting from the insurance sector from losing credibility. It should also be noted that Article 8.3 of this Regulation imposes an obligation of suspicious transaction reporting to the FIU, when in the exercise of the due customer diligence, for the purpose of obtaining identity of the economic beneficiary, an insurance company of CIMA zone is refused by another company domiciled in jurisdictions not long ago considered as tax haven (Jersey, Caiman Islands, etc.)..

STR obligation in the case of funds related to terrorism (13.2 and SR IV.2)

667. Article 26 of the AML Act creates an obligation to report to CENTIF all ML transactions that are also suspected of being intended for FT. This provision does not create any new obligation relative to the other provisions of Article 26, but specifies that transactions linked ML must be reported to CENTIF, even when they are also suspected of being intended for FT.

668. Apart from funds covered by STR obligation with regard to ML, the obligation to make an STR does not apply to funds for which there are reasonable grounds for suspecting, or of which it is suspected that such funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.

669. Furthermore, Article 10 of the WAEMU CFT Guideline requests member-States to take essential measures to ensure that persons subject to the law proceed without delay to make suspicious transaction reports to CENTIF when they suspect, or have reasonable grounds to suspect that the funds are linked to, related to, or are to be used for the financing of terrorism and/or terrorist acts. Since the law transposing this Guideline has not yet been adopted, the requirement of STR for funds related to terrorism cannot be met.

Obligation to report all suspicious transactions (C.13.3)

670. According to Article 26 of the AML Act related to the suspicious transaction report obligations, financial institutions are under obligation to report, without limitation of a ceiling:

- sums of money and all other property in their possession, when the latter could derive from money laundering;
- transactions that concern property, when the latter could be associated with a money laundering process;
- sums of money and all other property in their possession, when the latter, suspected of being intended for the financing of terrorism, seem to derive from transactions associated with money laundering.

671. Furthermore, Article 3 of the same act describes as money laundering offence "the attempt" to commit an act that constitutes money laundering.

Hence, even if the act does not explicitly mention it, any attempted transaction should be declared to CENTIF.

Tax Evasion (C.13.4)

672. The AML Act contains no special provision on tax evasion, but it describes as money laundering offence, any crime or offence (including tax evasion). Consequently, the suspicious transaction report obligation should be applicable, whether or not these transactions are considered as covering tax issues as well.

Analysis of Effectiveness

673. Some of the financial entities visited indicated that they had in the past transmitted suspicious transaction reports to Money Laundering Control Unit attached to Judicial Police Directorate. Some of these reports resulted in convictions for predicate money laundering offences. On the advent of the AML Act, suspicious transaction reports regarding money laundering were sent to the BCEAO, pending the establishment of CENTIF. CENTIF, on its part, confirmed receiving from the BCEAO STRs received from local banks. On the other hand, other financial entities subject to the act like insurance and reinsurance companies, financial institutions, microfinance institutions, the Post Office, the National Branch of the *Bourse Régionale des Valeurs Mobilières* (BRVM), authorized manual foreign exchange agencies, said they had not made suspicious transaction reports in the context of anti-money laundering and financing of terrorism, at times due to ignorance of the act and their obligations in that respect, in particular those related to declarations of suspicion.

674. Besides, all those concerned by the act in the sector have not yet received the model of the suspicious transaction report form. Some banks acknowledged having made suspicious transaction reports. CENTIF admitted that the dissemination of the models of the suspicious transaction report form concerned institutions organized into associations like banks or insurance companies.

675. There is no formal obligation to declare attempted suspicious money laundering transactions in Benin.

676. Since the Guideline on combating the financing of terrorism is now being incorporated into the legal order of Benin, STRs on the financing of terrorism cannot prosper.

677. Moreover, it should be noted that no STR has resulted in prosecution for money laundering in the Courts of Benin since the adoption of the AML Act.

In total, there is lack of effective implementation of the act in most of the financial entities subject to it.

Recommendation 14

C.14.1 Protection in case of STR

678. Article 128 of **Act 97-025 of 18 July 1997 on the control of drugs and precursors** stipulates that: "No prosecution for violation of professional secrecy may be initiated against managers or employees of the agencies listed in Article 126, even if investigations of legal decisions eventually show that the declarations, which were made in good faith, were baseless. Compensation for the damage suffered by the persons concerned by the declaration is the exclusive responsibility of the State".

679. Article 30 of the AML Act stipulates that "persons or managers of employees of persons mentioned in Article 5 (i.e. persons subject to the act) who, in good faith, transmitted information or made any report, in accordance with the provisions of this act, shall be exempted from all penalties for violation of the professional secrecy. No action in civil or criminal liability may be taken, nor professional sanction pronounced against persons or managers or employees of persons mentioned in Article 5, who acted under the same circumstances as those provided for in the previous paragraph, even if justice decisions handed down on the basis of the declarations mentioned in this same paragraph did not lead to a conviction. Besides, no action in civil or criminal liability may be taken against the persons mentioned in the previous paragraph due to material and or moral damages that could result from the blockage of a transaction by virtue of the provisions of Article 28. The provisions of this are applicable by right, even if the proof of the criminal nature of the acts at the origin of the declaration is not established or if these acts have been amnestied or resulted in a decision of non-suit, discharge or acquittal".

680. Although it does not specify it, the wording of the act suggests that this protection should be given to the interested persons, even if they did not specifically know the criminal activity in question, and even if the illegal activity which was the subject of suspicion did not really occur.

Prohibition against disclosing an STR to the customer (C.14.2)

681. Article 26 paragraph 4 of the AML Act stipulates that "These reports are confidential and may not be communicated to the owner of the funds or to the originator of the transactions". This provision does not exactly reflect the prohibition against communicating an STR in accordance with FATF standards, for (i) it concerns only an STR and not other information communicated or provided to CENTIF concerning this STR, (ii) it seem to target only the communication of the declaration and not that of its existence.

682. The violation of this prohibition is liable to criminal sanctions by virtue of the provisions of Article 40 of the AML Act pertaining to criminal penalties of certain wrongdoings associated with money laundering, which stipulates that "shall be punishable by a prison term of six months to two years and a fine of CFAF 100,000 to 1,500,000 or one of the two penalties alone, persons and managers or employees of natural or legal persons mentioned in Article 5, when the latter shall have **intentionally** committed the following acts:

- Revelations on suspicious transaction reporting made to the owner of the amounts or author of the transactions concerned;
- Information on the persons targeted by the investigation conducted on money laundering acts;
- Communication of information or documents to persons other than those mentioned in article 12. Hence, penalties are not provided for when a person makes revelations on an unintentional declaration.

It should be noted that the hypothesis of unintentional violation is not envisaged.

683. Article 15 of the CIMA Regulation stipulates as follows: "The declarant or any other person attached to the business (manager, salaried worker, employee, principal) should under no circumstance communicate to suspects the least information on the existence of a declaration of suspicion or its follow-up actions. The violation of this professional secrecy shall be liable to criminal sanctions. This confidentiality must also be applicable to suspicions addressed to the declarant by any person attached to the business (manager, salaried worker, employee, principal), even if this suspicion does not result in an effective declaration of suspicion".

684. Furthermore, Article 17 of the same Regulation specifies, concerning brokers: "Although legal representatives of insured persons and subscribers, insurance and reinsurance brokers who make a suspicious transaction report are requested not to inform their principals on penalty of incurring the penalties provided for by the regulation on anti-money laundering and combating the financing of terrorism:".

Additional elements (14.3)

685. The AML Act stipulates that the information held by CENTIF is confidential. Hence, Article 29 of the act stipulates that the CENTIF report to the State Prosecutor is accompanied by all useful support documents with the exception of the suspicious transaction report. The identity of the staff making STRs should not appear in the said report, which constitutes evidence until proven otherwise. Consequently, the confidentiality of the information and names must be respected by CENTIF, in accordance with the act.

Analysis of Effectiveness

686. CENTIF acknowledged having received suspicious transaction reports. But they have not yet been treated mainly due to the recent installation of the CENTIF, which had just received these declarations.

It is difficult, under these conditions, to assess the effective application of the confidentiality criteria.

Furthermore, some persons subject to the act acknowledged having rejected transactions that seemed suspicious to them for fear of being confronted with problems of confidence with their customers.

Recommendation 19

Study of a system for reporting currency transactions (C.19.1)

687. During the passage of the mission, no study had been conducted to assess the feasibility and usefulness of the implementing system by which financial institutions would declare all currency transactions above a certain amount to a national central agency with a computerized database. At community level, no similar study has been published by the competent authorities.

Recommendation 25

Guidelines to assist persons subject to the act to meet their obligations (C.25.1)

688. Article 13 of the AML Act invites the oversight authorities to specify, where necessary, the content and modalities of the implementation of money laundering prevention programmes**.**

689. The BCEAO, indeed, issued an Instruction in February 2007 containing additional clarifications in the AML Act to enable persons subject to it to better meet their AML obligations.

690. The CIMA did the same with the adoption of an ad hoc Regulation in April 2008, applicable to insurance companies of member-States.

691. The CREPMF, for its part, issued an Instruction for authorized actors of the WAEMU regional financial market in November 2009, or five (5) months after the passage of the mission, which enabled them to take it into account for the evaluation.

Feedback and advice on STRs (C.25.2)

692. Article 28 of the AML Act requests CENTIF to acknowledge receipt of any written suspicious transaction report.

693. Article 29 of the AML Act stipulates that CENTIF shall inform, at the appropriate time, those required to make STRs on the conclusions of its investigations.

694. Article 15.4 of the CIMA Regulation concerning the insurance sector provides a feedback of the FIU in these terms: "When the FIU has referred a case to the State Prosecutor, it informs the business about it at the appropriate time".

695. The statistics of STRs received are available in the 2008 Activity Report of CENTIF of Benin. The activity reports at the end of December 2008 and the first quarter of 2009 were communicated to the BCEAO and the MEF. CENTIF informed the mission that it intended to conduct studies on the techniques, methods and typologies of money laundering in the Republic of Benin. This study had not yet started at the time of the passage of the mission.

Analysis of Effectiveness

696. According to CENTIF, the suspicious transaction reports received in writing but only from banks, were registered and the acknowledgement of receipts were sent within 72 hours on the average. The other financial entities had not made any suspicious transaction report. Since the full treatment of the files received was not yet effective, it was not possible to assess the feedback on the conclusions of the investigations.

697. The mission received a copy of CENTIF's 2008 Activity Report. A section of the report is devoted to the treatment of STRs (number, origin, stage of treatment). But, the report was only transmitted to the Minister of Finance and BCEAO.

Recommendation 32

698. Virtually all the competent authorities do not keep statistics on issues related to the effectiveness and efficient functioning of the provisions on the fight against money laundering and the financing of terrorism

699. Concerning the banking sector, since the BC and the BCEAO are community oversight agencies, it was not possible to have information from the BC, which is based in Abidjan. The national agency of the BCEAO declared having received from lending institutions reports on the implementation of the AML scheme in accordance with the relevant Instruction.
The consultations of these reports by the mission made it possible to collect the following statistical data:

Years	**Number of reports received by BCEAO**	**Number of STRs contained in these reports**
2007	7	13
2008	5	-

700. Regarding the other entities concerned, no statistics on the effectiveness and efficient functioning of the AML/FT provisions were registered.

701. Moreover, statistics on seizures of foreign currency by customs units were presented to the mission by the Customs Department. They are summarized in the table below:

Year	Foreign	Amount	Customs Units (place)
2005	CFAF Dollars Bogus money	87,990,000 66,100 10,000,000	Kraké Kraké Kraké
2009	Dollars Euros	206,600 24,350	Cotonou-Airport Cotonou-Airport

3.7.2 Recommendations and Comments

To enable Benin to comply, the mission makes the following recommendations:

R 13

- Extend the STR to include predicate offences as defined by FATF.
- Define requirements for reporting attempted operations;
- Institute the obligation to effect an STR concerning funds for which there are reasonable justifications to suspect or which are suspected as being associated or in connection with or that they are going to be used for terrorism, with terrorist acts or terrorist organizations or with those who finance terrorism, in the framework of the transposition of the WAEMU CFT Guideline;
- Pursue the efforts to disseminate the AML, and the suspicious transaction report model, on the one hand, and training as well as sensitization, on the other hand, in order to enable those concerned to better know their obligations in the fight against money laundering and the financing of terrorism, particularly concerning STRs.

R 14

- Prohibit the disclosure of information on STRs to any third party not duly mandated to have access to it.
- Ensure effectiveness in the application of the sanctions in case of offence.

R 19

- Get the national and/or community authorities to explore the possibility of putting in place a system by which financial institutions would report all cash transactions involving sums higher than a specific amount to a national agency with a computerized database.

R25

- Formulate guidelines for all subjected persons.

- Organize and implement in a convenient and appropriate manner the feedback by the competent authorities, particularly CENTIF for the persons concerned.

3.7.3 ***Compliance with Recommendations 13, 14, 19, 25.2 and SR.IV***

	Rating	Summary of Factors Underlying Rating
R 13	***PC***	Limitation by AML of STR of money laundering and financing of terrorism. No obligation to report attempted operations Incomplete dissemination of STR templates Many liable persons are unaware of their STR obligations Lack of implementation
R 14	**LC**	AML Act vague on FATF requirements due to the fact that it only deals with STR and other information made available to CENTIF relating to the STR
R 19	NC	No feasibility or desirability study for implementation of a cash transaction reporting system starting from a given threshold at a national central agency with computerized database; no plans to do this
R 25	***PC***	Lack of guidelines in some financial entities Feedback not in conformity with the requirements
SR IV	***NC***	Lack of obligation to report FT-related transactions

3.8 INTERNAL CONTROLS, COMPLIANCE AND FOREIGN BRANCHES (R.15 & 22)

3.8.1 DESCRIPTION AND ANALYSIS

Internal controls and other measures

Recommendation 15

Obligation of establishment and maintenance of internal control procedures, policies and measures (C.15.1)

702. Article 13 of the AML Act stipulates that financial entities are under obligation to develop harmonized money laundering prevention programmes. These programmes should comprise, in particular: the centralization of the data on the identity of customers, originators, legal representatives, economic beneficiaries, treatment of suspicious transactions, appointment of internal officials in charge of the implementation of the AML programmes, continuing staff training, and establishment of an internal control system, application and efficiency of measures adopted in the framework of the AML.

703. This obligation is also prescribed by its Articles 13 (establishment of an anti-money laundering unit), 15 (internal anti-money laundering programme) and 16 (control of the internal anti-money

laundering programme). All institutions subjected to this Instruction are under obligation to put in place an internal AML/FT control system. The anti-money laundering system must be explicitly entrusted to an ad hoc structure, which may be the one in charge of control or internal audit.

704. Circular 10-2000/CB of the ML-WAMU, relating to internal control in lending institutions indicate that the internal control system aims at "verifying that the transactions carried out, the organization, internal procedures are in line with the legislative and regulatory provisions in force (in this case the AML legislation)".

705. In the insurance sector, Article 4 of Regulation 00004/CIMA recalls these obligations for the attention of insurance companies in member-countries of the CIMA, specifying that the function of Internal Officer in charge of the implementation of the AML programmes may be entrusted to the Internal Audit or Management Control Officer.

706. Concerning access, at the appropriate time, to all the information on vigilance measures in the insurance sector, the CIMA Regulation imposes on insurance companies the obligation to ensure that the Internal AML Officials "have easy access to all useful information".

707. Such specification is not provided by the texts concerning the other categories of financial entities. But, in practice, according to the agencies met, the internal procedures applicable in the framework of the AML system enable the interested parties to have access at any time to all necessary information for the performance of their duties.

708. At the level of the regional financial market, the CREPMF Instruction issued in November 2009 (after the passage of the mission) imposes on actors of the said market, the establishment of anti-money laundering mechanisms, in particular the attribution of the implementation and control to the Internal Controller (Articles 13 and 15) and the training of staff (Article 14). Moreover, the SGI and SGP are under obligation to put in place an internal control system by virtue of Article 54 of the general regulation on the organization, functioning and control of the WAEMU financial market.

Putting in place an independent control system endowed with resources (C.15.2)

709. According to the terms of the BC-WAMU circular on internal control in lending institutions, "the internal control policy is implemented by making available appropriate human, material and technical resources".

710. Article 13 of the BCEAO Instruction stipulates that: "The executive body must put at the disposal of the official in charge of the anti-money laundering system appropriate and adequate resources in order to guarantee an operational independence for the accomplishment of his mission". Article 16 of this Instruction specifies, moreover, that "the internal anti-money laundering programme must be subjected to the scope of competence and investigation of a structure or authority independent from the one in charge of its implementation. This structure or body is under obligation to report periodically on its control to the deliberating body".

711. In the stock market sector, Article 13 of the new Instruction of the CREPMF stipulates that "The executive body must put at the disposal of the Internal Controller in charge of the anti-money laundering system adequate and sufficient (human and material) resources in order to guarantee an operational independence for the accomplishment of his mission".

712. Article 4.1 of the CIMA Regulation indicates, for its part, that insurance companies should ensure that the internal officials in charge of implementation of the AML programmes "have sufficient powers".

During the meetings, the issue of inadequate resources was often raised.

Ongoing staff training (C.15.3)

713. Article 13 of the AML Act provides for ongoing staff training as part of the AML internal programmes.

714. This obligation is specified in Article 14 of the BCEAO Instruction, which provides for staff training (communication of the provisions of the legal texts in force) as well as its training (supply of procedures manual, training plan and sensitization to typologies).

715. The ad hoc provisions of the BCEAO Instruction were recalled by the CREPMF Instruction which entered into force in November 2009.

716. In the insurance sector, the obligations in the area of training are set for the benefit of AML Official and the persons concerned (Article 4.1).

717. During the visits to the Financial Institutions, the mission was informed that the AML training courses were received during the sensitization or training seminars organized by CENTIF, GIABA or other Institutions. These training activities were especially targeted at the front office staff and agency heads.

718. This information is corroborated by the information contained in the periodic reports transmitted to the BCEAO and to which the mission had access.

719. However, it was pointed out that the beneficiaries of the training did not systematically pass on the knowledge to other colleagues and that continuing training has not yet been instituted.

Vigilance measure during hiring of staff (C.15.4)

720. Act 90-018 of 27 July 1990 on bank regulation establishes criteria for hiring bank employees. Article 17 prohibits the recruitment in a bank or a financial institution of any person convicted for committing, conspiring to commit or attempting a long list of offences (including forgery, use of forged public/private documents, fraud). In practice, before hiring, each bank requires presentation of the criminal record.

721. Article 4.6 of the CIMA Regulation stipulates that "insurance businesses should develop systems for controlling conformity and appropriate procedures when hiring employees to ensure that it is done in accordance with the requisite criteria".

Similar provisions exist in the other FIs like manual foreign exchange agencies, formalized and decentralized financial institutions.

Additional elements - (C.15.5)- Independence of the AML control officer

722. In the FIs met and which have put in place an internal AML control, as prescribed by law, there seems to be so particular difficulty for the AML control officer to act independently. In practice, the STRs, for example, are handled in collaboration with the Senior Management. Besides, it does not seem established that the said officer can communicate with the Board of Directors without passing through the General Management.

Analysis of Effectiveness

723. The discussions showed that with financial entities and the BCEAO, and from the reading of the periodic reports that the latter receives annually financial institutions (Article 17 of the AML Instruction), that only banks have started implementing the AML internal programmes and systems provided for by the AML Act and the application texts adopted, in particular by the oversight authorities. Even in these cases, problems of resources and autonomy seem to exist.

724. One of the two banks visited has created a specific AML conformity department. The other bank has entrusted the control of AML conformity to an internal control agent. Hence, apart from banks, the other financial institutions do not seem to have created the ad hoc independent system, endowed with adequate resources.

725. In total, the implementation of the obligations under R.15 does not seem effective in the other agencies concerned. In particular, virtually all the financial institutions have not implemented continuing AML/FT training programmes for their staff.

726. Furthermore, the inadequacy of resources often appeared as a major concern of the actors themselves.

Recommendation 22: Foreign branches

Application of AML/FT measures to foreign branches and subsidiaries (C.22.1)

727. The issue of conformity of foreign branches and subsidiaries of FIs was not explicitly addressed in the AML Act. However, Article 7 specifies that in case of remote financial transactions, financial entities identify the natural persons, in accordance with the principles set forth in the annex to the said act (formal adoption of this annex in Benin remains to be established)

728. The provisions of point 6 of this annex, treat the requisite identification conditions, whether the counterpart is situated in the Union or not and also, when the identification obligations are not equivalent.

729. Thus, when the counterpart is situated in the Union, the identification by the contracting agency is not required.

730. When the counterpart is situated outside the WAEMU, the financial entity must verify its identity by consulting a reliable directory. In case of doubt in that regard, the financial entity must request for confirmation of the identity of its counterpart from the oversight authorities of the third-party country. The

agency is also under obligation to take "reasonable measures" to obtain information on the customer of its counterpart, namely the beneficiary owner of the transaction.

731. By virtue of the provisions of Article 9 of the AML Act, if the customer is not acting on its own behalf, the financial entity must obtain information by any means available on the identity of the person on whose behalf the customer is acting.

732. No provision prescribes to financial institutions that their foreign branches and subsidiaries established in countries that do not or inadequately apply the FATF Recommendations, observe the AML/FT measures (C.22.1.1).

733. There are no legal provisions in Benin stipulating that when the minimal AML/FT standards of host countries and countries of origin differ, the branches and subsidiaries in the host countries should be required to apply the most rigorous standard, so long as the local legislative and regulatory texts (i.e. in the host country) permit that (**C.22.1.2**.)

Information of the supervisor in case of non-compliance with the AML/FT measures (C.22.2)

734. Neither the Beninese legislation nor community texts contain provisions on this point.

Additional elements –Consistency of the vigilance measures at the level of the group (C.22.3)

735. There are no regulatory provisions on this. One of the banking institutions met with during the mission and the BCEAO mentioned the non-existence of practical cases on that issue in Benin

3.8.2 *Recommendations and Comments*

736. The competent authorities should ensure:

Concerning R.15

- the appointment of AML officials endowed with powers, in particular of timely access to information and documents, as well as necessary resources for the accomplishment of their mission;
- institution of continuing staff training;
- the definition of constraining AML/FT criteria at the time of recruitment;
- the verification of the effectiveness of the implementation of the internal control system in all FIs.

Concerning R.22

- Create for all banks and financial institutions an obligation to ensure that their foreign branches and subsidiaries apply the AML/FT standards and inform their supervisory authorities in case they cannot comply with the standards.

3.8.3 ***Compliance with Recommendations 15 and 22***

	Rating	Summary of factors Underlying Rating
R 15	**PC**	Lack of compliance with the obligation related to the establishment of an internal AML control system and appointment of ad hoc officials in most financial entities Limited training and lack of continuing training
R 22	**NC**	No requirement for financial institutions to ensure that company subsidiaries and branches outside the country comply with AML/CFT measures No requirement for FIs to inform supervisory authorities about a subsidiary or branch outside the country not complying with AML/CFT measures

3.9 SHELL BANKS (R.18)

3.9.1 DESCRIPTION AND ANALYSIS

Recommendation 18

Countries should not approve the establishment or accept the continued operation of shell banks. (C.18.1)

The conditions of access to the banking profession, with sanctions attached, especially the certification process, are a deterrent to the establishment of shell banks in Benin.

737. Article 7 of the Banking Act stipulates that without prior licensing and registration on the list of banks, no one shall carry on the business of banking as set forth in Article 3, or play the role of a bank or banker, or create such an impression, by using terms such as bank, banker or banking in the company name, trade name, publicity or in any other way whatsoever.

738. Without prior licensing and registration on the list of financial institutions, no person shall carry out the business of banking as set forth in Article 4, play the role of a financial institution, or create such an impression, by using terms pertaining to one of the activities stated in Article 4, in its company name, trade name, publicity or in any other way whatsoever.

739. Article 49 of this same law stipulates that any person who, acting on his own on behalf or on behalf of a third party, violates these provisions, shall be sentenced to one month's imprisonment and liable to a fine of CFAF 2 million to 20 million, or only one of these penalties.

740. However, the banking law does not prohibit the establishment of shell Banks in Benin.

741. The AML Act has no specific provisions prohibiting the establishment of shell banks in Benin, less so on plying their trade in the country.

Financial institutions should refuse to enter into, or continue, a correspondent banking relationship with shell banks (C.18.2)

742. The regulations have no specific provisions forbidding financial institutions to enter into or continue a correspondent banking relationship with shell banks.

743. The banks met say that they have never had this type of correspondent banking relationship.

Financial institutions should also guard against establishing relations with respondent foreign financial institutions that permit their accounts to be used by shell banks. (C.18.3)

744. There is no provision requiring financial institutions to guard against foreign financial institutions that permit their accounts to be used by shell banks.

3.9.2 Recommendations and Comments

745. There is no express provision prohibiting the establishment of shell banks or correspondent having banking relations with such banks; furthermore there are no provisions requiring financial institutions to guard against foreign financial institutions that permit their accounts to be used by shell banks.

The competent authorities ought to take clear-cut measures to:

- Prohibit financial institutions from establishing correspondent banking relations with shell banks;
- Compel financial institutions to ensure that respondent foreign financial institutions do not authorize shell banks to use their accounts.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R 18	**NC**	No express prohibition against the establishment or operations of shell banks; There is no express requirement to prohibit financial institutions from entering into correspondent relationships with shell banks**;** There is no effective monitoring to ensure that respondent foreign institutions do not permit shell banks to use their accounts

3.10 THE SUPERVISORY AND OVERSIGHT SYSTEM - COMPETENT AUTHORITIES AND SROS, ROLES, FUNCTIONS, DUTIES, POWERS (INCLUDING SANCTIONS) (R.17, 23, 25, 29, 30 &32)

3.1.1 Description and Analysis

Legal framework

- BCEAO statutes annexed to the Treaty of 14 November establishing WAMU;
- 24 April 1990 Convention on the establishment of the WAMU Banking Commission (BC-WAMU) and its annex;
- 3 July 1996 on the establishment of the Regional Council for Public Savings and Financial Markets (CREPMF) and its annex;
- Treaty on integrated organization of the insurance industry (CIMA Code);
- Regulation 14/2002/CM/UEMOA of 19/9/2002 on freezing of assets and other financial resources as part of combating terrorism financing in the member-States of the West African Economic and Monetary Union (WAEMU);
- Guideline 04/2007/CM/UEMOA of 4 July 2007 on combating terrorism financing in WAEMU member-States;
- Regulation 00004/CIMA of 4/10/2008 on combating money laundering and terrorism financing in CIMA member-States;
- Statutes of the Regional Commission on Insurance Control (CRCA);
- Act 90-018 of 27 July 1990 on banking regulations;
- Act 97-027 of 8 August 1997 on regulation of mutual institutions or savings and credit cooperatives;
- Act 2006-14 of 31/10/2006 on combating money laundering;
- WAEMU Instruction 01 /2007/RB of 2/7/2007 on money laundering within financial organizations;
- WAEMU Instruction 01/2006/SP of 31 July 2006 on electronic currency issue and electronic currency institutions, pursuant to Regulation 15/2002/CM/UEOA of 19 September 2002 on payment systems in WAEMU member-States;
- Decree 98/60 of 9/2/1998 pursuant to act 97-027 of 8 August 1997 on regulation of mutual institutions or savings and credit cooperatives.

746. Regulation and supervision of financial institutions in Benin are based on national and supra-national standards.

747. Guiding the banking and microfinance sector are: Banking regulations Act 90-018 of 27 July 1990, Mutual Institutions and Savings and Credit Cooperatives Act 97-027 of 8 August 1997 and regulations on their enforcement, by the Ministry of Finance, especially, and WAEMU statutes and Convention on the establishment of the Banking Commission and its annex.

748. For the *stock market* sector, regulation and oversight are the responsibility of the Regional Council for Public Savings and Financial Markets (CREPMF), established per the WAMU Convention of 24 April 1990.

749. For the insurance sector, on the one hand, the Inter-African Conference of Insurance Markets (CIMA) Code lays down common rules for insurance companies, and provides instructions for its

application; the Regional Insurance Supervision Commission (CRCA) has laid down Statutes, and on the other, the Ministry of Finance has set forth national regulations on the competences of the National Insurance Directorate.

Recommendations 23

Regulation and supervision of financial institutions (C.23.1)

750. Article 5 of the AML Act extends the scope of application of the act, in addition to the Public Treasury and BCEAO, to the financial institutions listed in Article 1, mainly comprising banks and financial institutions, the post office financial services, the *Caisse des Dépôts et Consignations*, insurance and reinsurance companies, brokers, mutual savings and credit institutions, the regional stock exchange (BRVM), central depository/settlement bank, management and intermediation companies, wealth management companies and their business introducers, fixed capital investment companies and duly authorized foreign exchange dealers.

Appointment of competent authorities to ensure compliance with the AML Act (C.23.3)

Persons and professions subject to the act (Act 2006-14, Art. 5 and 15)	**Supervisory authority**	**Regulatory and self-regulatory authorities**	**Control Authority AML/CFT**
Public Treasury	M E F	M E F	M E F (I G F), IGE) Supreme Court (Chamber of Accounts),
WAEMU	WAEMU Council of Ministers	WAEMU Council of Ministers	WAEMU Board of Directors WAEMU Inspection and Audit Department, Commissioner Controller
Banks and financial institutions	M E F (DAMF)	M E F WAEMU	WAMU Bank Commission
Post Office financial services	MEF / Ministry of Communication	M E F	MEF (IGF, IGE)
Caisse des Dépôts et Consignations	MEF	MEF	MEF (IGF, IGE) Supreme Court (Chamber of Accounts)

Insurance and reinsurance companies, insurance and reinsurance brokers	MEF (Department of Insurance)	CIMA MEF (License issued by MEF upon notification by CRCA	- CRCA pursuant to CIMA (Article 16 of the Treaty) - Department of Insurance
Mutual funds or savings and credit cooperatives	Ministry of Microfinance	WAEMU MEF	MEF – BCEAO
Institutions or organizations not established as mutual funds or cooperatives whose purpose is to collect savings and/or grant credits	Ministry of Microfinance	BCEAO MEF	MEF – BCEAO – CB WAMU
Regional Stock Exchange, Central depositary/Settlement Bank, management and intermediation company, wealth management company	CREPMF	CREPMF	CREPMF
Mutual fund	CREPMF(Article 23 of general regulations annex)	CREPMF	CREPMF
Fixed capital investment companies	CREPMF	CREPMF (license)	CREPMF
Duly accredited manual foreign exchange dealers	MEF	WAEMU MEF	WAEMU MEF
Business introducers for financial institutions NB: The notion of financial institution with reference to the Uniform Act includes banks and financial institutions, and insurance companies	CREPMF CIMA MEF	CREPMF (license) CRCA, MEF	CREPMF, CRCA, MEF (DA)

751. As shown in the table above, regular control authorities are appointed to ensure compliance with AML/CFT obligations

752. **In terms of supervision, banks and financial institutions** are subject to control by the WAMU Banking Commission (BC), pursuant to Article 13 of the Convention on the establishment of the BC. WAEMU also has independent supervisory powers, per paragraph 2 of the same article, which stipulates that, "The Banking Commission shall conduct or authorize the Central Bank to conduct documentary and on-site audits at banks and financial institutions to ensure compliance with all relevant provisions. On-site audits may also be conducted on the subsidiaries of banks and financial institutions, the corporate bodies that head them, de jure or de facto, and their subsidiaries. The Central Bank may also carry out audits on its own initiative and inform the Banking Commission of such audits".

753. **Decentralized financial systems** are under the joint supervision of the Ministry of Finance's microfinance surveillance unit and BCEAO.

754. Per its statutes, Benin's **postal system** is under the dual control of the General State Inspectorate and the Supreme Court Chamber of Accounts. Act 2004-20 of 17 August 2007 on the rules of procedure for the divisions of the Supreme Court authorizes the Supreme Court Chamber of Accounts to audit "State corporations and semi-public companies or limited liability companies in which the State and local government jointly or separately hold over 50% share capital or votes in the deliberative bodies (Article 154).

755. In the **stock exchange sector**, CREPMF regulates and supervises mutual funds, the regional stock exchange, the central depositary/settlement bank, management and intermediation companies and wealth management companies and business introducers.

756. Under Article 22 of the Convention, "The Regional Council shall regulate market operations per the following provisions:

- Enact a specific regulation for the regional stock market
- Provide general guidelines on the scope of its General Regulations..."

757. Article 23 of this annex stipulates that, "The Regional Council shall control the activities of all market players, such as market management institutions and licensed traders. It shall further ensure that security issuers meet their public offering commitments. In this respect, it may, where necessary, carry out investigations among their shareholders, parent companies and subsidiaries or any legal entity or physical person that may have direct or indirect links with these market players".

758. Discussions with market players during the mission point to the fact that CREPMF had never carried out AML/CFT audit.

759. **Insurance** institutions are under the supervision of CIMA, which is based in Libreville, Gabon. CIMA relies on the National insurance directorates to play this role. Insurance intermediaries are subject to prudential control by the National Insurance Department (DNA).

760. Per Article 6 of the CIMA Treaty, the Conference's Ministerial Council is its governing body. It sees to the achievement of the treaty's objectives. To this end, it has adopted the single insurance legislation. In this respect, it amends and complements, through regulation, the single insurance code annexed to the Treaty. It ensures that member-States apply the single legislation and implement the obligations under the Treaty.

761. Article 16 of the Treaty describes the Regional Commission on Insurance Supervision (CRCA) as the Conference's regulatory body. It is responsible for auditing companies, has general oversight and assists in organizing national insurance markets.

762. Article 10 of its statutes stipulates that the Commission shall carry out its assigned role under the Treaty. It shall specifically be responsible for supervision of companies and have general oversight and assist in organizing national insurance markets. To this end, it shall have a control body at the CIMA general secretariat. The national directorates "shall serve as relays for CRCA's activities in member-States" (Annex II of the CIMA Treaty).

763. Duly accredited manual foreign exchange dealers are under the control of BCEAO, in conjunction with the Ministry of Finance.

764. Benin's **postal service** is a fully state-owned company, and as such, is audited by its supervisory ministries, namely the Ministry of Communication and the Ministry of Economy and Finance, through their control bodies, i.e., the General Finance Inspectorate (IGF) and General State Inspectorate (IGE).

651. FATF recommendations are implemented only by banks.

Preventing criminals or their accomplices from taking over control of financial institutions (C.23.3)

765. The regulation set by the community bodies and national authorities for the control and oversight of financial institutions provides for measures to prevent criminals or their accomplices from taking control of financial institutions or becoming their beneficiaries.

Access to the banking profession

766. Articles 29, 30 and 31 of the banking regulations Act sets limits to the amendment of statutes, transfers by financial institutions, lease management, etc. The Ministry in charge of finance and the Central Bank must be notified about all authorizations.

767. Article 15 of the banking act bans all physical persons that have been sentenced for certain crimes and offences from heading, directing or managing a bank or financial institution or any of their agencies.

768. Pursuant to Article 12 of the Convention on the establishment of the WAMU Banking Commission, licenses are granted to banks and financial institutions per decree by the Minister of Finance, following due notice from the Banking Commission. With respect to banks, Articles 7 to 13 of the banking regulations act provides for issuing of licenses to banks and financial institutions, when the institution is established for the first time in the WAMU zone. In this respect, BCEAO is responsible for processing license applications, checking the background of venture capitalists and integrity of applicants for administrative and managerial positions in credit institutions.

769. These rules apply for initial establishment. For banks already established, the single license rule applies. The single license gives the duly established bank or financial institution, the right to engage in banking or financial activity in any of the WAMU member-States and freely provide the same type of services within the Union, without having to apply for new licenses.

Access to the insurance profession

770. In the insurance sector, the license documents are transmitted to CRCA by the competent DNA, which issues a notice (Title II, chapter 1, section 1 of the insurance code). This due notice determines the issue of the license by the Minister of Finance of Benin. Capital distribution, the quality and integrity of company directors (criminal conviction exists) are some of the features considered in this process. Shareholding requires special attention at the time of license application and any time there is a significant change in the capital or voting rights. Per Article 329-7, any move to increase the equity capital by over 20% or majority vote should be approved by the Minister responsible for insurance, following due notice by CRCA.

Access to the profession in the microfinance sector

771. Article 9 of the PARMEC Act requires savings collection or credit institutions or bodies to obtain a license from the Minister of Finance, per modalities set by decree. Decree 98/60 of 9 February 1998 implementing this act sets forth the licensing procedures, recognition or signing of conventions for non-mutual institutions.

772. The country is currently in the process of adopting a uniform bill on the new regulation for decentralized financial systems.

Access to the regional financial market

773. There should be distinction between the market institutions (regional stock exchange and the central depositary/settlement bank) and traders (SGI, SGP, CIB, AA, etc.).

774. For the market institutions, the company established to carry out regional stock exchange activities within WAMU must submit an application to CREPMF for a license. The application must comprise: (i) the statutes of the applicant; (ii) equity distribution and identity of shareholders; (iii) the General Regulation applied to stock brokers; (iv) and any other information that the Regional Council may deem necessary. This requirement also applies to the company established to carry out central depositary/settlement bank activities.

775. There are equally requirements for traders (SGI and SGP mainly). Article 27 of the General Regulation stipulates that “companies applying for licenses must present sufficient guarantees, especially regarding the composition and amount of their capital, their organization, human, technical and financial resources, the integrity and experience of their managers, and arrangements for ensuring security of customer operations. Article 32, for its part, excludes individuals who have been sentenced for falsification, swindling, embezzlement of public funds, violation of banking and legislation, changes etc.).

Access to the authorized manual foreign exchange dealer trade

776. For manual foreign exchange dealers, manual licenses are issued by MEF decree, following notification by BCEAO. Per BCEAO guideline 11/05/RC, authorizations issued shall only be valid upon the start of activities of the beneficiary within a period not exceeding one year from the date of notification of the said decree. License documents are processed by BCEAO, which exercises control over the criminal record of the license applicant. BCEAO issues a certified notification and transmits it to MEF, which issues the license authorization. Foreign exchange dealers must declare the volume of their transactions to BCEAO. They must observe the provisions of Regulation 09/98/CM/WAMU on the financial transactions outside the Union area, especially the ceiling for foreign exchange allocations for resident travellers.

777. It is difficult to grasp the ability and integrity of operators in the microfinance and manual foreign exchange sector, because most of them are in the informal sector (for instance, only 50 of the 180 decentralized financial companies are licensed).

Applying prudential regulations for AML/CFT (C. 23.4)

778. Many financial institutions lack clearly defined AML/CFT guidelines, and therefore do not have prudential regulations for AML/CFT.

779. As a general rule, prudential regulation and oversight measures are applied to financial institutions; these include prior authorization or license. However, these prudential measures are not expressly applied for money laundering and financing of terrorism.

780. Prudential measures are applied to only banks and financial institutions, whose management process come under scrutiny in order to detect, measure and control significant risks. However, it is not clear whether the prudential standards for these processes are equally applicable to anti-money laundering and terrorism financing.

781. The Banking Commission's Circular 10-2000 of 23 June 2000 on reorganization of internal audit of credit institutions stipulates that WAMU banks and financial institutions must have an efficient internal audit system, tailored to their organization and to the nature and volume of their activities as well as to the risks they are exposed to. This control measure could serve circumstantially for AML.

782. Ultimately, it is up to the control authorities to formulate an internal control policy and see to the introduction of an appropriate mechanism to detect, measure, oversee and control AML/CFT risks as well as all other risks faced by the institution, and assess the outcomes.

Prior authorization or registration of money or securities transmission and foreign exchange services (C.23.5)

See RS.VI

Monitoring and control of money transmission and foreign exchange services (C.23.6)

See RS.VI

Prior authorization or registration and control of other financial institutions (C.23.7)

783. Financial institutions other than banks, insurance companies, collective investment schemes, market intermediaries and decentralized financial institutions are also subject to prior authorization and supervision; however, the AML oversight conditions applicable to them are inadequate, if not inexistent.

Effectiveness

784. **No implementation**: There is no AML surveillance for microfinance institutions, insurance companies and the financial market. Except for banks, there is no prudential regulation applicable to AML/CFT.

Monitoring and control are unsatisfactory, as are money transmission services and authorized manual foreign exchange dealers.

Recommendation 25 – Guidelines for financial institutions on issues other than suspicious transaction reports

Guidelines for financial institutions (C. 25.1)

785. Per Act 2006-14, Article 13, audit authorities may, in their respective areas of competence, state the content and modalities for implementing anti-money laundering programmes.

786. In this respect, in 2007, BCEAO issued a guideline for banks and financial institutions, postal financial services, deposit and consignment offices, or institutions that operate as such, microfinance institutions and manual authorized foreign exchange dealers. However, this instruction only concerns operations likely to raise suspicions and the measures to be taken to apply the provisions of the act on AML mechanisms. It calls on the institutions concerned to set up an anti-money laundering unit and submit an annual report1 to BCEAO and the WAMU Banking Commission on the implementation of the entire AML system.

787. The applicability of the BCEAO Guideline to government institutions such as the Caisse Autonome d'Amortissement (clearing house) and Postal Service does not appear to be emphatic from the legal standpoint, as the activities of these bodies do not fall within the Central Bank's remit.

788. No circular or letter on AML has been sent to clarify certain points of the BCEAO Instruction, to help harmonize the AML/CFT measures to be taken within financial agencies.

789. Apart from the banks, most of these institutions have not been complying with this Instruction. Indeed, the Instruction does not expressly address currency transfer services, which are subject to regulation by their parent companies.

790. CIMA, for its part, instituted Regulation 00004/CIMA of 4/10/2008, which sets forth the guidelines for insurance and reinsurance companies and brokers. Instituted in the form of a community regulation, and therefore having a higher legal force than the act (and more so than the BCEAO Guideline), this regulation seems to be more complete and replete with details on registration and archiving procedures, computerized operational, vigilance toward customers and unusual operations (see developments made on this in several earlier paragraphs).

791. An Instruction was issued for the stock market sector on 23 November 2009, nearly five months after the mission's visit. It draws heavily on that of BCEAO, with nearly the same obligations for financial market stakeholders to set up an internal AML mechanism. Quite clearly, this text did not affect the rating made for this Recommendation.

1 According to Article. 17, this report should: • describe the organization and means of establishment in the prevention and control of money laundering; report on training and information activities conducted during the year; • list the controls made to ensure efficient implementation and compliance with the obligations on client identification, data conservation, detection and declaration of suspicious transactions; • highlight the results of the investigations, particularly concerning the weaknesses identified in the procedures and their compliance, as well as statistics on the implementation of the suspicion declaration system; • indicate, eventually, the nature of the data transmitted to third-party institutions, including those established outside the country; • map out the most frequent suspicious activities, indicating eventually the nature and form of the changes observed, in the area of money laundering; finally • present the prospects and action programme for the coming period.

792. CENTIF informed the mission that it had raised awareness among all the institutions concerned and AML stakeholders about the need to institute guidelines to assist financial institutions in knowing and implementing their AML/CFT obligations.

Recommendations 29

C.29.1 Competent authorities, their powers and resources (C.29.1)

In the banking sector

793. Pursuant to Article 13 of the Convention on the establishment of the WAMU Banking Commission, the commission shall authorize the Central Bank to undertake on-site and documentary audits of banks and financial institutions, to ensure compliance with relevant provisions on AML.

794. Article 14 adds that "Administrative and judicial authorities of WAMU member-States shall provide assistance for the inspections carried out under Article 13.

795. Article 18 of the Convention stipulates the non-applicability of bank confidentiality toward the Banking Commission. This is stipulated in Article 42 of the banking act, which prohibits credit establishments from resisting its inspections (Article 46 of the act).

796. The Central Bank may also carry out controls on its own initiative. It shall notify the Banking Commission of on-site audits (Article in the convention). Article 24 of the Bank's statutes gives BCEAO the right to communicate all the documents needed to carry out its operations. It may further enter into direct contact with companies and professional bodies to carry out the necessary investigations on its own behalf or on behalf of the Council of Ministers. In this regard, BCEAO may very well use such powers when examining an application for license by a credit institution, to check the origin of the funds making up the equity capital.

797. Per the banking act, professional secrecy may not be applied to BCEAO (Article 42) and credit institutions may not oppose its investigations (Article 46).

798. It appears that both the Banking Commission and BCEAO have the necessary powers to carry out investigations and oversight of the financial institutions within their jurisdiction.

799. According to its annual report, the Banking Commission has conducted a total of 42 on-site inspections, i.e., the same number as the previous year's. In terms of AML/CFT, the report states that "the legal framework has been adopted and CENTIFs are gradually being set up in the whole country. The institutions have been gradually preparing the framework required for vigilance, but the measures being taken need to be enhanced. Most institutions need to computerize procedures for detecting suspicious operations".

800. Information gathered by the assessors at meetings and in consulting the investigation reports confirms these assessments made by the Banking Commission in its report. The assessors further found out that the content of the inspection reports was often wanting in AML/CFT aspects.

In the microfinance sector

801. The Control and Surveillance Unit for Decentralised Financial Systems (CSSFD), BCEAO and the Banking Commission (for apex institutions with financial institution status) are authorised to control and ensure that the microfinance institutions meet their AML/CFT obligations.

802. For the Benin Postal Service, apart from the Supreme Court Chamber of Accounts, mentioned earlier, the General State Inspectorate has powers to ensure compliance with requirements.

In the insurance sector

803. Per the CIMA Code, the Regional Insurance Supervision Commission (CRCA or the Commission) carries out documentary and on-site audits of insurance and reinsurance companies operating in member-States. The investigative body set up at the Conference's General Secretariat is used for this investigation; and any useful findings for the investigations carried out by the National Insurance Directorate, in its capacity as general market overseer, are communicated to it. On-site investigations may be extended to parent companies and subsidiaries of the companies under investigation, and to any intermediary or technical expert, under terms stipulated by the single insurance legislation (Article 17).

804. Whenever the Commission observes lack of compliance with insurance regulations or behaviour that undermines the execution of commitments made to the insured, it enjoins the company concerned to take corrective measures. Failure to take corrective measures within the prescribed period shall lead to the sanctions as stated in paragraph c. below.

In the stock market sector

805. For documentary control, the Regional Council is authorized to request regular information; and prescribes the kind of information required and the terms for its transmission. It decides the accounting provisions applicable to market stakeholders. The Regional Council may also call in and listen to any one likely furnish it with information. (Article 25 of the annex).

Powers to carry out inspections (C.29.2)

In the banking sector

806. As shown above, Article 13 of the Convention on the establishment of the WAMU Banking Commission gives it the power to authorize the Central Bank to carry out on-site and documentary investigations to ensure compliance with the relevant AML provisions.

807. The Banking Act prohibits credit institutions from resisting investigations by the Banking Commission and BCEAO (Article 46 of the act).

808. On-site investigations organized by the BC, based on a duly approved annual programme (ad hoc investigations are carried out when needed), owing to the need to carry out regular assessments of the financial institutions concerned, may be extended to the subsidiaries of banks and financial institutions, as well as to the legal entities that head them de jure or de facto, and their subsidiaries.

The investigations made are general or targeted.

809. The 2008 BC report states that these investigations help to **assess anti-money laundering and terrorism financing**, as well as check the veracity of the documents and information submitted, compliance with prudential regulation, in particular, the management quality, efficiency of internal investigations and risk management.

Effectiveness

810. Seven (7) banks were inspected in 2008 by the WAMU Banking Commission. The recommendations made by the missions mainly had to do with corporate governance, business strategy and plan, information system and accounting, the portfolio quality and risk management, the financial situation and prudential ratios.

811. Meetings held by the mission with the credit institutions point to the fact that the BC inspections cycle was averagely biennial. However, one financial institution established following a merger said that it had not been inspected since 2006.

812. On the other hand, one bank said that it underwent on-site investigation in 2007 and 2008. It seems that this situation occurred because the bank was undergoing close monitoring.

813. Inspection reports consulted showed only feeble attempts at addressing AML/FT issues.

In the microfinance sector

814. Article 66 of the PARMEC (*Projet d'appui a la reglementation sur les mutuelles d'epargne et de credit*) Act stipulates that "The Minister may inspect or authorize the inspection of institutions". Article 67 of the same Act stipulates that "The Central Bank and Banking Commission may, on their own initiative, or at the request of the Minister, conduct on-site inspections of financial institutions and all companies under their control.

Effectiveness

815. Documents submitted to the mission by the CSSFB coordinator state that about 68 on-site inspections have been carried out jointly by BCEAO and the monitoring unit.

816. The largest microfinance institution (in terms of credit volume (CFAF 14.3 billion) met informed the mission that it had undergone inspection by a joint BCEAO/CSSFD mission in March 2009. However, the on-site investigations carried out do not cover the area of AML/CFT.

817. For the postal service, the mission could not obtain any information on the content and periods of the investigations made; however, information gathered on the ground did not show compliance with the AML Act.

In the insurance sector

818. For insurance, the CRCA inspectors exercise control over the market of member countries, and the national insurance directorates act as the Commission's relays in member-States.

Effectiveness

819. Three insurance companies underwent on-site investigation by CRCA in 2008. Based on the reports produced, these investigations do not cover the area of AML/CFT.

In the stock market sector

820. Article 56 of the General Regulations stipulates that "The Regional Council shall carry out documentary and on-site investigations among management or intermediary companies". Furthermore, "the Regional Council has inspectors whose scope of competence extend to all stakeholders who make a public call for savings or who intervene on the basis of authorization issued by the Regional Council" (Article 24 of the annex to the General Regulations).

Effectiveness

821. In its 2008 Annual Report, the Regional Council stated that it had carried out an investigation mission on the BRVM and DC/BR. This was the fourth investigation carried out since their license.

822. According to the report, the Council had conducted on-site investigations on 17 institutions, compared to 22 in 2007. The investigations were carried out on eight management and intermediation companies (SGIs), two undertakings for collective investment in transferable securities (UCITS), two mutual investment funds, one unit trust company, two business introducers, and the two central bodies (BRVM and DC/BR). On the other hand, the only licensed SGP was not investigated in 2008.

823. Of the four (4) SGIs operating in Benin, the ACTIBOURS company was subjected to an on-site control in November 2008.

It should be noted that all the investigations made do not cover AML/CFT.

Powers to have access to relevant documents (C.29.3)

In the banking sector

824. Upon the request of the Banking Commission, banks and financial institutions must provide all documents, information, clarifications and justification needed to carry out their role (Article 16 of the annex to the Convention establishing the BC). Article 17 states that the auditors of a bank or financial institution are required to send to it, upon request, all the reports needed to carry out its work. Article 18 states that banking secrecy of the BC cannot be invoked.

825. Article 42 of the banking act also has this provision, which states that "the professional secrecy of the Banking Commission or BCEAO…" cannot be invoked.

826. Article 17 of the BCEAO AML Guideline stipulates that "as part of the investigations set out in Article 46 of the act on banking regulation, banks and financial institutions must be able to produce all information needed for assessing their anti-money laundering mechanism. To this end, written procedures and internal documentation should be made available in French".

In the microfinance sector

827. Article 68 of the PARMEC Act stipulates that in their oversight role of the financial system, the professional secrecy of the Minister, Central Bank or the Banking Commission cannot be invoked.

In the stock market sector

828. For on-site investigations, the Regional Council is entitled to request the production of regular information, of which it shall set the content and terms of transmission (Article 25 of the annex to the General Regulation).

829. Moreover, the inspectors, or any other person authorized by the Regional Council to conduct investigations, has the right to request information, and copies thereof, in whatever form, in line with national legislation. The professional secrecy of persons commissioned by the Regional Council shall not be invoked (Article 39 of the annex to the General Regulation).

In the insurance sector

830. Article 13 of the CRCA Statutes stipulates that "The Commission may request from the auditors of an insurance company, any information pertaining to the activities of the institution under investigation. Professional secrecy may, therefore, not be invoked against the auditors. Professional secrecy or confidentiality of documents may not be invoked against the Commission or an insurance auditor sent to audit the insurance company".

Powers not predicated on need for court order (C.29.3.1)

831. The supervisor's power to compel production or to obtain access for supervisory purposes should not be predicated on the need to require a court order.

Adequate powers of enforcement and sanction against financial institutions and their directors (C.29.4)

832. In the banking sector, Article 34 of the AML Act stipulates that when, as a result of either a serious lack of vigilance or flaws in the organization of its internal control procedures, a person liable to the act disregards the preventive obligations instituted by the said act (failure to identify the client, for instance), the control authority, which has disciplinary action, may systematically take action as stipulated by act and prevailing regulations.

833. The WAMU Banking Council has powers to take disciplinary action against credit institutions that have violated the rules, depending on the seriousness of the offence.

834. In the microfinance sector, the PARMEC Act provides for disciplinary action, a fine or punishment, as the case may be (Article 30). Depending on the seriousness of the offence, the Public Prosecutor may take disciplinary action, ranging from a warning to the withdrawal of license, and may include suspension or outright dismissal of the directors (Article 74).

835. The Banking Commission institutes disciplinary action against financial institutions (Article 75).

836. Disciplinary action shall be taken without prejudice to criminal sanctions, and the Public Prosecutor shall prosecute, upon referral by the Minister or at the request of BCEAO or the Banking Commission, in the event of offences committed by financial institutions (Articles 77 and 80).

837. For the Postal Service, apart from the Supreme Court Chamber of Accounts' administrative powers to impose financial sanctions (penalties for delay, failure to respond, management in deed, or lack thereof), it may refer to the competent jurisdictions, acts likely to lead to prosecution. The Principal State Prosecutor of the Supreme Court shall request the Public Prosecutor's Office of the competent jurisdiction to initiate criminal proceedings (Article 161) of the 2007 Act on the Supreme Court rules of procedure.

838. For the insurance sector, Article 15 of the CRCA Statutes stipulates that should a company under investigation violate an insurance regulation, the Commission shall take disciplinary action ranging from a reprimand to withdrawal of license, as well as suspension or outright resignation of its managers, depending on the seriousness of the offence.

839. The Commission may further impose a fine and call for outright transfer of the portfolio of contracts.

840. In the stock market sector, CREMPF has powers to impose financial, administrative or disciplinary sanctions, as appropriate, against any action, omission or devices contrary to the general interest of the financial market and its proper functioning, and/or that may be harmful to the rights of investors, depending on the merits of the case, without prejudice to any judicial sanctions that may be levelled against the liable parties, in a legal action for redress, lodged individually by the injured parties (Article 30 of the annex to the General Regulation).

841. Furthermore, should the Regional Council observe any infringement on the equal investor information and treatment and violation of the rules governing the proper functioning of the financial market, the council may directly bring the matter before the courts of the countries where such offences are taking place or in countries where undue advantage of the situation is being taken, where appropriate, for the purposes of prosecution and sentence (Article 40 of the annex to the General Regulations).

Recommendation 17

Existence of effective, proportionate and dissuasive criminal, civil or administrative sanctions (C.17.1)

842. **Articles 35 to 45 of the AML Act set out administrative, disciplinary** and, especially penal measures, in the event of failure to comply with AML/CFT provisions. However, there are no known cases to help assess the efficiency of these measures.

843. Article 23 of the Convention on the establishment of the WAMU BC, Articles 47 and 48 of the Banking Act, Article 35 of the AML Act all set forth a host of sanctions that include withdrawal of license

of legal entities and individuals targeted by the FATF Recommendations, who do not comply with AML/CFT regulations.

844. These sanctions may range from reprimand to withdrawal of license, and may also include suspension or outright removal of the managers (Article 23 of the Convention on the establishment of the Banking Commission) with no prejudice to any financial and/or penal sanctions imposed. However, the decision to appoint an interim director or a liquidator rests with the Minister of Finance, on the proposal of the BC.

C.17.2 Countries should designate an authority empowered to apply these sanctions

845. Pursuant to Article 35 of the AML Act, control authorities with disciplinary powers, may automatically take action as stipulated by specific legislation and regulations in force. In this regard, as stated earlier, the administrative and disciplinary sanctions stipulated by the specific regulations shall be taken automatically by the control authorities (upon notifying the Principal State Prosecutor, per Article 35 of the AML Act) or referring the matter to same, in the event of a suit against a financial institution (Article 42 of the AML Act).

Imposing sanctions on directors (C.17.3)

846. Article 40 of the AML Act provides for penalties against persons and directors or the employees of individuals or corporate bodies subject to the Act. These sanctions range from imprisonment (six months to two years) to fines (CFA 50,000 to CFA 750,000) depending on the seriousness of the offence and/or existence of the intentional element. Additional penalties to restrict movement and exercising civic, family civil and professional rights may also be imposed, per Article 41 of the Act.

Effectiveness

847. It is important to point out that, to date, no sanctions have been imposed, making it difficult to assess their dissuasive effects.

Broad and proportionate range of sanctions (C.17.4)

848. A broad range of sanctions is available; these include administrative and disciplinary sanctions (Article 35 of the AML/CFT Act), interim measures (Article 36 of the AML/CFT act), penalties including compulsory confiscation of proceeds from money laundering activities (Articles 37, 38, 39, 40, 41 and 42 of the AML/CFT act).

849. However, it is difficult to assess the proportionality to the seriousness of the offence and the dissuasiveness of the sanctions, as AML penalties are not applied.

Recommendation 30 – Investigative bodies, resources, standards and confidentiality

Autonomy of investigative bodies and adequate resources allocated to them (C.30.1)

850. Generally, the regional investigative bodies (BC, BCEAO, CREPMF, CRCA) enjoy autonomy in the exercise of their investigative functions. However, they are under-resourced, especially in terms of human resources, and cannot carry out their functions efficiently. That is why the number of controls conducted cannot keep pace with the number of institutions to be investigated.

851. According to its 2008 Annual Report, the **Banking Commission** has a staff of 22 senior officers (compared to 18 in 2007) to carry out on-site investigations on 116 credit institutions (97 banks and 19 financial institutions) operating as at 31 December 2008. The ratio is thus 1 worker to 5 institutions.

852. Documentary control is carried out by a staff of 25 (compared to 19 in 2007), including 22 senior officers.

853. The mission was unable to obtain figures on the human and financial resources used by **BCEAO** to carry out investigations on banks, financial institutions, microfinance institutions and manual licensed foreign exchange dealers.

854. For the CRCA, based in Yaounde, Cameroon, the mission could not obtain information on its supervisory activities.

855. CREPMF has a staff of only three from the Market Control and Surveillance Directorate. Recruitments are planned to increase the workforce.

856. With regard to national investigative bodies, the Control and Surveillance Unit for Decentralised Financial Systems (CSSFD) for instance, has some thirty workers, including 19 senior staff. The mission was unable to obtain information on the number of staff assigned to investigations. Information obtained on the ground indicated that there was shortage of human resources, including at the DNA.

857. The mission was unable to obtain precise information on the resources of the Audit Office of the Chamber of Accounts, to carry out investigations on Benin's postal service.

C.30.2 Integrity and competence of staff of control authorities

858. Article 6 of the annex to the Convention on the establishment of the WAMU BC stipulates that its members and all persons contributing to its operations shall be held to professional secrecy. To avoid conflicts of interests, these members may not perform any paid or unpaid work in a bank or financial institution, or receive remuneration directly or indirectly from a bank or financial institution.

859. Article 47 of the BCEAO statutes stipulates that the Governor, Vice-Governor and all workers of the BC shall be held to professional secrecy, or face the full rigours of the law.

860. With regard to the Regional Insurance Supervision Commission, Article 25 stipulates that the members of the Commission and persons on the commission without the right to vote shall be held to professional secrecy. Likewise, professional secrecy shall be binding on all public service workers.

861. However, there are no specific provisions requiring members of CREMPF and national control authorities to demonstrate integrity and appropriate skills.

C.30.3 Training of staff of competent authorities

862. There is no provision in legislation governing oversight authorities such as BCEAO, the Banking Commission or WAMU, compelling them to train their staff on AML. However, an annual training programme has been introduced for BC staff. BCEAO, for its part, said it had participated in AML/CFT training at both the national and international levels.

863. In its 2008 annual report, the BC reported on workshops and meetings in which its workers participated; however, none of these seemed to have addressed AML/CFT.

864. At the meetings, the President of the Chamber of Accounts, who also oversees Benin's postal service, said that in 2006, he participated in an AML/CFT workshop organized by the World Bank, and in 2007, a similar workshop organized by the *Association des Juridictions Francophones*.

865. BCEAO and CENTIF have also organized some sensitization and training workshops on AML/CFT; and CSSFD said that it had sent its staff to these workshops.

866. However, all these training and sensitization activities are inadequate to provide thorough knowledge about AML/CFT obligations or even enhance its level of practice.

Analysis of effectiveness

867. Meetings with market stakeholders met during the mission point to the fact that CREPMF had conducted no on-site investigations or imposed any sanctions.

3.10.2 Recommendations and Comments

868. Nearly all financial institutions are regulated, the oversight authorities appointed and preventive measures taken against criminals or their accomplices. However, no arrangements have been made for AML/CFT. Likewise, there are no official guidelines on AML/CFT in all financial institutions, and many of them lack prudential regulations.

869. All in all, regional competent authorities like the BC, BCEAO and CRCA have autonomy in terms of their control powers, but lack training facilities.

870. The competent authorities with disciplinary powers have a broad range of sanctions; however, it is difficult to assess the proportionality and seriousness of the offence, since sanctions are not applied.

The mission's recommendations are as follows:

871. The oversight authorities (WAMU BC, BCEAO, CIMA CREPMF and the Ministry of Finance) should tighten control over financial institutions to ensure that they meet their obligations under community and national AML acts.

872. AML-related sanctions should be applied in all sectors targeted under legislation.

873. The supervisory authorities ought to undertake sensitization campaigns for the immediate institution of guidelines in all financial institutions and ensure their implementation. To this end, the Regional Council should adopt a sectoral AML guideline for all financial market stakeholders.

874. The supervisory authorities should receive more human resources to ensure their autonomy and enable them to cope with the additional responsibility of integrating anti-money laundering into their activities.

875. BCEAO and national authorities should carry out sensitization campaigns among their Western Union intermediaries to be more stringent in client identification.

3.10.3 Compliance with Recommendations 17, 23, 25, 29

	Compliance rating	Summary of Factors Underlying Ratings
R 17	PC	No administrative, disciplinary or penal sanctions have been taken since the act came into effect; It is impossible to assess the dissuasiveness of the sanctions, since they are not applied; Failure to impose financial sanctions on credit institutions make assessment of proportionality of sanctions difficult
R 23	PC	Lack of efficient AML monitoring for microfinance, insurance and the financial market; Except for banks, no AML/CFT prudential regulations for insurance companies and UCITS. Fund transfer services do not have licenses as such. Unsatisfactory monitoring and control of fund transfer services and licensed foreign exchange dealers; Control of aptitude and morality criteria of managers is difficult to grasp in the case of monetary and financial institutions and licensed manual foreign exchange dealers, because of the large number of people in the informal sector; Lack of implementation
R 25.1	PC	Incomplete existing guidelines and no guidelines for certain institutions Unauthorized or even no application of existing guidelines

R 29	PC	AML controls carried out by WAMU BC in banks and financial institutions are inadequate (one investigation on average, every two years) and not thorough DFS monitoring is flawed and does not focus on compliance with AML standards; Controls carried out by CREPMF do not have any AML component; There are doubts on controls of postal services, where they exist; Controls of insurance companies do not take AML into account.

3.11 MONEY OR VALUE TRANSFER SERVICES (RS.VI)

3.11.1 Description and Analysis

876. Per the regulations in force in Benin, money or value transfer (MVT) operations can only be carried out by licensed intermediaries (such as banks and the postal financial services).

877. In practice, these intermediaries (grantors) grant their license to professional money transfer institutions like Western Union, MoneyGram and Money Express, microfinance institutions and individuals (grantees), who do not have direct licenses to carry out such operations. The licensed intermediaries sign contracts with these entities or individuals. Market entry thus, is through this means.

878. These contracts are not subject to prior authorization by the competent authorities at the national or community levels.

879. However, the grantees are subject to the same obligation for vigilance as the grantor intermediaries. The grantees thus enter into the circle of persons involved in the AML process, even if the AML Act does not target them directly. In any case, the ultimate responsibility for all operations carried out lies with the grantor intermediaries.

880. Money and value transfer activities have developed rapidly in Benin, with many informal sector stakeholders dealing in MVT.

881. The assessors were informed that Benin has no representatives of major money transfer institutions like Western Union, Money Gram and Money Express and they were therefore unable to meet any of their managers. However, the operators that deal with these major institutions have AML/CFT procedure manuals.

Designation of competent authorities to register and/or license natural and legal persons that perform money or value transfer services (MVT service operators) (C VI.1)

882. No authority has been designated to register and/or license or register MVT service operators in Benin

Subjection to the FATF 40 Recommendations and the 9 FATF Special Recommendations (VI.2)

883. Money and value transfer services are indirectly subject to the FATF 40 Recommendations and nine special Recommendations by virtue of how they are run domestically in Benin.

Control of Money and Value Transfer (C.VI.3)

884. The grantor financial intermediaries (especially banks) say that they only conduct a posteriori control over the activities of money and value transfer operators. This control does not cover compliance with the 40+9 FAFT Recommendations. For instance, since they are not in contact with the customers, they cannot check their identity.

885. The grantor supervisory institutions (BCEAO and the Banking Commission) also do not check whether these grantors carry out AML/CFT compliance investigations among MVT operators. This means that the operators completely escape AML/CFT monitoring.

886. However, the national directorate of BCEAO sent a circular dated 29 November 2007, to banks operating in the country, ordering them to comply with "standard security regulations" on rapid money transfer. No mention was made of AML regulations. BCEAO further pointed out that the banks were the sole institutions authorized to carry out money transfers.

Maintaining a current list of MVT agents (C.VI.4)

887. There is no regulation for bank supervisors to maintain a list of money transfer institutions or MVT agents.

888. However, banks transmit reports of all money transfer operations carried out by themselves and even their agencies to BCEAO.

Sanctions (application of R17.1 to 17.4) (VI.5)

889. There is no provision for grantor intermediaries to have powers to impose sanctions on MVT service providers.

890. Supervisory bodies have never imposed sanctions on grantor intermediaries for failure of MVT operators to apply the AML Act.

Additional elements: Implementing measures set out in the Best International Practices (CVI.6)

891. The measures set out in the international Best Practices paper have not been implemented.

3.11.2 Recommendations and Comments

892. Benin's authorities should:

- Take measures to regulate "delegation" of MVT licenses by licensed intermediaries, by requiring prior authorization (or license) from competent authorities like BCEAO and MEF, to operate.
- Require banks to introduce control mechanisms for the activities of these entities by focusing on AML obligations.

List all stakeholders operating in the sector informally and invite them to regularize their status or cease activity altogether, or else face the full rigours of the law.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating

RS VI	NC	No authorization to practise the profession No direct submission to AML Act No control mechanisms No list of MVT agents No sanctions;

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 CUSTOMER DUE DILIGENCE AND RECORD KEEPING (R.12) (APPLYING R.5, 6, AND 8 TO 11)

4.1.1 DESCRIPTION AND ANALYSIS

Legal framework

- -AML Act
- -Inter-ministerial Decree 078/MISATMF/MCAT/DC/DAI on the opening of casinos in the Republic of Benin
- -Decree 99-442 of 17 September 1999 setting conditions for the practice of the profession of housing developer in Benin
- -Decree 85-500 of 29 November 1985 on the regulation of travel agencies in the Peoples' Republic of Benin
- -Decree 96-345 of 23 August 1996 regulating tourism offices in the Republic of Benin
- 1973 Order governing the trade and export of gold and precious stones
- -Act 65-6 of 20 April 1965 instituting the Bar of the Republic of Benin.
- -Act 2002-015 of 30 April 2002 on the status of notaries in the Republic of Benin
- -Act 2004-033 of 27 April 2006 on the establishment of the association of Chartered Accountants and Licensed Accountants in the Republic of Benin (OECCA-Benin).

893. Article 5 of the AML Act expressly compels, but not in a limited way, the following DNFBPs to prevent and detect money laundering activities:

i. Members of independent legal professions;

ii. Business introducers for financial institutions

iii. Auditors

iv. Real Estate Agents

v. Dealers in high value items like artefacts, precious stones and metals

vi. Money couriers

vii. Owners, directors and managers of casinos and gaming establishments, including national lotteries

viii. Travel agencies

ix. Non-governmental organizations

894. First, this list does not cover DNFBPs as far as FAFT is concerned; chartered accountants, for instance, are not listed (auditors are, though); and secondly, the list goes beyond the FAFT list to cover travel agencies, money couriers, artefact dealers and NGOs.

Application of R.15 to DNFBPs (C.12.1)

895. All DNFBPs are required to undertake customer due diligence measures just as the financial institutions stated in Title II of the AML Act.

Generally, the weaknesses identified in financial institutions, in the area of due diligence towards clients, are also found in the DNFBPs.

For casinos and gaming establishments:

896. In addition to the general customer identification obligations, Article 15 of the Act sets forth the following specific obligations for managers, owners and directors (and not for the legal entity owner itself):

- "Upon requesting authorization to commence business, inform the public authority of the legal origin of the funds needed to set up the establishment";
- Check the identity of gamblers who buy, bring or exchange chips or tokens to the tune of one million (1,000,000) CFA francs or above (about 1,525 Euros), or the counter value of which is higher than or equal to this amount, by requesting the person to present an valid identity card with a picture or any other original and valid official document, and make a copy of it;
- Keep records of gaming transactions in chronological order in a special register, indicating the nature of transaction and the amount, the names of the players, and the identity number presented, and maintain the records for 10 years following the last recorded transaction;
- Keep records of all funds transfer made by casinos and gaming establishments in chronological order in a special register and maintain it for 10 years following the last recorded transaction.

897. In the event that the casino or gaming establishment is controlled by a legal entity with branches, the chips should identify the branch that issues them. Under no circumstances should another branch be unable to redeem the chips issued by a particular branch, be it situated in the same country, in another member-State of the Union or in a third country.

898. Article 12 of Decree 078/MISATMF/MCAT/DC/DAI on the opening of casinos in the Republic of Benin requires that casinos keep a special register that is assessed, initialled and signed by the Minister of Interior and Security.

The mission could not obtain proof of the respect by casinos of their client due diligence obligations.

899. Real estate agents seem to show some concern when they buy or sell property for their customers. While the sector is subject to the AML Act, it is not regulated in Benin. Only the profession of estate developer, which, per Article 3 of Decree 99-442 of 17 September 1999 on the conditions for practising the profession in Benin, describes an estate developer as "any individual or corporate body who, habitually takes the initiative to carry out real estate development and is responsible for coordinating study, financing, control and management operations."

900. The mission met with an officer of the Real Estate Professionals Association of Benin (APIB), who admitted the association's ignorance of the AML Act and the fact that they buy and sell property without any regulation or control, except for fiscal purposes by the Ministry of Finance. He also informed the assessors about a boom in the housing industry since the early nineties and the existence of cash transactions to the tune of three hundred million (300,000,000) CFA francs in the sector.

901. It thus appears that estate agents do not comply with obligations to be vigilant toward their customers.

902. The authorities of the Ministry of urban development, housing, land reform and coastal erosion met all admitted to being fully aware of the problem and said they were working on laws to improve regulation of the sector.

903. The mission felt that the entire real estate sector needs to be reorganized as soon as possible, especially as the sector now seems to be a vector of money laundering, as revealed by a recent typology study conducted under GIABA (see details of the study at **www.giaba.org**).

904. The **activities of dealers in precious metals and stones** are governed by a 1973 order on trade and exports of gold and other precious stones. The General Directorate of Mines under the Ministry of Mines carries out controls on the quantity of gold for export, but the origin of the gold is not checked, neither is the cost of the transaction.
The mission could not obtain proof of the respect, by dealers in previous metals and stones, of their client due diligence obligations.

905. The **legal profession** is regulated by the Act 65-6 of 20/4/1965 instituting the Benin Bar. Checks are carried out by the Council of the Bar Association and the Appeal Court, which controls and sanctions malpractice by the members of the profession, who are **150 in number**.

906. The AML Act requires them to be vigilant "when they represent or assist clients outside normal judicial procedures, and which entail the following activities: purchase and sale of property, trading enterprises, businesses, handling of money, securities or assets belonging to the client, opening or managing bank accounts, savings or securities, establishment and management of companies, trusts or similar concerns and execution of other financial operations".

907. The mission met with the President of the Bar and another member of the association who bemoaned the poor knowledge of the AML Act within the profession, and expressed the need to raise awareness about it. To this end, a draft information bulletin was being prepared. The bar association has not organized any training or sensitization sessions on AML.

908. The situation, according to them, is however improving since the start of the activities of CENTIF, which has been inviting members of the association to workshops and seminars.

909. They expressed concern about the difficulty in applying the provisions of the AML Act, which has to do with "betrayal of professional secrecy", on the part of their counterparts; an issue that must be addressed.

All in all, it is clear that lawyers do not exercise the required vigilance toward their clients.

910. The **notary profession** is regulated by Act 2002-015 of 30/12/2002. The Chamber of Notaries provides oversight for the profession, in conjunction with the Principal State Prosecutor. The country has **25 notaries**, most of whom are based in Cotonou. They often intervene in real estate transaction and in the establishment of companies.

911. The mission held meetings with the President and Secretary of the Chamber of Notaries of Benin, who admitted that the profession had little knowledge of the AML Act. CENTIF had invited the association to a seminar in 2009.

912. The profession had not observed the existence of trust companies; **neither were there trust service providers in Benin**.

913. **In practice, vigilance is poor and no money laundering case has been detected.**

914. The **chartered accountant profession** is regulated by Act 2004-033 of 27 April 2006 on the establishment of the association of authorized accountants in the Republic of Benin (OECCA-Benin), which has 71 members. Chartered accountants are defined as those who are registered with the association and engage in the following:

- Audit, assess, revise and remedy the accounts of companies and institutions with whom they have no work contract;
- Certify the consistency and sincerity of the summary financial statements of companies per prevailing legal and regulatory provisions;
- Carry out accounting and financial audits.

915. The AML Act makes reference to auditors, but in actual fact, one has to be first a chartered accountant before becoming an auditor.

916. The association's board exercises initial disciplinary control (Article 35); and the National Disciplinary Chamber is the appeal body. Disciplinary sanctions (without prejudice to penal sanctions) range from reprimand to disbarment. The Ministry of Finance is the supervisory ministry.

917. The mission met with the Deputy Treasurer, who admitted that the level of knowledge of the AML Act was very poor. However, the situation was improving, following in-house workshops held, and external ones organized by CENTIF and GIABA.

No violation of the AML Act has been detected and no suspicious report made.
The mission could not obtain proof of the respect, by Chartered Accountants, of their client due diligence obligations.

Applying Recommendations 6, and 8 - 11 to DNFBPs C.12.2)

918. For DNFBPs the same shortcomings mentioned above for financial institutions are true, in terms of the absence in the AML Act of relevant provisions on:

- PEPs (R 6);
- Policies and measures to be adopted and implemented to prevent misuse of ICT and control risks in business relations or transactions that do not involve the physical presence of the parties as part of AML/CFT (R8);
- Resort to intermediaries and third parties (R9);
- Nature and availability of documents to be maintained (R10);
- Specific monitoring of unusual and suspicious transactions (R11).

4.1.2 Recommendations and Comments

919. The authorities should take the following measures:

- Ensure wide propagation of the AML Act among DNFBPs concerned;
- Establish guidelines for DNFBPs to facilitate respect of their obligations;
- Regulate and control professions predisposed to money laundering, such as real estate agent;
- Include in legislation, relevant provisions on R6, 8, 9, 10 and 11, as recommended for financial institutions;
- Make an inventory of DNFBPs.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of Factors Underlying Rating

R 12	NC	- DNFBPs do not seem to respect the client due diligence obligations imposed on them by the AML Act. - Are also valid for DNFBPs, the weaknesses identified in financial institutions concerning the absence in the AML Act of pertinent provisions regarding: - PEPs (R 6), policies and measured to be adopted and implemented to prevent abusive use of the new technologies and control the specific risks associated with business relations or transactions that do not imply the physical presence of the parties, in the context of anti-money laundering and financing of terrorism (R9), the nature and availability of documents to be kept (R10), the specific monitoring of unusual or suspicious transactions (R11). - DNFBPs' ignorance of the AML Act and their obligations towards it... -Lack of regulation of certain professions that may be vectors of money laundering (Estate Agents, in particular) - Total lack of implementation.

4.2 MONITORING SUSPICIOUS TRANSACTION REPORTING AND OTHER ISSUES (R.16) (APPLYING R.13-15, 17 & 21)

4.2.1 Description and Analysis

Obligation to report suspicious transactions to CENTIF (applying R.13 to 15, 17 and 21 to DNFBPs)

Obligation to report suspicious transactions (C.16.1)

920. Designated non-financial businesses and professions are liable to the general provisions of Article 26, AML Act 2006-14, on the obligation to report suspicious transactions to CENTIF[2].

921. DNFBPs are also required to meet all the requirements mentioned above for financial institutions, in applying Recommendation 13.

Suspicious transaction reports to self-regulatory organizations (16.2)

922. Article 26 does not provide for STRs to be sent to organizations (such as self-regulatory organizations) other than CENTIF.

Applying recommendations 14, 15 and 21 (16.3)

Recommendation 14

Protect genuine STRs and prohibit disclosure of STR information to clients (C.14.1 and 2)

[2] Article 26 of the AML Act stipulates that the persons referred to in Article 5 must report to CENTIF (i) any sums of money or other assets in their possession, that could be derived from money laundering; (ii) the transactions involving such assets, should these transactions be part of a money laundering activity; (ii) any sums of money or assets in their possession suspected to be intended for terrorist financing and that appear to be derived from transactions related to money laundering.

923. Article 30 of the AML Act stipulates that persons, directors and the employees of DNFBPs, who in good faith, have filed an STR shall be exempt from sanctions. Likewise, the prohibition from "warning the customer", as set forth in Article 26 of the Act, shall prevail against them.

Recommendation 15

Internal control and staff ongoing training (C.15.1 to 4)

924. DNFBPs should also institute procedures, policies and internal control measures to prevent money laundering (cf. Article 13 of AML Act).

They should also undertake ongoing training for staff.

Recommendation 21

925. There is no provision for DNFBPs to pay special attention to countries that do not or inadequately apply the FATF Recommendations; there is equally no provision for special scrutiny of transactions with these countries or the possibility to implement counter measures.

926. With regard to special provisions, only casinos and gaming establishments have special obligations, but do not comply with the criteria under Recommendation 16.

Additional elements - extending STR to other professional accounting activities (C.16.4). STR on proceeds from predicate offences (16.5)

(C.16.4)

927. The AML Act only targets "Auditors", which may include chartered accountants, but not licensed accountants

(C.16-5)

928. As mentioned under R13, the AML Act only targets money laundering and terrorism financing offences.

4.2.2 Recommendations and Comments

929. The recommendations and comments made for financial institutions under R 13 14, 15 and 21 (see section 3 above) are also true for DNFBPs.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of Factors Underlying Rating

R 16	NC	Inadequate control; No internal controls to prevent money laundering; No special attention to countries that do not adequately apply FATF recommendations; No anti-money laundering programmes No effective implementation of requirements of R. 16

4.3 REGULATION, SUPERVISION AND MONITORING (R.24-25)

4.3.1 Description and Analysis

816. The following table shows the competent authorities responsible for control and monitoring of DNFBPs in Benin.

Professions concerned	Supervisory authorities	Regulatory and self-regulatory authorities	AML/CFT control authority
Independent legal professions:			
Lawyers	Ministry of Justice		Bar Council
Notaries	Ministry of Justice	**Lawyers** Ministry of Justice (General Prosecutor's Office)/Bar Council/ President of the Bar	Notaries Association
Bailiffs	Ministry of Justice	**Notaries** Ministry of Justice (General Prosecutor's Office) / Notarial Association) **Bailiffs** Ministry of Justice (General Prosecutor's Office) – Bailiffs Association	Bailiffs Association
Auditors	Ministry of Economy and Finance	Council of Chartered Accountants and Certified Accountants	Council of the Chartered Accountants and Certified Accountants MEF
Real Estate Agents	Ministry of Trade		Ministry of Urban Development

Dealers in valuable items such as artefacts and precious stones and metals	Ministry of Trade		
Money couriers	Ministry of Trade Ministry of Interior		
Owners, directors and managers of casinos and gaming establishments, including the national lotteries	Ministry of Interior Ministry of Economy and Finance Ministry of Trade .	MEF	MEF
Travel Agencies	Ministry of Tourism	Ministry of Tourism	Ministry of Tourism
Non-governmental organizations	National NGO – Ministry of Interior / Ministry in charge of relations with institutions International NGO - Ministry of Interior / Ministry of Foreign Affairs	National NGO – Ministry of Interior/ Ministry in charge of relations with Institutions International NGO - Ministry of Interior / Ministry of Foreign Affairs Decree 2001 – 234	

Recommendation 24

Regulation and supervision of casinos (C. 24.1)

Opening and operations

930. The conditions for opening and operating casinos, mostly housed in the major hotels, are set forth in Inter-ministerial Decree 078/MISATMF/MCAT/DC/DA of 2 June 1997, on the opening of casinos in the Republic of Benin.

931. The application for temporary authorization for opening a casino must be attached with the following documents:

1)-An application together with the following documents:

- Criminal record dating back three months at most;

- Certified true copy of lease,
- Two copies of the registered statutes of the company established to operate the casino;
- A sheet showing full identification, profession and residence of the company director.

2) The Director and Deputy Director must provide an individual file comprising:

- Birth certificate;
- Criminal record dating back three months at most;
- A nationality certificate;
- A curriculum vitae;
- Three recent ID photos.

3) Individual documentation for staff comprising the same papers as for the Director and Deputy Director;

4) A pay-in slip for CFAF 250,000 being cost for studies, paid at a bank selected for this purpose;

5) A pay-in slip for an amount of CFAF 5,000,000 paid at a bank selected for this purpose;

6) Specifications;

7) Application for license for casino staff.

932. Prior to starting operations, the managers and staff of the casino must be licensed by the Minister of Interior and Security, following security checks made on them.

933. The casino director is obligated to keep a separate accounting for gambling and a separate one for the commercial operations of company. At all times, he is also required to make available for the ministries of Interior and Finance, all company documents, which are to be kept at the company's premises.

934. The Ministry of Interior prohibits access to the casino by minors and nationals.

Controls on opening and operating casinos, and sanctions

935. The staff of the Ministry of Interior are responsible for supervising the casino (general oversight, entry conditions, hours, etc.); the Ministry of Trade is responsible for controlling the general and special

accounting of the casino; and the Ministry of Trade controls application of operating standards for the premises, quality of services, etc. Holders of warrants issued by the competent Ministers and casino directors must subject themselves to their control and avail themselves to all investigations. They must have an office within or outside the casino premises.

936. Any violation to the rules may lead to withdrawal of the authorization, temporary or permanent closing of the casino, temporary or permanent withdrawal of the license given to the director or his deputy, all without prejudice to penalties against the offender.

937. The assessors met with a casino director who operates two gaming rooms. He admitted that before participating in a workshop organized on AML/CFT by GIABA in Abidjan, he had no knowledge of the AML Act. According to him, the risk of money laundering with casinos is rare because of the relatively small amount of earnings (CFAF 8 million per night maximum, with a face value of CFAF 100,000 worth of chips).

938. Foreign exchange is accepted at the gaming tables. This, however, is against foreign exchange regulations.

939. Checks, sometimes, surprise ones, are conducted, although none of them has to do with money laundering.

Regulation and supervision of other DNBFPs (C. 24.2)

Notaries

940. The notary profession is guided by Act 2002-015 of 30 December 2002. Notaries are public officers empowered to draw up all documents and contracts for which the relevant parties must or wish to establish the authenticity ascribed to instruments of the public authority. They are responsible for certifying the dates of these documents and contracts, recording the information submitted and issuing copies and certificates thereof (Article 1 of the Act).

941. Notaries are appointed by decree by the Council of Ministers, on the proposal of the Minister for Justice, upon notification by the commission responsible for providing opinion or making recommendations on the location of the offices of notaries, depending on the public need, the geographical area, population growth and economic development. They may also be appointed following the establishment of a professional civil society.

942. They swear an oath at the Court of Appeal, which is their supervisory body and where their accounting records are kept.

943. The duties of the notary are incompatible with the professions of traders, judges, lawyers, bailiffs, auctioneers and public servants, except in the case of notary clerks at the Appeal Court, where there is no notary office. The notary is prohibited from speculating on the stock market or carrying out trading, discounting and brokering.

944. Notaries are required to make a down payment of two million CFA francs, in cash, as a safeguard for possible conviction in the event of any form of malpractice.

945. In the event of breach of discipline by the Notary, Article 113, of the Notarial Act 2002-015 of 30 December 2002 stipulates that the Principal State Prosecutor, upon notification by the National Chamber of Notaries, may call the notary to order or discipline him.

946. With regard to other penalties (suspension for one year maximum or removal), the Principal State Prosecutor submits, following notification by the Chamber of Notaries, proposals that he deems necessary to the Keeper of the Seals, Minister of Justice. By decree, the Keeper of the Seals declares the suspension of the defaulting notary, following a hearing. The removal is pronounced by decree issued by the Council of Ministers, on the proposal of the Keeper of the Seals. Pursuant to Article 117 of the same Act, violations to the law and other infringements on discipline shall be liable to proceedings by the Principal State Prosecutor at the competent Appeal Court, even where there is no complainant.

947. Legal proceedings leading to a fine or damages, are brought before the district court of his area.

Lawyers

948. The Council of the *Ordre des Avocats* (Bar Association), which sits as a disciplinary council, may take legal action and punish malpractice by lawyers registered on their list and those on the internship list. Article 27, Act 65-6 of 2 April 1965 establishing the Bar of the Republic of Benin stipulates that the General Legal Council, sitting as a disciplinary council, shall prosecute and punish malpractice by lawyers registered on their list or on the internship list. This shall be done automatically, at the request of the Principal State Prosecutor and or on the initiative of the President of the Bar. It shall rule by decree and impose, where appropriate, one of the following disciplinary penalties as stipulated in Article 29:

- Warning;
- Reprimand;
- Temporary ban, not exceeding three years;
- Removal from the Roll of Lawyers or the internship list;
- Warning, reprimand or temporary ban may also entail forfeiting membership rights on the General Legal Council for a period not exceeding 10 years.

949. A lawyer who is removed may not be registered on the roll or as an intern of any jurisdiction in Benin.

950. No disciplinary action may be taken if the defaulting lawyer has not been heard or summoned within one month - the President of the Bar shall notify by registered letter, with acknowledgement of receipt, any decision taken by the Disciplinary Council, within 10 days of the notification. He shall also notify the Principal State Prosecutor of the decision within three days of the notification, when the issue is brought before the General Legal Council, and in other cases, only where temporary prohibition or disbarment has been ruled. The Principal State Prosecutor ensures that these disciplinary actions are carried out.

951. Cases of malpractice submitted by the Principal State Prosecutor to the General Legal Council should be acknowledged within eight days. If, within a period of three months (where the lawyer in question is in the country), and six months (where he is absent), no decision has been taken by the Disciplinary Council, the Principal State Prosecutor may directly bring the matter before the Appeal Court, which will determine the merits of the case as follows.

952. The same rule shall apply where the Principal State Prosecutor, prior to hearing about a complaint lodged with the General Legal Council for indiscipline, would have notified the Council, with no decision being taken within the same period, as from the date of the notification, receipt of which should be acknowledged within eight days.

953. Should he deem it necessary, the Principal State Prosecutor, may request a copy of any disciplinary decision taken by the General Legal Council, even when the Council is not obliged to notify him of such decision.

954. Exercising disciplinary rights in no way hinders any legal action that the Public Prosecutor or plaintiffs may take to seek redress for actions constituting offences or crimes.

Auditors

955. The AML Act used the term "Auditors", but per the regulation in force, it appears that only Chartered Accountants registered on the Role of lawyers may be appointed to practise the profession of Auditor.

956. The **profession of Chartered Accountant** is guided by Act 2004-033 of 27 April 2006, on the establishment of the Association of Chartered Accountants and Licensed Accountants of Benin (OECCA-Benin). The 2009 roll lists 55 Chartered Accountants and 25 Licensed Accountants. A Chartered Accountant is defined by the above Act as one who is registered with the association and normally carries out the following functions:

- Audit, assess, revise and improve the accounts of companies and organizations with whom the Chartered Accountant has no work contract;
- Certify the consistency and accuracy of summary financial statements of companies, in line with prevailing legislative and regulatory provisions;
- Conduct accounting and financial audits.

957. The council of the association exercises initial disciplinary action (Article 35), the National Disciplinary Chamber is the appeal body. Disciplinary actions (without prejudice to penal sanctions) range from warning to expulsion.

Real Estate Agents

958. Apart from the obligation to hold a professional card issued by the Ministry of Trade, the estate agent profession is not regulated.

959. On the other hand, we find on the real estate market, estate developers whose profession is regulated and supervised by the Ministry of Urban Planning.

960. There is a score of people in this sector who are all grouped within the Association of Real Estate Professionals of Benin (APIB), established to defend the interests of the profession.

961. The profession of money courier is not yet regulated.

962. The only money courier company in Benin benefited from a special decree authorizing it to practise under the supervision of the Ministry of Security.

Other institutions subject to the act

963. Others, like dealers in valuable items, travel agencies and NGOs are regulated and supervised by supervisory institutions, as shown in the table above.

964. Most designated non-financial professions are subject to supervision by a control authority; however, AML controls do not take place. This was due to lack of human, financial and material resources.

Recommendation 25

Guidelines for DNFBPs (C.25.1)

965. The mission observed that the DNFBP authorities had not drawn up any guidelines on AML. CENTIF has planned some training sessions in this regard. DNFBPs have no information or documentation to help them comply with AML requirements.

Feedback to DNFBPs by the FIU and the competent authorities (C.25.2)

966. DNFBPs sent no suspicious transaction reports to CENTIF, and there is therefore no information feedback.

967. Moreover, CENTIF's first activity report was not sent to the DNFBPs to inform them about this key AML/CFT institution.

4.3.2 Recommendations and Comments

968. The authorities should:

- See to the application of sanctions, in the event of violations;
- Ensure wide dissemination of the AML Act;
- Draw up guidelines to help DNFBPs to apply and comply with their AML obligations. These guidelines should particularly describe money laundering techniques and methods, and show additional measures for DNFBPs;

- Ensure compliance with AML/CFT obligations of casinos and other categories of designated non-financial businesses and professions;
- Distribute the CENTIF activity report among DNFBPs;
- Take measures to ensure efficiency of anti-money laundering and combating financial terrorism operations;
- Organize AML/CFT training and sensitization sessions for DNFBPs.

4.3.3 Compliance with Recommendations 24 and 25

	Rating	Summary of Factors Underlying Ratings
R24	NC	Lack of regulation of the estate agency profession Failure by casinos to apply AML regulations Authorities' failure to control non-compliance with AML obligations by casinos and other DNFBPs Failure to implement sanctions
R25	NC	Lack of guidelines; DNFBPs control authorities unaware of this recommendation No training and sensitization programmes by authorities for DNFBPs No STRs Failure to send CENTIF activity report to DNFBPs

4.4 OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS - MODERN SECURE TRANSACTION TECHNIQUES (R.20)

4.4.1 Description and analysis

Applying Recommendations 5, 6, 8, 11, 13-15, 17 and 21 to other businesses that present money laundering risks (C.20.1)

969. The AML Act imposes anti-money laundering obligations on institutions subject to it other than DNFBPs targeted by GAFI. They include dealers in valuable items, such as works of art, travel agencies, conveyors of funds, gaming establishments (other than casinos), national lotteries and non-governmental organizations.

But, these subjected institutions, whose level of vulnerability to money laundering risk has not yet been studied, have no knowledge of their obligations in the area of AML resulting from the act due to their ignorance of the latter.

970. The mission met with the representative of a money courier company, who confirmed that there was no regulation for the profession and admitted his ignorance of the AML Act.

971. The travel agency met also said it had no knowledge of the AML Act.

Development of modern, secure money management techniques C.20.2)

972. Regulation 15/2002/CM/UEMOA on payment systems in WAEMU member-States sets forth the promotion and use of non-cash payment methods.

973. This text grants the "right to an account", with minimum banking service, to all natural and legal persons that have a regular income. It obligates all traders to open an account. In transactions among themselves or with their clients, the traders are required to accept payments by cheque, the threshold of which shall be fixed by the Minister of Finance of each member country.

974. In the same vein, per Guideline 01/2003/SP of 8 May 2003, applying Guideline 08/2002/CM/UEMOA of 19 September 2002, on promoting the extension of banking facilities and utilization of non-cash payment methods, WAEMU set at one hundred thousand (100,000) CFA francs the baseline for carrying out non-cash payment transactions between private persons and public persons (mainly salaries and taxes).

The mission could not assure itself of the effective implementation of the results of these measures, in particular the promotion of extension of banking facilities, as no control or evaluation has been conducted and made available in that regard.

4.4.2 Recommendations and Comments

975. The AML Act certainly contains obligations for businesses and professions other than DNFBPs.

976. At the initiative of the community authorities, measures were taken to encourage the use of non-cash payment trnsacctions.

977. However, the lack of vulnerability studies on institutions subject to the act, knowledge of their AML obligations by the interested parties, control, evaluation, and lack of effectivement appeared as obstacles to compliance with R20.

978. The authorities should therefore:

- Conduct studies to determine the level of vulnerability of institutions subject to the ML Act;
- Ensure dissemination of the AML Act to entities other than DNFBPs, so they know their obligations;
- See to the control and evaluation of the effective implementation of measures to promote the extension of banking facilities and non-cash payment methods.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of Factors Underlying Ratings
R 20	NC .	-Lack of studies on the level of vulnerability of institutions subject to the AML Act - Ignorance of the law by those concerned; - Lack of control and assessment of prescribed measures - No effective measures to promote extension of banking facilities and non-cash payment methods

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1 LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL (R.33)

5.1.1 DESCRIPTION AND ANALYSIS

Legal Framework

- Uniform Act on General Commercial Law (**AUDCCG**);
- OHADA Uniform Act on Commercial Companies and Economic Interest Groups (**AUDSC-GIE)**;
- Act 90-005 of 15 May 1990 stipulating conditions for conducting commercial activities in the Republic of Benin.

Legal and regulatory obligation to ensure transparency concerning ownership and control of legal persons (C.33.1)

979. Act 90-005 of 15 May 1990 on conditions for conducting commercial activities in Benin Republic stipulates that "the conducting of commercial activities and services deemed to be commercial shall be free, subject to the application of legal inabilities and inconsistencies provided for by current laws and regulations" (Article 1). The nationality of the company is determined by the level of participation of private nationals or the Government (51% threshold of the capital). The law also stipulates the obligation to hold a professional card issued by the Minister of Trade

980. Furthermore, by virtue of the provisions of relevant articles of the Uniform Act of the General Commercial Law, "Any natural person with the status of a trader, as defined in the present Uniform Act, must in the first month of operation of his business, apply to the Registrar of the competent court within

whose jurisdiction the business operates, to be registered in the commercial register. In Benin, this is the responsibility of the Court of First Instance. Responsibility for the centralization of the Trade and Personal Property Credit Register lies with the Registry of the First Class Court of First Instance of Cotonou. Applications for registration must provide the following information:

For natural persons:

1) Full name and personal residence of the applicant;
2) date and place of birth;
3) nationality;
4) where necessary, the name under which the applicant conducts the trade, as well as the sign or logo used;
5) business activity (activities) and form of operation;
6) date and place of marriage, system of matrimonial property adopted, clauses binding on parties restricting the freedom to dispose of the property of spouses or the absence of such clauses, requests for the separation of property;
7) full names, dates and places of birth, residences and nationalities of persons mandated to **render by their signature the concerned party** liable;
8) address of the main establishment, and, where necessary, that of each of the other establishments or branches operating on the territory of the State Party;
9) where appropriate, the nature and location of the last business establishments the applicant operated previously indicating their business registration and Credit on Personal Property number(s) of such establishments;
10) date of commencement, by the concerned party, of the operation of the main establishment and, where applicable, of other establishments.

The applicant shall support his/her statements with the following documents:

1) A copy of birth certificate or any administrative document testifying to his/her identity
2) A copy of marriage certificate where necessary;
3) Criminal record, or its equivalent; where the applicant is not a citizen of the State Party in which he makes his/her registration, he/she should also provide a copy of the applicant's criminal record issued by the Authorities of his/her country of birth, and by default any equivalent document;
4) A certificate of residence;
5) A copy of the document of title or lease of the main establishment, and where applicable, that of other establishments;
6) In case of acquisition of funds, or leasing management, a copy of the acquisition act or leasing management act;
7) Where necessary, prior authorization to conduct the trade.

For legal persons concerned by the Uniform Act:

1) Corporate name;

2) Firm name, acronym or sign;

3) Activity (activities) undertaken;

4) Form of the company or legal person;

5) Amount of nominal capital indicating the amount of cash contributions and an assessment of contributions in kind;

6) Address of head office and, where applicable, that of the main business establishment and each of the other establishments;

7) Duration of the company or the legal person as defined by its statutes;

8) Full names and personal residence of business associates who have unlimited liability for the company's debts, indicating their dates and places of birth, their nationality, date and place of marriage, system of matrimonial property, clauses binding on parties restricting the freedom to dispose of the property of spouses or in the absence of such clauses, requests for the separation of property

9) Full names, date and place of birth and residence of managers, administrators or business associates mandated to commit the company or the legal person;

10) Full names, date and place of birth, addresses of the auditors, where their appointment is required by the Uniform Act in respect of Company Law and Economic Interest Groups.

To this application may be added the following supporting documents:

1) Two certified true copies of the statutes;

2) Two copies of statement of validity and conformity, or legally authenticated statement of subscription of payment;

3) Two copies of the certified true list of managers, administrators or business associates liable without limits and personally responsible or mandated to commit the company;

4) Two copies of criminal records of the persons mentioned in the above paragraph; where the applicant is not a national of the State Party in which he/she applied for registration, he/she should also provide a copy of personal criminal records issued by the Authorities of his/her Country of birth, or an equivalent document.

981. As indicated above, the Uniform Act on the General Commercial Law requires legal persons mentioned in the Uniform Act on Commercial Company Law and the GIE to apply for their registration in the month of their entry in the RCCM of the jurisdiction within which their head office falls (Article 27 AUDCG).

982. Pursuant to Article 98 of AUSGIE, any company has legal personality upon registration in the RCCM.

983. With regard to obligation for commercial companies to register, this particularly concerns general partnership companies, limited partnership companies, private companies (SARL), public limited companies and economic interest groups.

984. Furthermore, Article 10 of AUSCGIE requires that the statutes of the aforementioned companies must be established by notarial deed or by any instrument that ensures legal validity in the country of company's head office and be deposited in the notary's office together with the certification of the writings and signature by all the parties. The statutes must include the following:

- The identity of cash contributors indicating the amount of each contribution, the number and value of shares issued in exchange for each contribution;
- The identity of the contributors in kind, the nature and assessment of each one, the number and value of shares issued in exchange for each contribution;
- The identity of persons enjoying special benefits and the nature of such benefits;

Registration has a personal status;

Article 33 of AUDCCG stipulates, with regard to the updating of information, that any changes in information provided initially must be mentioned in the RCCM.

Timely access to information on beneficial ownership (C.33.2) - Additional element (34.3)

985. Information contained in the RCCM is available to the public, prosecuting agencies (police and gendarmerie and judicial authorities) and financial institutions. In fact, it is mainly persons trading with registered legal persons and those involved in legal disputes who request access to the RCCM. Despite some level of computerization, access to information contained in the RCCM is not easy.

986. However, the prosecution agencies indicated that, in practice, they obtain information on legal persons from tax authorities. The latter have more detailed information on legal persons than those listed in the RCCM, especially with regard to the shareholders of a legal person.

987. Legal persons are compelled to inform tax agencies of each change in their management and body of shareholders and the agencies can mete out sanctions if such information is not provided. In practice, such sanctions are enforced. Prosecution agencies must obtain such information the same day: even if the comptroller of taxes always requests prior approval, this is generally granted within 24 hours. General information (including information on management) is stored in a computerized database. More specific information is stored in hard copy in the tax departments.

Prevention of the misuse of bearer shares (C.33.3)

988. Article 744 and following of AUSCGIE stipulates that public limited companies are authorized to issue securities (shares and bonds), in the form of "bearer shares or registered shares". For companies that are not publicly traded, bearer shares may be conveyed by mere delivery; the bearer of the share is deemed to be the owner (Art. 764 Paragraph 1). In the case of publicly traded companies, AUSCGIE provides that apart from mere delivery, bearer shares "may be represented by registration in an account opened in the name of their owner and held either by the issuing company or by a financial intermediary licensed by the Ministry of Economy and Finance; the shares may then be conveyed by transfer from one account to another".

989. The provision of the Uniform Act does not make it possible to ensure that bearer shares issued by limited public companies are not misused. The mission could not obtain figures on the number of persons issuing this type of share and the amount and value of shares in circulation.

990. However, according to the authorities the team met with, no such case has yet been detected.

Analysis of Effectiveness

991. In commercial matters, it is the OHADA Law which is applicable in Benin. Admittedly, the assessment team was unable to ascertain actual compliance with various obligations outlined in the different legal instruments but, overall, the entire commercial fabric and legal persons operate in accordance with the OHADA regulations. Similarly, the team was unable to ascertain whether the data had been updated.

992. There is indeed a central national RCCM file at the First Class Court of First Instance of Cotonou and an RCCM in each of the eight courts of Instance of Benin and it is the location of the head office of a company that determines its registration**.** The central RCCM of Cotonou was computerized in December 2006 and registrations resumed since then.

993. The team was informed about the existence of a deputy judge near the Commercial Court responsible for the control of the RCCM located at the Registry of the Court of First Instance of Cotonou. Furthermore, the team was informed that responsibility for ascertaining the accuracy of information produced by legal persons lies with the notary.

994. Furthermore, the team obtained extracts from the RCCM, but the assessors were unable to measure their reliability or ensure the effectiveness of the updates made.

995. The team also learnt that information held by the tax authorities was more reliable and up-to-date, with the exception of a case involving the inclusion of a foreign company among the shareholders of a limited public company. In this case, the authorities could not provide information on the management and shareholders of the foreign company, namely the actual beneficiaries. In fact, such cases are rare. In view of the insignificant level of foreign interests, this does not represent a high risk.

996. Also, it is worth noting that independently of the compliance with the set of rules prescribed by the OHADA regulations with regard to registration and statues of companies, the large size of the informal sector in the economy of Benin did not make it possible to obtain adequate, relevant and up-to-date information. The authorities confirmed the existence of many economic actors who operate as legal persons without being registered.

997. Lastly, the Beninese authorities did not mention measures specially taken to prevent legal persons from issuing bearer shares that can be used for money laundering.

5.1.2 Recommendations and Comments

998. The Beninese authorities should take steps to:

- Implement the provisions of OHADA regulations, notably with regard to the updating of data contained in the RCCM ;
- Monitor bearer shares (number of issues, value and state of circulation) to prevent legal persons from issuing shares for the purpose of money laundering;
- To ensure that public services, notably those pertaining to taxes obtain more information on foreign companies holding shares in Beninese companies
- To monitor the fulfilment by notaries of their obligations to obtain, verify and preserve documents on actual ownership and control of legal persons.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of Factors Underlying Rating
R 33	***NC***	Absence of verification of compliance with OHADA obligations Inaccurate information contained in RCCM. Irregular updating of information Information contained in RCCM does not make it possible to identify beneficial ownership; No measures preventing the illegal use of legal persons issuing bearer shares for money laundering.

5.2 – LEGAL ARRANGEMENTS – ACCESS TO INFORMATION ON BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34)

5.2.1. – Description and Analysis

999. Beninese law does not provide for the creation of trusts and comparable arrangements. According to information garnered by the evaluation team, there is no foreign trust in the country.

1000. Article 5 of the AML Act makes reference to “the constitution, administration or management of companies, trusts or similar structures, execution of financial operations” in operations conducted by members of legal professions. The fact that the word “trust” is mentioned in the law gives the impression that it would be possible to establish one in Benin. But the authorities and PNFD representatives met clearly indicated that such arrangements did not exist in Benin and that there is no legal arrangement to guide its establishment (There is no provision in the OHADA Act on such a structure).

5.2.2. Compliance with Recommendation 34

	Rating	Summary of Factors Underlying Rating
R 34	***NA***	

5.3 NON-PROFIT ORGANIZATIONS (SR.VIII)

5.3.1 DESCRIPTION AND ANALYSIS

- Law of 1st July 1901 on Memorandum of Association;
- Decree 2001 – 234 of 12 July 2001 stipulating the conditions of existence and modalities of operation of NGOs and their umbrella organizations.
- Law 2006-14 of 31 October 2006 on the fight against money laundering
- Law 2006-14 of 31 October 2006
- Article 136 of criminal code procedure
- Decree 2006 – 752 of 31 December 2006 on the creation, jurisdiction, organization and operation of the National Financial Information Processing Unit (CENTIF)
- Guideline 04/2007/CM/WAEMU on the CFT in WAEMU member-States

1001. In order to carry out their activities in Benin, Non-Profit Organizations (NPOs) are required to register either at the Ministry of Interior, in Prefectures or in Town Halls and have this published in the Gazette. They are governed by the Law of 1 July 2001 on memorandum of association and by Decree 2001 – 234 of 12 July 2001 defining the conditions of existence and modalities of operation of NGOs and umbrella organizations. The documents required for the application include the statutes. They clearly outline the purpose, aim of activities and identity of persons who constitute their various structures.

1002. This information is subsequently published in the Gazette and in the press media in accordance with current regulations.

1003. The AML Act subjects Non-Governmental Organizations (NGOs) to the relevant obligations, notably those relating to vigilance, preservation and communication of documents.

Review of the adequacy of laws and regulations pertaining to NPOs (VIII.1)

1004. The Beninese authorities view the risk of financing of terrorism to be low and have not undertaken a review of the adequacy of current legislation applicable to associations and NGOs or conducted a specific study to assess the vulnerability of the sector to this risk.

1005. Furthermore, in the absence of the transposition into national law of the WAEMU guideline on CFT, and a relevant article devoted to NPOs, there is no provision on the control and regulation of NGOs that could be misused for the purposes of financing of terrorism as part of their activities .

Assistance to the NPO sector (VIII. 2)

1006. No outreach action has been undertaken in Benin for Non Profit Organizations (NPOs) in Benin pertaining to money laundering or financing of terrorism. However, the Centre for the promotion of Civil Society of the Ministry responsible for relations with Institutions assists NPOs to organize themselves and conform to current Laws and Regulations. There are plans to set up a Committee in charge of establishing

a national NPO coordinating structure to ensure greater effectiveness in their missions and relations with their partners namely the Government and external technical and financial partners.

Support for the monitoring and oversight of NPOs (VIII. 3)

1007. There are no support measures for the monitoring and oversight of NPOs despite the substantial financial resources available to some or the significant role played by the sector in international relations. Only financial controls relating to taxation are carried out when an NPO receives public funds.

5.3.2 *Recommendations and Comments*

1008. The authorities should:

- Review the adequacy of the current legislation applicable to associations and NGOs and conduct a specific study to assess the vulnerability of the sector to AML/CFT risks;
- Transpose as early as possible the WAEMU guideline on CFT in the country's laws, notably to define provisions for the monitoring and regulation of NGOs and avert their misuse for the financing of terrorism as part of their activities.
- Undertake awareness raising campaign on AML/CFT for NPOs.
- Undertake adequate monitoring of NPOs to ensure their compliance with AML requirements stipulated by law.
- Effectively enforce sanctions in case of violation of AML Act.

5.3.3 Compliance with SR VIII

	Rating	Summary of Factors Underlying Rating
S R VIII	***NC***	Lack of knowledge of the AML Act by NPOs Lack of monitoring and oversight of NPOs under AML; Lack of awareness of NGO sector Legal vacuum with regard to CFT; **Absence of implementation**

6. NATIONAL AND INTERNATIONAL COOPERATION

6.1 NATIONAL COOPERATION

6.1.1 Description and Analysis

Effective Mechanisms of Cooperation and Coordination to Combat Money Laundering and Financing of Terrorism (C.31.1)

1009. Apart from Article 19 of the AML Act instituting the counterparts of the CENTIF, notably within the National Police, Gendarmerie, Customs and Judicial Services, the AML Act makes no specific provision for cooperation between the competent authorities and the coordination of their activities.

1010. In practice, apart from cooperation in general law organized by the Criminal Code Procedure between law enforcement agencies, the evaluation team was also informed that the Economic and Financial Brigade of the Criminal Police Directorate collaborates with the Gendarmerie in the area of AML.

1011. But, in general, the team noted that further efforts should be made in the sharing of information between the various agencies (viz. Police, Gendarmerie and Customs).

1012. It would also appear that cooperation between the CILAD and the OCERTID, which are both also inter-ministerial structures, is inadequate. The OCERTID should play its role as coordinator of narcotic control better by centralizing data on this activity. To this end, there is a need for better collaboration among agencies involved in the control of narcotics, particularly and as an initial step, by appointing liaison officers at the OCERTID. This would facilitate the keeping of statistics.

1013. On the other hand, there does not appear to be any cooperation problem with CENTIF in view of effective establishment of its networks of counterparts (whose formal appointment is yet to be made) in the Administrations**.** However, the provision of information by the Customs Department, particularly concerning cross-border physical transportation of currency should be activated.

Additional elements-Mechanisms of consultation between competent authorities, the financial sector and other sectors (C.31.2)

1014. There is no consultative mechanism between the competent authorities, the financial sector and other sectors (including END).

6.1.2 Recommendations and Comments

1015. The authorities should:

- formally institute effective mechanisms of cooperation and coordination of their AML/CFT activities at national level
- regularly assess the effectiveness of such mechanisms
- put in place mechanisms of consultation between Government services and the actors of the AML/CFT system, particularly in the financial sector and that of CNFBP

6.1.3 Compliance with Recommendation 31

	Rating	Summary of Factors Underlying Rating
R.31	***PC***	-Absence of formal cooperation and coordination mechanisms -Inadequate information sharing and cooperation on AML domestically

6.2 UNITED NATIONS CONVENTIONS AND SPECIAL RESOLUTIONS (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35

Ratification of Anti-Money Laundering Conventions (C.35.1)

1016. Benin has ratified the following AML conventions:

- The United Nations Convention against Illicit Trafficking in Narcotics and Psychotropic Substances, concluded on 20 December 1988 in Vienna (Vienna Convention), ratified on 23 May 1997;
- United Nations Convention against Transnational Organized Crime of 15 December 2000 (Palermo Convention), ratified on 30 August 2004;

1017. Although the authorities met with claimed that instruments for the ratification of these Conventions were available by the evaluation team was unable to ascertain this. Based on the provisions of these two conventions, in July 1997 Benin passed Act 97-025 of 18 July 1997 establishing the control of narcotic drugs and precursors in 2006 and Act 2006-14 of 31 October 2006 on anti-money laundering. Through these laws, the provisions of the two conventions were largely incorporated in the national legislation.

1018. The drug and precursors control law entered into force in 1997 and it is regularly enforced by the relevant agencies. Statistics provided to the evaluation team show that drug seizures occur. However, the prosecution agencies appear not to be interested in the proceeds of crime as the absence of statistics on the freezing, seizure or confiscation of proceeds from this type of crime shows.

1019. Although the AML Act has been passed, it does not include all the provisions contained in the United Nations Convention against Transnational Organized Crime of 2000 known as the Palermo Convention.

Additional elements –Ratification and Implementation of Appropriate International Conventions C.35.2)

Special Recommendation I

Ratification of Conventions related to the AML (C.I.1)

1020. Benin has ratified the International Convention for the Suppression of the Financing of Terrorism on 30 August 2004, the Convention for the Suppression of Terrorist Bombing, on 31 July 2003, the OAU Convention on the Prevention and Combating of Terrorism, 1st March 2004.

1021. Benin has not yet transposed the WAEMU Guideline on the combating of the financing of terrorism into national law. The relevant bill is at the Supreme Court for approval.

Implementation of Resolutions 1267 and 1373 (C.I.2)

1022. United Nations Security Council Resolutions (1267 and 1373) are direct application.

1023. With regard to Resolution 1267 (1999), it was implemented by Regulation 14/2002/CM/UEMOA of 19 September 2002, on the freezing of funds and other financial resources as part of the fight against the financing of terrorism in WAEMU member-States. This Community Regulation sets out the principles of the said freeze which is backed by Decisions issued periodically by the Council of Ministers based on lists drawn up by the United Nations Security Council under this Resolution. In practice, the lists established by decision of the Council of Ministers are addressed to the BCEAO which communicates them to credit establishments for application. The Security Council lists as well as those drawn up by some countries reach relevant financial institutions through other channels (ministries or foreign embassies).

First, this dissemination appears to be limited and, secondly, it is not intended for other financial resources, which does not follow the requirements of Resolution 1267.

1024. On the other hand, Resolution 1373 (2001) has not been subjected to any application
.

6.2.2 ***Recommendations and Comments***

1025. Benin should:

- implement the Vienna and Palermo Conventions more fully;
- Implement the International Convention for the Suppression of the Financing of Terrorism.
- Transpose the WAEMU Guideline on AML into national law.
- Implement more fully Resolution 1267(1999).
- Implement Resolution 1373(2000).

6.2.3 ***Compliance with Recommendation 35 and Special Recommendation I***

	Rating	**Summary Underlying Rating**
R 35	***PC***	Partial implementation of Vienna and Palermo Conventions.
SR I	***NC***	Non-implementation of the International Convention for the Suppression of the Financing of Terrorism, due to the non transposition of the WAEMU Ad Hoc Guideline. Partial implementation of Resolution 1267(1999) Non-implementation of Resolution 1373 (2001)

6.3 MUTUAL LEGAL ASSISTANCE (R.32, 36-38, SR.V)

6.3.1 DESCRIPTION AND ANALYSIS

Legal Framework

- Benin has signed cooperation and mutual legal assistance with OCAM countries (12 September 1961), member-States of the Council of the Entente (20 February 1997), France, ECOWAS member-States (Mutual Legal Convention and Extradition Convention), the quadripartite agreement between Ghana, Nigeria, Togo and Benin of 1984;
- Articles 53 to 70 of the AML Act and Articles 12 to 16 of the International Convention for the Suppression of the Financing of Terrorism (ratified on 30 August 2004), provide responses to the concerns expressed in Recommendation 36 (36.1 to 36.7);
- Law of 10 March 1927 on extradition defines the principles of extradition in Benin;

Recommendation 36

The range of AML/CFT mutual assistance measures (C. 36.1) Application of the powers of competent authorities prescribed by R28 (C.36.6 and 36.8-Additional element)

1026. The AML Act provides for a range of unconditional legal assistance measures, and at the request of a third party state, subject to reciprocity.
In all cases, mutual assistance encompasses:

- Gathering testimonies or statements
- Making detained persons or other persons available for testimony or assistance in conducting investigations;
- Providing legal documents;
- Carrying out searches and seizures;
- Examination of objects and inspection of places
- Providing information and exhibits;
- Providing the originals or certified true copies of relevant files and documents including banking, accounting and business records.
- Article 54 of the AML Act indicates the form of request (written) as well as the list of documentary elements that must accompany it.

Timely, constructive and effective mutual assistance (C.36.1.1)

1027. According to the authorities met, although the AML measures are conventional, they have not yet been tested as part of implementation, since no case has yet been presented.

1028. But the Beninese authorities affirm that once a request for mutual assistance meets all the required conditions, there is no reason why it should not be granted in a timely, constructive and effective manner. In practice, it is generally the requesting country that is responsible for the shortcomings (insufficient exhibits justifying the request for additional assistance).

Mutual legal assistance not subjected to unreasonable, disproportionate or unduly restrictive conditions (C.36.2)

1029. Reasons for refusal of assistance are outlined by Article 55 of the AML Act:

- Irregular transmission or transmitted by non competent authority;
- Risk of breaching public peace, sovereignty, security or fundamental principles of law;
- Acts already subject of a criminal prosecution or have been definitively judged
- Measures requested or analogous measures are not authorized or are not applicable to the offence cited in the requested;
- The money laundering offence has lapsed under Beninese law or that of the requesting country;
- The decision is not legally enforceable;
- Foreign decision was not backed by adequate guarantees of the rights of the defendant;
- Measures requested are motivated solely by considerations of race, religion, nationality, or ethnic origin.

Clear and efficient processes for the execution of mutual legal assistance requests (C.36.3)

1030. The provision of the AML Act is clear and, therefore, likely to enable effective cooperation without unnecessary delay.

1031. However, the regulations make reference to a "competent authority" without specifying the entity to which the request should be addressed. But the Beninese authorities stated that, in legal matters, it is the Ministry of Justice which is mandated to do so, as is the case in most countries in the sub-region. The modalities for mutual legal assistance with regard to money laundering are not likely to cause unreasonable delays in the country.

1032. Furthermore, the evaluation team was unable to assess the actual efficiency of the system in the absence of effective implementation.

Mutual legal assistance on fiscal matters (C.36.4)

1033. There is no clarification as to whether the fact that the offence relates to fiscal matters could be ground for the refusal of mutual legal assistance. Be that as it may, the cases of refusal listed above do not include fiscal matters. In this regard, in principle, the Beninese authorities cannot turn down a request of mutual legal assistance based solely on fiscal matters.

Refusal of mutual legal assistance based on laws imposing secrecy or confidentiality (C.36.5)

1034. Professional secrecy cannot be grounds for refusal to execute a request for mutual legal assistance as stipulated in Article 55 paragraph 2 of the AML Act.

C. 36.7 Jurisdictional conflicts

1035. Although Article 47 of the AML Act authorizes the transfer of prosecutions, the act makes no provision for a mechanism that can be used to determine the appropriate venue for prosecutions in case of conflict of jurisdiction.

Special Recommendation V

1036. In the absence of national legislation incriminating the financing of terrorism, mutual legal assistance in respect of CFT is not possible.

R.37 Dual Criminality

Dual criminality and mutual legal assistance (C.37.1 and 37.2)

1037. The AML Act does not expressly state dual criminality as a condition of the execution of a request for mutual legal assistance.

1038. But Article 553 of the Penal Procedure Code (CPP) stipulates that "Any citizen of Benin who has committed an offence outside the country which is recognized as such by Beninese law may be prosecuted and tried by Beninese courts, if the offence is punishable by the country in which the offence was committed**"**. Interestingly, this provision of the CPP does not specify the crime.

1039. Article 554 of the CPP deals with the issue of "anyone who, while in Benin, is an accomplice of a crime or an offence committed outside the country". In such a case, the suspect may be prosecuted and judged by Beninese courts only "if the offence is punishable by both the foreign law and that of Benin and if it is definitively deemed to be a crime or an offence by the foreign jurisdiction".

1040. By virtue of this provision of common law, dual criminality appears to be applicable to mutual legal assistance in cases of offences committed outside the country.

1041. Notwithstanding the existence of the principle of dual criminality in Benin (as in most democratic countries), the authorities informed the evaluation team that this rule would be interpreted in a flexible manner in the context of money laundering. It is worth noting that the AML Act (which does not expressly make dual criminality an impediment), is consistent in all the eight WAEMU member-States, which indicates that the dual criminality condition needs to be qualified.

1042. The criminality of the predicate conduct of the offence is determined by the law (even though not all predicate offences of money laundering are considered as specific offences in Benin as indicated above). With regard to legal and practical impediments resulting from technical differences between the laws of countries concerned by the mutual assistance, it is for the jurisprudence to resolve such problems since it is a characterization which can be made only by the judges. Since the passing of the AML Act in 2006, Benin has not experienced such cases and there is no precedent in this regard.

NB: for more details on extradition, cf. Section 6.4

Special Recommendation V

1043. For the specific case of mutual legal assistance in the financing of terrorism, the foregoing remarks are still valid. It is worth noting, however, that this offence is not yet a crime in Benin.

Recommendation 38

Mutual legal assistance requests from foreign countries related to provisional or confiscation measures (C.38.1)

1044. The ECOWAS Extradition Convention A/P1/8/94 of 6 August 1994 and the AML Act deal extensively with requests for identification, freezing, seizure or confiscation. The ECOWAS Convention and Article 62 of the AML Act mention "exhibits" (intended to cover all proceeds of the crime), with regard to search and seizure. Article 63 on request for confiscation involving "an asset constituting the proceeds or instrument of one of the offences defined by the law". It is worth noting that these articles of the AML Act do not expressly mention "instruments used" and "instruments intended to be used to commit a given offence" related to money laundering, financing of terrorism or any other predicate offence. However, the concept of "exhibits" is wide enough to cover this relative loophole. It is worth considering that, in any event, the provisions of the AML Act may be complemented with those of the general law (penal code and penal procedure code).

Application of relevant measures to property of corresponding value (C.38.2)

1045. The AML Act does not expressly provide for the application of measures pertaining to the identification, freezing, seizure or confiscation**,** where the request relates to assets of corresponding value.

1046. The authorities informed the evaluation team that although in practice, for one reason or another, assets into which laundered money has been converted cannot be seized, the judge could still order the confiscation of assets of corresponding value and have it executed on the property of the accused. But the team was not informed about the existence of a precedent that has been applied to predicate offences.

Coordination of seizure and confiscation actions with other countries and sharing of confiscated assets (C.38.3 and 38.5)

1047. There is no coordination arrangement with other countries for the seizure and confiscation of assets.

1048. Pursuant to Article 66 of the AML Act related to the outcome of confiscated assets, a country may dispose of assets confiscated on its territory at the request of the foreign authorities, unless an agreement with the requesting government decides otherwise. To date, Benin has not yet signed any such agreement with another country. In the absence of an agreement, the State of Benin remains the sole owner of confiscated assets.

C.38.4 Funds for seized or confiscated assets

1049. The AML Act does not provide for the establishment of such a fund to receive seized or confiscated assets.

Special Recommendation V

1050. None of the above-mentioned AML provisions can be applied in the absence of any reference to the financing of terrorism and the specific ad hoc law. The transposition into national law of the WAEMU CFT Guideline can help address this issue.

R.32 Statistics

1051. Statistics were provided by the judicial authorities, but they do not include elements pertaining to mutual legal assistance in the area of AML.

6.3.2 *Recommendations and Comments*

1052. To a large extent, the mutual legal assistance put in place by Benin makes it possible to provide assistance to foreign countries since the grounds for refusal outlined are those that are generally allowed. However, for the mechanism to be complete, the Beninese authorities should:

- Strengthen the mechanisms to make it possible to provide more timely assistance;
- Set up a mechanism to determine the venue of the seizure in case of conflict of jurisdiction;
- Clarify the criminality of the predicate conduct;
- Set up provisional measures for the confiscation of assets of corresponding value;
- Institute a fund for seized and confiscated assets, notably to finance the cost of prosecution or welfare institutions for the victims
- Provide for the sharing of assets as part of cooperation and coordination efforts with other countries.

6.3.3 *Compliance with Recommendations 32, 36, 37, 39 and Special Recommendation V*

	Rating	Summary of Factors Underlying Rating
R 36	***LC***	Lack of determination of venue of seizure in case of jurisdictional conflict Lack of statistics making the assessment of implementation and effectiveness of the mechanism difficult
R 37	***LC***	Lack of clarification of the criminality of the predicate conduct and removal of legal and practical impediments affecting the mutual legal assistance
R 38	***PC***	Absence of provisions on the seizure and confiscation of assets of corresponding value Lack of mechanism for the coordination of initiatives with other countries Lack of funds for seized and confiscated assets Absence of provisions on sharing of assets with other countries in case of coordination
SR V	***NC***	Absence of law on financing of terrorism.

6.4 EXTRADITION (R. 37 & 39, & RS.V)

6.4.1 ANALYSIS AND DESCRIPTION

Legal Framework

- The Franchise Act of 10 March 1927 relative to the extradition of foreigners promulgated in French West Africa by Order of 10 March 1927;
- OCAM General Convention on Judicial Cooperation between member-States of 12 September 1961;
- Extradition Convention A/P1/8/94 of the Economic Community of West African States of 6 August 1994;
- International Convention for the Suppression of the Financing of Terrorism.

Recommendations 39 and 37

Money laundering as an extraditable offence- Effects of dual criminalization (C.39.1 and R37.2)

1053. According to the AML Act, money laundering is an extraditable offence. Article 71 of the conditions of extradition stipulates as follows: "Shall be subject to extradition:

- Persons prosecuted for the offences indicated by this Act irrespective of the duration of the sentence to which they may be liable on the national territory;

- Persons, who in respect of the offences described in this Act, are sentenced once and for all by the courts of the requesting country, irrespective of the need to take into account the sentencing. (paragraphl.1).

1054. However, paragraph 2 also poses the principle of dual criminalization in stipulating that "it shall not be exempt from the rules of the general law governing extradition**, especially those pertaining to dual criminalization"**.

1055. On this point, Article 3 of the franchise law of 10 March 1927 on the extradition of foreigners, which is still applicable in Benin indicates that "extradition shall be granted only where the offence, grounds for the request, has been committed … outside the territory of the requesting country by a non-national of the said country, if the offence is classified among those whose prosecution is authorized in France, even though they may have been committed by a foreigner outside the country'.

Extradition of its own nationals by a country (C.39.2 (a)

The AML Act is silent on this point.

1056. Article 5 of the Franchise Act of 10 March 1927 on the extradition of foreigners, not yet repealed by Benin, stipulates that extradition shall not be granted: "Where a person who is the subject of the request, is a French citizen or protégé, with the status of citizen or protégé being determined at the time of offence for which the extradition is being requested". On this basis, Benin has not extradited its nationals.

Cooperation in the prosecution of its own nationals (C.39.2 (b) "Aut dedere, aut judicare" and C.39.3)

1057. The provisions of Article 47 of the AML Act allows Benin to apply the principle of **"aut dedere, aut judicare" (extradite or arbitrate)** by assuming responsibility for prosecuting the suspect at request of a WAEMU member country or a third party country on the condition of reciprocity.

1058. The request for extradition to the Beninese authorities is accompanied by documents, evidence, items and information in the possession of the Authority of the requesting country. Pursuant to Article 48 of this same, the Beninese authorities may refuse the request if on the date of dispatch of the request, criminal proceedings have closed or if a final ruling has already been made in the case against the interested party in accordance with the rule of "non bus in idem". Prosecutions completed in the requesting country remain valid in so far as they are compatible with the current legislation of Benin.

1059. The competent authorities inform the requesting country about the outcome of the process together with copies of any past final court decision (Article 50).

Effectiveness of extradition procedures (C.39.4)

1060. The evaluation team was unable to assess the effectiveness and efficiency of the procedures due to the non-existence of executed cases of money laundering and statistics concerning cases of extradition in respect of predicate offences.

Additional element – Existence of simplified extradition procedures (C. 39.5)

1061. Article 72 of the AML Act lays out a simple procedure by which requests are sent directly to the Principal Public Prosecutor with copies for information to the Minister of Justice. In contrast, the simplified procedure of access to criminal records stipulated in Article 61 of the AML Act as part of mutual legal assistance does not appear to be applicable to extradition.

Special Recommendation V

1062. None of the aforementioned provisions of the AML Act relating to extradition can be applied in the absence of any reference to the financing of terrorism and the specific ad hoc act. Transposing the WAEMU AML Guideline into national law will help resolve this issue.

6.4.2 ***Recommendations and Comments***

1063. The current arrangement in Benin on extradition appears to be adequate and in line with international standards. Subject to effective application, it can provide significant assistance to requesting foreign countries.

1064. However**,** the Authorities should endeavour to:

- Relax the condition of dual criminalization so that it does not become an impediment to the execution of the measures;
- Provide clarifications on the issue of criminalization of the predicate conduct and removal of legal and practical impediments that may hamper extradition;
- Establish statistics to render the system of extradition effective;
- Pass the law on the financing of terrorism to enable extradition related to this kind of offence.

6.4.3 *Compliance with Recommendations 37, 39 and Special Recommendation V*

	Rating	Summary of Factors Underlying Rating
R 37	***LC***	Lack of clarification of the criminalization of the predicate conduct and removal of legal and practical impediments that may affect extradition
R 39	***LC***	In the absence of statistics it is not make possible to assess the effectiveness of the system of extradition
SR V	***NC***	The law on the financing of terrorism has not been passed, which makes extradition for the offence impossible.

6.5 OTHER FORMS OF INTERNATIONAL COOPERATION (R. 40, RS.V & R.32)

LEGAL FRAMEWORK

- ECOWAS Criminal Police Cooperation Agreement;
- Protocol on Creation of the Regional Criminal Investigation Agency.

DESCRIPTION AND ANALYSIS

Recommendation 40 (C.40.1 to 40.9)

Range of international cooperation measures (C40.1)

1065. **In accordance with** the relevant provisions of international agreements and conventions, as well as national regulations, notably the AML Act and the decree establishing CENTIF, the relevant Beninese authorities are in a position to grant their foreign counterparts a broader condition than a mere request from such countries, subject to reciprocity.

Cooperation between criminal prosecution agencies

1066. The INTERPOL **network** places cooperation systems and mechanisms at the disposal of the Gendarmerie.

1067. The authorities mentioned spontaneous information sharing with foreign countries, notably through the National Central Bureau (BCNC).

1068. On the basis of a Memorandum, Benin has been cooperating with Nigeria and joint surprise and permanent patrols are organized in some border areas at risk (Operation "Fire to Fire").

1069. Furthermore, Beninese security services exchange information with their counterparts in border countries as part of an agreement signed in Lome between Nigeria, Togo, Ghana and Benin.

1070. Other agreements signed at the level of ECOWAS underpin this sub-regional cooperation, especially the ECOWAS Criminal Police Cooperation Agreement and the 2006 Protocol of 2006 on the Creation of the Regional Criminal Investigation Agency within ECOWAS.

Customs Cooperation

1071. Benin is a member of the World Customs Organization (WCO). Also, there is direct cooperation between Beninese customs officers and their foreign counterparts through the Custom Enforcement Network (CEN) aimed at preventing, searching and punishing customs offences (but not those related to the AML Act). Furthermore, there are agreements at sub-regional level but it does not appear that such cooperation instruments have already been used under the AML/CFT.

Cooperation between FIUs

1072. Articles 23 and 24 of the AML Act, incorporated in the decree establishing CENTIF, enjoins the latter to communicate, at the request of a CENTIF of a WAEMU member country, any information and data related to investigations conducted following the declaration of suspicion at national level. Subject to reciprocity, the same provisions are applicable to third-party countries. To this end, CENTIF Benin has already shared information with two CENTIFs in the sub-region.

1073. Concerning the FIUs of third-party countries, CENTIF may, subject to reciprocity, share information with them, where the latter are subjected to similar professional secrecy obligations. To this end, CENTIF is planning to enter into an agreement with TRACFIN in France, to which CENTIF members have already made preliminary visits. A prior authorization by the Minister of Finance is required for information sharing agreements.

1074. In its 2009 first quarter activity report, CENTIF indicates that "the lack of international recognition which prevents it from obtaining information from other countries constitutes a major impediment to the analytical work carried out".

1075. Hence, to accomplish its mission it is urgent and necessary that CENTIF, with assistance from the national authorities, implements measures that would enable it to gain international recognition which it currently lacks, notably by joining the EGMONT Group (cf. also Section 2.5).

Cooperation between Supervisors

In the Banking Sector

1076. At **regional level**, BCEAO is represented on the CREPMF Board and is a member of the Association of Central African Banks (ABCA.

1077. The Banking Commission (BC) has signed a cooperation agreement with the Central Bank of Guinea and a convention with the Banking Commission of Central Africa (COBAC). The initial meetings between these two supervisory bodies under the convention were held in 2008, according to the annual report of the BC.

1078. **In addition**, BC is a member of the Committee of Banking Supervisors of West and Central Africa (CSBAOC) whose 14th general meeting held in October 2008 in Banjul considered the way forward in the area of AML supervision (see 2008 Annual Report)

1079. **At international level,** a Cooperation Agreement exists between the French Banking Commission and the BC is a member of the Group of Francophone Banking Supervisors created by Central Bank Governors of the of 34 countries including France. The Group collaborates with the Basel Committee. They also have ties with the World Bank which, as part of the evaluation of the West African financial system at regional level including a component on AML/CFT, works in relation with the BCEAO Banking Commission on issues pertaining to this area.

1080. **In the stock exchange sector, CREPMF** indicated in its 2008 Annual Report that it actively participated in various meetings at the international level in the area of **financial market regulation,** particularly within the International Organization of Securities Commissions (ISCO) and the Francophone Institute of Financial Regulation (IFREFI). At the regional level, the Regional Council works in close collaboration with other Bodies and Institutions of the Union, especially the Central Bank of West African States (BCEAO), the West African Development Bank (BOAD) and the WAEMU Commission on issues and subjects related to the financial system of the Union on which the Conference of Heads of State and the Council of Ministers has provided guidelines.

In the Insurance Sector,

1081. The Inter-African Conference on Insurance Markets (CIMA) and the Regional Council of Public Savings and Financial Markets (CREPMF) signed a cooperation and information sharing convention on 14 November 2008 in Lome, Togo.

Recommendation 32

1082. The evaluation team was unable to statistics on international cooperation related to AML/CFT. There does not appear to be ad hoc quantified data.

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6.5.2 *Recommendations and Comments*

The Authorities should:

- Pass the law on the transposition of the WAEMU Guideline on anti-money laundering;
- Assist CENTIF to gain international recognition, the absence of which is impeding its cooperation with foreign countries;
- Put in place an information collection system related to AML/CFT
- Keep reliable and regular statistics on requests for mutual legal assistance received and responses provided to measure the effectiveness of the cooperation framework.

6.5.3 *Compliance with Recommendations 32, 40 and Special Recommendation V*

	Rating	Summary of Factors Underlying Rating
R 40	***PC***	Absence of criminalization of FT Lack of recognition of CENTIF at international level Absence of system of collection of information relating to international cooperation on AML/CFT Lack of statistics Lack of implementation.
SR.V	***NC***	Lack of criminalization of FT impedes other forms of international cooperation.

7. OTHER ISSUES

7. 1 RESOURCES AND STATISTICS

1083. The description and analysis of Recommendations 30 and 32 are contained in the relevant portions of the report. Hence an overall rating for each Recommendation that are cross-cutting and concern several portions of the report.

7.1.1- Resources

Compliance with Recommendation 30

R	Rating	Summary of Factors Underlying Rating
R30	**PC**	Budget allocation to CENTIF is insufficient and cannot ensure its full autonomy. CENTIF is understaffed (lack of analysts, IT specialists and support staff). Investigative and criminal prosecution agencies are well-structured, but woefully lack financial, human and material resources to adequately handle AML/CFT matters. Furthermore, the training of these investigative and prosecution agencies authorities does not cover AML/CFT, be they judges, public prosecutors, police officers, customs officials, gendarmes etc. some have not even been sensitized on the issue. Resources provided control and supervisory organizations are inadequate. This is also true for their staff.

7.1.2- Statistics

Compliance with Recommendation 32

R	Rating	Summary of Factors Underlying Rating
R32	**PC**	General lack of statistics on AML/CFT, which makes an assessment of the effectiveness of the system difficult; Non-existence of relevant statistics on declaration of suspicion and other declarations Absence of statistics on prosecutions and sentencing, freeze, seizure and confiscation related to AML/CFT. Absence of statistics on the number of sanctions related to AML Non-existence of centralization mechanisms at national level of data provided by the various AML/CFT actors. Keeping of incomplete statistics on cross-border declaration or communication of the physical transportation of cash or negotiable bearer instruments. Lack of detailed statistics on mutual legal assistance and extradition There are no statistics on international cooperation Absence of an overall mechanism for assessing the effectiveness of the AML/CFT system.

7.2 OTHER RELEVANT AML/CFT MEASURES

N/A

TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDSATIONS

C: Compliant

NC: Non Compliant

LC: Largely Compliant

PC: Partially Compliant

40 Recommendations	Rating	Summary of Factors Underlying Rating
Legal System		
R1. Money laundering offence	**PC**	Absence of criminalization at national level of insider dealings and market manipulation on the stock exchange Lack of clarity on self-money laundering Enforcement of law not yet efficient
R2. Mental element and corporate criminal liability	**PC**	Enforcement of law not yet efficient Difficulties in assessing the proportionality and dissuasive nature of sentences.
R3. Confiscation and provisional measures	**LC**	Absence of arrangements for assets of corresponding value Impossibility of freezing, seizure and confiscation of assets related to financing of terrorism due to lack criminalization of this offence in the national law. Lack of implementation of freezing, seizure and confiscation mechanisms for money laundering Lack of statistics
Preventive Measures		
R4. Secrecy laws	**LC**	Absence of a mechanism ensuring that professional secrecy does not impede the sharing of information between financial institutions when required.

R5. Customer due diligence	**NC**	Partial coverage of financial institutions through anti-money laundering obligations Absence of regulations prohibiting the keeping of anonymous accounts Unduly lenient identification requirements particularly for beneficial owners No obligation to maintain constant vigilance (existing customers and high risk groups) Poor or lack of knowledge of AML regulation by those subject to the Act other than banks
R6. Politically exposed persons	**NC**	Absence of PEP requirements
R7. Correspondent banking	**NC**	Absence of requirements on relations with correspondent banking.
R8. New technologies and non face-to-face business	**PC**	Absence of specific arrangements in the AML Act pertaining to the misuse of new technologies Doubts about formal adoption of the Annex to the AML Act relating to modalities of client identification in cases of non face-to-face financial transactions Failure to adopt AML/CFT policies and measures needed to prevent misuse of new technologies and to control specific risks related to business relationships or transactions that do not involve the physical presence of the parties
R9. Third parties and intermediaries	**NC**	Lack of clear and comprehensive requirements in the regulations on the use of third parties and intermediaries in AML/CFT matters, although the practice exists
R10. Record-keeping	**PC**	Nature and availability of documents to be kept by credit establishments not specified
R11. Unusual transactions	**NC**	Partial or complete lack of knowledge of requirements Unconcerned auditors included among beneficiaries of release of outcome of points examined Partial implementation by banks Not implemented by other banks

R12. Designated non-financial businesses and professions– R.5, 6, 8-11	**NC**	-Lack of awareness by DNFBPs of AML Act and their attendant obligations due to lack of dissemination of Act and guidelines. -Absence of regulation and supervision of some professions that are vectors of money laundering (especially real estate agents) -No customer due diligence (PEP, preventive measures against misuse of new technologies, non fact-to-face relationships, use of introducers, record- keeping). -Total lack of implementation
R13. Suspicious transaction reporting	**PC**	Limitation by AML of STR of money laundering and financing of terrorism. No obligation to report attempted operations Incomplete dissemination of STR templates Many liable persons are unaware of their STR obligations Lack of implementation
R14. Protection and no tipping off	**LC**	AML Act vague on FATF requirements due to the fact that it only deals with STR and other information made available to CENTIF relating to the STR. Lack of effectiveness, no STR has since been fully treated
R15. Internal controls, compliance and audit	**PC**	With the exception of banks, no AML internal system of control has been put in place and no interim officials have been appointed in most financial institutions Limited training and continuing professional training.
R16. DNFBP – R.13-15 & 21	**NC**	Lack of regulation; STR requirement limited to ML/FT to the exclusion of predicate offences Absence of internal control to prevent money laundering; Absence of special attention to countries not sufficiently applying FATF recommendations; Absence of AML programmes; Lack of effectiveness.
R17. Sanctions	**PC**	No type of sanction (administrative, disciplinary or penal) applied since act came

		into force Impossibility to assess the actual dissuasive nature of sanctions in the absence of any application. Absence of monetary sanctions for credit institutions therefore making it difficult to determine the proportionality of the sanctions.
R18. Shell banks	**NC**	No prohibition against operating shell banks; No requirement prohibiting financial institutions from entering into a correspondent relationship with shell banks; No obligation to ensure that the FI customers abroad do not authorize SBs to use their accounts.
R19. Other forms of reporting	**NC**	No feasibility or desirability study for the implementation of a cash transaction reporting system starting from a given threshold at a national central agency with computerized database; no plans to do this.
R20. Other NFBP and secure transaction techniques	**NC**	Incomplete list of businesses and professions other than DNFBPs - Lack of awareness of law by subject persons - Lack of control - Absence of effective measures to promote the use of banks and cashless payments.
R21. Special attention for higher risk countries	**NC**	No requirement to pay particular attention to business relationships with customers residing in countries that insufficiently or do not apply FAFT Recommendations No measure in place to ensure that financial institutions are advised about noted flaws in the AML/CFT systems of other countries There are no counter measures being applied to countries that do not or insufficiently apply FAFT recommendations
R22. Foreign branches and subsidiaries	**NC**	No requirement for financial institutions to ensure that company subsidiaries and branches outside the country comply with AML/CFT measures No requirement for FIs to inform supervisory authorities about a subsidiary or branch outside the country not complying with AML/CFT measures

R23. Regulation, supervision and monitoring	**PC**	Lack of effective AML monitoring at the level of microfinance institutions, insurance companies and the financial market No prudential regulation applicable to AML/CFT for insurance companies and stock market operations. No formal certification of funds and security transfer services Inadequate monitoring and supervision of money remittance businesses and exchange bureaux Difficult to determine the criteria of expertise and integrity of MFI managers and currency changers Numerical strength of foreign exchange operators in the informal sector; No implementation
R24. DNBP- regulation, supervision and monitoring	**NC**	Inadequate regulation; AML regulation not implemented by casinos; Lack of monitoring by the authorities of compliance with AML requirements by casinos and other DNFBPs.
R25. Guidelines and feedback	**PC**	No guidelines for some subject persons Incomplete nature of some existing guidelines Non-compliant application or non-application of existing guidelines
Institutional and other measures		
R26. The Financial Intelligence Unit	**PC**	Powers of CENTIF do not cover financing of terrorism; Ministerial order on suspicion reporting template not disseminated to all liable entities; CENTIF counterparts in relevant administrations not appointed by their supervisory ministers; Lack of security standards in head office premises; No autonomy guaranteed as a result of inadequate credits and procedure used

		Non Egmont Group membership
R27. Law enforcement authorities	**PC**	Lack of specialization by judicial structures in AML (investigative chambers especially) and insufficient territorial competencies. Deferred arrest of suspects or seizure or failure to undertake such arrests or seizures not expressly prescribed in AML regulations
R28. Powers of competent authorities	**LC**	Not effective
R29. Supervisors	**NC**	Insufficient and lack of rigour in AML controls by BC-WAMU in credit institutions No AML component in controls conducted by CREPMF AML issues are not included in controls in insurance companies by supervisory authorities Incomplete supervision of SFD and AML not covered Insufficient or lack of control of the entire currency exchange sector and AML issues overlooked
R30. Resources, integrity and training	**PC**	Insufficient financial, material and human resources for CENTIF to guarantee its autonomy. Lack of or insufficient financial, material and human resources allocated to investigative and prosecution agencies to adequately support AML/CFT activities. Lack of training in AML/CFT for these authorities. Insufficient financial, material and human resources allocated to CENTIF for control and supervision organizations. Insufficient training of their staff
R31. National cooperation	**PC**	Absence of formal cooperation and coordination mechanism -lapses in information sharing and cooperation between agencies

R32. Statistics	**PC**	Lack of general evaluation mechanism for effectiveness of AML/CFT system. Lack of mechanism at national level for centralization of data provided by the various AML/CFT entities. No system to determine effectiveness of AML system; Lack of statistics especially on breakdown of STRs analysed and transmitted Since no ML case has been handled in Benin, there is no system for the collection of relevant information in place for the moment Since the financing of terrorism is currently a criminal offence, no relevant information collection mechanism is in place **No statistics since the 2006 law. This makes it difficult to assess the effectiveness of the system** Partial or lack of statistics on regular capital inflows and outflows in cross-border reporting or communication. No system of collection of relevant statistics on suspicious transaction and other reporting Lack of statistics on the number of sanctions by BC, at least partially, on breaches of AML standards Lack of detailed statistics on mutual legal assistance and extradition No statistics on international cooperation There are no statistics regarding cases of prosecution, sentencing, freezing and confiscation related to AML/CFT.
R33. Legal persons beneficial owners	**NC**	Lack of monitoring of compliance with OHADA requirements Unreliability of information contained in RCCM. Information not always up-to-date Information contained in RCCM not adequate enough to identify beneficial ownership; Lack of measures to avert the misuse of legal entities who issue bearer shares for money

		laundering purposes.
R34. Legal arrangements – beneficial owners	**N/A**	
International cooperation		
R35. Conventions	**PC**	Partial implementation of Vienna and Palermo Conventions.
R36. Mutual legal assistance	**LC**	Place of prosecution in the event of jurisdictional conflict is not determined Lack of statistics
R37. Dual criminality	**LC**	Lack of clarification of the criminality of predicated conduct and removal of legal and practical impediments affecting mutual legal assistance
R38. Mutual legal assistance confiscation and freezing	**PC**	No provisions on seizure and confiscation of assets of corresponding value Lack of mechanism for coordination of initiatives with other countries No funds for seized and confiscated assets No arrangements on sharing of assets with other countries Lack of statistics
R39. Extradition	**LC**	Lack of statistics to assess the effectiveness of extradition mechanism
R40. Other forms of co-operation	**PC**	No system of information collection relating to international cooperation in the area of AML/CFT. No implementation. Lack of statistics
Nine Special Recommendations		
SR.I Implement UN instruments	**NC**	Failure to implement International Convention on the Suppression of the Financing of Terrorism due to absence of law on financing of terrorism Partial implementation of Resolution 1267(1999) Non-implementation of Resolution 1373 (2001)

SR.II Criminalize terrorism financing	**NC**	A**bsence of criminalization of terrorism due to non-transposition of relevant WAEMU Guideline.**
SR.III Freeze and confiscate terrorist assets	**NC**	Incomplete nature of mechanism for freezing of funds under Resolution 1267 (1999 Non implementation of Resolution 1373(2001)
SR.IV Suspicious transaction reporting	**NC**	No obligation to report FT-related operations
SR.V International cooperation	**NC**	Law on financing is not passed
SR VI AML/CFT requirement for money/value transfer services	**NC**	No authorization for undertaking the profession Lack of direct submission to AML Act No control mechanism No list of money/value transfer agents Absence of sanctions
SR VII AML requirements for money/value transfer services	**NC**	No law on CFT due to non transposition of relevant WAEMU Guideline. No restrictive arrangements on SR VII requirements, notably full information on originator and control of compliance.
SR.VIII non-profit organizations	**NC**	Lack of awareness by NPOs of AML Act No supervision of NPOs in respect of AML ; Lack of sensitization of NGO sector Legal vacuum with regard to CFT
SR. IX Cross-border declaration or disclosure	**NC**	Law on financing of terrorism not passed, WAEMU residents do not have to disclose cross-border physical transportation within WAEMU zone of cash or bearer negotiable instruments issued by the BCEAO There is no formal framework of collaboration between Customs and CENTIF for communicating statistics on cross-border transportation of currency and negotiable instruments. Violations uncovered by Customs are considered solely as customs offences and treated in accordance with customs rules.

TABLE 2: RECOMMENDED ACTION PLAN FOR IMPROVING THE AML/CFT SYSTEM

40 + 9 FATF Recommendations	Principal Recommendations
Legal System and Institutional Measures	
Scope of enforcement of the money laundering offence (R 1, R 2)	The Beninese authorities should: - Criminalize migrant trafficking in a more extensive manner; - Criminalize terrorism and its financing, insider dealing and manipulation of the market; - Clarify self-money laundering; - Implement measures needed to render the enforcement of the AML Act effective, notably through its wider dissemination among authorities in charge of enforcement, backed by appropriate training; - Implement measures required to assess the effectiveness of the AML system.
Criminalization of terrorist financing (SR II)	The law on the transposition of the CFT and WAEMU Guideline should be passed in order to criminalize the financing of terrorism**.**
Confiscation, freezing and seizing of property of criminal origin (R3)	The authorities should take the following steps: - Include in the legislation mechanisms relating to assets of corresponding value; - Enable the freezing, seizure and confiscation of goods related to the financing of terrorism by criminalizing this offence in the country's laws; - Implement mechanisms for freezing, seizure and confiscation of assets related to money laundering; - Compile and keep statistics.
Confiscation of proceeds of crime or assets used for terrorist financing (SR III)	The freezing measures stipulated in Resolution. 1267 (1999) should be fully implemented, particularly by expanding the list established by the United Nations Security Council to include other liable persons . Resolution 1373 (2001) should be implemented, particularly by establishing lists at national and sub-regional level
Financial Intelligence Unit (R26)	The powers of CENTIF should be extended to cover financing of terrorism The dissemination of the template for suspicious transaction reporting

	determined by a ministerial order should be expanded to include all subject persons; The appointment of CENTIF counterparts at level of administrations concerned should be regularized through ad-hoc decisions by their Supervisory Minister; The necessary security standards must be established for access to head office, protection of members and information held by the FIU Adequate financial and human resources must be made available to CENTIF to ensure its autonomy.
Law enforcement, prosecution and other competent authorities (R 27, R28)	Specialized structures should be created in the courts, notably to investigate AML.CFT cases The special anti-narcotic techniques defined should include AML/CFT Resources available to authorities must be significantly strengthened Specific and relevant training in AML and CFT to investigative and prosecution agencies including themes covering the scope of predicate offences, typologies of money laundering, investigation techniques and retracing financial channels etc.
Cross-border declarations or disclosure (RS IX)	The Authorities should: • Make the system of disclosure put in place compliant with requirements; • Institute a formal framework of collaboration between Customs and CENTIF to communicate statistics on disclosure of cross-border transport of cash and negotiable instruments; • Organize, in a formal manner, the coordination of activities between customs, immigration and other competent authorities • Ensure the full application of Resolution 1267(1999) and implementation of Resolution 1373 (2001); • Undertake the early transposition of Guideline N°04/2007/CM/UEMOA • Put in place a computerized database to monitor the cross-border transportation of currency and negotiable instruments and a mechanism for the automatic transmission of information to CENTIF
Preventive Measures Applicable to Financial Institutions	
Risk of money laundering or terrorism financing	
Customer due diligence:	Benin should identify risks and vulnerabilities related to AML/CFT in

Identification and record keeping obligation (R. 5 to 8)	order to define an action plan to mitigate them. The authorities should endeavour to remedy flaws in the current legislation (particularly some of the customer diligence obligations) and have the Annex to the AML Act formally adopted (to be amended to include legal persons) to render specific requirements for identification with regard to non face-to-face operations To that end, the authorities are also urged to institute and impose on financial institutions: • the formal and explicit prohibition to hold anonymous or numbered accounts or in fictitious names; • clear requirements for the identification of beneficial owners; • In all cases obtain information on the intended purpose and nature of the business relationship; • Due diligence in ensuring constant updating of customer documents and information; • The need to maintain a minimum of identification measures even with regard to financial institutions subjected to the AML Act: • The requirement to introduce enhanced measures for higher risk categories or reduce such measures in cases of lesser risks; • Due diligence on existing customers for all subject financial institutions ***Recommendation 6*** *Put in place* an adequate system of risk management to improve the detection and constant monitoring of politically exposed persons Subject the entry into a relationship with such high risk persons to prior approval and ensure that the origin of the funds are determined ***Recommendation 7*** Gather adequate information about a respondent institution (based on publicly available information) to ascertain whether it has been subject to AML measures prior to entering into any relationship with it; Obtain approval from Senior Management before establishing new correspondent relationships. Assess respondent institution's AML/CFT controls and ascertain that they are adequate and effective. Specify in writing the internal liabilities with respect to the AML/CFT system. Observe prescribed due diligence in the cases of the use of payable through accounts. ***Recommendation 8*** Pass legislation on specific measures relating to the misuse of new

	technologies; Formal adoption of Annex to AML Act on modalities for customer identification in case of non face-to-face financial operations Adoption of policies for the effective implementation of AML/CFT measures needed to prevent the misuse of new technologies and to control specific risks related to business relationships or non face-to-face transactions.
Third Parties (R9)	The AML regulations should clearly define conditions authorizing the use of third parties and intermediaries in AML/CFT matters. When deciding in which countries the third-party who is compliant with the criteria may be established, the competent authorities should consider available information ascertaining whether such countries duly apply the FATF Recommendations. In the final analysis, responsibility for the identification and verification of the identity should lie with the financial institution using the third party Financial institutions using third parties should: Immediately obtain from such third parties information pertaining to customer due diligence (Criteria 5.3 to 5.6). Take necessary steps to ensure that a third party is capable to provide, on request and within the shortest possible time, copies of relevant identification and other documents related to CDD to ensure that the third party is subjected to regulations and supervision (in accordance with Recommendations 23, 24 and 29), and that he has taken steps to comply with CDD measures set out in Recommendations 5 and 10.
Financial institution secrecy and confidentiality (R4)	The authorities should put in place measures ensuring that laws on professional confidentiality of financial institutions do not hamper the sharing of information between financial institutions where it is a requirement of Recommendations 7 and 9 or Special Recommendation VII. Furthermore, in view of the sensitivity of aspects related to financial institution confidentiality, the authorities should ensure that access to data covered is strictly limited to needs related to tasks entrusted to the structures concerned by AML/CFT.
Record keeping and wire transfers (R10 and RS VII)	The current regulations should be complemented to ensure consistency with R10 of the nature of records to be kept by financial organizations Benin should adopt as early as possible, legal measures for the implementation of SR.VII, notably by adopting the uniform act on the transposition of WAEMU Guideline relating to CFT. This act should be amended to ensure that financial institutions are under obligation to fulfil all the necessary requirements of R10 especially: Require, gather and keep, for all transfers, accurate and complete information on the originators (identity, address and bank account

	number). Indicate the nature of records to be kept and their availability In dealing with unusual transactions, the financial institutions should ensure the monitoring of each case on individual basis and not in a single batch. Implement effective control measures in line with SR VII
Monitoring of operations (R11 and R21)	The authorities should consider remedying the inadequacies noted and take the necessary steps for doing so: Compel financial institutions to pay particular attention with any unusual operation without any economic rationale irrespective of the sums involved. Include auditors among persons who may have access to the outcomes of the review of complex transactions, involving abnormally high sums or without any apparent economic rationale. Pay special attention to business relationships and transactions with customers residing in the countries that do not implement the FATF Recommendations Put in place effective measures to ensure that the financial institutions are informed of concerns raised in relation to lapses in AML/CFT mechanisms in other countries. Introduce counter-measures applicable to countries that do not or insufficiently apply the FAFT Recommendations
Suspicious Transaction Reporting (R. 13, R14, R19, R 25 and SR IV)	**R 13** It is recommended that the Beninese Authorities should***:*** -extend the STR to include predicate offences as defined by FATF; -define requirements for reporting attempted operations -ensure the exhaustive dissemination of STR templates -ensure that all subjected persons are aware of their STR obligations -ensure effective implementation **R 14** The authorities must prohibit the disclosure of information on STR to any third party not duly mandated to have access to it; CENTIF must take the necessary steps to ensure that STRs received are handled diligently and in line with the regulations pertaining to confidentiality in order to assure subject persons. Consequently, the application of the regulations related to sanctions (Article 40) must be effective in the event of violation in order to dissuade the subject persons who would be tempted to intentionally undertake STRs ***R 19*** The national and/or sub-regional authorities must explore the possibility of putting in place a system by which financial institutions would report all cash transactions involving sums higher than a specific amount to a

	national agency with computerized database ***R25*** Guidelines must be formulated for all subjected persons. The competent authorities, and CENTIF in particular, must provide designated financial institutions that are required to report suspicious operations with useful and appropriate feedback in keeping with FATF guidelines
Internal controls, compliance audit and foreign branches (R15 and R22)	The competent authorities should: R.15 - appoint AML officials mandated to gain speedy access to information and documents as well the necessary resources to carry out their mission; - put in place continuing training for the staff; -define AML/CFT requirements at the time of recruitment; -ascertain that the internal control system is effectively implemented in all FIs. R.22 Introduce for all banks and financial institutions a requirement to ensure that their foreign branches and subsidiaries apply the AML/CFT standards and inform their supervisory authorities should they be unable to uphold the standards.
Shell banks (R18)	The authorities should take clear measures to: Prohibit financial institutions from entering into or maintaining correspondent bank relationship with shell banks; Ensure that financial institutions belonging to their foreign clientele do not authorize shell banks to use their accounts
Regulation and supervision, competent authorities and their powers (R17, R23, R25, R29, R30)	The supervisory authorities (BC-WAMU, BCEAO, CIMA, CREPMF, and Ministry of Finance) should step up controls of subject persons to ensure the full implementation of requirements derived from both national and sub-regional community AML applicable regulations. The application of AML sanctions must become effective in all sectors covered by the legislation. Supervisory authorities should undertake awareness campaigns for the early establishment of guidelines in all FIs and ensure that they are effectively implemented. To that end, the Regional Council should adopt an AML sector guideline for all financial market players. The resources, particularly human, of the supervisory authorities should be strengthened to ensure their autonomy and enable them to address the additional responsibility related to the integration of AML into their mandates. Special training effort is also indispensable;

Alternative remittance (SR VI)	The authorities should: Introduce measures to regulate the delegation of approvals for the transfer of funds and values by certified intermediaries, particularly by requiring approval to carry such activities from the competent authorities (BCEAO, MEF). Enjoin banks to put in place a mechanism for the control of the activities of such entities with special emphasis on AML requirements. Identify actors operating in the sector informally and urge them to regularize their situation or end their activities or face the relevant legal sanctions.
Preventive measures applicable to designated non-financial businesses and professions	
Customer due diligence and record-keeping (R12)	The authorities should take the following steps: Ensure the widespread dissemination of the AML Act among subject DNFBPs Establish guidelines for DNFBPs to facilitate the application of obligations incumbent on them Regulate and control professions that are vectors of money laundering, particularly real estate agencies. Complement the legislation by including measures related to R6, 8, 9, 10 and 11 as recommended for financial institutions. Undertake a census of DNFBPs
Suspicious transaction reporting (R16)	The recommendations made for financial institutions relative to R 13,14, 15 and 21 (see Section 3 of Report) also apply to DNFBPs
Regulation, Supervision and control (R17, R24 and R25)	The authorities should: - ensure that sanctions are applied in cases of violation; - put in place a regulation to govern the exercise of the profession of estate manager; - widely disseminate the AML Act; Establish guidelines to assist DNFBPs to apply and fulfil their AML obligations. These guidelines should also include a description of money laundering techniques and methods and indicate possible additional measures that the DNFBPs must observe, namely: Ensure that AML/CFT requirements are observed by casinos and other DNFBPs Disseminate the CNETIF activity report by DNFBPs Take steps to ensure that the control measures are effective; Organize training and awareness-raising sessions on AML/CFT for DNFBPs;

Other nonfinancial businesses and professions and modern and secure transaction techniques (R20)	The authorities should: -Complete the list of businesses and professions other than DNFBPs; -disseminate the AML Act to subject persons other than DNFBPs to ensure that they are informed about their obligations; - Ensure that measures for the promotion of the use of banking facilities and cashless payment methods are implemented
Legal persons and arrangements and non-profit organizations	
Legal persons – Access to beneficial ownership and control of information (R 33)	The Beninese authorities should: • Implement all the OHADA provisions particularly with respect to the updating of data contained in the RCCM; • Monitor bearer shares (number of issuers, value and state of circulation) to ensure that legal persons issuing bearer shares are not used for money-laundering purposes; • Ensure that public agencies, particularly revenue collection agencies obtain more information on foreign companies that hold shares in Beninese companies • Verify that notaries fulfil their obligations regarding obtaining, verifying and keeping documents on actual ownership and control of legal persons.
Legal arrangements – access to beneficial ownership and control information (R.34)	
NGO (SR VIII)	The authorities should: -.ascertain the adequacy of the current legislation applicable to associations and NGOs and undertake a specific study to assess the vulnerability of the sector to AML/CFT risks; . Transpose as early as possible into national law the WAEMU AML Guideline, particularly to define control and regulatory arrangements for NGOs and dissuade their misuse for the purposes of financing of terrorism as part of their of their activities. Undertake AML/CFT awareness-raising actions with NPOs. Exercise adequate supervision of NPOs to ensure that they comply with AML requirements in accordance with the law. Apply sanctions in case of violation of AML Act.
National and International Cooperation	
National Cooperation and Coordination (R31)	The authorities should: Institute in a formal manner effective AML/CFT cooperation and coordination mechanisms for their activities at national level Regularly assess the effectiveness of such mechanisms

	Put in place mechanisms of consultation between Government Agencies and AML/CFT actors particularly in the financial sector and that of DNFBPs
International Conventions and United Nations Resolutions (R35 and SR I)	Benin should: Implement more fully the Vienna and Palermo Conventions. Transpose WAEMU CFT Guideline into a national law to enable the implementation of the International Convention for the Suppression of the Financing of Terrorism. Implement more fully Resolution 1267(1999). Implement Resolution 1373(2000).
Mutual Legal Assistance (R 32, 36-38 and SR V)	The Beninese authorities should: Strengthen mechanisms to enable the provision of timely assistance; Provide a mechanism to determine the venue of prosecution in the event of jurisdictional conflicts; Clarify the criminalization of predicate conduct; Introduce provisional measures for the confiscation of assets of corresponding value; Institute a fund for seized and confiscated assets, particularly to finance prosecution or social welfare actions for victims Make provision for the sharing of assets as part of cooperation and coordination efforts with other countries Keep statistics on mutual legal assistance
Extradition (R32, 37 and 39, SR V)	The authorities should: Make the condition of dual criminalization more flexible to ensure that it does not hamper the execution of measures Clarify the issue of criminalization of predicate conduct and removal of legal and practical impediments that could hamper extradition Pass a law on FT to make extradition related to this kind of offence possible. Establish statistics to help assess the effectiveness of the extradition process
Other forms of cooperation (R40 et SR V)	The authorities should: Pass the law on the transposition of the WAEMU Guideline on CFT to enable cooperation in this area;

	Assist CENTIF to gain access to international recognition; Put in place a system of information collection related to international cooperation on AML/CFT; Keep reliable statistics on request for mutual legal assistance or extradition received and responses provided the latter to assess the effectiveness of the general cooperation framework

ANNEX 1: LIST OF AUTHORITIES AND ORGANIZATIONS MET

PUBLIC SECTOR	PRIVATE SECTOR	OBSERVATIONS
MINISTRIES (8) - 1-Economy and Finance -2-Justice, Legislation and Human Rights; - 3-Interior and Public Security -4-Foreign Affairs -5-Trade -6-Town Planning, Habitat, Land Reform and Sea Erosion Control - 7-Tourism and Cottage Industry -8- Microfinance **OTHER STRUCTURES OR PUBLIC AUTHORITIES (12)** 1-CENTIF 2-BCEAO 3- Inter-ministerial Committee on Money Laundering 4-Anti-Corruption Observatory 5- General Directorate of Customs 6- General Directorate of National Police 7- General Directorate of National Gendarmerie 7- General Inspectorate of Ministry of Justice 8-Presidents of Administrative Chamber and Chamber of Accounts of Supreme Court 9- Principal Public Prosecutor at Court of Appeal 10- *Substitut Procureur de la République Tribunal de 1ère Instance de 1ère Classe de Cotonou* 11- *Juge d'Instruction du 1er Cabinet du Tribunal de 1ère Instance de 1ère Classe de Cotonou*	**FINANCIAL SECTOR** <u>Banks and FIs</u>: APBEF-B *BOA-Benin *DIAMOND BANK *EQUIPBAIL * PADME **La Poste du Bénin* **Association des Sociétés d'Assurance* <u>Insurance Companies</u> *Union Béninoise d'Assurance-Vie*; <u>Stock Market Actors</u> *Antenne Nationale BRVM* SGI- ACTIBOURSE *Apporteur d'Affaires Samadoss Finances* **DNFBPs** - *Chambre des Notaires* *-Ordre des Avocats* - *Ordre des Experts Comptables et Comptables Agréés* -Casino *-Association des Professionnels en Immobilier-Bénin –APIB-* *-SAGAM: Transport de fonds* - Authorized Manual Foreign Exchange Agency: World Money Market -ONG- ALCRER - Association of NGO Networks in Benin - CEFRONG	The Minister of Finance, Minister of Justice and Minister of Interior personally received members of the evaluation team. The Minister of Justice invited them to dinner which he personally attended.

12-*Greffe du Tribunal de 1st Instance de 1ère Classe de Cotonou - RCCM*	- Travel Agency	

ANNEX 2 : LIST OF LEGAL INSTRUMENTS AND OTHER DOCUMENTS REVIEWED BY EVALUATION TEAM SUPRA-NATIONAL INSTRUMENTS

1. Decision A/DEC/9/12/99, Conference of Heads of State and Government of ECOWAS on the Creation of the Inter-Governmental Action Group against Money-Laundering in West Africa (GIABA)

2. Convention portant création de la Commission bancaire de l'Union Monétaire Ouest Africaine et son Annexe. (Convention Establishing the Banking Commission of the West African Monetary Union and its Annex)

3. Convention portant création du CREPMF et son Annexe, (Convention Establishing CREPMF and its Annex)

4. Règlement Général CREPMF (CRPMF General Regulations)

5. Code CIMA (CIMA Code)

6. Directive CM/UEMOA N° 07/2002 du 19 Septembre 2002, relatif à la lutte contre le blanchiment de capitaux dans les Etats membres de l'UEMOA (CM/UEMOA Guideline 07/2002 of 19 September on Anti-Money Laundering in WAEMU States)

7. Acte Uniforme relatif au Droit des Sociétés Commerciales et du Groupement d'Intérêt Economique (Uniform Act on Commercial Companies and Economic Interest Groups)

8. Règlement R09/CM/UEMOA du 20/12/1998 relatif aux relations financières extérieures Etats membres de l'UEMOA (article 22 à 29) (WAEMU Regulation R09/CM/UEMOA on external financial relationships of WAEMU member-States);

9. Règlement N° 15/2002/CM/UEMOA du 19 septembre 2002 relatif aux systèmes de paiement dans les Etats membres de l'UEMOA (WAEMU Regulation 15/2002/CM/UEMOA on external financial relationships of WAEMU member-States)

10. Règlement N° 14/2002/CM/UEMOA du 19 septembre 2002 relatif au gel des fonds et autres ressources financières dans le cadre de la lutte contre le financement du Terrorisme dans les Etats membres de l'UEMOA (WAEMU Regulation R09/CM/UEMOA on freezing of funds and other financial resources as part of control of Terrorism Financing in WAEMU member-States);

11. Règlement 00004/CIMA du 04/10/2008 relatif à la lutte contre le blanchiment des capitaux et à la lutte contre le financement du terrorisme dans les Etats membres de la CIMA (Regulation 00004/CIMA of 4/10/2008 on anti-money laundering and control of the financing of terrorism in CIMA member-States)

12. Décision N° 14 /2006 CM/UEMOA du 08/09/2006 portant modification de la Décision n° 12/2005/CM/UEMOA du 04/07/2005: relative à la liste des personnes, entités ou organismes visés par le gel des fonds et autres ressources financières dans le cadre de la lutte contre le financement du terrorisme dans les Etats membres de l'UEMOA; (Decision 14 /2006 CM/UEMOA of 8/9/2008 on the amendment of Decision12/2005/CM/UEMOA of 4/7/2005 relating to the list of persons, entities or organizations concerned by the freezing of funds and other resources under the control of the financing of terrorism in WAEMU member-States)

13. Directive N° 04/2007/CM/UEMOA du 4 juillet 2007 relative à la lutte contre le financement du terrorisme dans les Etats membres de l'UEMOA (Guideline 4/2007/CM/UEMOA of 4 July 2007 on the control of the financing of terrorism in WAEMU member-States)

14. Instruction N° 01/2007/RB de la BCEAO du 2 juillet 2007 relative à la lutte contre le blanchiment des capitaux. (Directive 1/2007/RB of the BCEAO of 2 July 2007 on anti-money laundering)

15. Instruction Nº 01/2006/SP de la BCEAO du 31 juillet 2006 relative à l'émission de monnaie électronique et aux établissements de monnaie électronique (Directive 01/2006/SP of the BCEAO on the issuance of e-money and establishment of e-money)

National Legal Instruments

1. Constitution

2. Loi cadre N° 90-018 du 27 juillet 1990 portant réglementation bancaire en république du Bénin (Parent Act 90-018 of 27 July 1990 on bank regulation in the Republic of Benin)

3. *Loi N° 97-027 du 08 août 1997 portant réglementation des IMCEC*

4. Loi N° 86-05 du 26 février 1986 relative aux contentieux des infractions au contrôle des changes. (Parent Act 86-05 of 26 February on litigations relating to exchange control violations)

5. Loi N° 2006-14 du 31 Octobre 2006 portant lutte contre le blanchiment de capitaux au Bénin (Law 2006-14 of 31 October 2006 on money laundering in Benin)

6. Loi 97-025 du 18 juillet 1997 portant sur le contrôle des Drogues et des Précurseurs (Law 97-025 of 18 July 1997 on the control of Narcotics and Precursors)

7. Décret N° 2006-752 du 31 décembre 2006 portant création, attributions, organisation et fonctionnement d'une Cellule Nationale de Traitement des Informations Financières (CENTIF); Decree 2006-752 of 31 December 2006 on the creation, powers, organization and functioning of a National Financial Information Processing Unit (CENTIF)

8. Code Pénal (Criminal Code)

9. Code de Procédure Pénale: (Order 25/PR/MJL of 7 August 1967 on Criminal Code Procedure)

10. Ordonnance N° 54/PR/MFAE/DD du 21-11-1966 portant code des douanes en République du Bénin (Order 54/PR/MFAE/DD of 21-11-1966 on the customs code of the Republic of Benin):

11. Code Pénal de l'Afrique Occidentale Française (Criminal Code of French West Africa);

12. Code des Douanes (Customs Code)

13. Décret n° 99-141 du15 Mars 1999 portant création et attributions de l'Office Central de Répression du Trafic Illicite des Drogues et des Précurseurs (OCERTID) (Decree 99-141 of 15 March 1999 on the creation and powers of the Central Agency for the Suppression of Trafficking of Narcotics and Precursors)

14. Décret N° 2005-812 du 29 décembre 2005 portant nomination de Magistrats (Decree 2005-812 of 29 December 2005 on the appointment of Judges)

15. Décret 2008-248 du 7 mai 2008 portant nomination des membres de la CENTIF. (Decree 2008-248 of 7 May 2008 on the appointment of CENTIF members)

16. Arrêté ministériel 2008 n°120/MEF/CENTIF du 18 février 2009, fixant un modèle de Déclaration d'Opérations Suspectes (D.O.S) (Ministerial Order 2008 120/MEF/CENTIF of 18 February 2009 defining a Suspicious Transaction Reporting (STR)

Reports and Other Documents

1. Rapport Annuel 2008 de la Commission Bancaire (Banking Commission 2008 Annual Report)

2. Rapport Annuel 2008 du CREPMF (CREPMF 2008 Annual Report)

3. Transparency International 2008 2009 Annual Report

4. Rapport Semestriel de Surveillance Multilatérale de la Commission de l'UEMOA (Décembre 2008) (WAEMU Multilateral Supervision Commission Half-Yearly Report December 2008)