INTER-GOVERNMENTAL ACTION GROUP AGAINST
MONEY LAUNDERING IN WEST AFRICA

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

BURKINA FASO

NOVEMBER 2009

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List of Acronyms and Abbreviations

AML	Anti-money Laundering
AML/CFT	Anti-money Laundering and Combating the Financing of Terrorism
BAP	Bank Accounting Plan
BC	Banking Commission
BCEAO	Central Bank of West African States
BP	Basic Principle
BRVM	*Bourse Régionale des Valeurs Mobilières*
CAC	*Commissaire aux comptes* (Auditors)
CB-UMOA	*Commission bancaire de l'UMOA* (Banking Commission-WAMU)
CCS/SFD	*Cellule de Contrôle and de Surveillance des Systèmes Financiers Décentralisés*
CDM	*Conseil des Ministres* (Council of Ministers)
CENTIF	*Cellule Nationale de Traitement des Informations Financières* (Financial Intelligence Unit)
CFA	CFA Franc, currency issued by the BCEAO
CFAF	Franc of the African Financial Community
CFT	Combating the Financing of Terrorism
CMU	*Conseil des ministres de l'UEMOA* (WAEMU Council of Ministers)
CRCA	*Commission Régionale de Contrôle des Assurances* (Regional Insurance Control Commission)
CREPMF	*Conseil Régional de l'Épargne Publique and des Marchés Financiers*
DFS	Decentralized Financial System
DNA	*Direction Nationale des Assurances*
ECOWAS	Economic Community of West African States
EUR	Euro
FA FATF	Financial Agency Financial Action Task Force
FSAP	Financial Sector Assessment Program
FT	Financing of Terrorism
G	Giga (billion)
GDP	Gross Domestic Product
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
I-	Instruction
IMCEC	*Institutions mutualistes ou coopératives d'épargne et de crédit* (Mutual-benefit Savings and Lending institutions or Cooperatives)
Inc.	Incorporated Company
LI	Lending Institution
M	Million
MD	Managing Director
MFE	Micro-Finance Establishment
ML	Money Laundering
OHADA	Organization for the Harmonization of Business Law in Africa
OPCVM	*Organisme de placements collectifs en valeurs mobilières*
R-	Regulation
SGCB	General Secretariat CB-WAMU
SGI	*Société de gestion and d'Intermédiation*

SGP	*Société de Gestion de Patrimoine*
STR	Suspicious Transaction Report
UEMOA	*Union Economique and Monétaire Ouest Africaine* (West African Economic and Monetary Union)
UMOA	*Union Monétaire Ouest Africaine* (West African Monetary Union)
US$	United States Dollar

MAP OF BURKINA FASO



INTRODUCTION

General Information and methodology used for the Evaluation of Burkina Faso

1. The evaluation of Burkina Faso's anti-money laundering and counter financing of terrorism regime (AML/CFT) was conducted on basis of the Forty Recommendations of 2003 and the Nine Special Recommendations of 2001 on the financing of terrorism developed by the Financial Action Task Force (FATF). It was also prepared on the basis of the 2004 Methodology.

2. The evaluation was conducted on the basis of the laws, regulations and other documents delivered by regional institutions (notably the Central Bank of West African States –BCEAO -, the Banking Commission of the West African Monetary Union – CB of the UEMOA -, and the Inter-Governmental Action Group against Money Laundering in West Africa – GIABA -) and by the national authorities of Burkina Faso, as well as the data collected during the visit to the country from 26 January to 6 February 2009. During its visit, the evaluation team met officials and representatives of all competent government sectors and the private sector (a list of the organizations met is included in the annex to the report).

3. The evaluation was conducted by a team of evaluators from the World Bank, including Pierre-Laurent Chatain (Financial Expert and Head of Mission), Jean-Pierre Brun (Legal Expert), Boudewijn Verhelst (Consultant and FIU Expert and Criminal Law Specialist) and Elpidio Freitas, a GIABA observer. The experts focused their analyzes on the Burkinabe AML mechanism while taking into account the regional and regional framework of UEMOA on anti-money laundering and combating the financing of terrorism. To that end, the team met the authorities of BCEAO in Burkina Faso. They analyzed the institutional framework, the laws and regulations on AML/CFT, regulations, guidelines and other obligations, as well as the regulatory system or other system in force in Burkina Faso to fight against money laundering and financing of terrorism. The capacity, implementation and efficiency of all these mechanisms were also evaluated. This report proposes a synthesis of the AML/CFT measures in force in Burkina Faso on the date of the on-site visit or immediately after. It describes them and analyzes them, and makes recommendations on the actions to take to improve certain aspects of the system (Cf. Table 2). It also indicates the level of compliance of the country with the 40+9 Recommendations of FATF (Cf. Table 1).

4. The report was prepared by the World Bank in the more general framework of the Financial Sector Assessment Program (FSAP) of Burkina Faso. Besides, the report will be submitted in November 2009 to the plenary session of GIABA to be validated as a Mutual Evaluation Report of the regional group. It is important to indicate that the report is taking up in a number of items, particularly regarding the system of supervision and control of financial institutions (Section 3.10 of the Report), the observations and comments that the World Bank made in previous evaluation reports (Reports of Mali[1], Niger and the report on anti-money laundering in the UEMOA zone[2]). Indeed, since the structure of the supervision and regulation of financial activities (banks, insurance companies and stock exchanges) is the same in all countries of the sub-region, the mission deemed it relevant to take responsibility for its previous works. Similarly, given the fact that the Burkinabe anti-money laundering Act of 2006 incorporated the regional AML standards, several sections of the report took inspiration from the observations included in the WAEMU anti-money laundering report.

[1] Approved by the plenary session of GIABA in November 2008.

[2] Currently being reviewed by BCEAO services.

5. It should finally be noted that in accordance with the methodology of evaluation of compliance with the 40 Recommendations and 9 Special Recommendations of the FATF[3], the acts were considered as "acts and regulations"[4], the instructions of BCEAO as "other enforceable means" and the regional guidelines as non-enforceable, as part of the rating process assessing compliance with the different recommendations.

SYNTHESIS OF THE EVALUATION

MAIN FINDINGS

6. Burkina Faso criminalized money laundering by passing Act No. 026-2006/AN of 28 November 2006 (AML Act). However, the country has no Act for combating the financing of terrorism. Besides, the system of freezing, seizure and confiscation for money laundering offences has not been enforced. No money laundering case has resulted in legal proceedings in Burkina Faso.

7. A Financial Intelligence Unit (CENTIF) has been created and its members appointed. The Unit has acquired premises and started equipping itself. However, at the time of the mission, it was not yet operational. Only a single case of suspicion was transmitted to the CENTIF and according to the data collected by the mission, the case does not seem to have any link with a money laundering operation.

8. In Burkina Faso, the implementation of the AML preventive measures by financial institutions remains highly embryonic. The due diligence requirements instituted by Act No. 026-2006 are incomplete and vague. Regarding the obligations to report suspicious transactions to the CENTIF, only banks were aware of their responsibility in this area. Responsibility for supervision of compliance with the AML standards within banks lies with the regional bodies. On-site controls were carried out, but were not detailed enough and must therefore be enhanced[5]; regarding on-site and off-site oversight in other financial sectors (insurance, financial markets, micro-finance), they are still inadequate. Moreover, the application of the AML standards by non-financial professions (lawyers, notaries) is non-existent.

9. The mutual legal assistance system is well organized and enables the authorities of Burkina Faso to provide substantial and quite complete assistance to foreign legal authorities. The Legal Framework of extradition in the area of money laundering is adequate and largely in conformity with international standards. Cross-border cooperation with the CENTIF is, on the other hand, limited by uncertainties on its ability to collect data from external correspondents on request, from a FIU situated in a non-UEMOA country, for example. In addition, the CENTIF does not have the legal capacity to exchange information on financing of terrorism.

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[3] "The explanatory notes indicate that "the basic obligations enacted by Recommendations 5, 10 and 13 should be formulated in a legislative and regulatory text". The expression "act or regulation" refers to the primary and secondary legislation such as acts, decrees, implementing laws or other similar provisions, promulgated or authorized by a legislative body and which imposes obligations accompanied by sanctions if they are not respected. By other constraining means, they refer to guidelines, instructions or other documents or mechanisms providing for operative clauses the non-respect of which attract sanctions, and which are promulgated by a competent authority (for example, a financial monitoring authority) or a self-regulatory organization. In both cases, the sanctions in case of non-compliance should be efficient, proportional and dissuasive (see Recommendation 17). The criteria of the methodology concerning Recommendations 5, 10 and 13, which are basic obligations, are marked with an asterisk (*)." Extract from the Methodology for evaluation of compliance with the 40 Recommendations and 9 Special Recommendations of FATF.

[4] As were the directly enforceable regional acts, such as the CIMA regulations.

[5] According to the response to this report given by Burkina Faso, the controls of WAEMU BC in the area of AML/FT, given the recent adoption of the relevant texts, concerned mainly the development and implementation of an internal money laundering control program in banks visited. The subsequent missions of the UMOA BC will no doubt be more profound depending on the indications given by the Burkinabe authorities.

10. Consequently, the AML/CFT apparatus is not yet operational in Burkina Faso. To that end, the authorities should (i) acquire the legal and repressive arsenal for combating FT, (ii) make the CENTIF really operational by providing it with the necessary human and technical resources, (iii) adopt a national AML/CFT strategy by involving all the actors concerned, (iv) consolidate the AML/CFT Legal Framework through the dissemination of instructions to the professions concerned, and finally (iv) sensitize all the sectors on the importance of complying with the AML/CFT standards.

LEGAL SYSTEMS AND RELATED INSTITUTIONAL MEASURES

11. Article 55 of the Drug Code and Act No. 026-2006/AN of 28 November 2006 (AML Act), which define money laundering in different terms, constitute the legal system for the prevention and suppression of money laundering in Burkina Faso.

12. Offences related to laundering the proceeds from illegal trafficking of narcotics were framed in positive law by the 1996 Criminal Code and amended by Article 55 of the 1999 Drug Code.

13. In a more general framework, the AML has transposed into the national law Regional Guideline No. 07/2002 adopted by UEMOA Council of Ministers on 19 September 2002. The Act recalls the provisions of the Single Act, which was adopted on 20 March 2003 by the Council of Ministers of the Union (CMU), on the proposal of the BCEAO, in order to facilitate the adoption of AML acts at the national level and, thereby, ensure uniformity of the general principles in the entire region.

14. Act No. 026-2006/AN specifies the applicable enforcement measures as well as natural persons and legal persons, guilty of the general money laundering offence, and provides for a system of confiscation of the proceeds of the offence as well as conservatory measures (freezing and seizure) and defines the preventive and operational framework, particularly that of the CENTIF, as well as the legal framework of the international cooperation (mutual legal assistance and extradition).

15. This legal provision, however, has several weaknesses; it does not consider the financing of terrorism as an underlying offense of money laundering and does not incriminate insider trading. In the absence of statistical data, there are no mechanisms for regular evaluation of the efficiency of Act No. 026-2006. More generally, it was observed that there was ignorance of the Act, both at the level of the authorities in charge of its implementation and the private sector.

16. Neither Article 55 of the Drug Code nor Act No. 026-2006/AN was enforced, since no money laundering case was handled by the criminal proceeding authorities. In this regard, it should be recalled that Burkina Faso is one of the last UEMOA countries to pass an AML Act, 4 years after the regional guideline. It is, therefore, urgent that the mechanisms set forth by law be put in place so as to make the nation's anti-money laundering mechanism fully operational, as soon as possible.

17. The provision for freezing, seizure and confiscation for money laundering offences has never been enforced. Concerning the financing of terrorism, Regional Regulation No. 14/2002/CM/UEMOA puts in place a mechanism for freezing of funds and other financial resources in application of Resolutions 1373 and 1267 of the UN Security Council. This Regulation, directly applied in the States of the zone, is highly incomplete and does not allow the freezing of all funds and other property belonging to natural persons and entities designated by the Sanctions Committee. Moreover, it only targets lists established by the Security Council and does not put in place a procedure for decision on the lists submitted by third States.

18. The UEMOA Council of Ministers adopted a guideline on 4 July 2007, which sets the broad orientations of a future preventive and repressive mechanism in the fight against the financing of terrorism. Even if this text has many weaknesses, its transposition into adapted conditions would enable Burkina Faso to make considerable progress in the harmonization of its legislation. The guideline specifies that the countries have six months to implement it. A bill is currently under consideration, but pending its adoption, the legal system is non-existent in the absence of legislation applicable at the time of the mission.

19. Burkina Faso created a National Information Processing Unit, the CENTIF, in application of Article 16 of Act No. 026-2006/AN of 28 November 2006 "on the fight against money laundering". CENTIF is an administrative unit playing the role of the FIU mainly in charge of handling reports of suspicion of money laundering (also known as Suspicious Transaction Reports-STRs). The CENTIF is just starting its activities and has not yet become really operational, even though its members have been appointed.

20. The law enforcement services are adequately trained to perform their duties in terms of investigations into common Act crimes. On the other hand, the phenomenon of money laundering is still not well apprehended and it constitutes a major challenge, for both magistrates and investigators.

21. The customs have no specific attributions in the fight against money laundering and combating the financing of terrorism. When they are confronted with acts likely to be associated with this type of crime, they transmit the information to the police services. In addition, Burkina Faso has not yet instituted a specific system of declaration or report of information as part of AML/CFT.

PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

22. In Burkina Faso, implementation of preventive AML measures by financial institutions remains is still at an early stage. The due diligence requirements instituted by Act No. 026-2006 are incomplete and frequently vague. This situation makes it impossible for subjected persons to understand the nature and sphere of their obligations, whereas these themes are new and the guidelines provided by both the national and regional authorities, particularly BCEAO, are also minimal[6]. The mission noted, in particular, the highly-limited obligations of identification (notably concerning the beneficial owner), as well as the lack of duty to seek information on the purpose and nature of the business relationship, to perform ongoing due diligence and enhanced due diligence measures (notably for politically exposed persons), obligations on existing customers as well as specific measures for correspondent banking and electronic transfer activities.

23. The provisions in the area of Suspicious Transaction Reports as well as their implementation call for reservations. Their inaccuracy is also prejudicial whereas they are completely new for most of the subjected institutions. Of the institutions met by the mission, only banks were aware of these obligations of declaration. The other persons of the financial sector were ignorant, at the time of the mission, of the existence of an obligation to report suspicions to the FIU, as provided for under Article 24 of the above-mentioned Act. Moreover, in the absence of an operational CENTIF, the subjected institutions are not, in practice, in a position to declare their suspicions. Consequently, either these institutions declare their suspicions to the BCEAO or they transmit the suspicious cases to their parent company when they belong to a large group. In one case, an institution acknowledged referring suspicions cases to its department for "Ethics".

6 BCEAO has indeed issued instruction 01/2007/RB, which only applies, however, to banking institutions.

24. Knowledge of obligations in the area of AML is weak within the banking sector, despite the efforts of the Association of Professional Banks and Financial Institutions of Burkina (APBEF-B), which "lobbied" to get the national authorities to vote Act No. 026-2006 within the shortest possible time. That is how the APBEF-B defended the AML bill before the Parliamentarians, some of whom did not clearly perceive the challenges facing the country. The association also disseminated Act No. 026-2006 in its bulletin (*Le Financier of Burkina #005*) and created within it a task force in charge of reflecting on the new forms of fraud such as cybercrime[7]. It also sensitized its members on the risks of money laundering in money transfer operations and the exchange sector. Finally, the APBEF-B strived to ensure the appointment of CENTIF correspondents in each bank.

25. Under these circumstances, it should be observed that only a few banks have, for example, copies of the texts in force. Knowledge of the AML obligations is, moreover, non-existent in the other compartments of the financial sector (micro-finance institutions, postal services and insurance companies, notably). The texts were not communicated to the subjected persons and no important awareness campaign has been carried out in Burkina Faso.

26. Generally, the implementation of the AML preventive mechanisms in the banking sector is inadequate. Certainly, all the banks met by the mission have adopted internal mechanisms concerning Know Your Customers principles, record keeping, detection and reporting of suspicious transactions. However, the reading of the documents provided to the mission shows that the internal standards are incomplete and rarely updated[8]. Only a small number of banks have really started assuming ownership for the AML obligations. The mission also observed that for several interlocutors, the AML was limited to the respect of the thresholds for financial transactions with foreign countries[9] or to the detection of fake bank notes at the teller windows.

27. Moreover, according to one local bank, resistance to reforms of the "old practices and/or habits" is today harming the efficiency of the controls. Indeed, the "AML culture" is not widespread among professionals, who have not yet acquired the reflexes of "suspicion". This may be attributed to several factors: (i) high volume of transactions conducted in cash; (ii) a partial or imperfect knowledge of the customers and their activity; (iii) considerable reluctance from customers to provide documents that would help justify bank transactions, from an economic point of view; (iv) poorly mastered trends in the operation of accounts of Associations, NGOs or Projects, (v) finally, weak controls of the use of money transfer systems and issue of foreign bank notes (EUR or US$). To that must be added the case of homonyms, which is very common in the country, thus seriously complicating the work of the agents[10].

28. If the national and regional texts prescribe a general obligation to financial institutions to establish internal policies and procedures for combating money laundering, it should be observed that micro-finance institutions (MFIs) – highly-active in Burkina Faso – are ignorant of AML Act No. 026-2006. The 2007 BCEAO Instruction was effectively disseminated at all levels through the professional association of MFIs, but neither the national Act nor the United Nations lists of nations under Resolution 1267. In the stock market sector, the same observation is also made, even if the risk is less,

[7] It is not rare that swindle or fraud attempts are made on the Internet, using fake documents bearing the logo or brand name of local banks. That is why a local bank informed the mission that all the data, instructions, payment orders, transactions and other documents are forwarded through secured systems like the SWIFT or RTGS.

[8] For example, the internal instructions make reference to the community texts and do not mention National Act 026-2006.

[9] As long as the transfer is made within the thresholds authorized by the exchange regulations, the AML standards are respected. Hence, one interlocutor indicated that the repetition of the international money transfer operations for the same person was not suspicious as long as it complied with the thresholds fixed by the authorities.

[10] The mission thus verified that during one meeting, out of 5 persons interviewed, 3 had the same surname.

considering the fact that the country has only one management and intermediation company. Finally, in the insurance sector, efforts have been made to comply with the AML standards – often those of the parent company, in the case of companies belonging to foreign groups – but discussions show that the national Act and the CENTIF were unknown.

29. Funds transfer activities through banks have experienced a rapid development during these past years. If they meet a strong expectation on the part of the economic operators who find in these services a rapid and economic tool for money transfer, their rapid growth arouses concerns with regard to ML. Many local banks have, indeed, delegated to sub-agents, the reception/issue of Western Union (WU) type transfers. These sub-groups include natural persons, transit agents, MFIs as well as NGOs, notably religious NGOs. Certainly, training activities have been organized by WU for its partners, including in the area of AML. These sub-delegations should, moreover, be approved by WU, which conducts on-site visits. Furthermore, nothing shows that the banks verify that these sub-delegations comply with the preventive AML obligations.

30. In this regard, the mission had access to funds transfer invoices and observed that some sections were not correctly served (no address of recipient, indication of a mere postal box in the section for the address of the sender, purpose of the transfer not specified). A local bank also indicated that its AML instructions were not brought to the knowledge of its WU delegations. Besides, it should be stressed that the WU networks are used not only for transfers from natural persons to natural persons but also by traders who settle, in this way, their commercial operations, notably importation transactions. Hence, some economic operators "bypass" traditional banking networks in conducting their import transactions, using the WU network, which is less strict on the mandatory support documents that should be provided in connection with commercial transactions with the external world. In this regard, a bank informed to the mission that the use of false support documents is widespread. There are also serious reasons of concern with regard to ML/FT risks, since these international money transfer operations are often made by sub-delegates of banks that are not subjected to any external supervision. Certainly, supervision of compliance with the AML standards (particularly those relating to customer identification) is ultimately at the charge of the delegating bank. Indeed, these banks do not always ensure that their sub-delegates actually comply with the AML rules.

31. Under these conditions, it seems urgent that the authorities sensitize all the actors involved in AML activities on the relevant existing obligations. It starts with the communication of all the texts in force to the different subjected persons, as well as on sensitization actions that would help ensure a common understanding of the objectives and provisions of these texts. It is also necessary to complete rapidly the provision in place in order to create complete and clear due diligence requirements and integrate the CFT dimension into these obligations. The CENTIF, for its part, should rapidly be engaged in the field, in order to make known its interlocutors, who are either unaware of it or mistake it for the BCEAO.

32. Concerning the supervision of banks and other financial institutions, it is the Banking Commission of the Union that has the responsibility to control the compliance with the AML/CFT obligations. To that end, it has powers to impose administrative or disciplinary sanctions, including in the areas of violations of the AML/CFT standards. Under these conditions, the CB has played a reduced role in the area of prudential monitoring of money laundering. On-site investigations were conducted in Burkina, but they do not seem to be detailed enough. It appears urgent that the CB intensifies its controls and provides adequate and in-depth training of its staff in the area of AML/CFT and that the latter are provided with appropriate methodological tools.

33. The regulation and specific monitoring of micro-finance companies or decentralized financial institutions (DFIs) falls on the MEF and, since 2008, on the CB and the BCEAO for the umbrella

structures. The human resources of the MEF for the monitoring of these structures are clearly inadequate, despite the support provided by the BCEAO. Moreover, oversight has been exercised and strictly geared towards the respect of the prudential regulations and thus, the approach to the money laundering risk has not been integrated. An awareness campaign of the DFIs on AML/CFT risks and their preventive obligations also seems necessary.

34. In the insurance and financial market sectors, AML supervision seems inadequate.[11] After the mission, CIMA adopted Regulation 0004/CIMA/PCMA/PCE/SG/08, which defines the procedures that apply to insurance organizations within CIMA member-states as part of AML/CFT policy. However, the mission was unable to assess its level of implementation. Moreover, CIMA suffers from low resources, and the conditions of coordination between its secretariat and its national delegations lack clarity. In the financial market sector, the staff of the CREPMF is not adequately trained on issues of money laundering and the sphere of the powers of investigations of its inspectors is not clearly defined, particularly on the powers for accessing the necessary documents. If investigations are conducted among actors of the market, none has been specifically devoted to the AML.

35. Physical transfer of capital is a strong reality in the UEMOA zone, and in Burkina Faso as elsewhere. The existence of important Diasporas, notably Nigerian and Ivorian Diasporas, the pre-eminence of cash in the economy and the lack of resources for controlling the internal and external borders of the zone render difficult the application of the regulation on exchange control. Besides, the regional provision in force is not in conformity with the relevant international standards and does not help to ensure the prevention of money laundering nor observation of illegal financial flow.

36. The exchange activity in Burkina Faso is highly active and is done mainly through two channels. The formal channel is that of banks and authorized money changers. The latter have been the subject of audit missions conducted jointly by the MEF and the BCEAO. However, these controls only concerned the respect of the exchange regulation and not on compliance with the AML standards.

37. The informal money exchange channels are also a source of concern. The networks operate mainly between Burkina Faso and Europe, and the other African countries, particularly West African countries. These networks are used by the Burkinabe Diaspora, which finds through a multitude of illegal operators, a convenient, rapid and inexpensive means of money transfer from BF to abroad and vice-versa. These networks are also used for the settlement of importation transactions in order to side-step the foreign exchange regulation, which requires the provision of supporting documents, such as invoices or prior import declaration for the transfer of funds exceeding CFAF 300,000.

PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS (DNFBPS)

38. The dissemination and institution of preventive standards in the sector of DNFBPs is non-existent. Act No. 026-2006/AN of 28 November 2006 integrates the designated non-financial professions and businesses as defined by the FATF in the overall money laundering control system. It defines their due diligence and reporting obligations, with particular focus on casinos and gaming institutions. The weaknesses identified for the non-banking financial professions are largely applicable to designated non-financial businesses and professions. Considerable weaknesses are to be noted: measures for customer identification, occasional customers, beneficial ownership and ten-yearly record keeping are not applicable to DNFBPs; these professions are not subjected to the establishment of AML internal policies and procedures adapted to their activities.

[11] A local insurance company indicated that the last verification dates back to 2005 and that it did not treat the AML.

39. Besides, the implementation of the legislation is ineffective. No effort has been made to raising awareness in these professions. Their responsible authorities and their self-regulatory organizations have so far not undertaken any action.

LEGAL PERSONS AND LEGAL ARRANGEMENTS

40. Burkina Faso is a member of OHADA, and the applicable commercial law is, therefore, largely of regional inspiration. The Uniform Act Relating to the General Commercial Law (UAGCL) and the Uniform Act Relating to Commercial Companies and Economic Interest Groups (UACCEIG) govern the legal system of commercial companies and conditions of their creation/registration in States of the UEMOA zone. Article 27 of the UAGCL imposes on targeted companies and other legal persons the Uniform Act on commercial companies and economic interest groups to require their registration, within the month of their constitution, at the Trade and Credit Registry of the jurisdiction where their Headquarters is situated.

41. The practical respect of these obligations and the effective update of the required data constitute a challenge, given the 4,000 annual registrations to be managed manually, for lack of computerization and in the absence of a central database. The highly important share of the informal economy renders difficult the acquisition of adequate, pertinent and up-to-date data on economic operators and their effective transactions.

NON- PROFIT ORGANIZATIONS

42. AML Act No. 026-2006/AN imposes obligations of prevention and detection of money laundering for non-profit organizations. In this regard, these organizations are subject to due diligence obligations as well as a obligations of reporting of suspicious transactions to CENTIF. Besides, the CFT Guideline requires that States should exercise over the organizations specific due diligence requirements. These measures include notably the registration of all not-for-profit organizations in the register opened by the responsible authority, the obligation imposed on these organizations to record in a register all donations made to them, including identification of the donor, and make the register available to the CENTIF and the competent authorities.

43. The monitoring of NGOs is both a necessity and a challenge, given the risks associated with the extension of their activities in the real estate, money transfer and exchange sectors, the facilities they enjoy when they have signed a framework agreement with the State, and the difficulties encountered by the competent services in the assessment and monitoring of their financial situation. Presently, the controls and monitoring of NGOs is quite inadequate, given the risk they represent in the area of money laundering and financing of terrorism.

NATIONAL AND INTERNATIONAL COOPERATION

44. The legal mutual assistance system is well established and enables the authorities of Burkina Faso to offer substantial and quite complete assistance to foreign legal authorities. In general, the principle of dual criminality does not apply in the area of legal mutual assistance, facilitating a flexible and vast approach to the rogatory commissions, except for requests for execution of confiscation judgments. There is also a serious legal impediment regarding the possibility of offering legal assistance, when the request concerns property of equivalent value, as the seizure and confiscation of actual equivalent values are not part of the body of laws of Burkina Faso.

45. The Legal framework of extradition in the area of money laundering is adequate and largely in conformity with international criteria. The principle of dual criminality, both for money laundering and financing of terrorism, may constitute a cause for refusal, either because of lack of concordance between the underlying offenses, or through lack of a crime of financing of terrorism.

46. Cross-border cooperation of the CENTIF is limited by uncertainties over its ability to collect data from external correspondents on request, for example, from a FIU located in a non-UEMOA country. In addition, the CENTIF does not have the legal capacity to exchange data on the financing of terrorism.

OTHER ISSUES

DETAILED EVALUATION REPORT

1.1 General Information

47. Burkina Faso, a "Country of Men of Integrity" in *Moré* language, is a West African State, which became independent on 5 August 1960, called Upper Volta until 4 August 1984.

48. Burkina covers an area of 274,187 Km2, with an estimated population of 14.077 million inhabitants, according to the 2006 General Population and Housing Census. Situated in the heart of West Africa, Burkina shares borders with Mali in the North, Côte d'Ivoire in the West and South-West, Ghana, Togo and Benin in the South, and Niger in the East. Apart from the capital, Ouagadougou (1,475,223 inhabitants), the main towns are Bobo-Dioulasso (489,967 inhabitants), Koudougou (138,209 inhabitants), Ouahigouya, Banfora, Kaya, Dédougou, Fada, Tenkodogo, Gaoua

49. The neighborhood with Côte d'Ivoire, land of immigration for exploitation of coffee and cocoa plantations has drained to this country a good part of the Burkinabe population, which serves as labor for the development of Ivorian agriculture. Historically, part of former Upper Volta was, in this regard, physically attached to Côte d'Ivoire.

50. The territory is divided administratively into thirteen (13) regions, forty-five (45) provinces, three hundred and fifty (350) districts, three hundred and two (302) rural communes and forty-nine (49) urban communes.

51. Burkina ranks 176th out of 177 countries in the UNDP classification of the Sustainable Human Development Index of 2007.

52. The economic activity is characterized by the preponderance of the tertiary sector: 46.9% in 2007, followed by the primary sector often affected by climatic conditions: 29.3% and the secondary sector: 23.8%.

53. According to the latest estimation by BCEAO, GDP was CFAF 3,626.06 billion in 2008, representing an increase of 12.2% compared to 2007. In real terms, the expected economic growth would be around 4.5% as against 3.6% in 2007. This growth would be driven by the growth in agricultural production, the boom of production of extractives industries (mainly gold) and manufacturing industries, public works as well as the dynamism of the telecommunications sector.

54. The mining sector comprises 4 industrial gold mines, in activity, exploited by Canadian and British companies. Traditional gold miners (gold diggers) basically in the informal sector also exist in the mining sector. The State is trying to organize into purchasing and export offices, the traditional gold sector. In 2008, 4.9 tons of industrial gold and 0.5 tons of traditional gold were produced.

55. The main export products of Burkina are cotton, stock breeding products and gold.

56. Under the terms of the Constitution, Burkina Faso is a single and secular democratic State. Faso is the republican form of State. The legislative power belongs to a unicameral Parliament called National Assembly. The Executive power is represented by the President and his government. The highest legal authority is the Court of Cassation since 2000, the year when the Supreme Court was dissolved, following the adoption of several organic laws, namely Law 13/2000/AN on 09 May 2000, on the

organization, competence and functioning of the Court of Cassation and its relevant procedure (for more details, see Annex 3 of the report).

57. At the monetary level, Burkina is a member of the West African Monetary Union (UMOA), instituted by the Treaty of 14 November 1973 and which comprises eight (8) States (1). This Union is characterized, notably by the transfer of the power of monetary issue (Franc of the African Financial Community - CFA, common monetary unit), to the common issue Institute, the Central Bank of West African States (BCEAO) whose headquarters is based in Dakar and which also manages the reserves of external assets of the member States.

58. Burkina belongs to the Franc Zone, which is basically characterized by:

- The convertibility of currencies issued by the different issuing institutes of the Franc Zone is guaranteed without *a priori* limitation by the French Treasury.
- Fixed rates: currencies of the Zone are convertible among themselves, at fixed rates, without limitation of the amounts. A fixed rate has also been defined in relation to the euro, the common European currency.

59. Burkina is also a member of the West African Economic and Monetary Union (UEMOA), instituted by the Treaty of 10 January 1994 and which aims at completing the UMOA Treaty, comprising the same member States. Decisions of the UEMOA bodies are directly applicable when they take the form of a Regulation or Decision.

60. Burkina is also a member of the Economic Community of West African States (ECOWAS), the Inter-Governmental Action against Money Laundering in West Africa (GIABA). GIABA is an organization created in 1999 by the Conference of ECOWAS Heads of State and Government to combat with greater efficiency in the sub-regional framework, the money laundering scourge, and the financing of terrorism, following the amendment of its Statute in 2006.

61. In the framework of the participation in the policy of integration through concentric circles, Burkina also belongs to the Organization for the Harmonization of Business Act in Africa (OHADA), the *Conférence Inter Africaine du Marché des Assurances* (CIMA), the Franc Zone, African Union (AU).

62. Burkina has subscribed to the African Peer Review Mechanism (APRM), a mechanism of commitment in favor of the good governance standards put in place at the level of the African Union and which has twenty-seven members. At the universal level, Burkina is a member of the United Nations Organization (UNO). Burkina has ratified the 2003 United Nations Convention against Corruption (Merida Convention). As part of the fight against corruption, Burkina instituted at the end of 2008, a Higher State Control Authority (ASCE), an independent administrative authority in charge of contributing to the fight against corruption.

1.2 General situation of money laundering and financing of terrorism

63. The mission tried to appreciate these phenomena from the scarce national data available, as well as the existing public data on Burkina Faso and West Africa. As of the date of the mission, the statistics provided by the Ministry of Justice made no mention of any condemnation or ongoing cases in the area of money laundering or financing of terrorism as the latter is not yet considered as a crime. However, the authorities declared that since the departure of the mission, a report on the declaration of suspicion had been transmitted on 19 August 2009 to the District Attorney of Burkina Faso at the Ouagadougou High Court of Justice, which entrusted it to an investigating judge.

64. However, the statistics on activities of the Prosecution Department helped to observe that the criminal environment is marked by considerable illegal trafficking, described further in this section. Hence, the number of new cases registered for drug smuggling has more than doubled between 2003 and 2007, going from 94 to 230. During the same period, cases of kidnapping and child trafficking virtually tripled (from 37 in 2003 to 87 in 2007). Each year, there are on the average, more than 30 new cases of embezzlement, more than 150 new cases of serious theft, about 150 new cases of forgery, about 100 new violations of the legislation on arms, about thirty new cases of crime syndicates. The rate of corruption is perceived as high.

65. West Africa is particularly vulnerable to criminal phenomena as the region is increasingly opening up to international trade, as a result of the globalization. The development of crime is indeed facilitated by (i) the existence of past and present armed conflicts in the sub-region (Côte d'Ivoire) or within its close neighbors[12] (ii) the weakness of the State (notably in terms of control and suppression) associated, notably with the lack of resources and corruption, (iii) poverty, which facilitates the recruitment by criminal groups (drug smugglers notably) as well as (iv) the importance of the informal sector and the widespread use of cash as means of payment.

66. Anti-money laundering and combating the financing of terrorism is a new subject in Burkina Faso. Indeed, the anti-money laundering Act is barely two years old (cf. above). The repressive system (Police, Justice, and Customs Department) for a long time deprived of adapted relevant, normative and structural tools is not yet operational. The overall strategy for combating the financial aspects of organized crime is yet to be developed. In this regard, the mission encourages the national authorities to pursue their efforts in this sense.

67. The underlying money laundering crime is presented as follows:

68. **Trafficking of narcotic products**. Burkina Faso is also directly affected by the increasing involvement of West Africa in international drug trafficking, and more generally through the growth of illegal trafficking activities in the region.

69. Indeed, according to the United Nations Office for Drug and Crime (UNODC), West Africa has become a hub for international drug trafficking (more than the quarter of the cocaine consumed in Europe is alleged to transit through West Africa). Human trafficking also affects the sub-region, which may (i) be national, international or sub-regional and (ii) concern forced labor (including forced begging) or prostitution. The sub-region is also used as a transit platform to Europe for illegal migrants from other countries.

70. **Fraud**. Several types of fraud are observed in the sector of import and export operations, which are manifested in several forms, including under-invoicing and/or false-invoicing for example or the illegal exercise of gold trade. Aware of the magnitude of the phenomenon, a situation analysis was conducted to apprehend the different manifestations and forms of fraud (for more details on the conclusions of this situation analysis, refer to Annex 3). In Burkina Faso, the mining activity is booming. 4 industrial gold mines in production and several mines under construction have resumed their activities. Apart from the industrial mining network exploited by foreign companies (mainly Canadian and British), there is a whole network of traditional gold miners disseminated across the country. The State does not have the means to ban these activities and, therefore, prefers to tolerate them and supervise them. It is in this traditional sector that you find risks of money laundering,

12 Availability of arms for criminal groups or likely to be smuggled, reconversion of combatants into criminals, weakening of States due to conflicts, etc.

according to the authorities, associated with prostitution and drug trafficking. To prevent fraud in this sector, the country passed a law in 2004 on suppression of fraud in the area of gold marketing (Act No. 2004-096 of 7 December 2004).

71. **Human trafficking**. Human trafficking is a reality in Burkina Faso. It should be pointed out, in particular, the trafficking of children sold by their family to networks, which resell them in countries of the sub-region, notably Côte d'Ivoire where they are constrained to work on farms. To acquire the legal means for combating this scourge, the country quite recently passed Act No. 029-2008 of 15 May 2008 on the fight against human trafficking and assimilated practices. Before then, the country had been a signatory to the Multilateral Agreement on regional cooperation for combating human trafficking, particularly women and children in West and Central Africa, signed in Abuja on 6 July 2006. However, the lack of resources of the State services reduces considerably the sphere of these initiatives.

72. **Terrorism and its financing**. According to the interlocutors of the mission, Burkina Faso does not know this terrorist phenomenon. It does not, for that matter, consider itself as immunized against any threat. The country has taken certain measures aimed at preventing the country from being used to perpetrate or prepare acts of terrorism against other States or against its own citizens. These measures include the creation of the Centre for Research and Processing of Information (CRTI) of the National Gendarmerie, which ensures the monitoring of groups and movements suspected of being associated with terrorist organizations. The authorities are even planning to create a unit of the CRTI at Dori[13] (see the map of BF presented at the beginning of this report, province #35) to ensure the monitoring of the Sahel region, potentially favorable for the preparation of terrorist activities, due to its geographical configuration, resumption of the Touareg irredentism in Mali and Niger, but also because of the proximity with the Maghreb boarders where, already, the Al Qaida group in the Maghreb is operating. The State security services are also monitoring the national Islamic groups, including those of foreigners in transit, entering or getting out of the country (Pakistanis, Iranians, Indians and Turks, notably). Having said that, in the absence of a specific provision in the Burkinabe Criminal Code making terrorist act and its financing a crime, any legal action in this area is, for the moment, doomed to fail[14].

73. **Cybercrime.** Cybercrime is not yet punished in Burkina Faso, but a draft bill on punishment of this crime is being developed.

74. **Prostitution.** Prostitution through soliciting in the street is punishable by a prison term of 15 days to 2 months and a Francs50,000 - 100,000 fine or by just one of these two penalties (Paragraph 2 of Section 423 of the Penal Code). Besides, procuring is punishable by a prison term of one to three years and a Francs300,000 to 900,000 fine francs (Section 424 of the Penal Code).

75. **Corruption.** Corruption is punished by Articles 156 **to** 159 of the Criminal Code. The sanctions are one to five years imprisonment and a fine of 300,000 francs or higher.

1.3 Overview of the Financial Sector and Designated Non-financial Businesses and Professions

1.3.1 Formal financial sector in Burkina Faso

[13] This sub-branch became effective since the mission, according to the information received from the authorities in their response of 24 August 2009.

[14] The country observed in its response of 24 August 2009 that Burkina Faso has ratified and internalized the first 13 international instruments for combating terrorism.

76. The formal financial sector is under-developed in Burkina and dominated by banks as shown in the table below. To date, Burkinabe banks mobilize nearly 68 % of the assets of the formal financial sector and about 85% of deposits.

	No. of institutions /branches	Loans		Deposits	
		In CFAF Billion	In %	In CFAF Billion	In %
Commercial Banks	11/90	599.3	67.6	699.8	84.5
Non-banking Financial Institutions	5/15	25.9	2.9	…	…
Insurance Companies	10/29	6.6	0.7		…
Micro-finance	323/450	100.4	11.3	62.8	7.6
SONAPOST	1/75	73.6	8.3	65.9	8.0
Pension Fund	1	80.7	9.1		
Total	350/659	886.5	100.0	828.5	100.0

Source: BCEAO quoted in the IMF report on evaluation of the stability of the financial system, June 2008.

77. The banking system[15] comprised as of 31/12/2008, 12 banks and 5 financial institutions. The table below details the number of entities by category of institution.

As of 31/12/2008 -	Number of entities
- Banks	12
- Financial institutions	5
- *Office national des Postes* (Post Office Financial services)	1
- *Caisse des dépôts et consignations*[2]	0
- Micro-finance institutions (decentralized financial systems, SFD[1])	320
-Authorized manual exchange institutions	49
- Insurance and reinsurance companies	10
- Insurance and reinsurance brokers	11
- *Bourse régionale des valeurs mobilières* (BRVM) (Regional Stock Exchange)	1
- Central Securities Depositor and Securities	0

15 The Banking Act makes a distinction between banks and specialized financial institutions, as the latter can only engage in a limited area of operations. The banks are, therefore, defined as enterprises whose usual profession is to receive funds that may be used through checks or transfers and which they use for their own accounts or for the account of others, in credit or investment operations (Article 3), while are considered as financial institutions natural persons or legal entities, other than banks, who have chosen as their normal profession to undertake for their own account operations of credit, credit sale or exchange, or who usually receive funds that they use for their own account in investment operations, or who usually serve as middlemen, and operate as stockbrokers, brokers or otherwise in all or part of these transactions (Article. 4).

Settlement Bank[2]	
- Management and Intermediation Companies (SGI)	1
- *Sociétés de gestion du patrimoine*[2] (SGP)	0
- *Organisations de placements collectifs en valeurs mobilières*[2] (OPCVM)	0
- Fixed Capital Investment Enterprises[2]	0
- National Management of the BCEAO	1
- Values and fund transfer companies[3]	2
- Pension Fund	2
- Public Treasury	1
- Electronic Money Issuers	0
- Electronic Money Distribution Institutions	0
- Electronic Money Institutions	0
- Financial agency business getters	0

Source: Burkina Faso, World Bank, BCEAO and IMF

[1] These are mutual benefit Institutions and savings and credit cooperatives, as well as structures or organizations non-constituted in the form of mutual benefit institutions and cooperatives with the objective of collecting savings and/or granting of loans. List provided by the MEF as of 31/12/2008

[2] Financial institutions mentioned in Burkinabe Act No. 026-2006 on the AML

[3] Activity not subjected to registration of authorization.

78. There have been recent movements in the area of share ownership of banks in Burkina (Buy-back of BACB by the ECOBANK group), integration of BIB into the United Bank of Africa (UBA) group, a group with Nigerian capital.

79. Bank intermediation is weak, of around 25%, or 4% less than the regional average. The offer of banking services is narrow and relatively simple:
    - Return on investments are largely limited to demand and fixed-term deposits, savings bonds and special regime savings account;
    - The contributions concern mainly enterprises and to a less extent natural persons. Despite the initial attempt at diversification towards SMEs, banks mainly grant loans to major enterprises operating in the cotton, energy, mining and import-export sectors. The support includes, notably seasonal credits, documentary letters of credit and structured financing schemes;
    - Cash remains the most privileged means of payment of withdrawal and deposit transactions. The other means of payment offered are checks (freely endorsable or not), transfers, credit cards (national, regional or international), whose rapid development is recent, as well as electronic money and electronic wallet, instituted by a regional regulation in 2002[16], but still not very much developed. Automatic teller machines (ATMs) and electronic payment terminals (epts) exist in the main towns;

16 Regulation No. 15/2002/CM of 19 September 2002 provides that electronic money can only be issued by banks, financial services of the Post Office, Public Treasuries, DFCs as well as by any other organization authorized by Act to carry out electronic money issue activities (Article 131). This regulation also defines electronic money as monetary value representing a credit on the issuer, which is stored on an electronic medium or on a medium of the same nature, issued against payment of funds in an amount whose value is not less than the monetary value issued and accepted as means of payment by enterprises other than the issuer (Article 1). The electronic wallet is defined as a pre-paid payment card, i.e. on which a certain amount of money is charged, making it possible to make electronic payments of limited amounts (Article 1).

- Foreign exchange operations are a significant source of income for certain institutions[17].

80. **Banks strongly develop their quick money transfer offer.** This high growth is done in partnership, on the one hand, with international rapid money transfer companies (Western Union and Money Gram), on the other hand, with small traders and individual enterprises who operate as agents of the banks (and consequently funds transfer companies) and offer access to these services for mainly occasional customers.

1.3.2 Other financial institutions

81. **The micro finance sector (Decentralized Financial Systems, DFCs)**, is experiencing a rapid growth. If the micro-finance networks are mobilizing a small share of deposits, they manage as many customer accounts as the traditional banks. There are roughly more than 350 DFCs, which collect about 7.6% of the deposits.

82. **The activities of the DFCs are slightly diversified, but may concern considerable amounts for natural persons**. The products offered mainly consist in demand and fixed-term deposits as well as loans of small amount intended for investment or consumption. Despite the deposit of an averagely modest amount, the main deposits may reach several millions of CFA francs in certain DFCs. Most of the transactions are done in cash and the mutual benefit DFCs or cooperatives cannot offer check or transfer services, but may propose withdrawal or payment cards as well as electronic cash and electronic wallet services. Some DFCs have established partnerships with local banks to offer international money transfer services (notably Western Union) to their customers as well as to occasional customers. The insurance sector comprises 6 insurance companies: IARD (Fire, Accidents, Various Risks: SONAR-IARD, UAB-IARD, AGF-IARD, GA-IARD, Colina and Raynal) and the modesty of the life insurance branch (4 life insurance companies: SONAR-vie, UAB-vie, AGF-vie and GA-vie). The latter branch proposes savings products that can promote the anonymity of their beneficiaries. Burkina has 6 insurance companies. The products offered are divided into death insurance (generally secured by bank loans, on the basis of agreements signed with bank partners and retirement pension: concerning pension funds, one can mention the *Caisse Nationale de Sécurité Sociale* (CNSS), which proposes pension insurance to employees of the private sector and public enterprises, and the civil servants pension scheme (CARFO), which manages the pension of government employees.

83. The BCEAO, an issuing institute, legally carries out, in addition to cash issue, activities of a State bank and lending institutions (management of credit accounts and execution of international financial operations).

84. The activities of the other non-banking financial institutions are limited:
    - **Postal services**: the financial services offered by the *Société Nationale des Postes* (SONAPOST) concern transactions on postal current accounts (including payments and money transfers), ordinary savings, retirement savings and life insurance, paper and electronic postal orders, quick money transfers and manual money exchange.
    - **Manual money exchange**. Burkina Faso has 49 authorized manual money exchange bureaus. The mission noted that some banks delegate to registered exchange bureaus, the manual targeted foreign currency exchange activity (mainly Euros).

17 Article 2 of the Guideline on external financial relations of UEMOA member States, annexed to Regulation No. 09/2001/CM/UEMOA, provides that only the BCEAO, the Post Office, an authorized intermediate bank or an authorized manual exchange agency may carry out currency exchange operations.

- **Securities transactions and management of third party accounts:** There is in Burkina, a management and intermediation company (SGI[18]) authorized by the CREPMF to purchase and sell securities (shares or bonds) on behalf of customers at the *Bourse Régionale des Valeurs Mobilières* (BRVM), established in Côte d'Ivoire. Four bond lines have been issued in Burkina and no share line. There is no Portfolio Management Company (SGP[19]) no Mutual Fund (OPCVM[20]) registered in Burkina;
- **Institutions operating in the area of electronic cash issue, including electronic wallet** (electronic cash institutions, electronic cash distributors and issuers of electronic cash[21]): according to the information obtained by the mission, no institution is operating in this area in Burkina. There is no variable capital Investment Enterprise. There is also no *Caisse de Dépôt et Consignation* or equivalent organization.

1.3.3 Informal financial sector

85. The informal financial sector plays an important role, notably in the area of international funds transfer, foreign exchange and *tontines*.

86. Informal money exchange completes the informal fund transfer activities. No quantitative estimation of the informal currency exchange system is available. However, the interlocutors met by the mission (particularly banks) stressed the importance of the unit transactions treated, as well as the highly established nature of the informal currency exchange system. Informal currency exchange is not limited to the major international foreign currencies (EUR and US$) but also concerns the different currencies used in West Africa and in the neighboring zones (CFAF of the CEMAC notably).

87. *Tontines* also constitute a popular savings instrument.

1.3.4 Designated non-financial businesses and professions

88. The profession of real estate agents is governed by an Act, which has just been voted (awaiting communication to the mission) and which has not yet been implemented.

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18 The Regional Public Savings and Financial Markets Board (CREPMF) has established a General Regulation on the organization, operation and control of the UEMOA Regional Financial Market. The latter authorizes the SGI to carry out (i) exclusively activities of negotiator-compensator of securities quoted on behalf of third parties (and to receive and hold public funds in the framework of this activity) the activity of keeping account of securities (Article 37) and (ii) as a related activity, financial management of securities trading accounts for their customers, the activity of consultancy in financial engineering and investment of securities to be issued during their issue (Articles 38 and 39).

19 The general regulation of the CREPMF defines the SGP as legal entities which, through investments and negotiations on the stock market made by the SGI to which they transmit the corresponding orders, intervene with discretion in the management of securities entrusted to them, based on the management mandate established with their customers (Article 57). The SGP cannot hold the securities and/or funds of their customers.

20 The OPCVM are authorized to exercise delegated collective management in the form of Variable Capital Investment Companies (SICAV),and Common Investment Funds (FCP), which are co-owners of securities, or of any other form of collective investment authorized by the CREPMF (Article 72).

21 BCEAO Instruction No. 01/2006/SP of 31 July 2006 on the issue of electronic money and electronic money institutions defines as follows the different categories of institutions (Article 1 paragraphs 7, 8 and 9):

- electronic money issuing institution: banks in the sense of Article 3 of the Act on banking regulation, Postal Check Services, the Public Treasury or any other organization empowered by law to exercise the activities of issue of electronic money [electronic money institution], the decentralized financial systems in the sense of the Act on regulation of mutual-help institutions or savings and credit cooperatives, debtors of the credit incorporated in the electronic instrument.
- electronic money distribution institution: the enterprise offering to its customers a service of charging, recharging or cashing electronic money.
- electronic money institution: an enterprise or any other legal entity empowered to issue means of payment in the form of electronic money and whose activities are limited to: (i) – the issue of electronic money, (ii) putting at the disposal of the public electronic money and (iii) the management of electronic money.

89. Auditors and chartered accountants depend on the order of authorized accountants and authorized chartered accountants, which is administered by a council of the order whose function is mainly to establish by-laws of the order comprising the rights and duties of chartered accountants. In 2008, the table comprised 32 independent chartered accountants, 22 chartered accounting firms, 24 authorized independent accountants, 4 accounting companies and 1 foreign chartered accountant with authorization to operate in Burkina Faso.

90. The legal profession is practiced mainly on individual basis, but the Act authorizes the establishment of law firms and bar associations. The practice as an employee or a non-employee collaborator of a lawyer, an association or a law firm is authorized in application of Article 18 of Decree No. 200-426 of 13 September 2000. There are 152 lawyers practicing in Burkina Faso, registered at the Burkina Faso bar within which are registered lawyers exercising their professions, for the time being, in Ouagadougou or Bobo-Dioulasso.

91. Notaries are public officers instituted for life to receive all deeds and contracts to which the parties should or would like to give a character of authenticity attached to public authority deeds and to ensure the date, conserve the deposit, issue operative copies, official copies and extracts. There are 8 notary's offices in Burkina Faso, each carrying out, on the average, 600 deeds per annum. It should be noted that due to the particularities of the land tenure system, most land sales do not require the drafting of a notarial deed.

92. Casinos and slot machine institutions are governed by Act No. 027-2008/AN of 8 May 2008 and Ministerial Order No. 2008/41 of 18 February/2008 governing gaming and activities of casinos in Burkina Faso. There is one casino and four companies exploiting gaming institutions in Burkina Faso. One of them is the first private employer in the country. As state-owned company (ONAB) has monopoly for horse race betting and lotteries.

93. Lawyers, notaries, chartered accountants and auditors provide financial, fiscal and other forms of advice to enterprises. Lawyers and notaries play a significant role in the creation of legal persons and estate transactions. However, the mission could not be informed about the existence of specialized companies intervening as agents during the constitution of legal persons or trust funds.

94. The estimations concerning non-Governmental Organizations, also subjected to the Act of 28 November 2006, vary considerably, the lowest mentioning about 600 units endowed with the status of association and having signed a framework agreement with the State. Other statistics estimate the number of NGOs at 16,000. They have no legal obligations of accounting disclosure, which makes it difficult to control the regularity of their finances[22].

1.4 Overview of commercial law and mechanisms governing legal persons and arrangements

95. The law applicable to legal persons established in Burkina Faso is governed by the Single Act on the right of commercial companies, adopted by the Council of Ministers on 17 April 1997 and entered into force on 01 January 1998. The provisions of this Act are, in accordance with the OHADA treaty, directly applicable and mandatory in the sixteen Party-States, including Burkina Faso.

96. By virtue of Title 1, persons who wish to exercise a commercial activity should establish by a notarized act or by any other act offering adequate guarantees of authenticity of the statutes,

22 On this point, the tax administration in its survey mission of looking for information to apprehend the actual file of NGOs, held exchange and working meetings with the Cooperation Directorate General (DGCOOP), notably the Department for monitoring non-Governmental Organizations (DSONG). The conclusions of these discussions are attached as Annex 3 to the report.

mentioning mandatorily the form of the company, its corporate name, its corporate purpose, its headquarters, the identity of the contributors and the amounts of their contributions as well as the number and value of corporate securities issued against the contributions made by the partners.

97. Any company, except the share company, must be registered at the trade registry in order to obtain a legal personality. In Burkina Faso as in the other States that have adhered to the Single Act, any person, irrespective of his nationality, wishing to exercise a commercial activity, may choose one of the company forms provided for by the Single Act, notably the company with a collective name, simple partnership company, the limited liability company, the incorporated company, the joint venture. No information on the number of companies, by categories, was communicated to the mission.

98. According to the information collected by the mission, there are no legal structures in the form of a fund or foundation in Burkina Faso.

1.5 Overview of the preventive strategy in the area of the fight against money laundering and the financing of terrorism

1.5.1 Strategies and Priorities in the area of AML/*C*FT

99. Burkina Faso is one of the latest countries of the Union to have passed an Anti-money Laundering Act (28 November 2006), just before Mali and Togo[23]. At the time of the mission, the national authorities had still not defined the prevention strategy in the fight against money laundering. Such a strategy should include the definition of objectives, identification of priorities, mobilization of adequate resources and constant evaluation of results obtained. It also presupposes the establishment of a national coordination structure, preferably inter-ministerial structure, in order to monitor (i) the establishment of ad hoc structures, particularly the CENTIF, (ii) the appointment of anti-money laundering correspondents in each department concerned, (iii) finally, the dissemination of pertinent information[24] among all the sectors concerned. During the visit, only a few of the measures had hardly been initiated. Indeed, the CENTIF whose statutory members were appointed in July 2008 by decree adopted in Cabinet meeting (Decree 2008-420/PRES/PM/MEF of 10 July 2008) is not yet an operational unit. It is still unknown to the general public and especially the subjected sectors[25]. The Act has not been disseminated and popularized among the sectors concerned, including certain key ministerial departments or institutions (Customs, courts, legal and accounting professions)[26].

100. A national coordination policy has, moreover, been initiated, spurred on by GIABA, aimed at creating an Inter-ministerial AML/CFT Commission. Its objective is to ensure a constant flow of information among the partners concerned, make recommendations to the Ministers, formulate the national strategy and finally propose reforms aimed at intensifying the fight against money laundering and financing of terrorism. Under these circumstances, this initiative is, for the time being, in a draft stage (for more details, refer to Section 6.1 of the report).

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23 The Anti-money Laundering Acts of the 8 States of the Union were adopted according to the following chronology: Senegal (27 January 2004), Niger (8 June 2004), Guinea-Bissau (2 November 2004), Côte d'Ivoire (2 December 2005), Benin (31 October 2006), Burkina Faso (28 November 2006), Mali (29 December 2006), Togo (2007).

24 In this case, the lists of natural persons, legal entities or organizations targeted by the freezing of funds in the framework of the fight against the financing of terrorism.

25 It should be indicated in this regard that the CENTIF accompanied the mission during most of the discussions with government services. This was an opportunity to introduce the unit and its newly-appointed members to its future partners and correspondents.

26 It should be noted, however, that the text has been posted on the Legiburkina.bf website.

101. Concerning the strategy and priorities regarding the fight against the financing of terrorism, the country has not adopted any particular measure in that regard. The only reference text in this area is the Regional Guideline No. 04/2007/CM/UEMOA of 4 July 2007 on the Single model Act adopted by the UMOA Council of Ministers in March 2008. For all that, in the absence of a national Act transposing the regional CFT framework, Burkina Faso still has not adopted a national text to facilitate the suppression of the FT. Certainly a bill making the act of terrorism and its financing a crime is actually under consideration by the Ministry of Justice. It seems that this legal draft – a copy of which was not sent to the mission – has made little progress.

102. Obviously, according to the discussions the mission had, there is an urgent need to rapidly initiate a global reflection in this area.

1.5.2 Institutional framework for the fight against money laundering and financing of terrorism

103. The AML institutional framework of Burkina Faso is as follows.

104. It is the Ministry of Economy and Finance (MEF) that is mainly in charge of AML policy at the national level. The CENTIF is indeed placed under the responsibility of the MEF (Article 16 of Act No. 026-2006). The resources of the CENTIF are mainly from state contributions.

105. By virtue of Article 17 of Act No. 026-2006, the centre of the AML preventive mechanism in Burkina Faso is constituted by the CENTIF, whose mission is to collect and process financial information on money laundering channels. Its operation is ensured by 6 members appointed for 3 years (renewable once) by decree taken by the Council of ministers. At the time of the mission, this unit had just been established in the provisional premises and had not yet started its activities. It does not have either permanent premises or its own budget. Concerning the budget, the CENTIF was granted a start-up fund of around CFAF 78 million (about US$ 173,000). Its Chairman made a budget request for 2009 in the amount of CFAF 363 million, which has not yet been approved. According to the information gathered by the mission, the budget of the CENTIF is included in the state budget, under the Section “common expenditures”, without apparently a special budget line being identified for the unit. It may therefore be inferred that the CENTIF has no specific budget envelope for the coming year.

106. The Minister of Security is the responsible authority for the National Police, while the National Gendarmerie is attached to the Ministry of Defense. Money laundering cases are normally entrusted to the economic and financial sections of the judicial police, both of the police and the gendarmerie, which have no experience or training in this area. The mission of the information services of the police and the gendarmerie is to collect and exploit information that are of interest for the security of the country, including information on subversive activities and groups potentially associated with terrorism.

107. The General Directorate of the National Police and the Headquarters of the National Gendarmerie have judicial police competence.

108. -The judicial authority comprises magistrates of the Attorney General’s Department and Headquarters. The attributions of the Ministry of Justice include organization and operation of the judicial system, the administration of justice in criminal matters and implementation of international agreements in legal matters. It is responsible for magistrates and functions as a central competent authority for requests for mutual legal assistance and extradition.

109. Courts and tribunals that are empowered to handle cases related to money laundering and financing of terrorism are in ascending order: the High Court (District courts), Appeal Courts and the Court of Cassation. The prosecution is ensured by magistrates of the District Attorney's Departments, notably the District Attorney and his substitutes and general Lawyers at the level of the Court of Cassation and Appeal Courts, and the District Attorney of Faso and his substitutes at the High Court. Since, according to the structure of the Prosecution Departments, there are no specialized sections to handle financial issues, such as money laundering, the magistrates should still acquire minimum expertise in the area. No case of money laundering has resulted in legal proceedings, although the AML Act was introduced two years ago.

110. The role of the Ministry of Foreign Affairs in anti-money laundering and combating the financing of terrorism is limited. It is the central point for reception and distribution of requests for mutual legal assistance or extradition through the diplomatic channel. It is also involved in the dissemination of UN Lists 1267 and 1373.

111. By virtue of the annex to the convention on the creation of the BC-WAMU, the BC-WAMU, which is chaired by the Governor of the BCEAO, is in charge of ensuring the organization and control of banks and financial institutions based in Burkina Faso as in the eight States of the Union. It has, to that end, powers of administrative or disciplinary sanction. Its competence covers anti-money laundering and combating the financing of terrorism. Moreover, the main attributions of the BCEAO are the development and technical transposition of the accounting and prudential regulation, including AML, applicable to financial institutions and contribution through National Agencies, to the supervision of the banking system.

112. For designated non-financial businesses and professions, the situation is as follows: casinos are jointly controlled by the Ministry of Interior and the Ministry of Economy and Finance, which delivers the authorizations. Estate agents depend on the Ministry of Housing. The notaries and lawyers are subjected to the respective authority of the Chamber of Notaries and the Bar association. No reflection was started among them in the area of AML; consequently, none of these self-regulatory organizations plays a role for their members in the fight against money laundering.

Risk-based approach

113. Anti-money laundering and combating the financing of terrorism is not a priority of the public policy of Burkina Faso, despite the antecedence of the 2003 UMOA Single Act and the 2002 Regional Guideline. As things are, the national authorities have no real control strategy based on a reasoned approach to the risk. The national texts were adopted without any accompanying strategy in favor of the main actors and the institutions concerned. At the time of the mission, important sectors like the non-financial professions and, to a lesser extent, the networks had a partial knowledge or were completely ignorant of the fight against ML/FT.

Progress made since the last evaluation

114. Burkina Faso has never been evaluated in this area or on the part of international institutions (World Bank or IMF) nor that of GIABA.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Acts and Regulations

2.1 Criminalization of money laundering (R.1, R 2 and 32)

2.1.1 Description and Analysis

115. The 1996 Criminal Code and the 1999 Drug Code instituted the offense of "money laundering" as a result of illegal drug trafficking. A new more complete legal framework results from Act No. 026-2006 of 28 November 2006 on the fight against money laundering. This Act comes to transpose into the legal order of Burkina Faso, UEMOA Directive No. 07/2002/CM/UEMOA (AML Guideline) on the fight against money laundering, on basis of the transposition framework provided for by the UEMOA Single Act.

Recommendation 1

Criminalization of money laundering (c. 1.1 Physical and material elements of the offense)

116. Article 2 of Act No. 026-2006 of 28 November 2006 on the fight against money laundering defines this crime in accordance with the Vienna and Palermo Conventions by targeting "*one or several of the following offences committed intentionally":*

- The conversion, transfer or manipulation of property, of which the author knows that they come from a crime or a misdemeanor or a participation in this crime or misdemeanor, with the aim of dissimulating or disguising the illegal origin of the said property or to assist any person implicated in the commission of this crime or misdemeanor to escape from the judicial consequences of his acts;

- The dissimulation, disguise of the nature, origin, placement, disposal, movement or the actual ownership of the property or related rights of which the author knows that they come from a crime or misdemeanor or a participation in this crime or misdemeanor;

- The acquisition, detention or use of property of which the author knows, at the time of reception of the said property, that they come from a crime or misdemeanor or a participation in this crime or misdemeanor.

117. A second definition, solely applicable to money laundering in the area of drugs, results from Article 55 of the Drug Code, which imposes a prison term of 10 - 20 years on those who:

- Facilitate by any fraudulent means the false justification of the origin of the resources or property of the author of the offenses provided for by this Act (the Drug Code);
- Consciously provide support to any operation of investment, conversion or dissimulation of the product or reconvert into the national economy the resources acquired through the commission of offenses;
- Those who acquire, keep or use gains and resources, knowing that they come from one of the offences listed in the preceding paragraphs.

118. It should be noted that this second definition, particularly its first part, could facilitate the prosecution of money laundering offences: it allows prosecutor to obtain convictions by proving, on the one hand that the author facilitated the false justification of the origin of the resources and property of a person (through a financial package transactions), and, on the other hand that this person committed previously a crime in violation of the legislation on narcotic drugs. Contrary to the definition given by the 2006 Act, there is no need to demonstrate (or establish by factual circumstances) that the property laundered is derived from a crime and that the launderer was aware of it (or could not ignore it).

119. In other words, this text reduces the major difficulty to prove the link between the underlying offense and the "laundered" property. From the moment this property is manipulated by the "launderer" with a view to leading one to believe in a fictitious origin of the property (fictitious transaction), and that it is proved that their owner has violated the legislation on narcotic drugs, this relationship between the crime and the property may be considered proven, as well as the knowledge of this relationship by the author of the facts.

120. It would therefore be judicious that the prosecutorial authorities of Burkina Faso be encouraged by the Ministry of Justice to enforce this text as a matter of priority, or jointly with the general text, when they are confronted with a laundering operation of proceeds from drug trafficking. The difficulties of proving the crime will be probably reduced, and moreover, it is logical that the special Act, sanctioned with more severe penalties, is applied in priority.

Types of property for which money laundering crime is applicable (c. 1.2)

121. Article 1 of Act No. 026-2006 defines the types of property to which money laundering crime is applicable: they include all types of assets, tangible or intangible, movable or fixed, visible or invisible, as well as legal acts or documents testifying to the ownership of these assets or the related rights. Money laundering crime is therefore applicable to all types of property derived from the commission of a crime or a misdemeanor.

122. Act No. 026-2006 does not specify whether the property coming from the commitment of an underlying offense may include indirect proceeds from the crime or the misdemeanor; in the absence of such precision, the courts should interpret the Act on this point. They may either consider that the text is applicable only to property derived directly from an underlying offense (penal acts are of strict application), or that by not making a distinction between property coming directly or indirectly from a crime, the legislator wanted to include the two categories (there is no distinction to make where the Act makes no distinction). The main judicial authorities met seem to consider that this second analysis will take into account the particularities of money laundering. It would be useful that the legislator clarifies this point.

123. In accordance with Article 3 of AML Act No. 026-2006, it is not necessary that a person be convicted for an underlying offense to prove that a property constitutes the proceeds of the crime. Indeed, this article provides that "except where the original offence has been the subject of an amnesty law, there is money laundering even if:

- The author of the crimes or misdemeanors has not been prosecuted or convicted;
- A necessary condition to bring the case to courts is missing following the said crimes or misdemeanors.

The scope of the underlying offences (c. 1.3) and Method of the threshold for defining underlying offenses (c. 1.4)

124. Since there is no exhaustive list of underlying offenses of money laundering in Act No. 026-2006, it follows from its Article 2 that all crimes and misdemeanors are concerned. An analysis of the Criminal Code of Burkina Faso is, therefore, necessary in order to determine whether the 20 categories of serious offenses designated by FATF constitute "crimes or misdemeanors" and are, in this regard, money laundering underlying offences.

125. The Criminal Code adopts a tripartite distribution of crimes depending on the seriousness of the punishment incurred. Article 58 of the Criminal Code provides that "crimes" are offenses punishable by death or a prison term of five years. Misdemeanors are offences punishable by a prison term of

eleven days to five years and a fine of over CFAF 50,000 (about US$ 110) or by only one of these sentences. Are described as "contraventions", offences punishable by a fine of CFAF 50,000 or more. It may be deducted that all offences punishable by a minimum prison term of 11 days, or a fine of CFAF 50,000 (about US$ 110) constitute an underlying offence.

126. This method of the threshold retained by the authorities of Burkina Faso to define the underlying offences of money laundering is in line with the Recommendations of FATF, since are notably included, all offences punishable by a prison term of more than eleven days.

127. The table below summarizes the list of serious money laundering underlying offences designated by FATF and presents the offenses and corresponding sentences in the Burkinabe Criminal Law.

FATF Serious Offenses	**Criminal Law of Burkina Faso: "Crimes and Misdemeanors" and Sanctions imposed in terms of duration of imprisonment**
Participation in an organized group / racketeering	CP, Organized crime Articles 222 to 224, 5 to 20 years
Terrorism and its financing	Lack of incrimination of terrorism and financing of terrorism
Human trafficking	Articles 4 and 5 of Act No. 029-2008 of 15 May 2008, 5 to 20 years
Illicit trafficking of immigrants	Article 11 Act No. 029-2008 of 15 May 2008, 5 to 10 years
Sexual exploitation	CP, Articles 424 to 430 CP, 2 months to 5 years
Trafficking of narcotic drugs	Act No. 017-99/AN of 29 April 1999 on the Drug Code 2 to 20 years (Article 44 and subsequent Articles)
Arms trafficking (except export)	CP, Articles 537 to 539, 1 to 5 years
Illegal trafficking of stolen property	CP, Receiving stolen property l, Article 473, 1 to 5 years
Corruption	CP, Articles 156, 157, 158, 1 to 5 years
Fraud and swindle	CP, Articles 477 and 217, 3 months to 5 years
Counterfeit money	CP, Articles 250 to 261, minimum: CFAF 50,000, maximum: life imprisonment
Counterfeit and pirating of products	CP, Article 216, 3 months to 6 years
Crime against the environment	Environment Code, Articles 79 to 99, life imprisonment
Murders	CP, Articles 318 to 326, life imprisonment
Kidnapping, sequestration, hostage-taking	CP, Articles 356 and subsequent Articles, minimum 5 years, maximum: death sentence
Theft	CP, Articles 449 and subsequent Articles, minimum 1 year
Smuggling	Customs Code, Articles 261 to 266, 3 months to 5 years imprisonment
Extortion	CP Articles 474 and subsequent Articles, minimum: 1 year
Forged documents (except forged passports)	CP Articles 262 and subsequent Articles, 2 months to life imprisonment
Piracy	CP Articles 532 and subsequent Articles, 1 year to death sentence
Insider trading	No insider trading and manipulation of rates

128. A major part of the serious crimes designated by FATF are, therefore, "crimes or misdemeanors" with regard to the Burkinabe Act. There is however, lack of incrimination of terrorism and its

financing and incrimination of stock exchange misdemeanors, notably insider trading and manipulation of rates. Although the financial environment and the presently limited nature of a terrorist threat in Burkina Faso limit their practical importance, these shortfalls constitute significant weaknesses of the LCB/CFT mechanism.

Acts committed outside the territory (c. 1.5) and the Additional element - Money laundering of proceeds of a crime committed in another country which does not constitute a crime in this other country (1.8)

129. Article 2 of AML Act No. 026-2006 provides that "there is money laundering even if the facts that are at the origin of the acquisition, detention and transfer of property to be laundered are committed on the territory of another member State or on that of a Third State". According to this Article, which recalls Article 2 of the AML Guideline, money laundering underlying offences cover acts committed in another State.

130. The Act does not raise the principle of double incrimination and does not specify whether there is money laundering offense when the proceeds from the crime are obtained from a conduct that occurred in another country, which does not constitute an offence in this other country, but which would have constituted an underlying offense if it had occurred in Burkina Faso. On this point, some of the discussions with the criminal proceedings authorities revealed that the latter would have powers from the moment the original act constitutes an offence in Burkina Faso. Hence, it would not be necessary that the facts at the origin of the money laundering constitute an offense in the country where they were committed, since only the criminal nature of these facts in Burkina Faso is pertinent.

Application of the money laundering offence to persons who commit the underlying offence (c. 1.6)

131. In their responses to the questionnaire, the authorities of Burkina Faso indicated that Article 37 paragraph 2 of the AML Act specifically excludes that a person may be convicted for the main offence and the laundering of the proceeds of the latter. This Article provides that "when the offence or misdemeanor from which originate the property or sums of money on which the laundering offense is committed, is punishable by a sentence of deprivation of liberty for a period longer than that of imprisonment imposed pursuant to Article 35, money laundering shall be punishable by sentences imposed for the original offense, of which the author had knowledge, and if this offense is accompanied by aggravating circumstances, penalties imposed only for the circumstances of which he had knowledge".

132. In reality, it does not appear obvious that this text abolishes the possibility of sentencing, for money laundering, the author of the underlying offense: in this case, the reference to the "knowledge" of the original offense would be useless, as the author of an underlying offence necessarily had knowledge of it. Hence, Article 37 rather seems to cover persons who did not commit the initial offense. Besides, since money laundering is a complex offense, implying the commission of positive acts of dissimulation to hide the origin of the proceeds of an offense, it is logically constituted and this, to a large extent like possession or receipt of stolen property, through acts distinct from the predicate crime . It, therefore, appears that the provision of Article 37 is simply intended to aggravate the sentence imposed when the main offense is punished more severely than money laundering.

133. In any case, and in the absence of precision or legislative clarification, this issue shall be settled by the authoritative judgment of the courts. In the meanwhile, the resulting uncertainty may constitute an obstacle to the conviction of the author of an underlying offense for money laundering. Since this obstacle is not justified by a basic principle of the Act of Burkina Faso, this country is not in conformity with criteria 1.6 on suppression of self-laundering.

Related offences (c. 1.7)

134. Under Article 3 of AML Act No. 026-2006, are also considered as laundering, "the agreement, participation in an association to commit laundering acts, any aid, advice and assistance, the association to commit the said act, attempts to perpetrate it, aid, encouragement or advice to a natural person or legal entity, with a view to executing it or facilitating its execution". Money laundering related offences, as provided for by Rec. 1, are, therefore, covered.

Recommendation 2

Criminal liability of natural persons (c. 2.1)

135. As indicated above, money laundering crime imposes that the acts be intentional (Article 2 of the Single Act and AML Guideline which define money laundering as "*one or several […] acts […] committed intentionally*".

The intentional element (c. 2.2)

136. AML Act No. 026-2026 does not contain any provision specifically mentioning that the intentional element of the money laundering offense may be deduced from "objective factual circumstances". In Burkina Faso, the judge may pronounce a sentence based on evidence, which he appreciates according to his absolute conviction. The result is that, according to the authorities met by the mission and in accordance with the situation of the countries that adopt this principle, the proof of intentional element of a crime may be reported on the basis of objective material elements and deduced from factual circumstances. This approach is in line with the requirement of Rec. 2.

Criminal liability of legal persons (c. 2.3) and additional sanctions (c. 2.4)

137. Chapter IV of Title IV of AML Act No. 026-2006 affirms the principle of penal liability of legal persons found guilty of money laundering and sets the relevant sanctions applicable to them.

138. Subjecting legal persons to criminal liability in the area of money laundering does not exclude the possibility of initiating parallel procedures. Indeed, Article 33 of AML Act No. 026-2006 provides that, "*when, following, either a serious lack of vigilance or a shortcoming in the organization of its internal control procedures,* [a person subjected, legal entity included] *is unaware of the obligations imposed on him* [by this Act], *the Control Authority having disciplinary powers may automatically act under the conditions provided for by the specific legislative and regulatory texts in force*".

139. Moreover, the above-mentioned Act also provides in its Article 42 that the conviction of legal persons does not exclude the conviction of its representatives, natural persons, as authors or accomplices of the same acts.

Sanctions for money laundering offence (c. 2.5)

140. *Penal sanctions against natural persons* are provided for by Articles 35 to 39 of AML Act No. 026-2006: the facts are punishable by a prison term of 3 to 7 years and a fine equal to three times the value of the property or funds on which the laundering operations were carried out. Attempted money laundering as well as the agreement, association and complicity with a view to committing a money laundering offensce are punishable by the same penalties.

141. Penalties provided for above are doubled in case of aggravating circumstances, such as when:

- The money laundering offense is committed by an organized gang
- The money laundering offense is committed in the usual manner or using facilities procured through the exercise of a professional activity
- The author of the crime is a repeat offender (crimes committed abroad are taken into account for establishing the repeated offense).

142. The last paragraph of Article 37 of AML Act No. 026-2006 also provides that when the crime or misdemeanor at the origin of the property or amounts of money on which the laundering offense was committed is punishable by a sentence of deprivation of liberty for a period longer than that of the prison term imposed by AML Act No. 026-2006, the money laundering is punishable by penalties imposed for the original offense of which the author was aware and if this offense is accompanied by aggravating circumstances, penalties attached only to the circumstances of which he was aware.

143. *Penal sanctions for legal persons* are provided for under Article 40: Legal persons are punished by a fine in an amount equal to or higher than five times the fine imposed on natural persons.

144. *Additional penalties* are provided for in Articles 39, 40 and 43 of the AML Act. They are of two types: a mandatory complementary penalty and optional complementary penalties.

145. The mandatory complementary penalty targets the confiscation of the proceeds derived from the crime, movable and immovable property into which these proceeds are transformed or converted and, up to their value, property acquired legitimately into which the said proceeds are merged, as well as the revenues and other benefits. This complementary penalty is common for natural persons and legal persons.

146. The optional complementary penalties provided for against natural persons aim at (1) restricting their freedom of action (notably banning from the territory, from stay, from leaving the national territory, from civic and family rights, from the issue of checks), (2) limiting their prerogatives on certain property (banning from driving land, sea and air motor engines, holding or carrying an arm, etc.) and (3) confiscating their legally acquired property.

147. The optional complementary penalties provided for against legal persons may be, notably exclusion from public markets, confiscation of the asset that served or was intended to be used to commit the crime or the asset resulting from it, placement under judicial monitoring, banning from activities for a maximum period of 5 years, the dissolution, publishing, posting or dissemination of the conviction decision.

148. Article 69 of the Drug Code provides for the mandatory confiscation of the proceeds derived from the crime, movable or immovable property in which these proceeds are transformed or converted and, up to the equivalent of their value, property acquired legitimately to which the said products are mixed, as well as incomes and other benefits derived from the crime. However, it is only applicable to crimes provided for under Articles 44 to 54 of this Code, excluding apparently the laundering provided for in Article 55. On the other hand, Article 70 of the Drug Code authorizes, as an optional complementary sentence, the confiscation of the legally acquired property of the convicted person.

149. Moreover, it should be stressed that the causes of exemption and reduction of the penal sanctions are provided for under Articles 41 and 42. These encouraging provisions are as set forth in case a person helps, by revealing the existence of an agreement, to identify the other persons involved and avoid the commission of the crime. Provision is then made for an exemption. They are also as set forth in the case where, before the proceedings, a person helps to identify the other authors or after

initiation of the proceedings, facilitates the arrests of the latter. A reduction of the sentence is then possible.

150. The penalties applicable to legal persons appear proportional, and dissuasive, given notably the fine the maximum of which represents five times the penalty imposed on natural persons, themselves likely to pay a fine equal to the triple of the amounts laundered.

Statistics (application of R. 32)

151. No money laundering case was handled, and only one report of suspicion is being handled by the CENTIF. No provision for collection of pertinent information is, for the moment, in place.

Analysis of effectiveness

152. Since its adoption in 2006, no money laundering case has been handled by the authorities of Burkina Faso on the basis of AML Act No. 026-2006. Saving exceptions, magistrates have no knowledge of the text of the AML Act, which is published in the Gazette but has not been the subject of a special dissemination.

153. The Minister of Justice did not send out, as is normally his role, a circular explaining and commenting on the Act in order to assist magistrates to understand it, interpret it and apply it where necessary. The Chancery has not helped magistrates of the headquarters and the district attorney's office to conduct a specific, systematic and in-depth reflection on the difficulties of applying money laundering crime: issues as important as self-money laundering (can one convict the author of the main crime not only for the latter but also for acts constituting money laundering), the proof of the link between the property laundered and the main offense, or the deduction of the intentional element through objective factual observations, are left to the appreciation of the jurisprudence. Courts will do so probably according to normal practices, general principles of the Burkinabe law, and in the light of the jurisprudence in the area of possessing and receiving stolen assets, the latter crime being very close to money laundering as defined by the AML Act. Presently, there is, therefore, no certainty on the conformity of the interpretations adopted with the FATF standards.

154. In particular, the interpretations risk diverging on the criminal or misdemeanor nature of the offense: the maximum of the penalty (7 years) exceeds the threshold of misdemeanors and appears, in the very view of top magistrates, to consider money laundering as a "crime", which would imply the application of the criminal procedure with notably the intervention of a popular jury at the stage of adjudication. Other magistrates seem to think that the crime must be prosecuted according to the procedure applicable to misdemeanors, and that the intention of the legislator was to institute a misdemeanor punishable by criminal penalty pursuant to Article 35 of the Criminal Code, according to which misdemeanors are punishable by a maximum prison term of 5 years, "except in cases where the Act will have determined other limitations".

155. The argument could hold if the AML Act had precisely indicated that such was the desire of the legislator, which is not the case. Under these conditions, a major uncertainty hangs on the application of the text: if money laundering facts are prosecuted under the procedure applicable to misdemeanors and that judges think that there was need to investigate and try them under the procedure applicable to "crimes", cancellations of the proceedings are possible.

2.1.2 Recommendations and Comments

156. Burkina Faso is called upon to incriminate terrorism and its financing as early as possible.

157. AML Act No. 026-2006 should be amended in order to:

- Specify whether money laundering crime is a crime or a misdemeanor.
- Specify that money laundering crime is applicable to property representing indirectly the proceeds of the crime, and that the author of the underlying offence may also be convicted for the laundering facts.
- Specify the provisions on the additional and optional penalties of confiscation provided for under articles 39 and 43 of the criminal code and the drug code. In particular, it will not be superfluous to clarify the sphere of the confiscation concerning property "of legal origin" of the author of a money laundering operation and the notion of "proceeds of the offence". Similarly, it would be necessary to specify that the confiscation may concern the equivalent value of the property laundered, and extend the mandatory complementary penalty of confiscation in connection with narcotic drugs to laundering of proceeds from these crimes.

158. Efforts of dissemination and explanation of AML Act No. 026-2006 should be made by the authorities of Burkina Faso, not only among the subjected parties, but also among authorities in charge of enforcing the Act. Training activities could be usefully envisaged.

159. In particular, it would be advisable that the prosecuting authorities of Burkina Faso be encouraged to enforce, as a matter of priority, Article 55 of the Drug Code when they are confronted with a money laundering operation, obviously associated with proceeds from trafficking of narcotic drugs.

160. The authorities of Burkina Faso are invited to put in place statistical tools on issues relating to the efficiency and effective operation of provisions for combating money laundering.

2.1.3 Compliance with Recommendations R.1 and R.2

	Rating	Summary of factors underlying rating
R.1	PC	Terrorism and its financing, as well as inside trading, are not underlying offences. It is not specified whether the crime is a crime or a misdemeanor, It is not specified whether the crime is applicable to property representing direct proceeds from the underlying offence. It is not certain that the author of the latter may also be convicted for laundering illegal profits. Lack of enforcement of the Act.
R.2	LC	The intentional element may be deduced from objective factual circumstances, given the principles underlying the legal system of Burkina Faso. The liability of the legal persons has been established. Lack of enforcement of the Act.

2.2 Criminalization of terrorist financing (SR.II and R 32)

2.2.1 Description and Analysis

161. Burkina Faso has not yet established a specific mechanism for combating the financing of terrorism.

162. The UEMOA regional authorities have adopted Guideline No. 04/2007/CM/UEMOA (CFT Guideline) on the fight against the financing of terrorism in UEMOA member States in order to define the Legal Framework for combating the financing of terrorism (FT) in its member States.

163. The modalities for transposing the CFT Guideline are defined in its Article 27, according to which "the member States adopt, latest 6 months from the date of signature of this Guideline, the single texts on the fight against the financing of terrorism for transposition of this guideline into their internal law". Hence, the transposition of the CFT Guideline in WAEMU member States brings into play: (i) the WAEMU Council of Ministers, which, on the basis of Article 22 of the WAEMU Treaty, decided on the uniform texts on the fight against the financing of terrorism (as these texts should serve as a "model" for member States for the transposition of the CFT Guideline) then (ii) the UEMOA member States, which adopt a national law incorporating the provisions of the single texts[27], thereby transposing the CFT Guideline into their internal legal order.

164. A Single Act on the fight against the financing of terrorism in UEMOA member States (CFT Single Act) was adopted on 28 March 2008 by the UEMOA Council of Ministers. However, none of the member States, except Senegal, has passed a national law to transpose the CFT Guideline.

165. To date, no national law for transposition of the CFT Guideline has been adopted in Burkina Faso. The authorities met explained that a bill on terrorism transposing into an internal law the 9 Conventions in the annex to the International Convention for the Suppression of the Financing of Terrorism is currently under examination. Burkina Faso has not yet put in place a body of laws for the fight against the financing of terrorism, the analysis below examines with regard to international standards the provisions of the CFT Guideline and of the CFT Single Act since the latter sets the major orientations of the future relevant Burkinabe provision.

Terrorist Financing Offence (c. II.1)

166. Article 6 of the CFT Guideline (taken up by Article 4 of the CFT Single Act) provides for criminalization of the financing of terrorism by requiring that UEMOA member States take the necessary measures to, on the one hand, *"consider as a criminal offense, with regard to their internal law, the acts mentioned in Articles 4* [financing of terrorism] and *5* [association, entente or complicity with a view to financing terrorism] and, on the other hand, "punish these offences with appropriate penalties, given their grave nature".

167. The material elements constituting the crime of financing terrorism are defined in Article 4 of the CFT Guideline (taken up by Article 4 of the CFT Single Act). It involves *"the fact, by whatever means, directly or indirectly, deliberately, providing, mobilizing or managing or attempting to provide, mobilize or manage funds, property, financial or other services, with the intention of having them used or knowing that they will be used, in totality or partially, with a view to committing:*

- an act constituting an offence in the sense of one of the international legal instruments listed in the annex to the Guideline [they are the nine (9) annexes to the United Nations Convention of 09 December 1999 for the Repression of the Financing of Terrorism] regardless of the occurrence of such an act;
- any other act intended to kill or seriously injure a civilian, or any other person who is not participating directly in the hostilities in a situation of armed conflict, when, by its nature or its context, this act aims at intimidating a population or constraining a Government or an international organization to accomplish or to refrain from accomplishing any act.

27 Article 22 of the UMOA Treaty empowers the UEMOA Council of Ministers to authorize derogations to the agreed provisions, not affecting the principles that would appear justified by the conditions and actual needs of a member State of the Union.

168. Article 4 provides for a wide definition of the term "financing" of terrorism in accordance with the United Nations Convention, since are covered the supply, mobilization or management of funds, property, financial or other services by any means, with a view to having them used, or knowing that they will be used for the purpose of committing a terrorist act.

169. Besides, concerning the definition of a "terrorist act", Article 4, paragraph 1 of the CFT Guideline refers to acts incriminated by the 9 Conventions in the Annex to the United Nations Convention on the Financing of Terrorism; and recalls in its paragraph 2 the definition of "terrorist act" provided for by the United Nations Convention. This approach requires that Burkina Faso be part of the 9 Conventions covered and that it incriminates in its Criminal Act, the different offenses provided for by these conventions. This is not yet the case in Burkina Faso, since the bill on terrorism transposing into their internal law, the 9 Conventions in the Annex to the United Nations Convention on Repression of the Financing of Terrorism is currently under consideration.

170. The financing of a "terrorist organization" and the financing of a "terrorist" are not incriminated neither by the CFT Guideline, nor the CFT Single Act. *(SR. II –b).* Concerning the *"funds"* covered by the crime of financing of terrorism, the guideline covers *"funds, property, financial or other services"*. The CFT Guideline defines *the term* "property" by referring to the AML Guideline (Article 1, paragraph 1 of the *CFT Guideline), which itself defines "property"* as "all types of assets, alienable or inalienable, movable or immovable, tangible or intangible, fungible or infungible as well as legal deeds or documents testifying to the ownership of these assets or related rights". Moreover, Article 1, paragraph 7 of the CFT Guideline contains a definition of "funds and other financial resources", which cover *"all financial assets and economic benefits of any nature including, but not exclusively, cash, checks, debts in cash, drafts, payment orders and other payment instruments, deposits with banks and financial institutions, account balances, [...]. These definitions make it possible to include in the sphere of the guideline all "funds" retained by the United Nations Convention of 09 December 1999 for the* Suppression of the Financing of Terrorism.

171. *(SR. II-c)* The CFT Guideline and the CFT Single Act do not impose that the funds were effectively used to commit or attempt to commit one or several terrorist acts. Indeed, Article 4, paragraph 2 of these two texts provides as follows: "the crime of financing of terrorism […] is constituted even if the funds have not been effectively used to commit [the acts covered by the Act].

172. The above-mentioned texts make no distinction as to whether the funds and other financial resources come from a legitimate source or not, as long as they are knowingly intended for financing of terrorism (*cf*. definition of financing of terrorism above, Article 4, *paragraph 1*).

173. (SR. II-d) The CFT Guideline and the CFT Single Act do not contain any provision requiring States to consider as a criminal offence *the attempted* commission of the crime of financing of terrorism. However the BCEAO has asserted in its previous comments on the regional report on evaluation of the UEMOA that the attempt was covered by Article 6 of the Guideline, which incriminates the fact of "*attempt to provide, mobilize or manage funds* […} and the Criminal Code of Burkina Faso contains provisions on the attempt to commit a crime or a misdemeanor.

174. (SR. II-e) In accordance with Article 2(5) of the United Nations Convention on the financing of terrorism, the CFT Guideline and Single Act provide that *"the attempt or participation in an association with a view to committing an act constituting financing of terrorism [...], the association for committing the said act, the assistance, encouragement or advice to a natural person or legal entity with a view to executing it or facilitating its execution"* also constitute an offense of financing of terrorism.

Underlying offence of money laundering (c. II.2)

175. In accordance with Article 6, paragraph 2 of the CFT Guideline and Single Act, crimes of financing of terrorism constitute underlying offences of money laundering.

Territorial competence (c. II.3)

176. Article 4, paragraph 3 of the above-mentioned text provides that there is financing of terrorism even if the facts that are at the origin of the acquisition, detention and transfer of property intended for the financing of terrorism are committed in [another State].

Intentional element (application of c. 2.2 of R.2)

177. Neither the Guideline, nor the CFT Single Act contains a provision providing that the intentional element of the crime of financing of terrorism may be deduced from the objective factual circumstances. The common Act of the member States is, therefore, applicable here, and, in the case in point, should facilitate the deduction of the intention, depending on the factual circumstances noted by the courts.

Liability of legal persons (application of c. 2.3 and c. 2.4 of R.2)

178. The Guideline poses the principle of application of the penal liability of legal persons for facts of financing of terrorism by referring to Guideline No. 07/2002/CM/UEMOA in the area of the fight against money laundering. Indeed, Article 23 of the Guideline provides that the provisions of the Guideline on money laundering concerning the conviction of certain acts attributable to natural persons or legal persons are applicable to the offense of financing of terrorism. The CFT Single Act enshrines the penal liability of legal persons in Chapter IV of its Title III on “the Suppression of the Financing of Terrorism", which takes up Article 42 of the AML Single Act but sets heavier penalties for this offense.

179. The fact of submitting legal persons to penal liability in the financing of terrorism does not exclude the possibility of initiating parallel procedures. Indeed, Article 38 of the CFT Single Act provides that legal persons may also be sentenced to one or several penalties (cf. c 2.5 below) and that the competent control authority may impose appropriate sanctions.

180. Besides, the above-mentioned Article provides that the conviction of legal persons does not exclude the conviction of its representatives, natural persons, as authors or accomplices of the same facts.

Sanctions for financing of terrorism (application of c. 2.5 of R.2)

181. Natural persons guilty of a crime of financing of terrorism are punishable by a prison term of ten years and a fine equal to four times the value of the property or funds on which the financing of terrorism operations were carried out. Attempted financing terrorism is punishable by the same penalties (Article 32 of the CFT Single Act). The penalties provided for above are doubled in case of aggravating circumstances (habit, repeated offence, organized gang – Article 34 of the CFT Single Act, which takes up Article 39 of the AML Single Act).

182. The penalties applicable to legal persons are the fine; this is equal to at least five times the fine imposed on natural persons, without prejudice to the conviction of the latter as authors or accomplices of the same facts.

183. The CFT Single Act also provides for complementary penalties for natural persons and legal persons, as well as causes of exemption and reduction of the penal sanctions; the latter are the same as those provided for by the AML Single Act for the crime of money laundering (cf. Section 2.1, c.2.5).

Analysis of effectiveness

184. Burkina Faso has no provision for combating the financing of terrorism and the latter is not a criminal offence. In their written response to the evaluation criteria, the authorities of Burkina Faso observed that the country ratified in 2003, the 1999 United Nations International Convention for the suppression of the financing of terrorism and that relevant measures were taken to ensure its application:

- Criminalization of any activity of provision or mobilization of funds for purposes of terrorism;
- Criminalization of any form of assistance for terrorist purposes, with reference to Article 65 of the Criminal Code;
- Application of Article 536a of the Criminal Code, repressing the recruitment, maintenance and training of persons, with a view to fighting or participating in terrorist acts;
- Development of a draft bill on combating the financing of terrorism, which provides for the freezing of funds.

185. However, the mission was presented with two versions of the Criminal Code (a hard copy and an electronic version), and none of them contains Article 536a on the recruitment, maintenance and training of people for terrorist acts[28]. Article 65 of the Criminal Code is a general article on aiding and abetting crimes, but does not specifically mention terrorism; the latter is not clearly defined by any chapter or article of the code. No text on the provision or mobilization of terrorist funds features in this same code or in a text provided to the mission. Finally, the draft bill on financing of terrorism was not given to the mission.

186. Under these conditions, it appears that the responses given by the authorities to the report transmitted to the UNO on application of the 1999 Convention on the Financing of Terrorism does not present a full picture of the legislative reality.

2.2.2 Recommendations and Comments

187. The authorities of Burkina Faso should rapidly consider as criminal offences, acts of terrorism and financing of terrorism as set forth in the 9 Conventions in the annex to the UN Convention on FT and provide for the corresponding penalties.

188. Since the CFT Guideline does not cover all the requirements of Special Recommendation II, the authorities of Burkina Faso are encouraged to ensure that the following elements are taken into account when developing texts for transposition of the CFT Guideline:

[28] According to the authorities, Article 536 bis rather featured in the draft Criminal Code, resulting from the review of the one in force. However, following the development of the bill on the fight against the financing of terrorism, this Article was abandoned.

- Providing for criminalization of the financing of a "terrorist" organization and the financing of a "terrorist";
- Providing for criminalization of the attempt to finance terrorism in order to comply with the AML guideline;
- Specifically providing that the intentional element of the offence of terrorist financing may be deducted from optional factual circumstances;
- Providing for a specific clause covering the possibility of initiating parallel procedures, whether penal, civil or administrative, for legal persons regardless of their criminal liability in the financing of terrorism; providing for applicable penal sanctions for the offense of terrorist financing.

2.2.3 Compliance with Special Recommendation II and R 32

	Rating	Summary of factors underlying rating
SR.II	NC	Terrorism and financing of terrorism were not considered as criminal offences at the time of the visit.

2.3 Forfeiture, freezing and seizure of the proceeds of crime (R.3 and 32)

2.3.1 Description and Analysis

Confiscation of property that constitutes proceeds generated through the commission of any offence of money laundering, financing of terrorism or other underlying offence, including property of equivalent value (c. 3.1)

189. The mandatory confiscation of property constituting proceeds generated by the commission of a money laundering offence is set forth in Article 43 of AML Act No. 026-2006, which provides that:

"in all cases of conviction for money laundering offense or attempted money laundering offense, the tribunals shall order the confiscation to the Public Treasury, of proceeds derived from the crime, movable and immovable property into which all these proceeds are transformed or converted and to the amount of their value, property acquired legitimately into which the said proceeds are merged, as well as incomes and other benefits derived from these proceeds, property into which they are transformed or invested or property into which they are merged from any person to whom these proceeds and this property belong, unless their owner establishes that he is unaware of their fraudulent origin".

190. Moreover, Articles 39 and 40 of AML Act No. 026-2006 provide as complementary optional criminal sanction, the "confiscation of the good or the item that served or was intended to commit the offense or of the item that constitutes the proceed" and concerning natural persons alone, the confiscation of the totality or part of the property of legal origin of the convicted person.

191. Hence, AML Act No. 026-2006 includes as property liable for confiscation proceeds from the money laundering offense and the instruments used or intended to be used to commit this offense. Are also liable for confiscation, movable or immovable property, into which the proceeds from money laundering are merged or transformed, this to the extent of their value if this property was legitimately acquired.

192. This specific laundering provision is enhanced or completed by the general provisions of the Criminal Code and the Drug Code, which provide:

- That the court may confiscate the property that served or were intended to serve to commit the offence, or which are proceeds from it (Article 55 of the Criminal Code);
- That the court may pronounce the confiscation of the totality or part of the property of legal origin of the convicted person (Article 70 of the Drug Code).
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193. It should also be recalled that the tribunal may order, in accordance with Article 69 of the Drug Code and in case of conviction for a violation of the legislation on narcotic drugs provided for under Articles 44 - 54 of this code, "the confiscation of the proceeds derived from the offense, the movable or immovable property into which the proceeds shall be transformed or converted, to the extent of the amount of their value, the property acquired legitimately into which these proceeds are merged, as well as the incomes and benefits derived from these proceeds, property into which are transformed or invested or assets into which they are merged, and this to whichever person these proceeds and this property belong, unless the owners establish that they were unaware of their fraudulent origin". Since the laundering of proceeds from trafficking of narcotic drugs is provided for under Article 55, it does not seem to fall under this statute.

194. The analysis of this provision leads to highlight six observations on the weaknesses or uncertainties it contains:

1) The categories of property liable for confiscation, to which reference is made in the previous paragraphs, exclude funds or objects associated with the financing of terrorism, which for the moment is not incriminated in Burkina Faso.

2) The second observation concerns the mandatory complementary penalty under Article 43 of the 2006 Act on "confiscation of proceeds derived from the crime, movable and immovable property into which these proceeds have been transformed or converted, and up to their value, legally acquired property into which these proceeds are merged as well as incomes derived from these proceeds, property into which they are transformed or invested or property into which they are merged ….".

195. One may ponder over the notion of proceeds from money laundering, which, in the strict sense, would be limited to incomes (interests…) derived from the investment of property of illegal origin. The senior magistrates met seem to think that this term may concern more generally all assets derived from the underlying offense and which are subsequently transmitted, converted or invested later. The jurisprudence should confirm (or infirm) this point of view. In the meantime, a legislative clarification would be useful as the general provisions of the Criminal Code on confiscation (Article 55) do not target the object of the crime, but refer to the goods that were used to commit the offence or which are proceeds from the offense; The optional complementary penalty provided for by the AML Act concerns the confiscation of the property or the item that served or was intended to serve in committing the offense or the item that constitutes the product from it. A strict and literal interpretation could limit the scope of application of the text to incomes derived from money laundering operations. The senior magistrates met seem to consider, as in the previous case, that the confiscation is targeted at proceeds from the main offence as they have been transformed into an

apparently legal asset base through money laundering operations. But, to avoid application difficulties, it would be better to introduce a legislative precision.

196. Article 39 also provides, as an optional complementary sentence, for the confiscation of all or parts of the property of *legal origin* of the convict. Some magistrates wondered whether it should not be "of illegal origin", as this expression seems more logical in the context of criminal conviction. Others felt that the text allows, within the limit of the value of the property laundered, for the confiscation of proceeds from the main offence when it is not possible to distinguish between the latter and legally-acquired property.

197. Literally interpreted, this text could just as well simply justify the confiscation, and without limit, of all the property of a convicted offender. It would, therefore, be useful that both the national and regional legislation be reviewed to rigorously specify the purpose of this provision. Otherwise, the appreciation would be left to the courts and eventually to the Court of Cassation.

198. The general text on confiscation provided for under Article 55 of the Criminal Code enables the court to confiscate the property that served or was intended to serve to commit the offense, or that constitutes the proceeds from it. It, therefore, makes no reference to the object of the misdemeanor or crime.

199. Under Articles 39, 40, 43 of the 2006 Act, Article 55 of the Criminal Code, it may be considered that the property "laundered" are part of the category of property that "served" to commit the crime, since the sums of money or the property derived from the initial offence are necessarily the medium, hence in some way, the means for committing the money laundering acts. But, it is not highly satisfactory that provisions of such importance on confiscation be based on an interpretation that seems uncertain.

200. In brief, the extensive interpretation of the notion of proceeds from money laundering or property that "served" in the commission of this offense is adopted, there is some uncertainty about the possibility of confiscating property acquired through the commission of an underlying money laundering offense in application of AML Act No. 026-2006 or Article 55 of the Criminal Code, as these texts make no reference to the object of the misdemeanor or crime. Moreover, the possibility of confiscating the equivalent value of the property is not explicitly mentioned in the texts.

Provisional measures for blocking any transfer of property liable for confiscation (c. 3.2)

201. AML Act No. 026-2006 sets forth provisional measures for blocking any transaction, transfer or disposal of property liable for confiscation. Hence, its Article 34 provides that "*the investigating judge may prescribe provisional measures, in accordance with the act ordering, at the expense of the State, notably the seizure or confiscation of the property associated with the offence, the subject of the investigation and all elements that will help to identify them, as well as the freezing of sums of money and financial operations concerning the said property*".

Application *ex parte* or without prior notification of the first request for freezing or seizure of property liable for confiscation (c. 3.3)

202. Act No. 026-2006 or the Criminal Code do not specifically provide for the possibility of the investigating judge or the Attorney General to carry out an application ex parte or without prior notification of an initial request for freezing or seizure of property liable for confiscation. However, according to the authorities met by the mission, these measures may be ordered under the powers of the district attorneys and investigating judges to take any step relating to the conduct of the

investigation. In particular, the investigating judge is allowed to take all measures useful for establishing the truth.

Detection and tracing of the origin of the property that is or may be liable for confiscation (c. 3.4) and measures aimed at preventing or voiding actions harming the capacity of the authorities to recover property liable for confiscation (c. 3.6)

203. *Powers of seizure of judicial police officers*: Articles 52 - 75 of the Code of Criminal Procedure organize the penal investigations (*enquêtes de flagrance* and preliminaries) and provide for the possibility of seizure by the District Attorney and by judicial police officers acting under the control of the magistrate of the district attorney's office. Article 78 of the Code of Criminal Procedure gives the investigating judge in charge of a procedure, after being contacted by the District Attorney, the power to search for any information he deems necessary for establishing the truth. He may delegate this power to the judicial police officers through a rogatory commission. Apart from seizure powers, the Code of Criminal Procedure empowers judicial police officers to undertake searches, home visits, hearings, and police custodies.

204. Moreover, Act No. 026-20066 empowers the investigating judge to order a number of investigation measures to establish the proof of offences associated with money laundering. It involves notably placing under monitoring bank accounts and assimilated accounts, access to computer systems, networks and servers, and communication of authentic acts or under private signature, bank documents, financial and commercial documents.

205. Possibility for the criminal proceeding authorities to adopt measures aimed at preventing or cancelling acts notably contractual acts that could impede the confiscation: these measures are not explicitly provided for by the AML Act or the Code of Criminal Procedure, but are included in practice in the framework of the general powers of district attorneys and investigating judges for the efficient conduct of the investigation.

206. *Seizure powers of the Customs*. It is Chapter I of Title X of the Customs Code "Recording of customs crimes" that organizes these powers. Article 171 provides that: "those who observe a customs offense shall have the right to seize all items liable to confiscation, retain the expeditions and all other documents relating to the items seized and ensure the preventive retention of the items as security against the penalties".

207. *Powers of the CENTIF:* in accordance with Article 26 of Act No. 026-2006, the CENTIF has 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.

Protection of the rights of bona fide third parties (c. 3.5)

208. AML Act No. 026-2006 contains no specific provision protecting the rights of bona fide third parties. However, in accordance with Article 43 mentioned above, the confiscation, for the benefit of the Public Treasury, of proceeds derived from the offense is not applicable to property belonging to persons having established that they were unaware of their fraudulent origin. It is, therefore, up to the owner of the property to prove his good faith. Article 98 of the Code of Criminal Procedure offers the possibility to any person who claims to have a right over an item placed in the custody of the Justice Department to claim its restitution from the investigating judge.

Additional element – Clauses providing for: a) confiscation of property of criminal organizations; b) confiscation mechanisms initiated through a criminal conviction; and confiscation of property in

accordance with the reversal of the burden of proof of legal origin on the presumed author of the crime (c. 3.7)

209. Act No. 026-2006 does not specifically provide for the confiscation of property belonging to a criminal organization as such. However, Article 222 of the Criminal Code of Burkina Faso incriminates crime syndicate defined as: "Any formed association or agreement, irrespective of the duration and the number of its members, for the purpose of preparing or committing crimes against individuals or property". Article 223 imposes a prison term of five to ten years on any individual belonging to the association or agreement.

210. In the framework of criminal proceedings and convictions, property belonging to the criminal association or its members may, therefore, be seized by virtue of the powers of the judicial police officers, the district attorney's office or the investigating judge in the course of their investigations. They may also be the object of confiscation in accordance with Article 55 of the Criminal Code if they were used or intended to be used to commit the crime, or if they are proceeds of the crime.

211. Outside these mechanisms, there is no procedure for civil confiscation or system of reversing the burden of proof in Burkina Faso.

Statistics (application of R. 32)

212. No money laundering case has, for the moment, been handled by the authorities of Burkina Faso. The same applies to cases in connection with the financing of terrorism, which is still not incriminated in Burkinabe law. During the period 2006-2008, the accumulated seizures of narcotic drugs amounted to about:

- 27.7 tons of cannabis,
- 72 kg of cocaine,
- 312 grams and 129 "lines" of heroine
- 19 tons of "street drugs"

Analysis of effectiveness

213. The provisions on seizure and confiscation for money laundering set forth by Act No. 026-2006 have not yet been implemented, which made it impossible for the mission to appreciate their effective practice.

2.3.2 Recommendations and Comments

214. The texts establishing the mechanisms of freezing, seizure and confiscation for crimes associated with money laundering are only partially in conformity with international standards: specifications should be made on the possibility of confiscating the proceeds of the underlying offense and object of the crime.

215. The authorities of Burkina Faso are invited to put in place, as early as possible, Act No. 026-2006/AN and introduce in the positive Act, the criminalization of the financing of terrorism and confiscation of property associated with the commission of this offense and which would be the object, proceed or instruments of the crime.

216. The authorities of Burkina Faso should provide for a mechanism that would help to know the amounts of money seized in the course of money laundering proceedings and for their management,

in order to assess the efficiency of the legal measures of seizures and confiscations and quantify the amounts.

2.3.3 Compliance with Recommendation 3 and 32

	Rating	Summary of factors underlying rating
R.3	PC	The confiscation is not possible in the area of financing of terrorist financing Precisions should be provided on the confiscation of the proceeds of the underlying offense and that of the object of the crime of money laundering. The confiscation in equivalent value is not specifically provided for

2.4 Freezing of assets used for the financing of terrorism (SR.III)

2.4.1 Description and Analysis

217. Regional Regulation No. 14/2002/CM/UEMOA (Regulation 14/2002), which is directly applied, establishes a mechanism for freezing assets in application of Resolution 1267 (and subsequent Resolutions) of the Security Council of UEMOA member States and in Burkina Faso.

218. The decisions of the UEMOA Council of Ministers determining the list of persons, entities and organizations whose funds should be frozen are listed below:

- Decision No. 06/2003/CM/UEMOA on the list of persons, entities or organizations targeted by the freezing of funds and other financial resources in the framework of the fight against the financing of terrorism in the UEMOA member States;
- Decision No. 04/2004/CM/UEMOA on amendment of Decision No. 06/2003/CM/UEMOA.
- Decision No. 12/2005/CM/UEMOA of 04 July 2005 on the list of persons, entities or organizations targeted by the freezing of funds and other financial resources in the framework of the fight against the financing of terrorism in the UEMOA member States;
- Decision No. 14/2006/CM/UEMOA of 08 September 2006 on amendment of Decision No. 12/2002/CM/UEMOA;
- Decision No. 09/2007/CM/UEMOA of 06 April 2007 on amendment of Decision No. 14/2006/CM/UEMOA.

Freezing of funds covered by S/RES/1267(1999) (c. III.1), Application of c. III.1 to III.3 to funds or other property controlled by the persons targeted (c. III.4) and Communication to the financial sector (c. III.5)

219. Article 4 of Regulation 14/2002 establishes the conditions of application of the measures for freezing funds and other financial resources of the entities designated by the Sanctions Committee. It provides that “all funds and other financial resources belonging to any natural person or legal entity, any entity or any organization designated by the Sanctions Committee shall be frozen”.

220. The procedure for dissemination of the list retained by Regulation 14/2002 requires the UEMOA Council of Ministers to decide on the list of persons, entities and organizations whose funds must be frozen, these lists shall then be disseminated by the BCEAO to banks and financial institutions. In this regard, 5 decisions were taken by the UEMOA Council of Ministers.

221. Between two sessions of the Council of Ministers, Regulation 14/2002 empowers the President of the Council of Ministers, on proposal of the Governor of the Central Bank, to amend or complete the list of persons, entities or organizations whose funds must be frozen on the basis of decisions of the Sanctions Committee. These measures should then receive the approval of the subsequent Council of Ministers.

222. Concerning the scope of application of Regulation 14/2002, it is applicable to banks and financial institutions, as defined by the banking regulation, exercising their activities on the territory of the UEMOA States. These entities are expected, moreover, to provide the Central Bank and the Banking Commission with any information that can facilitate the respect of the regulation, notably concerning the funds and financial resources frozen.

223. The provision for dissemination of the lists of the United Nations Security Council, under Resolution 1267 calls for several comments:

- Concerning entities or persons subjected to the freezing provision, Regulation 14/2002 is limitative, since only natural persons or legal persons, entities or organizations explicitly designated by the Sanctions Committee (Article 4) shall be subjected to the freezing measures. It should be recalled that the above-mentioned resolution requires that funds or other property held or controlled directly or indirectly by persons or entities explicitly designated by the Sanctions Committee, as well as "by persons acting on their behalf or on their instructions" be also frozen. On this point, the BCEAO has had the opportunity to insist that Article 4 *paragraph* 1 of Regulation No. 14 is limited to targeting funds and other resources "*belonging*" to persons designated by the Sanctions Committee. Consequently, this provision could be interpreted as covering the said property, as long as it is established that they belong to the persons concerned, irrespective of the mode by which they are managed or controlled, if even through representatives.

- Concerning assets of persons or entities covered by the regulation, only financial assets are concerned. Indeed, Article 4 of the regulation covers "funds and other financial resources", defined as follows:

- "all financial assets and economic benefits of any nature, including, but not exclusively, cash, checks, credits in cash, bills, payment orders, and other payment instruments, deposits with banks and financial institutions, account balances, credits and credit securities, negotiated securities and debt instruments, notably shares and other equity securities, title certificates, bonds, acceptance papers, warrants, unpledged securities, contracts on derived proceeds, interests, dividends or other incomes from assets or appreciations in value perceived on the assets, credit, right to compensation, guarantees, guarantees of efficient execution or other financial commitments, bills of lading, sale contracts, any document testifying to the detention of shares of a fund or financial resources or any other export financing instrument" (Article 1, "Terminology" of the Regulation).

224. This definition of "funds" submitted to the freezing provision is not in line with the requirements of Resolutions 1267 and subsequent resolutions. These Resolutions retain the obligation to freeze immediately "funds or other property" belonging to or controlled by the persons or entities listed. "Funds and other property" mean financial assets, but also property of any nature, tangible and intangible, movable and immovable, as well as documents or legal instruments in any form proving the ownership of or interest in the said property.

225. The provision instituted by the above regulation has a highly restrictive scope of application, since it covers only funds held by financial institutions whereas the above-mentioned resolution requires that all funds and other property belonging to the persons or entities who commit or attempt to

commit terrorist acts be frozen; the compliance with such a requirement will need the intervention of other actors in addition to financial institutions.

226. The provision instituted by the regulation, which requires the UEMOA Council of Ministers to determine the list of persons, entities or organizations whose funds should be frozen is heavy and does not facilitate a "timely" dissemination of the lists to the member States, notably Burkina Faso, as imposed by Resolution 1267. Indeed, in the context of Resolution 1267, "timely" means, if possible, within a few hours from inclusion on the lists of the Sanctions Committee against Al-Qaida and the Taliban. In addition, in the hypothesis of a blockage situation within the Council of Ministers, which takes its decisions unanimously (Article 11 of the Treaty constituting the UEMOA), the member States, notably Burkina Faso, should be endowed with clear national procedures for disseminating the lists to facilitate prompt intervention.

Freezing of funds covered by S/RES/1373 (2001) (c. III.2), freezing carried out by other countries (c. III.3), application of c. III.1 to III.3 to funds or other property controlled by the persons targeted (c. III.4) and Communication to the financial sector (c. III.5)

227. The preamble of Regulation 14/2002 covers both Resolutions 1267 and 1373; however, only Resolution 1267 is covered in its Article 2 "purpose of the regulation". Regulation 14/2002 contains no specific provision on implementation of Resolution 1373.

228. At the national level, Burkina Faso has no legal provision that enables it to develop its own list by designating natural persons or entities whose funds or other property should be frozen and undertake the freezing of these funds. The financing of terrorism does not constitute a criminal offense.

229. Burkina Faso has not instituted a procedure that will enable it to examine and give effect to initiatives taken in terms of freezing mechanisms of other countries.

230. The lack of a legal provision enabling Burkina Faso to take measures in the area of freezing mechanisms of Resolution 1373 explains the lack of an efficient system of communication to the financial sector.

Instructions to financial institutions and other persons or entities (c. III.6)

231. Apart from Regulation 14/2002, which covers exclusively financial institutions, the mission was not informed of any instruction to financial institutions and other natural persons or entities likely to detain funds or other property targeted by their obligation to take measures as freezing mechanisms.

Request for withdrawal of the list and de-freezing of funds (c. III.7)

232. In the absence of a legal provision enforcing Resolution 1373, there are no efficient procedures brought to the knowledge of the public to examine request for withdrawal from the list of persons targeted and de-freezing of funds or other property of persons or entities withdrawn from the list.

Procedures for de-blocking funds of persons inadvertently affected by the freezing mechanism (c. III.8)

233. Regulation 14/2002 does not institute efficient procedures brought to the knowledge of the public for de-blocking, as early as possible, the funds or other property of natural persons or entities inadvertently affected by a freezing mechanism, after verification that the natural person or entity is not a targeted person. When it is transposed, the administrative procedure of protest provided for

under Article 31 of the Single Act can be used to de-block the funds of persons inadvertently affected by a freezing mechanism.

Access to frozen funds to cover basic expenditures (c. III.9)

234. Regulation 14/2002 does not institute adapted procedures for authorizing access to funds and other property that are frozen in accordance with Resolution S/RES/1267(1999) and of which it would be decided that they serve to cover the basic expenditures, payment of certain types of commissions, fees and payments for services, as well as extraordinary expenditures.

Procedures for challenging the freezing with a view to its review by a court (c. III.10)

235. Regulation 14/2002 does not institute appropriate procedures to enable a natural person or legal entity whose funds or other property have been frozen to challenge this measure with a view to its review by a court.

Freezing, seizure, and confiscation under other circumstances (application of c. 3.1 à 3.4 and 3.6 of R. 3, c. III.11)

236. Burkina Faso has no procedure for the freezing, seizure and confiscation of funds or other property associated with terrorism, since terrorism and its financing are, for the moment, not incriminated in the country.

237. However, once transposed, the CFT Guideline should enable Burkina Faso to overcome this shortcoming. Indeed, Article 20 of the CFT Guideline provides that "*the member States shall adopt, in accordance with the regulations of their internal law, provisional measures by ordering at the expense of the member State concerned, notably the seizure of property in relation with the offence of financing of terrorism, the subject of the investigation and all elements that will help to identify them*".

Protection of the rights of third parties (c. III.12)

238. Regulation 14/2002 contains no provision to ensure the protection of the rights of third parties acting in good faith.

Implementation of the obligations provided for by SR. III (c. III.13)

239. Article 8 of Regulation 14/2002 provides that the BCEAO and the Banking Commission are in charge of monitoring the application of the regulation. In this regard, the Banking Commission may impose sanctions for non-respect of the provision instituted by the banks and lending institutions under its supervision. To date, the competent authorities concerned have not carried out any control of the efficient application of Regulation 14/2002.

240. Since Regulation 14/2002 is not applicable to financial institutions, no provision for monitoring its application is made for other entities likely to hold funds belonging to persons and entities targeted by the UNO lists.

241. No provision for monitoring the efficient application of the freezing measures taken under Resolution 1373 is in place.

Complementary element – Implementation of the measures recommended in the document on Best International Practices (c. III.14) and Implementation of the procedures authorizing access to

frozen funds (c. III.15)

242. The measures advocated in the document on best international practices are not provided for by Regulation 14/2002. The same applies to procedures authorizing access to funds or other property frozen in pursuant of Resolution S/RES/1373(2001), in order to cover basic expenditures, payment of certain types of commissions, service fees and remunerations, as well as exceptional expenditures.

Statistics (application of R. 32)

243. No mechanism for collection of information on freezing measures taken under Resolution 1267 is available.

Analysis of effectiveness

244. Burkina Faso has instituted an inter-ministerial committee whose function is to monitor the implementation of UN Resolutions on sanctions against Al Qaida and the Taliban. This committee regroups the Ministries of Finance and Budget, Security, Defense, Territorial Administration, Justice, as well as the Ministry of Foreign Affairs and General Cooperation.

245. The Committee of the Security Council of Resolution 1267 was notably informed that the lists transmitted by the United Nations Organization were updated at the BCEAO and validated by the UEMOA Council of Ministers. The lists (hard copy) are then sent by BCEAO to the professional banking association (APBEF), which distributes them to the banks.

246. Only banks have declared having knowledge of the list disseminated by the authorities containing the names of persons whose funds should be frozen. In most cases, the controls carried out after the reception of the lists concern newly-opened accounts, with the exclusion of accounts opened, which are considered less risky. The lists are disseminated, received and exploited, in the best of cases, manually without electronic transmission or reconciliation. In one bank visited by the mission, the latest update obviously dated back to the year 2006. The mission concludes that the treatment of the lists stemming from the UN1267 Resolution is not satisfactory.

2.4.2 Recommendations and Comments

247. The provision of freezing of funds under Resolution 1267 is highly incomplete and should be amended in order to:

- Subject to the freezing measures taken under Resolution 1267 funds or other property held or controlled directly or indirectly by persons or entities explicitly designated by the Sanctions Committee, also by "persons acting on their behalf or on their instructions";
- -Extend the freezing measures to all "funds and other property", which would help, in accordance with the above-mentioned resolution to cover all financial assets, property of all kinds, tangible or intangible, movable and immovable, as well as legal documents and instruments in any form proving the ownership or interests on the said property;
- -Extend the scope of application of the regulation to cover all the actors who would hold funds and other property belonging to the persons or entities indicated directly or indirectly in the commission of terrorist acts provide for an efficient monitoring of the respect of these obligations by the responsible authorities;

- Provide for a clear and rapid mechanism for the dissemination of the lists of the Sanctions Committee at the national level, which would be complementary to the regional provision.
- Put in place efficient procedures brought to the knowledge of the public for unblocking, as early as possible, funds or other property of persons or entities inadvertently affected by a freezing mechanism, after verification that the person or entity is not a target.
- Put in place adapted procedures to authorize access to funds or other property that have been frozen in pursuance of Resolution S/RES/1267(1999) and of which it would be decided that they would serve to cover basic expenses, payment of certain types of commissions, service fees and remunerations, as well as extraordinary expenditures.
- Put in place appropriate procedures to enable a person or entity whose funds or other property have been frozen to protest against this measure, with a view to its review by a court.
- Adopt measures to ensure the protection of the rights of third parties acting in good faith.

248. Concerning Resolution 1373, Burkina Faso should:
- Be able to designate the persons or entities whose funds or other property should be frozen;
- Provide for a clear and rapid procedure for examining and giving effect to initiatives taken as freezing mechanisms of the other countries;
- Put in place efficient procedures brought to the notice of the public for examining in good time, request for withdrawal from the list of persons targeted and de-freezing of the funds or other property of persons or entities withdrawn from the lists;
- Put in place efficient procedures brought to the knowledge of the public for de-freezing as early as possible, the funds or other property of persons or entities inadvertently affected by a freezing mechanism, after verification that the person or entity is not a targeted person;
- Put in place appropriate procedures to enable a person or entity whose funds or other property have been frozen to protest against this measure, with a view to its review by a court;

249. Adopt measures to ensure the protection of the rights of third parties acting in good faith.

250. Burkina Faso should quickly transpose the CFT Guideline, incriminate the financing of terrorism in its internal legal order and provide for a mechanism for freezing, seizure and confiscation of funds or other property associated with terrorism.
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2.4.3 Compliance with Special Recommendation III and R 32

	Rating	Summary of factors underlying rating
SR.III	NC	Lack of a complete mechanism ensuring the application of Resolutions 1267 and 1373 (see recommendations and comments above, 259-261). In particular: - Visits to banks established that the lists were not updated under conditions to ensure their effective exploitation - Lack of a clear and complete mechanism at the national level responding to the requirements of Resolution 1267.

		Lack of a clear and efficient procedure for enforcing initiatives taken in the other countries.

2.5 The Financial Intelligence Unit and its functions (R26)

2.5.1 Description and Analysis

Legal Framework

251. As a member of the West African Economic and Monetary Union, Burkina Faso has literally transposed Guideline No. 07/2002/CM/UEMOA of 19 September 2002 into its national legislation through Act No. 026-2006/AN of 28 November 2006 "on anti-money laundering" (designated herein after as the "AML Act"), promulgated by Decree No. 2006-649/PRES of 29 December 2006. Section 16 of the AML Act established a National Financial Information Treatment Unit, CENTIF.

Establishment of a FIU serving as a national centre (c. 26.1)

252. Article 16 of the Act provides that a National Financial Information Treatment Unit, (CENTIF) is instituted under the responsibility of the Minister of Finance whose composition, operation and organization shall be fixed by decree. Pursuant to this Article, Decree No. 2007-449/PRES/PM/MEF/MS/MJ of 18 July 2007, on attributions, composition and operation of the National Financial Information Treatment Unit (CENTIF) was adopted. Later, the members of the Unit were appointed by Decree No. 2008-420/PRES/PM/MEF of 10 July 2008. Finally, the Unit became formally operational on 9 December 2008 with the swearing in of the members.

253. The CENTIF is an administrative structure, "endowed with financial autonomy and autonomous decision-making powers on issues within its competence. Its mission is to collect and treat financial information on money laundering channels". This information is mainly sent to it in the form of declarations of suspicion by the entities subjected to the AML Act, in order to update elements likely to constitute money laundering. In addition, it receives information communicated by the control authorities and judicial police officers, which may be useful for the accomplishment of its mission (Article 17, AML Act).

254. Apart from these attributions, it is also expected to express views on the implementation of the government's policy in the area of anti-money laundering and, eventually, to propose all necessary reforms for enhancing the efficiency of the AML system. At the time of the visit, the CENTIF was striving to develop the model of declaration of suspicion, its By-laws and its Code of Ethics.

255. To date, the attributions of the CENTIF do not cover the fight against the financing of terrorism. Burkina Faso is developing a bill transposing the Single Act on combating the financing of terrorism in the UEMOA member States adopted by the Council of Ministers of the Union on 28 March 2008. This Act will extend the attributions of the CENTIF to the fight against the financing of terrorism.

Advice on how to establish declarations (c.26.2)

256. 248. At the time of the visit, the model of suspicious transaction reports had been submitted to the Ministry of Economy and Finance for adoption (Article 24 of the AML Act). In addition, a technical data sheet as advice on how to inform the suspicion report form was developed by the CENTIF for training the entities concerned.

257. The model is drafted according to the following plan:

- Identification of the entity and/or person
- General information
- Description and status of the suspicious transactions
- Identification of the suspected natural person and/or legal entity and relationship with the declarant
- Analysis (suspicious elements)

258. The use of the fixed model is mandatory. (article 24 AML). The ignorance of this rule is even sanctioned by fines (articles 33 and 38 in fine, AML). Hence, the members of CENTIF were of the view that they should reject irregular declarations.

259. The declarations of suspicion are transmitted to the CENTIF by any means leaving written trace. Reports made through the telephone or any other electronic means must be confirmed in writing within forty-eight (48) hours. These declarations should indicate the period within which the suspicious operation must be executed, or the reasons for which the operation has already been executed (article 25 AML). The CENTIF acknowledges receipt of all written declarations of suspicion.

260. Implicitly, article 25 compels the subjected entities to declare to the centif the suspicious operations before the execution of the latter. However, if it is possible to suspend their execution or if appeared, after the realization of the operation, that the latter concerned sums of money and all other property of suspicious origin, the suspicious report remains mandatory and should indicate the reasons for the delay.

261. The principle of declaration before execution of the transaction is important, since the CENTIF has power to oppose the execution of the suspicious operation for a maximum period of 48 hours (article 26 AML act). This enables the CENTIF to deepen the research in complicated cases and avoid the disappearance of capital before they can be seized by the judicial authorities. If, at the end of this period, the investigating judge has not contacted the declarant, the latter resumes his freedom of action.

262. The opposition decision is, therefore, taken by the "CENTIF". The regulatory texts do not specify who in the CENTIF can exercise this power and how the decision is taken (in a commission?, unanimously?). The members of the CENTIF were of the view that in practice, the decision should be taken by the chairman or his delegate, who is a member of the unit.

263. Finally, the declaration of suspicion to the CENTIF remains mandatory, even in the case of a declaration made to an authority in application of a text other than the AML Act (article 24 AML Act, last paragraph). Hence, the unit is aware of the cases that may concern it, while remaining in a position to provide pertinent elements to an investigation or examination.

Access by the FIU to timely information (c.26.3)

264. In accordance with Article 17 of the AML Act, the CENTIF may request for the "communication, by the subjected institutions as well as by any natural person and legal entity, information held by them and likely to help enrich the declarations of suspicions". Hence, it has access to financial, administrative and police information, held by the control authorities and judicial police officers, as well as by subjected institutions and any natural person or legal entity, for as much as they are

necessary and pertinent for the accomplishment of its mission and the analysis of the suspicious reports. Access to this information is normally done by e-mail or through individuals (the correspondents) or in writing, using a form designed by Unit.

265. The CENTIF has correspondents in certain public services, notably the police, the gendarmerie, financial services and judicial services (Article 18 of the AML Act). These correspondents act as liaison officers and are supposed to provide any pertinent information at the request of the CENTIF in the context of the analysis of the declarations. In addition, nothing prevents them from communicating spontaneously to the CENTIF any information they deem useful.

Obtaining additional information from the declaring entities (c. 26.4)

266. The authority to obtaining "additional information" is provided for by Article 17, as mentioned above, as well as Article 26, paragraph 1, of the AML Act. This last article refers to "requests for additional information from the declarant, as well as from any other public and/or control authority". This provision seems quite superfluous, given the very wide sphere of Article 17 and could even give the impression that the power of the CENTIF to request for additional information would be limited exclusively to the sole declarant and not the other subjected entities.

Dissemination of financial information (c. 26.5)

267. The CENTIF transmits a report to the district attorney's department when the operations communicated to it highlight facts likely to constitute money laundering crimes (Article 27 AML Act). The decision-making procedure within the CENTIF is governed by the By-Laws of the Unit (planned), providing that the District Attorney of Faso, territorially competent, will be contacted by the President of the CENTIF, after decision by members of the Unit meeting as a Review Board. In case of emergency, the President of the Unit (or a delegate member designated by the President) may take the decision without the intervention of the Review Board.

268. The decision of transmission to the District Attorney is normally taken by consensus, but failing that, a simple majority is enough with the President casting the winning vote in case of a tie. Since the planned regulation does not specify a minimal quorum of presence on the Board, all the members should meet for the CENTIF to take a valid decision (except in case of emergency).

269. The District attorney of Faso is, therefore, sole recipient of the CENTIF reports. The report is accompanied by all support documents, but it never contains the declaration of suspicion itself. The identity of the declarant cannot feature in the report, which serves as evidence until proven otherwise. The CENTIF informs "at the proper time" the declaring entity about the findings of its investigations.

Operational autonomy and independence (c. 26.6)

270. The Act confers the CENTIF independence and operational autonomy to be sheltered from influence or undue interference. Placed under the responsibility of the Minister of Finance, the CENTIF enjoys financial autonomy and autonomous decision-making power in matters within its competence (Article 17). This independence is reaffirmed in Article 2 of the Decree on attributions, composition and operation of the CENTIF.

271. In this context, it is remarkable that the President of the CENTIF be appointed by the Minister, while the other members are detached. The reason for this divergent formulation is not clear, and it

could mean that there is a relation of subordination between the President of the Unit and the Minister. On the other hand, Article 17 of the AML Act seems to leave no doubt about the functional autonomy of the CENTIF. This being the case, a doubt persists on the full decisional autonomy of the President of the Unit.

272. Since the CENTIF started its operations quite recently, it is difficult to evaluate whether this principle of independence and operational autonomy is risky or not. However, the lack of an approved budget cannot ensure an independent operation of the Unit.

Protection of information held by the FIU (c. 26.7)

273. The CENTIF operates under the principle of strict confidentiality, which protects the information received or collected by the CENTIF. The confidentiality is only removed in case of transmission to the District Attorney of Burkina Faso and in the framework of exchange of information with foreign colleagues who are expected to observe similar professional secrecy obligations.

274. Since the obligation of confidentiality is duly established with regard to members of the Unit and its staff, correspondents of the CENTIF (Article 19), as well as entities and persons subjected (Article 38), it remains a shortcoming on the part of other persons who may be involved in the operation of the CENTIF. Indeed, Article 17 entrusts to the Unit, the power to request for, in the framework of its mission, the communication of information not only held by the subjected entities and persons, but also "by any natural person or legal entity". Even if it may be admitted that government administrations are liable to confidentiality by reason of their own rules or ethics, the same applies to other persons not regulated.

275. Concerning physical protection of the information, the security system envisaged by the CENTIF (banning of private visits, acquisition of paper shredders, permanent security on the premises ensured by the defense and security forces, protection of computer data, video monitoring, access badges) should enable it to ensure efficient protection of the information in its possession. The case currently being handled by the CENTIF is kept in a safe, pending the time the Unit will occupy its permanent offices.

Publication of periodic reports (c. 26.8)

276. The CENTIF should prepare quarterly reports and an annual report submitted to the Minister of Economy and Finance who analyzes the trend of anti-money laundering activities at the national and international levels, and must conduct the evaluation of the declarations collected. These reports are also transmitted to the Headquarters of the BCEAO, which makes a synthesis of them for purposes of informing the UEMOA Council of Ministers.

Membership of the Egmont Group (c. 26.9)

277. No step has been initiated with a view to registering the CENTIF of Burkina Faso as a member of the Egmont Group. In any case, in the present situation, the CENTIF does not meet all the conditions for membership of the Egmont Group, notably those concerning the financing of terrorism and the operational status.

Taking the principles of the Egmont Group into account (c. 26.10)

278. The provisions of the AML Act governing international cooperation with foreign colleagues are in line with the principles of the Egmont Group. The CENTIF has not yet exchanged any information with a FIU of a UEMOA country, or of another third country. However, the CENTIF intends to take into account the principles of the Egmont Group in its operational relations with other financial information units, each time it embarks on the exchange of information.

Adequacy of the resources of the FIU (c. 30.1)

279. The CENTIF is composed of six (6) members:

- The President, who is a top civil servant appointed by the Minister of Finance from the managerial staff under his authority;
- 1 Magistrate specialized in financial issues detached by the Minister of Justice;
- 1 Top Official of the Judicial Police, detached by the Minister of Security;
- 1 Representative of BCEAO, ensuring the Secretariat of the CENTIF;
- 1 Investigating Officer, Inspector of Customs Services, detached by the Minister of Finance;
- 1 Investigating Officer, Judicial Police Officer, detached by the Minister of Security.

280. The members of the CENTIF perform their functions, on permanent basis, for a period of 3 years renewable once. They were appointed according to Decree No. 2008-420/PRES/PM/MEF of 10 July 2008.

281. It is planned that the members of the CENTIF will be assisted in their mission by a support staff comprising:

- 2 Administrative and Financial Officials (RAF);
- 1 Computer Scientist;
- 1 Financial Analyst;
- 1 Secretary;
- Civilian security agents.

282. The financial resources of the CENTIF come from an allocation from the State, and may be completed by contributions from UEMOA and development partners. For the year 2008 the CENTIF received an allocation of CFAF 78.0 million from the State to cover the initial operational costs. For the year 2009, the CENTIF requested for a budget of CFAF 363,000,000 (about € 553,390), which has not yet been approved. At the time of the mission, operational expenses were covered by the common expenses of the State budget, without being individualized.

283. The Unit is temporarily based in a building of the Ministry of Finance, pending the time it will have permanent premises.

Integrity of Staff of the FIU (c. 30.2)

284. The members of the CENTIF are appointed by the President and swear an oath before assuming their functions. They are obliged to comply with the professional secrecy and may use the information they obtain in the performance of their duties and other purposes other than those provided for by the

AML Act. The conditions of their recruitment are governed by the terms and conditions of their respective administration. The correspondents of the CENTIF in the various government services swear the same oath. The code of ethics (planned) refers to the provisions of the Criminal Code in case of violation of the professional secrecy and provides for additional administrative and professional sanctions (Articles 17 and 18).

285. Concerning the support staff, the By-laws and code of ethics being validated by the Minister of Economy and Finance, impose obligations of the respect of the secrecy and confidentiality of the information collected, just as the members and correspondents. It is envisaged that each of the agents signs a personal commitment to that end, a commitment, which will be added to his administrative database. The violation of this commitment will result in the interruption of the working contract without prejudice to the relevant sanctions provided for by the Criminal Code.

Adapted training of the staff of the FIU (c. 30.3)

286. The members of the CENTIF are in the initial stages of their specific training in the area of money laundering and financing of terrorism. Before the implementation of the Unit, they undertook some training activities:

- A study tour of three members (the President, the Magistrate and the Top Official of the Judicial Police) to the CENTIF of Senegal;
- Participation of the President in a training workshop organized by IMA in Tunis;
- Participation of three (3) members (the Top Official of the Judicial Police and the two Investigating Officers) in a training workshop organized by GIABA with the support of the American Treasury in Abidjan, Côte d'Ivoire.

287. Also, the agent from BCEAO participated in various training workshops on the AML/FT organized by the BCEAO/BEAC capacity building project, the Embassy of the United States in Burkina and GIABA in collaboration, on the one hand, with the Embassy of France in Senegal, and on the other, with UNODC.

288. For the year 2009, requests for sponsorship for the organization of local workshops and study tours were submitted to GIABA and the French Cooperation Agency.

289. Besides, the 2009-2011 action plan (being finalized) envisages training activities for both the members and the support staff. This action plan will be submitted for the appreciation of the partners and international institutions in charge of the AML/FT, with a view to soliciting their contribution for its implementation.

Statistics (application of R. 32)

290. The members of the CENTIF are aware of the importance of keeping accurate detailed and reliable statistics and envisage establishing a computer system for the statistics. At the time of the visit, only one declaration of suspicion had been received, which was still being treated.

2.5.2 Recommendations and Comments

291. According to the AML Act, the CENTIF is an administrative unit accomplishing the functions of the CENTIF and is mainly in charge of receiving and processing suspicious transaction reports. The latter is not really operational. Only one suspicious case has been reported to it since its installation.

292. Basic legal framework of the CENTIF is solid. The form for declaration of suspicion (planned) developed by the CENTIF is well drafted, complete and detailed and should guide the declarants. The organization and administration of the CENTIF appear adapted to the task of a FIU. With the gradual acquisition of experience and specific knowledge in the area, the quality of operation of the unit should improve.

293. In this context, it should be noted that the point of view of the CENTIF on irregular declarations deserves to be reconsidered. A mere rejection reflects a quite formalist approach, which could prove counter-productive.

294. It is of utmost importance that a relationship of trust be established between the entities subjected and the CENTIF. Without that, any efficiency of the preventive system is seriously mortgaged. One of the pillars of this relationship is the confidentiality which protects the information on declarations of suspicion. The declarants must be convinced that their information will only lead to an investigation or a criminal proceeding in case of serious pieces of evidence of money laundering or financing of terrorism. Consequently, the data are shrouded in secrecy during the entire analytical phase, and the CENTIF must ensure the respect of this confidentiality when it solicits information from third parties.

295. Apart from the relationship with the declarants, the CENTIF must also create synergies with the district attorney and the other judicial authorities. The presence of a magistrate within the unit can facilitate the relations with the judiciary. In this context, it is important to obtain a systematic feedback on the follow-up by the judiciary authorities so that the CENTIF can evaluate the quality of its relations and where necessary, improve or correct its analytical tasks.

296. The multidisciplinary approach which is reflected in the composition of the members of the CENTIF is somewhat imbalanced by the preponderance of the police/judiciary component to the prejudice of the financial element. It is necessary to enhance the financial analysis capacity of the service by recruiting an expert analyst in the economic, banking and/or financial areas.

297. In view of its lack of experience, the CENTIF will have to face considerable challenges, especially in terms of sensitization and training, first of all at its own level. It will be necessary that its members acquire rapidly the expected expertise and that it establishes its authority over the subjected persons.

298. The support activity of the CENTIF is essential for supporting the investigation and prosecuting authorities in their efforts against the major financial delinquency and assisting them to focus more on the aspects of criminal proceeds and their recuperation. The AML Act is already two years old and the decree instituting the CENTIF is one and half years old, and it should be observed that progress has, so far, been very low. There is therefore a need to introduce more dynamism in the development of the preventive system and in the in-depth and specialist training of the members and staff of the unit in the area.

299. The budget of the CENTIF for the 2009 fiscal year is not known. The current lack of budget and uncertainty with regard to financial resources to be mobilized are mortgaging its operational capacities. It will be necessary to clarify this major aspect so that the treatment of STR will be ensured under the best conditions and that in the spirit of the population, the CENTIF be perceived as an efficient body. The human resources are now adequate. On the other hand, the computer equipment and materials are not adapted.

300. Finally, in the absence of a FT Act, the CENTIF has no power in the area.

2.5.3 Compliance with Recommendations 26 and 30

	Rating	Summary of factors underlying rating
R.26	PC	Lack of an effectively operational FIU The attributions of the FIU do not include the fight against the financing of terrorism The protection of confidentiality is not totally ensured with the request for additional information

2.6. The authorities in charge of investigations, the prosecution authorities and other competent authorities – the framework of the investigation and prosecution for the crime and that of confiscation and freezing (R.27, 28, 30 and 32).

2.6.1 Description and Analysis

Legal Framework:

Judicial Authorities

301. Money laundering cases are within the jurisdiction of the court for minor offenses of the 23 High Courts of Burkina Faso, where investigating judges also sit. Pending appeal, these cases are tried by the Appeal Court of Ouagadougou or Bobo-Dioulasso. The Court of Cassation is the last resort for legal matters.

302. At each level of jurisdiction, the public action is exercised by State Prosecutor, notably the Attorney General and his Lawyers/general prosecutors at the Appeal Courts and the District attorney of Faso, assisted by his deputies at the level of the High Courts. The status of the judiciary corps is regulated by Organic Act No. 036-2001/AN of 13 December 2001. In all, there are 356 of them.

Police and Gendarmerie

303. The general mission of the police service is maintenance of public peace and protection of the national institutions. Hence, they in charge of the prevention (Administrative Police) and investigation of all crimes, including money laundering and activities associated with terrorism (Judicial Police).

304. The National Police Service, with a staff of about 6,000 people, comprises the Headquarters, six (6) Central Departments, thirteen (13) Regional Departments and forty-five (45) Provincial Departments subdivided into Central Police Stations (45), Regional Police Stations (9) and District Police Stations (132) and eighteen (18) Border Police Posts. The structure comprises services in charge of the fight against economic and financial crimes (Economic and Financial Police Divisions and Economic and Financial Brigades) and Services in charge of the fight against terrorism (Territorial Monitoring Divisions and Regional State Security Services).

305. The Gendarmerie, with a staff of about 5,000 men, performs the tasks of administrative police (prevention), military police and judicial police. It comprises Headquarters; three (03) Gendarmerie Regions, which are subdivided into Departmental Gendarmerie Groups, Mobile Gendarmerie Groups; Companies and Research Sections, Brigades. The Research Sections are composed of economic and

financial units, and many others. The economic and financial units are in charge of investigations on economic and financial crimes (e.g.: embezzlement, bankruptcies, and money laundering). Besides, the Gendarmerie is entrusted with the mission of operational defense of the territory.

306. Serious crimes, which these investigating authorities should deal with and which can generate considerable criminal profits, are drug trafficking, crimes against property (thefts, armed robbery …), confidence crime like swindling, misappropriation of funds and forgery, and human trafficking (especially children).

Intelligence Services

307. There are intelligence services established both in the National Police (monitoring of the territory) and the Gendarmerie (research and information treatment centre - CRTI). Their general mission is to centralize and exploit information in any area of activities that could affect public security. They play an important role of monitoring persons and groups in the anti-terrorist context.

Designation of the competent criminal proceedings authorities (c. 27.1)

308. There are no police services specialized in money laundering and the AML Act is virtually unknown to the operational services. Investigation of financial crime cases is normally entrusted to the economic and financial brigades of the police service and the economic units of the gendarmerie, which have no experience in the area of money laundering. The investigations focus on basic crimes and not on the financial aspects resulting from them, such as the search for asset base benefits.

309. The suspicious transaction reporting system would encourage investigators to pay more attention to these financial aspects and the search for and discovery of the criminal proceeds. This system represents a different approach, which consists in tracing back to the underlying offences from the analysis of the financial flows that they engendered. This also requires a change in perspectives aimed at focusing on the detection and recuperation of the criminal assets, without limiting the investigation just to the basic crime. An initial declaration from a bank reached the district attorney's office. The difficulties raised by the police investigators in money laundering investigations are mainly insufficient resources, lack of time for dealing with complex and sophisticated cases, and lack of specific training. A real specialization would also help to better take into account the difficulties of proof of elements constituting the misdemeanor, such as the illegal origin and the intentional element.

310. The same problems are faced by the district attorney's office. Even if the AML Act has been in force since 28 November 2006, it has never been enforced. Several magistrates acknowledged that on the merits, they had not had the opportunity to conduct an in-depth reflection on the Act and conditions of its application. The Chancery has not even sent out a circular on the issue or organized discussion and specific training sessions29. Magistrates are, nevertheless, already aware of a few legal problems with the application of the AML Act. First of all, Article 35 provides for a prison term of 3 to 7 years, which creates uncertainty about the criminal or minor nature of the offense and, consequently, on the procedure to follow. Besides, it is necessary to consider the difficulty of the proof of the underlying offence or the illegal origin of the property laundered, especially in case of proceeding for autonomous money laundering acts. Finally, the discussions revealed that magistrates

[29] However, 3 magistrates attended a seminar in Lome on the burden of proof and confiscation of property.

are likely to take divergent stands on Article 27 of the AML Act, which order the district attorney to "immediately" refer the case to the investigating judge. This article would, therefore, help to get around the basic prerogatives of the State Prosecutor. Hence, it proved that the magistrates do not clearly see the role and operation of the CENTIF, and fear a conflict with the investigation prerogatives of the judicial police.

311. Article 31 of the AML Act provides for specific powers of the investigating judge in the search for evidence: monitoring of bank accounts, access to computer systems and request that bank and similar documents be transmitted to them. This article seems superfluous, since these acts are in any case part of the common attributions of the investigating judge. In addition, the specific reference in this article to proof of the original money laundering crime is unfortunate: it may create confusion about the burden of proof in the context of prosecution for money laundering as an autonomous offence.

Possibility of differing or not carrying out certain arrests and seizure to ensure the efficient conduct of the investigation (c. 27.2)

312. There are no formal and specific provisions in the CPP of Burkina Faso or in the AML Act that cover differed arrest and seizure. Nevertheless, in practice the investigators are at liberty to decide on the appropriate time for arresting people implicated in these activities or collecting evidence. This decision depends on the urgency of the measures to be taken and the circumstances surrounding the incriminated acts and the need to protect the property laundered or to be laundered and prevent the authors of these acts to escape prosecution. In any case, the principles governing the criminal procedure do not grant any period to the competent authorities to arrest a person implicated in the commission of a crime or misdemeanor. Police investigations are conducted under the direction and responsibility of the State Prosecutor of Faso and, eventually, the investigating judge. Hence, any decision in that regard should normally be taken in consultation with these magistrates.

Additional element – Authorization for special investigation techniques (c. 27.3

313. The AML Act, or the CPP, makes no provision for the use of special techniques in money laundering investigations. On the other hand, the Act on drugs (Act No. 23-94 of 19 May 1994 on the Health Code) contains pertinent provisions that may apply to related money laundering investigations, notably access to computer system (Article 83), monitoring and telephone tapping (Article84), monitoring of bank accounts (Article 85) and production of bank financial and commercial documents, authorized by the judicial authorities.

314. Since the control delivery technique is not provided for by this Act, the authorities indicate Article 11 of the UN Vienna Convention of 20 December 1988 as the formal reference text. In any case, the use of this technique by the police services is done under the control of the judicial authorities.

Additional element – Framework for use of special investigation techniques (c. 27.4)

315. The above-mentioned special techniques have not yet been put into practice in the investigations of money laundering or financing of terrorism acts, except in the context of drugs

Additional element – Special groups and operational international cooperation (c.27.5).

316. Such groups have not yet been set up as part of AML/CFT Policy.

Additional element – Review of the ML/TF trends by the authorities (c.27.6)

317. Authorities have not yet made a review of ML/FT trends in Burkina Faso.

Power to demand and seek any document or piece of information

318. In principle, any search and seizure depends on a decision of the competent judicial authority. Articles 31 and 34 of the AML Act even provide specifically, access to bank and financial data and seizure of evidence by the investigating judge. The police can only do without basic procedure in the case of flagrant offence, but then only against the suspect and in his home, or with the consent of the suspect (Title II, Chapter I, Code of Criminal Procedure). However, this procedure has not yet been applied in the context of money laundering or financing of terrorism.

Authority to obtain and use testimonies (c. 28.2)

319. The hearing of witnesses and use of testimonies are basic elements in any investigation and prosecution on money laundering and other acts. The prosecution authorities, including the police, are therefore empowered, as a routine, to obtain and use testimonies when they observe crimes and gather evidence (Article 14 & 21 CPP). In addition, a specific procedure concerning appearance of witnesses not detained is provided for under Article 57 of the AML Act in the context of mutual legal assistance.

Adequacy of resources of the authorities (c. 30.1)

320. For the moment, there are 356 magistrates in Burkina Faso, a number, which seems adequate under the current circumstances. The vacant positions are promptly filled and the magistrates met did not indicate concrete problems resulting from lack of human resources.

321. The organization of the police and the gendarmerie services appears adequate and well structured. However, according to the interlocutors, their human (and financial) resources are quite limited in the face of the challenges. Hence, the total number of staff of the national police and national gendarmerie do not enable the services to cover the entire national territory.

Integrity of authorities staff (c. 30.2)

322. The Burkinabe magistrates should meet the general conditions of access to the Burkinabe public service, hold at least a Master's degree in Law or equivalent certificate. They must have obtained the certificate sanctioning the practical training at the *Ecole Nationale d'Administration et de Magistrature* or that of an equivalent acknowledged training centre. A morality survey is conducted on them and they swear an oath at the time of the retraining and before assuming their functions to keep professional secrecy and always conduct themselves as worthy and loyal magistrate (CH. II of the Organic Act). They are subjected to strict rules of ethics and discipline (CH. IX of the Organic Act).

323. The police and the gendarme should pass a competitive examination before being admitted to the training institutes. They should not have had a previous criminal record, and should undergo a morality examination and attend courses on ethics during their instructions. It should be noted that the National Police has a Code of good conduct being reviewed, with a view to enhancing some of its provisions (Cf. Order No. 2004-077/SECU/CAB of 27/9/2004).

Adapted training of staff of the authorities (c. 30.3)

324. The magistrates are generally trained at the Ecole nationale de la magistrature, and must cover a practical training period of 12 months.

325. Police officers receive a training of two (2) years for the grades of Assistant and Police Officers and three (3) years for the Commissioners.

326. The non-Commissioned Officers of the gendarmerie receive a basic training of 2 years before acquiring the status of Police Detective. After about ten years of service in the field, they acquire the status of Judicial Police Officer (JPO), through a competitive examination. All the Brigade Commanders are Judicial Police Officers. The Gendarmerie Officers are trained in the Officer Cadet Training Schools in Burkina Faso, Europe or in the sub-region; they later take a specialization course called "Gendarmerie Application". They then become Judicial Police Officers.

327. A structural and specialized training on financial crime, the financing of terrorism and money laundering is not yet integrated into this training program, with the only exception of occasional seminars organized at the supranational level with reduced participation of a few Burkinabe delegates.

Additional element – Special training programs for magistrates (c. 30.4)

Additional element – Special training program for magistrates
Statistics (application of R. 32)

Statistics on the number of investigations and seizures (source: Ministry de Justice and Gendarmerie)

328. The following statistics concern the number and nature of investigations conducted by the gendarmerie, and on crimes that were generally investigated:

SUMMARY	Number in 2006	Number in 2007	Number in 2008
Currency	113	126	127
Gun smuggling	149	24	33
Gold fraud	10	2	12
Drug trafficking	38	82	160
False entry	111	126	143
Abuse of function	22	30	36
Crime syndicate	41	116	46
Corruption	2	5	7
Arrest and	60	75	62
Kidnapping of minors	357	567	576
Thefts	14,990	14,943	16,708
Swindling	1,699	1,172	1,554
Possession of stolen property	907	813	981
False pretences	72	89	92

Complicity of theft	35	212	187
Unlawful entry	319	274	1,481
Breach of trust	5,123	5,953	5,639

Source: National Police Headquarters (DGPN).

		Year 2006	Year 2007	Year 2008	Observations
1.	Number of criminal investigations in general	16,432	13,020	14,569	These are crimes in the wide sense, including misdemeanors
2.	Number of investigations on the forms of criminality likely to procure criminal property	10,502	7,718	8,779	These are crimes and Misdemeanors crimes against property as set forth in Articles 449 - 536 of the Burkinabe Criminal Code: theft, robberies, armed robberies, swindle, Breach of trust, etc.
3.	Number of criminal proceedings and convictions	7,092	5,898	7,406	These are cases resolved with minutes of the inquiry .
4.	Number of seizures effected	12	13	16	These are seizures made from delinquents
5.	Amount of the seizures effected	CFAF 2,561,637	CFAF 2,761,637	CFAF 2,691,638	

Sources: Reports of activities of the National Gendarmerie for 2006, 2007, 2008.

329. The incomplete nature and lack of details in the statistics provided makes it to appreciate the efficiency of the fight against crime. In addition, except for seizures made by the gendarmerie and the customs department, the statistical data on amounts of money or other assets seized and/or confiscated are highly fragmentary and vague. Apparently, such seizures are quite rare due to the lack of focus of the investigations on the financial aspects.

2.6.2 Recommendations and Comments

330. 319 If the police and gendarmerie services seem trained in an adequate manner in the area of common law crimes, the phenomenon of money laundering is still poorly apprehended by magistrates and investigators. The apparent lack of any seizure of criminal proceeds shows that recovery of such assets is not really part of the objectives of the investigations. It is, therefore, important that investigators pay greater attention to the financial aspects of misdemeanors and also acquire more expertise in this area.

331. The Chancery should send out, within the shortest possible time, a circular to draw attention on the implementation of the anti-money laundering, preventive and repressive system and measures to take. At the level of the district attorney's office, it would be necessary to examine the possibility of creating specialized sessions do deal with financial delinquency, organized crime and terrorism.

332. The legal authorities should develop their relationship with the CENTIF in order to optimize the system based on declarations of suspicion. In case of persistent doubt on the issues or legal interpretations, they should strive to create jurisprudence and, if necessary, solicit the intervention of the legislator.

333. The uncertainties weighing on the interpretation of Article 27 regarding the powers of the Public Prosecutor of Burkina Faso should be removed. Indeed, the underlying idea is to avoid any intervention or even political pressure in delicate cases. However, one may wonder whether this provision may not be counter-productive. Not only it contravenes the principle of the appropriateness of the prosecution, but it could, at least in theory, create a congestion of the jurisdictions.

2.6.3 Compliance with Recommendations 27, 28 and 30

	Rating	Summary of factors underlying the rating
R27	PC	Lack of efficiency in the detection and investigation of asset base benefits Investigations and prosecutions are not focused enough on the financial aspect and recuperation of criminal assets Lack of specialization in money laundering and financing of terrorism, at the level of both the prosecution department and the police. Passive attitude and lack of initiatives to acquire expertise in the field.
R28	PC	The lack of incrimination of FT reduces the sphere of the powers of the authorities in terms of access to pertinent information.

2.7 Cross-border declaration or disclosure (SR IX)

2.7.1 Description and Analysis

334. The main mission of the Customs Department in Burkina Faso is to ensure that customs duties on cross-border movements of assets and property are duly collected. These revenues represent 37% of State revenues. They are also in charge of protecting national industries. Crimes that are mostly encountered in their area are smuggling, counterfeiting, fraud (especially on quantities), false declarations, and trafficking of drogues, arms and art works.

335. Apart from the classical system of declaration of imported and exported goods, Burkina Faso must also apply the UEMOA Foreign Exchange Regulation. As a member of the UEMOA, sharing the same currency (the CFA franc) with seven other States, the relevant regulation applied in Burkina Faso is a Regional regulation and is based on Regulation No. 09CM/UEMOA of 20 December 1998 on external financial relations of UEMOA member States. This regulation has not been transposed into the domestic law, since it is supposed to be directly applicable in Burkina Faso. The litigation over exchange control crimes in Burkina Faso depends on a national regulation, Act No. 16/92/ADP on Litigation over Exchange Control Crimes of 23 December 1992.

336. In accordance with Chapter 4 of Regulation No. 09CM/UEMOA (Articles 22 to 35), residents travelling abroad (i.e. non-member countries of the UEMOA) may only carry on them foreign exchange in the form of bank notes, the equivalent of a maximum of CFAF 2,000,000 (about €

3,054). Manual transportation of CFA francs within the Union, importation of CFA notes or payment instruments denominated in foreign exchange by resident travellers is free. Non-resident travellers are expected to declare, in writing, on entering and leaving the national territory, all means of payment in their possession when the amount involved exceeds the equivalent of CFAF 1,000,000 (or ± € 1,527).

System of control of cross border physical cash movements (c. IX.1)

337. Burkina Faso has not instituted a specific system **OF REPORT** in the context of money laundering/financing of terrorism. The system mentioned here cannot be considered as being, even partially, in line with international AML/CFT criteria.

338. The Foreign Exchange Regulation is especially intended to protect the Regional currency of UEMOA countries, which is reflected in the very low thresholds (respectively, CFAF 1,000,000 and CFAF 2,000,000). Hence, one may ask questions on the concrete implementation of the control measures: according to information received so far from the Customs Department, there has been no **REPORT**, and naturally much less, seizures. Besides, one gets the impression that there is poor communication of the declaration obligations to travellers: this requirement is not mentioned in the forms to be completed by travellers on entering the country, nor their attention drawn by posters at the border posts.

Reports on the origin and use of physical cash (c. IX.2)

339. In general terms, customs agents have the right to check goods, means of transport and persons, homes and a special communication right for Customs Officers concerning all kinds of papers and documents. In principle, they have the right to interrogate the persons concerned and conduct investigation into cases of customs crimes (Title X, Chapter II of the Customs Code). But as mentioned above, this is not applicable in the context of AML/CFT.

Retention of cash (c. IX. 3)

340. The blockage and freezing of property are only possible in case of observation of a flagrant customs crime, not in the context of AML/CFT. Hence, all objects liable for confiscation may be seized and retained as a preventive measure to guarantee the penalties (Art. 171.2, Customs Code). The means of transport and the contentious goods not liable for confiscation, may, as guarantee for the penalties imposed, be kept until a deposit is provided or payment of the amount of the said penalties is effected (Article 228, Customs Code). Each time that customs officers observe acts that fall outside their competence, they immediately pass on the case to the police or the gendarmerie, which carries out the immobilization or seizure of the goods and other assets associated with the crime, where necessary.

Case of retention of information (c. IX.4)

341. Information on customs observations and other information on the identity of the persons concerned are registered but are not kept or used in support of court action against money laundering or financing of terrorism.

Statistics of Customs Observations Regarding Cash (WAEMU Regulations)

Year	Number of cases	Total amount (in CFAF million)

2005	0	0
2006	37	482.7
2007	93	1,240.6
Total	130	1,723.3

Communication of information to the FIU (c. IX.5)

342. There are no formal provisions compelling the Customs Department to notify the CENTIF of suspicious **TRANSACTIONS** in cross-border movements. However, there is a correspondent of the CENTIF at the Customs Administration pursuant to Article 18 of the AML Act. Nothing prevents this correspondent from informing the CENTIF of observations that could be pertinent for supporting the analytical work of the FIU. Such information may, however, not be considered as a denunciation.

National cooperation between the customs and immigration services and the other competent authorities (c. IX. 6)

343. Presently, at the national level, there is no formal and structured coordination between the authorities concerned. The interaction between the Customs Administration and the other operational services, like the border police, is done in the field, depending on the needs and the nature of the case. Apparently, this cooperation is done in a routine manner and poses no problem of coordination.

International cooperation between the competent authorities (c. IX.7)

344. International cooperation between the Customs Administration is, first of all, based on agreements on mutual administrative assistance. Such agreements have been signed with Mali, Niger, Togo, Ghana, Benin, Côte d'Ivoire, France and Belgium. In addition, the Customs Administration of UEMOA and ECOWAS member countries, including Burkina Faso, cooperate in the area of monitoring of **Regional** regulation. Apart from that, there is no cross-border cooperation based on reciprocity. There has not yet been an exchange of information in the framework of the UEMOA foreign exchange regulation. Since the AML/CFT system of declaration/communication of cash has not been introduced in Burkina Faso, there is no legal base and practice for offering international assistance.

Sanction for false declarations/communications (application of c.17.1-17.4, c. IX. 8)

345. Sanctions applicable in case of false declarations or communications concern exclusively actual customs and foreign exchange offences. There is no specific sanction for AML/CFT, except where the acts can be considered as offences provided for by the AML Act.

Sanction of cross-border movements of physical currency associated with a FT or ML operation (application of c.17.1-17.4, c. IX.9)

346. Acts of cross-border movements of physical currency that are associated with money laundering may be repressed pursuant to Articles 37 - 38 of the AML Act, as acts of commission of participation in these misdemeano**u**rs. However, customs officers themselves have no specific legal basis for intervening. In practice, they leave the observations and investigation to the police or gendarmerie services.

Confiscation of cash associated with ML/FT (application of c.3.1-3.6, c. IX.10-11)

347. Since customs officers have no competence in seizing goods than in the case of customs crime, they should eventually pass on the case to the police or the judicial authorities to take the appropriate provisional measures.

Notification of the discovery of unusual cross-border movements of precious stones or precious metals (c. IX. 12)

348. Nothing is specifically provided in this particular case, but this form of information exchange may be considered in the framework of the above-mentioned international cooperation between customs services and, according to the interlocutors, is regularly done.

Measures for protecting the data collected (c. IX.13)

349. In principle, the customs **database**s are confidential and may only be accessed by authorized persons, such as customs officers and the police forces. Their use is also regulated. However, there are no border operation reports in the sense of SR IX in the Burkinabe customs data basis.

Recommendations and Comments

350. The customs services have no attributions in the specific area of anti-money laundering and financing of terrorism. In the presence of movements of physical cash and illicit goods associated with these offen**C**es, the competent services will limit themselves to transmitting the database to the police services, rather than launching their own inquiry.

351. Some existing mechanisms may be used for detecting movements of physical cash across UEMOA borders. The exchange regulations already provide for a system of declaration that enables the customs services to obtain information on physical cash in the possession of travellers entering or leaving the **WAEMU** territory30. For all that, the system of declaration provided by the regulation has not been implemented by the authorities.

352. It is, therefore, necessary to accelerate the establishment of an effective customs control of cross-border movements of physical currency and organize a specific and adequate training in the area.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors justifying rating
SR.IX	NC	Lack of a system of declaration or communication on cross-border movements of physical cash in the framework of AML/FT

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

CUSTOMER DUE DILIGENCE AND RECORD KEEPING

3.1 Risk of money laundering and financing of terrorism (see section 1.2 of report).

3.2 Customer due diligence, including enhanced or reduced identification measures (R.5 à R 8)

[30] This regulation is not applicable to the internal borders of the UEMOA..

3.2.1 Description and Analysis

Legal Framework:

- Act No. 026-2006/AN of 28 November 2006 on Anti-money Laundering (AML) and transposing the AML Single Act, as well as Guideline No. 07-02/CM/WAEMU of 19 September 2002 on anti-money laundering within UEMOA member States.
- Instruction No. 01/2007/RB of the BCEAO of 2 July 2007 on Anti-money Laundering within financial institutions (regulation of Act No. 026-2006 mentioned above);
- Instruction No. 01/2006/SP of the BCEAO of 31 July 2006 on the Issue of Electronic Money and Electronic Money Institutions adopted in application of regulation No. 15/2002/CM/ WAEMU of 19 September 2002 on payment systems within UEMOA member States;
- Guideline No. 04/2007/CM/ WAEMU of 4 July 2007 on Combating the Financing of Terrorism (not transposed at the time of the mission and, therefore, has no binding force in Burkina Faso).
    - Guideline No. 04/2007/CM/ WAEMU on Combating Terrorism in WAEMU member States was also adopted on 4 July 2007. It covers the same financial institutions as Act No. 026-2006, as well as fund transfer companies31. Guideline No. 04/2007 has not yet been transposed in Burkina Faso and, therefore, its provisions have no binding force.

Financial institutions to which the AML/CFT Acts explicitly apply (apart from electronic money)

	Act No. 026-2006 on the AML	Instruction No. 01/07/RB of the BCEAO on the AML	Guideline No. 04/2007 on the CFT (not transposed)
- Banks and financial institutions (OF[32])	X	X	X
- Post Office financial services (OF)	X	X	X
- *Caisse des dépôts et consignation* (or organizations replacing them) (OF)	X	X	X
- Micro-finance institutions[33] (OF)	X	X	X
- Authorized manual exchange bureaus (OF)	X	X	X
- Insurance and reinsurance companies (OF)	X		X
- Insurance and reinsurance brokers (OF)	X		X
- Regional stock exchange (OF)	X		X
- Central securities depositor and security settlement bank (OF)	X		X
- Management and intermediation companies (OF)	X		X
- *Sociétés de gestion du patrimoine* (OF)	X		X

31 Its Article 13 provides that member States pledge to take measures to ensure that natural persons and legal entities that provide a service for transmission of funds or assets obtain an authorization to exercise and that they are subjected to the mechanism for combating organized crime in force in UEMOA member States, notably the general and specific obligations applicable to financial institutions in the prevention and detection of ML and FT operations.

32 Financial institutions as defined in Article 1of Act No. 026-2006.

33 Mutual-benefit institutions and savings & credit cooperatives as well as structures or agencies not constituted in the form of Mutual-benefit institutions an cooperatives, for the purpose of collecting savings and/or granting loans.

- *Organismes de placements collectifs en valeurs mobilières*, OPCVM (OF)	X		X
- Fixed capital investment enterprises (OF)	X		X
- BCEAO	X		X
- Public Treasury	X		X
- Services for transmission of funds or values			X

Texts on the AML applicable to institutions operating in the area of electronic money

	Act No. … on the AML	Instruction No. 01/07/RB of the BCEAO on the AML	Instruction No. 01/2006/SP of the BCEAO on electronic money	Guideline No. 04/2007 on the CFT (not transposed)
- Banks	X	x		x
- Postal check services	X	x		x
- Decentralized financial systems	X	x		x
- Public Treasury[34]	X	x	X	x
- Electronic money institution			X	
- Other electronic money distribution institutions				

Recommendation 5

Prohibition of anonymous accounts (c. 5.1)

353. Anonymous accounts are not explicitly prohibited in Burkina Faso. In fact, there is no provision in the national legal system specifically prohibiting financial institutions from holding anonymous accounts or under false names. The AML Act No. 026-2006 does not also specifically prohibit anonymous accounts or account under false names[35].

354. In the absence of specific provisions on numbered accounts, the latter are therefore not explicitly prohibited in Burkina Faso. From the discussions with a sample of local banks, it transpired that, in practice, the latter did not keep anonymous, numbered accounts or accounts under false names.

Due diligence framework (c. 5.2)

355. Act No. 026-2006 imposes on financial institutions a series of due diligence and KYC requirements. Just as in its Article 7, all financial institutions must show proof of vigilance each time

[34] Only certain obligations of each of the texts mentioned are applicable to the Public Treasury.

[35] In their responses dated 24 August 2009, the authorities made the following comment: "Although it is not explicitly banned by the texts, the opening of anonymous accounts or accounts under fictitious names is not a current practice in the UMOA space. Indeed, the production of a valid ID card is mandatory for opening accounts in the books of local banks. Besides, the full references of account holders are necessary for informing the bank accounts file (FICOB)".

they enter into a relationship with a customer for opening of an account, keeping securities, shares and bonds, attribution of a safety box or for the establishment of all business relations.

356. The same obligation is applied in the case of occasional transactions. Article 8, paragraph 1 of the AML Act, indeed, provides that vigilance measures are required for any operation involving a cash amount equal to or above CFAF 5 million (approx. US$ 12,000) or the CFA equivalent is of which equal to or above this amount. It is the same in case of repetition of distinct operations for a single amount below the threshold of CFAF 5 million or when the legal origin of the money is not certain.

357. Finally, diligence is required from financial institutions for distant financial operations. The annex to Act No. 026-2006 stipulates, in this regard, that special measures should be applied to individual customers who wish to conduct distant financial operations. It will involve, for example, refusing the operation if there are reasons to think that the customer is trying to avoid direct contact in order to hide his real identity, or if there are suspicions of money laundering. The same annex provides that the internal control procedures of the financial institution should pay particular attention to distant operations.

358. It should also be noted that BCEAO instruction specifies, for financial institutions alone, that the "customer identification procedures" should apply to existing customers, "notably those on which hang doubts as to the reliability of the information previously collected" (Article 4, paragraph 4).

Measures of identification and sources of verification (c. 5.3)

359. Act No. 026-2006 specifies the conditions in which financial institutions undertake verification of customer identity. Article 7 also provides for verification of the identity of a natural person through presentation of a national ID card or any other original official document in place of an ID card. Concerning the picture that should mandatorily feature on every ID card in accordance with the UEMOA Single Act (Article7) and the AML Guideline (Article 7), the Burkinabe law contains an error obviously made when drafting its transposition text. Article 7 talks about "photocopy" instead of "picture": hence, one reads "the verification of the identity of a natural person through the presentation of a valid national ID card (…) and bearing a photocopy of which a copy is made".

360. It should also be noted that the general obligation of identification from reliable independent sources as recommended by FATF is not explicitly mentioned by Act No. 026-2006 for natural persons and legal persons. Note that BCEAO's directive 01/2007/RB includes provisions regarding the above mentioned identification requirement.

361. The AML Act also prescribes to financial institutions to verify the professional and residential address of the individual client, through a document that could serve as proof. If, in the case of an individual trader, the latter is expected to provide in addition, any document testifying to his registration in the Trade and Credit based on Personal Property Register.

362. Concerning legal persons, the AML Act (Article 7, paragraph 2) prescribes that the identification of a legal entity must be done through "the production, on the one hand, of the original, the dispatch or certified true copy of any deed extract from the Trade and Credit based on Personal Property Register, testifying notably to its legal form, its headquarters and, on the other, the powers of persons acting on its behalf". The same article also talks about, in addition to legal persons, "branches", without clearly knowing what the Act is specifically referring to here36.

36 The due diligence requirement applied to branches, a category distinct from that of legal entities, is also provided for in the community texts. The situation is, therefore, not specific to Burkina Faso.

363. The AML Act contains no obligation of verification, based on reliable and independent data, of the identity of local structures in the sense of FATF37. This situation may present a risk for certain structures, which, by nature, favor anonymity of the economic eligible parties, such as Trust Funds. The 2006 Act refers to it in its Article 5 as regards services provided by lawyers for the establishment, management or direction of trust funds. This problem is, however, theoretical, since according to the discussions with the Ministry of Justice, trust fund-type structures do not exist in Burkina.

Verifications of legal persons or legal structures (c. 5.4)

364. Concerning legal persons, Article 7 of the AML Act provides that the identification of a legal entity is based, apart from proof of its registration, on the production of the powers of persons acting on its behalf (Article 7, paragraph 3). Financial institutions are moreover expected to verify the identity of natural persons acting on behalf the legal entity under the conditions as set forth in Article 7, paragraph 2 (cf. c. 5.3 above). Article 7 also provides that financial institutions have documents testifying to the legal form and headquarters of the legal entity (Article 7, paragraph 3).

365. Article 7, paragraph 4 indicates further that financial institutions shall verify, under the same conditions as those set forth in Article 2, the real identity and address of officials, employees and representatives acting on behalf of others. The latter should, in turn, produce documents testifying, on the one hand, to the delegation of powers or the mandate that has been given to them, and on the other, the identity and address of the economic eligible parties.

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

366. Article 9 of Act No. 026-2006 provides that: “in case the client is not acting on its own behalf, the financial agency will inform itself through all possible means about the identity of the person on whose behalf it is acting” (Article 9, paragraph 1).

367. The same article provides that if, after verification, the doubt persists on the identity of the eligible party, the financial agency shall forward a suspicious transaction report to the CENTIF. It is also indicated that no customer may invoke professional secrecy to refuse to communicate the identity of the economic eligible party.

368. Article 9 also provides in its last paragraph that financial institutions do not need to seek information on the identity of the person on whose behalf their client is acting, when the latter is a financial agency subjected to Act No. 026-2006.

369. Under these circumstances, the AML Act contains some weaknesses. There is no explicit obligation for financial institutions to take reasonable measures to understand the ownership and control structure of the client or for identifying the individual (s) who in fine owns/own or controls/control the client (including identifying persons who exercise, as a last resort, effective control over a legal entity or a legal structure). Similarly, there is no obligation to verify the identity of the beneficial owners with pertinent information or data obtained from a reliable source, so that the financial agency has satisfactory knowledge of the identity of the effective beneficiary.

37 The methodology for verification of the compliance with the recommendations of FATF specifies that “the terms legal structure targets specifically trust funds and other similar structures. For an example of similar structures (for purposes of the AML/FT), one may mention the trust, the Treuhand or the fideicomiso”.

Information on the purpose and planned nature of the business relations (c. 5.6)

370. The Burkinabe Act contains no provision compelling financial institutions to obtain information on the purpose and planned nature of the business relations.

Due diligence measures in business relationship (c. 5.7)

371. In Burkina Faso, financial institutions are not obliged to (i) exercise constant due diligence regarding their business relations, (ii) carry out an attentive analysis of the transactions made during the entire period of their business relations, in order to ensure that these transactions are coherent with the knowledge that the institutions have of their customers, their commercial activities, their risk profile and, eventually, the origin of their funds, nor (iii) ensure the updating and relevance of documents, data or information collected during the accomplishment of the due diligence process towards their customers, through the analysis of existing documents, notably for the high-risk categories of clients or business relations.

372. Only certain aspects relating to the exercise of vigilance are indirectly dealt with by the AML Regulation, which does not correspond to the recommendations of FATF. They are, notably (i) obligations to treat suspicious transactions (Article 13), which, in practice, is only possible if vigilance is exercised, (ii) centralization of the information on the identity of customers, originators, representatives and eligible economic parties, and (iii) provisions of Article 7 of BCEAO Instruction No. 01/2007/RB, which require that the financial institutions to which it applies provide for a system of analysis of transactions and customer profile, making it possible to trace and monitor "atypical financial movements and operations", in particular.

373. Besides, Guideline No. 04-2007 provides that member States should impose on financial institutions "the constant monitoring of their customers throughout their business relations, to the extent of the level of risk of customers to be associated with the financing of terrorism" (Article 11-7).

Risk – Enhanced due diligence measures (c. 5.8)

374. There is no provision in Burkina Faso that imposes on financial institutions to adopt enhanced vigilance measures for high-risk categories. Hence, the national texts make no reference to non-resident customers or customers of private banks, for example.

375. BCEAO Instruction No. 01/2007/RB imposes on financial institutions to which it applies, certain indirect and partial obligations relating to enhanced vigilance. It notably provides that these financial institutions must define the type of customers they cannot accept (Article 4, paragraph 3) and provide for a mechanism for analyzing customer transactions and profile, to enable them to trace and monitor, particularly atypical financial movements and operations (Article 7 paragraph 1).

Risk – Reduced or simplified measures (c. 5.9 à 5.12)

376. In accordance with Article 9, last paragraph of the AML Act, financial institutions are not subjected to obligations of identification when the customer is a financial agency subjected to the provision of this Act. Reduced measures, as provided for by FATF, are therefore possible, only if the customer is a financial agency subjected to the AML Act. This is a very wide exclusion. Hence, a financial agency does not have to seek information on the identity of natural persons or legal persons and legal structures, on behalf of which a financial organization subjected to the AML Act (which is its customer) is acting. This provision seems to contradict the recommendations in terms of

traceability of financial flows expressed for electronic transfers in Special Recommendation VII (cf. 3.5).

377. The scope of application of the above-mentioned Article 9 is ambiguous, since it does not indicate whether the simplified measures are applicable to national financial institutions alone. According to the mission, it extends to relations with all WAEMU financial institutions. If it strictly applies to Burkinabe financial institutions (i.e. those subjected to the provisions of Act No. 026-2006), it seems incompatible with the fact that (i) the provisions of this Single Act were prepared and adopted by WAEMU, and, therefore, one may think that the financial institutions covered are those subjected to the provisions of this Single Act, as transposed into the legal system of each country and (ii) the provisions of the annex to the Single Act provide explicitly (solely for distant operations with natural persons) that the identification of the latter is not required "when the counterpart is situated within the Union" (Article 6a). Although it is not yet transposed, CFT Guideline No. 04/2007 contains similar provisions. Indeed, it requires that the member States should exonerate financial institutions from the obligations of identification (identification of the customer and economic eligible party), in case the customer is also a financial agency established in a member State subjected to an equivalent obligation of identification (Article 11).

378. Some reduced identification measures are also set forth in the annex to the AML Act during distant transactions with natural persons (cf. description relating to c. 8.2 below). Article 2 of this annex also provides that these simplified provisions may not be applied if a financial agency (i) feels that direct contact (face-to-face) is avoided in order to dissimulate the real identity of the customer and (ii) has suspicions of money laundering.

379. There is no provision in the Burkinabe Act that provides that when financial institutions are authorized to apply simplified or reduced vigilance measures vis-à-vis their customers who reside in another country, this option concerns (i) only institutions whose country of origin has the assurance that they respect the recommendations of FATF and that they have effectively applied them and that (ii) simplified vigilance measures concerning customers are not acceptable when there is suspicion of money laundering or financing of terrorism or in case of specific circumstances presenting a higher risk (with the specific exception of the preceding paragraph for distant transactions).

Period of the verification – General rule (c. 5.13)

380. In its Article 7, the AML Act provides that financial institutions should verify the identity and address of their customers (i) before opening an account for them, taking care of securities, stocks or bonds, attributing a safe to them or establishing with them any other business relation, and (ii) when they perform certain transactions with occasional customers (Article 8).

381. Concerning occasional customers, Guideline No. 04/2007 specifies the provisions of Act No. 026-2006. It also provides that, in case the total amount is not known at the time of commitment of the transaction, member States should request the financial agency concerned to carry out the identification as soon it becomes aware of it, and ensure that the threshold is attained (Article 11.2).

Period of verification – Special circumstances (c. 5.14)

382. Where the verification of the identity of the customer and the beneficial owner is required, there is no provision authorizing financial institutions to do so after the establishment of the business relation.

Lack of compliance with the due diligence requirements – Before establishing the business relation (c. 5.15)

383. Act No. 026-2006 does not directly ban a financial agency from opening an account, establishing a business relation or making a transaction when it cannot comply with the requirements provided by law in terms of identification of the customer or the beneficial owners or owners. It, however, provides for penal sanctions when these obligations are not respected38, but, at the time of the mission, these sanctions had never been imposed.

384. On the other hand, Instruction No. 01/2007/RB of the BCEAO imposes on financial institutions alone, to which it is applicable39 to "refrain from establishing any relation" until after having verified, in a satisfactory manner, the identity and address of their customers (Article, 4 paragraph 3).

385. Article 9 of Act No. 026-2006 also provides that when there is still doubt after verification of the identity of the interested beneficial owner, the financial agency makes a declaration of suspicion. This provision is, in fact, only applicable in case of doubt on the interested beneficial owner. In any case, if the financial agency cannot meet the obligations of identification set forth by law, it is not explicitly expected to make a suspicious transaction report.

Non-compliance with the due diligence requirements – After establishing the business relation (c. 5.16)

386. When a financial institution has already established a business relation and that it cannot meet the expected obligations of identification, there is no provision requiring that this financial institution be under obligation to put an end to the business relation and envisage making a suspicious transaction report. Only Article 9 of the AML Act includes such a provision in the particular case where the financial agency has persistent doubt about the identity only of the beneficial owner.

Existing customers (c. 5.17) – due diligence requirement

387. Act No. 026-2006 does not impose on financial institutions to apply the due diligence requirements to existing customers, depending on the importance of the risk they represent.

388. BCEAO Instruction No. 01/2007/RB imposes solely on financial institutions that they aim at applying "the customer identification procedures" not only in their new relations but also to existing customers (Article 4, paragraph 4). This instruction does not define the notion of customer identification procedures, nor does it specify the conditions under which these procedures must be applied to existing customers.

Existing customers - Anonymous accounts (c. 5.18)

389. There is no text imposing on financial institutions to apply the due diligence measures to their existing customers, if they are customers holding anonymous accounts under false names or numbered accounts.

Recommendation 6

Obligation to identify PEPs (c. 6.1)

38 Article 40 provides for six months to two years prison term and a fine of CFAF 100,000 - CFAF 1,500,000 (about US$ 220 and US$ 3,300 respectively) when this lack of compliance is intentional and CFAF 50,000 - CFAF 750,000 (about US$ 110 and US$ 1,660 respectively) when it is not intentional.

39 Banks, financial institutions, Post Office financial services, *Caisses des dépôts et consignation* (or agencies that replace them), mutual benefit institutions and savings and credit cooperatives, structures or agencies not constituted in the form of mutual benefit or cooperative unions and whose objective is to collect savings and/or grant credit and authorize to operate manual exchange.

390. AML Act No. 026-2006 makes no reference to Politically Exposed Persons (PEP). It should be said that the national law only transposes the UEMOA AML Legal Framework, which provides for nothing in this area. Indeed, neither the AML Guideline nor the AML Single Act deals with the issue of PEPs. Only the CFT Single Act, transposing CFT Guideline No. 04/2007, provides that financial institutions should notably apply, depending on their appreciation of the risk, enhanced diligence measures in transactions or business relations with PEPs residing in another member State or in a third State, notably for purposes of preventing or detecting operations associated with the FT. In this regard, they should adopt appropriate measures to establish the origin of the asset base or funds (Article 13). This Single Act is, nevertheless, not yet transposed into Burkina Faso law.

Authorization of business relations with PEPs by the top management (c. 6.2)

391. As mentioned earlier, in the absence of a provision for transactions with PEPs, financial institutions are under no obligation to obtain the authorization of their top management before (i) establishing business relations with a PEP, or (ii) pursuing the business relation when a customer has been accepted and that it subsequently appears that this customer or the effective beneficiary is a PEP or becoming a PEP.

392. Guideline No. 04/2007 on the CFT contains no provision on this issue.

Identification of the origin of the asset base and funds of PEPs (c. 6.3)

393. Financial institutions are under no obligation to take all reasonable measures to identify the origin of the asset base and the origin of funds of customers and beneficial owners identified as PEPs.

394. Guideline No. 04/2007 on the CFT contains ambiguous provisions. Its drafting seems to indicate that each member State should take appropriate measures to establish the origin of the asset base or funds40 (Article 15).

Constant and enhanced monitoring of the relations with a PEP (c. 6.4)

395. Financial institutions are under no obligation to carry out an enhanced and constant monitoring of the business relations they have with PEPs.

396. Guideline No. 04/2007 on the CFT provides that each member State should take measures to request that financial institutions apply, depending on their appreciation of the risk, enhanced vigilance measures in their transactions or business relations with PEPs residing in another member State or in a third State, notably for purposes of preventing or detecting operations associated with the FT (Article 15). The guideline (i) seems to indicate that the monitoring could not be enhanced if the financial agency does not deem it necessary ("depending on their appreciation of the risk") and (ii) creates confusion by giving the impression of linking enhanced monitoring of PEPs and the fight against the FT ("notably for purposes of preventing and detecting operations associated with the FT"), whereas money laundering constitutes the main reason explaining the measures imposed with regard to PEPs.

40 Article 15 stipulates that: "each member State shall ensure to take measures in order to request that financial institutions, notably apply, depending on their appreciation of the risk, enhanced vigilance measures during transactions or business relations with PEPs residing in another member State or in a third State, notably for purposes of preventing or detecting operations associated with the FT. To that end it adopts appropriate measures to establish the origin of the asset base or funds".

Additional element – Application of R.6 to national PEPs (c. 6.5)

397. As already mentioned, in Burkina Faso, there are no obligations transcribing the provisions of Recommendation 6 of FATF, neither for foreign PEPs nor for national PEPs.

398. Guideline No. 04/2007 only concerns PEPs residing in another UEMOA member State or in a third State (Article 15).

Additional element – Transposition of the Merida Convention (c. 6.6)

399. The United Nations Convention against Corruption, signed in Merida on 09 December 2003, was ratified by Burkina Faso on 23 June 2006.

Recommendation 7

Adequate information on cross-border bank correspondents (c. 7.1)

400. Concerning cross-border correspondence banking and other similar relations, Act No. 026-2006 does not impose on financial institutions to seek adequate information on the client institution in order to clearly understand the nature of its activities and evaluate, on the basis of publicly available information, the reputation of the institution and the quality of its monitoring.

Evaluation of the control mechanisms put in place by correspondent banks (c. 7.2)

401. Financial institutions are under no obligation either to evaluate the controls put in place by the client institution in terms of AML or ensure their relevance and efficiency.

Specification of the respective responsibilities of each institution (c. 7.4)

402. Act No. 026-2006 does not impose on financial institutions to specify in writing the respective responsibilities of each institution in the AML.

Regulations on payable-through accounts (c. 7.5)

403. The AML Act contains no provision on the relations of bank correspondent involving the holding of payable-through accounts41.

Recommendation 8

Prevention of abusive use of new technologies (c. 8.1)

404. Act No. 026-2006 contains no clause compelling financial institutions to adopt policies or take necessary measures to prevent abusive use of the new technologies in ML and FT provisions.

405. On the other hand, BCEAO Instruction No. 01/2007/RB (which from an FATF perspective is not considered as a "law") imposes only on financial institutions to which it is applicable[42] and which

41 There is no provision explicitly banning such payable-through-accounts in Burkina.

42 Banks, financial institutions, Post Office financial services, *Caisses des dépôts et consignation* (or organizations playing that role), mutual-help and cooperative savings and lending institutions, structures or organizations not constituted in the form of mutual-help and cooperative institutions and having as objective the collection of savings and/or granting of loans and authorized manual exchange agencies.

authorize the execution of transactions through internet or through any other electronic means to (i) have an adapted system for monitoring these transactions and (ii) centralize and analyze unusual transactions through the internet or through any other electronic facility (Article 9).

Management of risks associated with non face to face business relationships (c. 8.2)

406. The last paragraph of Article 7 of Act No. 026-2006 provides that, in case of distant financial operations, the financial institutions conduct an identification of the natural persons in accordance with the principles set out in the annex to the Act. There is no provision governing non face to face operations conducted with legal persons or legal arrangements. The annex to the AML Act on customer identification modalities in case of distant financial operations covers natural persons alone.

407. The annex to the AML Act specifies that the identification procedures implemented by financial institutions in their distant relations with natural persons (i) may be applied on condition that no reasonable motive makes one to think that direct contact (face to face) is avoided in order to dissimulate the real identity of the customer and that no money laundering is suspected (Article 2) and (ii) should not be applied to operations involving the use of cash (Article 3). No detail is provided on the conduct that financial institutions should adopt when the above-mentioned conditions are not met (e.g. suspicious transaction reports to be envisaged, refusal to establish business relations, etc.).

408. The annex to the AML Act also indicates that the internal control procedures of financial institutions should especially take into account distant operations (Article 4), with no further precision.

409. Article 5 of the annex to the AML Act concerns customer identification conditions during distant operations "in the case where the counterpart of the financial agency executing the operation (contracting financial agency) is a client". Two situations are envisaged: in the first case, the identification is done through direct contact with the client, through a subsidiary or representation office of the contracting financial agency that is closest to the client; in the second case (lack of direct contact with the customer), the client should (i) transmit a copy of an official identity document and (ii) an initial payment should be made from an account opened with a lending institution of the UEMOA or a third State that applies equivalent anti-money laundering standards. The financial agency should (i) pay particular attention to the verification of the address featuring on the identity document (where it is indicated) and (ii) carefully verify that the identity of the account holder through whom the payment is being made effectively corresponds to that of the customer (by eventually contacting the agency with which the account is opened). These provisions seem to target only the establishment of distant relations (e.g. opening of an account) and not the conduct of distant operations after a business relation has been established.

410. Despite an unclear drafting, Article 6 of the annex to the AML Act seems to concern the situation where a Burkinabe financial agency carries out a transaction with another financial agency (Burkinabe or not) acting on behalf of a customer43. Two types of diligence processes are envisaged concerning respectively (i) the financial agency* (Burkinabe or not) acting on behalf of a customer and (ii) this customer. They differ depending on whether the financial agency* concerned is established in the UEMOA or not.

411. When the financial agency* concerned "is established" in the UEMOA, no due diligence is required in its regard, nor that of its customer. Article 6 a) specifies, indeed, that "the identification of

43 To avoid any confusion, such financial agency is marked with an * in the rest of the document.

the customer by the financial agency is not required pursuant to Article 9, paragraph 4" of the Act when the financial institution carrying out a transaction on behalf of its customer is a financial institution of the UEMOA. This drafting is notably in contradiction with the provisions of Special Recommendation VII on electronic transfers.

412. When the financial agency* concerned "is established" outside the UEMOA, the financial agency must verify the identity of this financial agency* by consulting a "reliable financial directory" and, in case of doubt, request for confirmation of its identity from the control authority of the competent third country (Article 6 b). Hence, in the framework of a bank correspondence relation with a financial agency that is not based in the UEMOA, the obligations of a Burkinabe financial agency are limited to verifying its identity, normally only from a financial directory.

413. This article also specifies that the financial agency should take reasonable measures to verify the beneficial owner of the operation, which comprise (i) "when the country of the counterpart applies equivalent identification obligations", the request for the name and address of the customer, and (ii) when the country of the counterpart does not apply equivalent identification obligations, the request to the financial agency* concerned for a certificate confirming that the identity of the customer has been duly verified and registered. The equivalent notions of beneficial owner or obligations of identification are not defined by law or the annex to the Single Act.

Analysis of effectiveness (Recommendations 5 to 8)

Effectiveness with regard to Recommendation 5

414. The mission met the Professional Association of Banks and Financial Institutions (APBEF-B), three banks, the Association of Mutual Savings and Lending institutions and 3 MFIs, one insurance company, an authorized exchange bureau, a Western Union branch, Post Office financial services, the Treasury Department, the National Branch of BCEAO, the national branch of the Bourse Régionale des Valeurs Mobilières (BRVM) as well as a management and intermediation company.

415. It transpired from the discussions with all the actors concerned that the implementation of preventive measures in the financial sector, generally, is quite incomplete and even non-existent in certain compartments. According to the BCEAO, the system is gradually being put in place. In the banking sector, local banks have AML procedures; however, the implementation of AML preventive policy is non-existent in the micro-finance sector, postal services, and highly incomplete in insurance companies.

416. The texts with binding force in Burkina Faso (Act No. 026-2006 and BCEAO Instruction No. 04-2007) are less known or unknown to those subjected to them. Most often, they are not communicated to them either by the authorities or by their respective supervisors. No raising awareness campaign has been organized by the latter since the entry into force of these texts. Only a few banks and the National Branch of the BCEAO were aware of the provisions contained in these texts (all the banks met were, however, aware of those of Guideline No. 07-2002, although it has no binding force in Burkina Faso).

417. The implementation of the provisions applicable in the area of AML only started in the banking sector and appears highly disparate according to the banks. All the banks met have designed AML mechanisms and put in place – at least on paper, procedures aimed at identifying customers, detecting suspicious operations, filing customer data and reporting suspicious transactions[44]. Under the

[44] Hence, for example, a local bank has developed "KYC" forms that help to reveal the identity of the customer, his profile and asset base. The same bank requests its officials in charge of customer relations to confirm in writing that the information, notably on the identity of the client are

circumstance, it is especially in the implementation of standards that the mission observed several weaknesses. In some banking institutions, the most recent internal AML instructions do not make reference to Act No. 026-2006 and are still limited to the letter of the provisions of Guideline No. 07-2002. The mission learnt about several of these instructions and observed that the latter are most often limited to repeating the provisions of the regional texts without giving their agents more details on the cause of action to take.

418. In the insurance and micro-finance institutions sectors, the internal standards are partial for the first[45] and non-existent for the second. Concerning MFIs in particular, the code of ethics developed by the Professional Association of Micro-Finance Institutions (version of 26 September 2008) contains a special clause on AML. Hence, Article 36 provides that "DFCs shall take all necessary measures to ensure that in their relations with local or international financial partners, their services shall not be used for money laundering activities. Similarly, they shall ensure that they shall not serve as channels for financing illegal activities conducted by their members, customers or users". This code to which the MFIs subscribed, has, however, not been applied in practice.

419. Concerning the control of identity and address of customers in particular, the mission observed diverse and multiple practices, depending on the institutions. Hence, if the majority of the banks interviewed indicated refusing the driving license as acceptable ID document, for the reason that it not reliable, this is not the case for the Western Union network, including those in remote areas. This situation is of concern with regard to international money transfer operations by Western Union outlets. From the analysis of a sample of Western Union transfer slip, it was revealed that the address of the originator may just be a post office box or that of a hotel. Concerning the identification of legal persons, the banks indicated that they sometimes had problems identifying cover companies or fictitious associations, and recommend to their commercial staff to conduct on-site visits.

420. Still on WU activities, considerable weaknesses were also observed in the control of swift money transfers and implementation of the AML preventive standards. All local banks have signed agreements with WU to offer their customers this type of services. These same banks have signed contracts with sub-delegates (transit agents, small traders, forest bureaus, NGOs), which act as key players. According to the information obtained by the mission, (i) these independent agents have not been trained or are inadequately trained in the area of AML, and (ii) very little control of the conditions in which the agents conduct these operations with regard to existing obligations in the area of AML, was carried out by the delegating banks[46], or their supervisors[47]. Besides, the banks have not put in place adequate mechanisms for exercising vigilance over these operations and, in fact, they largely rely on the vigilance exercised by Western Union and MoneyGram, which dominate the market in the UEMOA zone, although they are not authorized or physically established (the closest WU representative is based in Morocco). The weaknesses in customer identification render

"reliable" and "that he has good reason to believe that the customer of good reputation and is engaged in a lawful activity and derives his income from legal sources". In turn, the branch manager should confirm that he is "satisfied" that all the information required in the framework of the KYC policy of the bank has been obtained and is coherent.

[45] Note that after the mission, CIMA adopted the 0004/CIMA/PCMA/PCE/SG/08, which the procedures that must be applied by insurance companies within CIMA member states, as part of AML/CFT. However, the mission experts were not able to assess level of implementation.

[46] In the framework of these sub-delegation contracts, the bank "delegates" its responsibility in the area of knowledge of customers to its sub-delegate. It is therefore the responsibility of the latter to collect the identity information of the customer. However, the final responsibility of the identification of the customer rests with the bank. Consequently, the latter should ensure that its sub-delegate correctly carries out the KYC instructions. In practice, this is not always the case. In the case of banks that visit their sub-delegates, they observe that often, the identification standards are not respected.

47 In November 2007, the national branch of BCEAO, however addressed to all banks, a circular on quick money transfer. The circular stresses that quick money transfer activities are being increasingly carried out under conditions that do not respect any security in that respect (local banks do not meet the standards, the operators are not trained, lack of appropriate control on the part of banks) and request all the institutions concerned to take the necessary measures to ensure that these highly sensitive activities are carried out in the respect of the normal security rules.

ineffective the amount limitations imposed for each operation or for a customer in a day by Western Union or MoneyGram.

421. Obviously, to protect itself against any risk of prosecution, a local bank has provided at the back of every deposit receipt form, a clause according to which "the bank declines any responsibility if it is revealed that the funds deposited come from a criminal origin or illegal sources". For the evaluators, this clause, which, in any case, does not specify to whom it would be binding is legally disputable. It is also mentioned that "the depositor declares that the funds or property deposited are not of criminal origin or did not come from illegal activities". This declaration has no effective range since it accredits the idea that the bank is trying to shirk all responsibility in the eventuality where funds of criminal origin would not have been detected by one of these officers. For the mission, this clause can, under no circumstance, exempt the banking institution from its responsibilities with regard to the AML standards. It transpires from these considerations that local banks have no clear understanding of their roles in the area of AML.

422. The vigilance system is mainly based on individual vigilance of the agents who are rarely trained in AML, and the controls are often limited to the operations mentioned in Article 10 of Act No. 026-2006 (cash operations of over CFAF 50 million and "unusual" operations of more than CFAF 10 million). Moreover, measures on identification of the beneficial owners, in all cases, appear too limited.

423. Finally, the banks met indicated having no anonymous accounts or accounts under false names or numbered accounts[48.] They also indicated to the mission that they did not use the services of business introducers.

Effectiveness with regard to Recommendation 6

424. On the other hand, certain banks belonging to international groups have put in place mechanisms which, in some cases, go beyond the texts in force in Burkina Faso, taking inspiration from the recommendations of FATF. This is the case with PEP. Even if the AML Act is silent on the issue, a local bank has instituted an enhanced vigilance system in the area of PEP. The latter has created a database containing the names of 10 persons who have occupied top positions, as well as the names of their immediate relatives (spouses and children), without distinctions of nationality (Burkinabe or foreigners, not necessarily residents). Enhanced control is then ensured on the operation of these accounts. This list also relies on an empirical approach of the bank, depending on local data. This case is marginal and the other institutions met indicated that they do not fully understand the concept of PEPs.

Effectiveness with regard to Recommendation 7

425. As mentioned above, Act No. 026-2006 does not compel financial institutions to collect sufficient information on the client institution in order to clearly understand the nature of its activities and to evaluate, on the basis of publicly available information, the reputation of the institution and the quality of its monitoring. Generally, local banks demand nothing from their correspondent banks. Only banks belonging to major groups, either foreign of established in the sub-region, question their counterparts about their AML/CFT provisions.

Effectiveness with regard to Recommendation 8

48 The procedures of one of these agencies, which the mission consulted, however, mentioned the existence of "pseudonym accounts", while stressing that the identity of the customer and beneficial owner must also be known to the management.

426. Only one of these banks allows its customers – natural persons and legal persons - to open a distant account, by internet. This non face to face facility is offered to Burkinabe established in another State as well as any foreign customer. The documents for opening an account are transmitted to the prospective customer by e-mail. The latter returns the documents justifying his identity and address by ordinary mail (with a certified true copy of the ID card, a residence certificate[49], a document supporting his income). The applicant must also explain his reasons for opening the account and eventually provide a bank reference. When the process of opening an account by internet is initiated in a country where the bank has a subsidiary, the due diligence procedures are the responsibility of the subsidiary; otherwise, it is the bank to which the application was sent that carries out the usual verifications. Concerning other activities favoring anonymity, it should be noted that certain banks offer their customers mobile phone banking services, which are, however, limited to consultation of accounts. For the moment, these services do not allow customers to make financial operations. In conclusion, BCEAO Instruction No. 01/2007/RB is the only regulatory framework applicable for preventing abusive use of the new information and communication technologies.

3.2.2 Recommendations and Comments

Rec. 5

427. The authorities are invited to implement the following recommendations:

- Explicitly ban financial institutions from keeping anonymous accounts or accounts under false names;
- Impose on all financial institutions to observe due diligence:
  - When they carry out occasional transactions in the form of electronic transfers under the conditions provided for by the explanatory note of Special Recommendation VII;
  - In all cases where there is suspicion of ML;
  - When the institution has doubts about the veracity and pertinence of the customer identification data previously obtained (including institutions not covered by the provisions of the BCEAO Instruction);
- Clarify the obligations of verification of the identity of legal persons;
- Request all financial institutions to verify, for legal structures in the sense of fatf, (i) that any person who claims to be acting on behalf of the customer is authorized to do so, and identify and verify the identity of this person, as well as (ii) the legal status of the legal structure;
- Impose on financial institutions to appreciate, for all their customers, whether the customer is acting on his own behalf;
- Concerning the beneficial owner, impose on financial institutions to:
  - Identify the natural person(s) who *in fine* possess or control their customer;
  - Take reasonable measures to verify the identity of the beneficial owner;

49 Obtainable at the City Hall, Consulate or Prefecture.

- Take all reasonable measures concerning legal entity or legal structures for (i) understanding the ownership and the customer's control structure and (ii) determine natural persons who in fine own or control the customer.
- Impose on financial institutions to obtain, in all cases, information on the purpose and envisaged nature of the business relation;

o Create an obligation for financial institutions to keep constant watch over their business relations;

o Compel a financial institution to make careful analysis of the transactions made during the entire period of their business relations;

o Compel all financial institutions to ensure the update and relevance of the documents, data or information collected during the accomplishment of the due diligence with regard to customers;

o Impose on financial institutions to adopt enhanced due diligence measures for high-risk categories.

o

Rec. 6

428. Compel financial institutions to:

- put in place adequate risk management systems in order to determine whether a potential customer, a customer or the beneficial owner is a PEP;
- obtain the authorization of their top management before (i) establishing a business relation with a PEP, or (ii) pursuing a business relation when after a customer has accepted, it subsequently appears that this customer or the beneficial owner is a PEP or becoming a PEP;
- undertake enhanced ongoing monitoring of the business relationship they have with PEPs;

Rec. 7

429. Compel financial institutions to:

- Gather sufficient information about a respondent institution in order to fully understand the nature of the respondent's business and to determine, on the basis of publicly available information, the reputation of the institution and the quality of supervision;
- Assess the respondent institution's AML/CFT controls and ascertain that they are adequate and effective;
- Obtain approval from senior management before establishing new correspondent banking relationship;
- Specify in writing the respective responsibilities of each institution in the AML/CFT.
- When a correspondent banking relationship implies the holding of payable-through accounts, compel financial institutions to ensure that (i) their client (the client financial institution) has applied all the normal due diligence measures as set forth in recommendation 5 to those of its customers that have direct access to the corresponding financial institution, and (ii) the other client

financial institution can provide relevant customer identification data upon request to the correspondent financial institution.

Rec.8

430. Compel financial institutions to put in place policies or adopt the necessary measures to prevent abusive use of the new technologies in the ML or FT provisions.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	- Highly-limited identification obligations, particularly for the beneficial owners; - Lack of duty to inform on the purpose and nature of the dealing; - No constant due diligence obligations; - Lack of obligations on existing customers; - Implementation limited by the banking sector and lack of implementation by the other financial institutions.
R.6	NC	- Lack of obligations related to PEPs.
R.7	NC	- Lack of obligations related to bank correspondents.
R.8	NC	- Incomplete and unspecific obligations; - Lack of implementation.

3.3 Third parties and introduced businesses (R.9)

3.3.1 Description and Analysis

431. The texts in force do not authorize financial institutions to resort to middlemen or third parties only for certain establishment of distant relations, under difficult conditions of interpretation that are defined in the annex to the AML Single Act, taking up the terms of the AML Guideline. The financial institutions met in the banking sectors in Burkina Faso indicated that they resort to third parties on which they rely for part of their due diligence requirements in the area of AML, this under a sub-delegation contract. This is the case, for example, with Western Union-type of funds transfers by banks (since part of the due diligence requirements are met at the level of these funds transfer companies).

3.3.2 Recommendations and Comments

432. The WAEMU authorities should ensure that the conditions under which the use of third parties and intermediaries in the area of AML/CFT is authorized are specified (collectively through measures adopted at the level of the WAEMU and/or State by State).

- Financial institutions resorting to a third party are under obligation to obtain immediately from this third party the necessary information concerning certain elements of the measures on vigilance over customers (criteria 5.3 à 5.6);
- Financial institutions should be under obligation to take adequate measures to ensure that the third party is in a position to provide, upon request and within the shortest possible time, copies of the identification data and other pertinent documents associated with the due diligence obligations relating to customers;
- Financial institutions should be under obligation to ensure that the third party is subjected to a regulation and is monitored (pursuant to Recommendations 23, 24 and 29), and that

he has taken measures aimed at complying with due diligence measures relating to customers as set forth in Recommendations 5 and 10;

- When it comes to deciding in which countries the third party that complies with the criteria can be established, the competent authorities should take into account the available data that will help to know whether these countries adequately apply the Recommendations of FATF;
- As a last resort, responsibility for identification and verification of the identity should rest with the financial institution that has recourse to a third party.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NC	Lack of specific standards whereas recourse to third parties exists in practice

3.4 Professional secrecy or confidentiality of financial institutions (R.4)

3.4.1 Description and Analysis

Recommendation 4
No impediment to the implementation of the Recommendations of FATF due to professional secrecy applicable to financial institutions (c.4.1)

433. Article 32 of Act nº 026-2006 provides that "notwithstanding all contrary legal or regulatory provisions, professional secrecy may not be invoked by the persons covered in Article 5 [persons subjected to the Act] to refuse to provide information to the control authorities, as well as to the CENTIF or to make the declarations provided for by this Act. The same applies to the information required in the framework of an investigation on money laundering acts ordered by the investigating judge or carried out under his control by government agents in charge of the detection and punishment of crimes associated with money laundering".

434. On the contrary, there is no provision for ensuring that the laws on professional secrecy of financial institutions do not impede the exchange of information between financial institutions, when it is required by Recommendations 7 and 9 or Special Recommendation VII.

Analysis of effectiveness

435. Discussions with both the financial institutions and government services and the BCEAO showed that there is no problem with regard to the provision of confidential information to the competent authorities when the latter request for such information in the exercise of their mission. The mission thus was able to read in the AML internal standards of a major local bank, the following comment: "*the Group must be perceived as a responsible organization, which offers all necessary assistance to the local authorities and which provides all the information required or other reports in accordance with the laws in force"*.

3.4.2. Recommendations and Comments

436. The Burkinabe authorities should consider putting in place a system to ensure that laws on professional secrecy of financial institutions do not impede the exchange of information between financial institutions, as required under Recommendations 7 and 9 or Special Recommendation VII.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	- Lack of a provision to ensure that professional secrecy does not impede the exchange of information between financial institutions, when required.

3.5 Record keeping and rules governing electronic transfers (R.10 and RS.VII)

3.5.1 Description and Analysis

Recommendation 10
Keeping a record of all necessary documents facilitating the reconstitution of the different transactions (c.10.1* & c.10.1.1*)

437. Article 11 of Act No. 026-2006 provides that – except with prejudice to the provisions setting forth more constraining obligations – financial institutions should (i) conserve for a period of ten years, from the closure of their accounts and the cessation of their relations with their usual or occasional customers, the documents and items relating to their identity and (ii) preserve the items and documents on operations that they carried out for ten years from the end of the fiscal year during which the operations were carried out.

438. Moreover, additional specifications are provided for banks and financial institutions through more general texts than the AML/CFT. Hence, Article 20 of Regional Regulation No. 15/2002/CM/UEMOA on payment systems in UEMOA member States provide that, the message of the data of documents in electronic form, must be conserved for 5 years in the form in which it was created, sent or received. Besides, Circular No. 10-2000/CB of 23 June 2000 of the Banking Commission provides that the internal control system of these institutions should guarantee the existence of a permanent audit channel for (i) reconstituting operations in a chronological order, (ii) justifying any information with the original document from which it should be possible to trace, through an uninterrupted channel, back to the synthesis document and (iii) explaining the trend of the balances from one closure to the other, thanks to the conservation of the movement that affected the accounting headings. These constituent elements of the audit channel should be conserved for at least ten years. This requirement in the area of audit channel, however, does not cover all the information required for facilitating the reconstitution of the different transactions so as to provide, where necessary, evidence in case of criminal proceedings.

439. It is not required (i) that the documents be conserved longer if a competent authority demands it in a specific case or for the accomplishment of its mission, nor (ii) that the documents on the transactions should be sufficient to facilitate the reconstitution of the different transactions, so as to provide, where necessary, evidence in case of criminal proceedings.

440. Concerning the last point, Article 12 of Guideline No. 04/2007 specifies that the member States adopt measures intended to compel financial institutions to conserve certain documents, records and statistical data to serve as proof in any investigation concerning the financing of terrorism. This provision does not cover money laundering cases.

Keeping record of identification data, accounts books and commercial correspondence (c.10.2*)

441. Article 11 of Act 026-2006 imposes on financial institutions to conserve the items and documents related to the operations that they carried out for ten years. The vast reference to records and

documents related to operations is not the subject of additional precisions, notably for explicitly including the account books and commercial correspondence.

Information put at the disposal of the competent authorities (c.10.3*)

442. Article 12 of Act No. 026-2006 provides (i) that the judicial authorities, government agents in charge of the detection and repression of crimes associated with money laundering, acting in the framework of a judicial mandate, the control authorities, as well as the CENTIF may request the persons subjected to the AML act to communicate to them customer identification information that these subjected persons should collect and conserve. Moreover, Article 17 of the same act provides that the CENTIF may request for communication by the persons subjected and any other natural person or legal entity of the information detained by them and which could enrich the declarations of suspicion.

443. The AML Act does not provide that financial institutions should ensure that all documents concerning customers and operations are made readily available to the competent national authorities for the accomplishment of their mission.

Electronic transfers (RS. VII)

444. Regulation No. 15/2002/CM/UEMOA of 19 September 2002 on payment systems within WAEMU member States sets forth the provisions applicable to electronic transfers. Despite the ambiguities of this text, the mission understands that the institutions authorized to make transfers are banks, financial institutions, Post Office financial services, the Public Treasury, the DFCs as well as any other institution duly authorized by the Act (Articles 42, 131 and 13250). No institution falling within the latter category has been identified in Burkina Faso.

Obtaining information on the originator of a transfer (c.VII.1)

445. Financial institutions of the originators are not obliged to obtain and conserve, for all transfers, the following information on the originator of the transfer and verify that this information is accurate and useful: name of originator, account number of the originator.

Inclusion of information on the originator of an international transfer (c.VII.2)

446. For cross-border transfers (including transfers and batch transmissions, through a credit or debit card for effecting a funds transfer), there is no obligation for the financial institution of the originator to include full information on the originator in the message or the payment form accompanying the transfer.

447. Guideline No. 04/2007 on the CFT does not require that States impose on a financial institution to include full information on the originator, i.e. his name, account number and address in the message or payment form accompanying the transfer. In fact, if Article 14 of the Guideline provides that member States should take the necessary measures to ensure that any cross-border electronic transfer

[50] Article 42 on the general scope of application of the regulation does not comprise financial institutions that are explicitly covered by Article 132 of the regulation. The provisions of Title II, which include electronic transfers are applicable (i) according to the general provisions mentioned in Article 131, to all institutions covered in Article 42 and DFCs, which are empowered to promote the use of modern payment instruments, notably the constitution of groups, with a view to instituting mechanisms and electronic transfer instruments of a national or regional dimension and (ii) according to Article 132, which defines the scope of application of Title II, to banks and financial institutions alone.

is accompanied by information on the originator, only his account number (or failing that, a unique reference number) should necessarily accompany a transfer.

Inclusion of information on the originator of a national transfer (c.VII.3)

448. For national transfers, there is no obligation for the financial institution of the originator to comply with the previous criterion VII.2 or to include only the account number of the originator or instead of the account number, a unique means of identification in the message or the payment form.

449. Guideline No. 04/2007 on the CFT stipulates that "member States shall ensure that any national electronic transfer includes the same data as in the case of cross-border transfers, unless all the information on the originator can be put at the disposal of the financial institutions of the beneficiary and the competent authorities through other means" (Article 14 paragraph 2).

Treatment of non-routine transactions (c.VII.4)

450. Financial institutions are under no obligation to ensure that non-routine transactions are not treated in batches when this can generate an increased risk of money laundering or financing of terrorism.

Keeping record of information on the transfer originators (c.VII.5)

451. There is no obligation for each intermediary financial institution in the payment channel to keep record of all the necessary information on the originator with the corresponding transfer.

Existence of a minimal threshold (c.VII.6)

452. There is no minimal threshold in Burkina Faso, below which certain obligations on electronic transfers would be waived.

Requirement of efficient control procedures by institutions based on assessment of the risks (c.VII.7)

453. There is no obligation for financial institutions to adopt efficient procedures based on risk assessment, in order to identify and treat transfers that are not accompanied by full information on the originator.

Existence of efficient control measures for implementation of SR VII (c.VII.8)

454. In the absence of a transposition in Burkina Faso of the provisions of Special Recommendation VII, there are no measures for controlling the respect of the latter by financial institutions.

Application of criteria 17.1 - 17.4 to SR VII (c.VII.9)

455. There are no obligations in this area in Burkina Faso relating to SR VII.

Analysis of effectiveness

456. All the institutions met said they keep a record of documents on their customers for a period of 10 years. However, for many of those subjected, this practice is not as a result of an application of the AML Act, which is unknown to some of them, unless through usage.

457. The banks met indicated that they have their main correspondence bank relations within the European Union or the UEMOA. Since the standards are applicable there, they said they ensure that the originators and beneficiaries are clearly mentioned when they make transfers outside these jurisdictions. No bank said it had a specific computer system for controlling information accompanying electronic transfers in order to detect any abnormal behavior.

458. In this regard, the mission concluded, from its discussions, that the issue of money transfers to from overseas is a major factor of vulnerability to AML/CFT. One financial institution in fact suggested to one of his customers, who wanted to transfer CFAF 10 million (approx. US$ 23,000) to Europe to break-up his transfer into several components in order to respect the threshold rules imposed by the monetary authorities. Another said that the agents of certain bureaus, during the input of transactions into the computer system, put a cross sign (X) in the section "identity of the customer".

3.5.2 Recommendations and Comments

459. International transfers with the outside world (WAEMU zone and Europe, in particular) constitute an important and booming activity in Burkina Faso. The lack of any measure taking up the provisions of Special Recommendation VII constitutes, in this context, a particularly important weakness. The only transposition of the measures envisaged by Guideline No. 04/2007 on the CFT cannot be adequate in this regard. The latter should be completed and specified during their transposition into their Burkinabe Act. The obligations in the area of record keeping are, moreover, incomplete.

460. The authorities should consider putting in place the following provisions:

Recommendation 10

- Provide that records of documents may be kept longer if a competent authority requests for it in a specific case and for the accomplishment of its mission;
- Provide that the documents concerning the transactions be adequate to facilitate the reconstitution of the different transactions so as to provide, where necessary, proofs in case of criminal proceedings;
- Specify that the obligation imposed on financial institutions to keep for ten years a record of documents relating to operations that they have effected, include notably the accounts books and commercial correspondence;
- Impose on financial institutions to ensure that all documents on customers and operations are readily made available to the competent national authorities for the accomplishment of their mission.

Special Recommendation VII

- Financial institutions of the originators should obtain and conserve for all transfers, all useful information on the originator of the transfer (name, address and account number of the originator),
- For cross-border transfers, the financial institution of the originator should include full information on the originator in the message or the payment form accompanying the transfer;

- Financial institutions should ensure that non-routine transactions are not treated in batches where this could cause increased risk of money laundering or financing of terrorism;
- Compel financial institutions to adopt efficient procedures based on an evaluation of the risks in order to identify and treat transfers that are not accompanied by full information on the originator.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	PC	- Lack of adequate specifications on the nature and availability of the documents to be conserved, -Content of the record keeping obligations most often unknown to those subjected to the requirement (in a context of lack of supervision of the respect of the AML obligations).
SR.VII	NC	- Lack of obligations regarding electronic transfers

3.6 Monitoring of the transactions and business relation (R.11 and 21)

3.6.1 Description and Analysis

Recommendation 11
Obligation to pay particular attention to all complex operations, in an abnormally high amount, or to all unusual transactions (c.11.1)

461. As indicated in other appraisal reports of the WB in the region (See in particular the report of Mali and Niger), the AML Single Act provides that financial institutions and, more generally, all the persons subjected to this text (hence, including the BCEAO and the Public Treasury) should make particular analysis of any operation involving an amount equal to or higher than CFAF 10 million (about US$ 22,000), which is made under unusual conditions of complexity and/or does not seem to have economic justification or legal purpose (Article 10 paragraph 1). This provision is taken up in Article 10 of Burkinabe Act No. 026/2006 of 28 November 2006. The Act does not create an obligation for financial institutions to pay particular attention to (i) operations in an amount below CFAF 10 million (about US$ 22,000) and (ii) unusual types of transactions, when they are not for apparent economic or legal reason**.**

Analysis in every possible measure of the context and purpose of these transactions (c.11.2)

462. Article 10 paragraph 2 of the AML Single Act, taken up in Article 10 paragraph 4 of the Burkinabe AML Act specifies that subjected persons "are under obligation to seek information on the customer, and/or through all other means, on the origin and destination of the sums of money involved, as well as on the purpose of the transaction and identity of the persons involved". The measures to be adopted are vague ("seek information" whereas FATF recommends to: "analyze in every possible measure the context and purpose of these transactions and note the results of these analyzes in written form").

463. Article 12 of Instruction No. 01/2007/RB provides that the financial institutions to which it applies find out, in all cases, from customers the origin and destination of these amounts as well as the purpose of the transaction and the identity of the beneficiaries. The systematic obligation to find out from the customer to obtain additional information on the transactions covered in Article 10 can alert the customer upstream about any declaration of suspicions.

Keeping record of the results at the disposal of the competent authorities and auditors (c.11.3)

464. According to Act 026/2006, Article 10 last paragraph, the main characteristics of the operation, the identity of the originator and the beneficiary, that of the actors involved in the operation should be indicated in a confidential register (Article 10 paragraph 3) and put at the disposal of the legal authorities, public agents in charge of the detection and suppression of ML crimes acting in the context of a judicial mandate, the control authorities and the CENTIF. Auditors are not part of the persons that could have access to this information.

Recommendation 21

Pay particular attention to countries that do not implement or inadequately implement FATF Recommendations (c.21.1)

465. The AML Single Act, like the National Act No. 026/2006, does not compel financial institutions to pay particular attention to their business relations and their transactions (notably with legal persons and financial institutions) based in countries that do not implement or inadequately implement the recommendations of FATF. This aspect is solely dealt with in a partial and unclear manner in the Annex to the Single Act (cf. analysis of criterion 8-2).

466. Instruction No. 01/2007/RB of the BCEAO imposes on financial institutions to which it applies[51] to have a mechanism for analyzing transactions and profile of customers that could help trace and "monitor in particular" movements of atypical financial operations (Article 7). It specifies that the latter include, notably transactions made with persons targeted by assets freezing measures for their presumed links with an organized criminal entity[52] and with counterparts based in countries, territories and/or jurisdictions declared by FATF as non-cooperative (which is more restrictive than the provisions of Recommendation 21, which concerns countries that do not implement or inadequately implement the recommendations of FATF).

Establishment of efficient measures (c.21.1.1)

467. There are not in Burkina Faso efficient measures to ensure that financial institutions are informed about the above-mentioned concerns through the weaknesses of the AML/CFT provisions of other countries.

Analysis of transactions that have no apparent economic or legal purpose (c.21.2)

468. For transactions with countries that do not implement or inadequately implement the recommendations of FATF, there is not in Burkina Faso an obligation to analyze, as much as possible, the context and purpose of these operations, if they are not the subject of apparent economic or legal purpose. A fortiori, there is no obligation to put the written results of this analysis at the disposal of the competent authorities and auditors.

Possibility of applying adapted counter-measures to countries that persist not to implement or inadequately implement the recommendations of FATF (c.21.3)

51 Banks, financial institutions, Post Office financial services, *Caisses des dépôts et consignation* (or agencies representing them), mutual benefit and cooperative savings and credit institutions, structures or organizations not constituted in the form of mutual or cooperative institutions and whose purpose is to collect savings and/or grant loans and authorized manual money changers.

52 A the time of the mission there was no mechanism for freezing assets for their presumed links with an organized criminal entity (terrorist movements are not included in this category for lack of incrimination).

469. When a country persists in not implementing or inadequately implementing the recommendations of FATF, Burkina cannot apply adapted counter-measures[53].

3.6.2 Recommendations and Comments

- Compel financial institutions to pay particular attention to all complex individual operations of an abnormally high amount when they are not for an apparent economic or legal purpose, irrespective of their amount (i.e. Solely when they are equal to or higher than CFA 10 million);
- Compel financial institutions to pay particular attention to all types of unusual transactions, when they are not for apparent economic or legal purpose;
- Enable auditors to have access to the confidential register as set forth in article 10 of the AML single act in the performance of their duties;
- Institute an obligation for financial institutions to pay particular attention to their business relations and their transactions (notably with legal persons and financial institutions) based in countries that do not implement or inadequately implement the recommendations of FATF;
- Put in place efficient measures to ensure that financial institutions are informed about the above-mentioned concerns caused by weaknesses of the AML/CFT provisions of other countries.

3.6.3Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying the rating
R.11	PC	Lack of implementation outside the banking sector
R.21	NC	Lack of provision on countries that do not implement or inadequately implement the recommendations of FATF

3.7 Suspicious transaction reports and other types of reports (R.13-14, 19, 25 and RS.IV)

3.7.1 Description and Analysis

- Recommendation 13

Obligation to make suspicious transaction reports (STR) in case of suspicion of money laundering or terrorism (c.13.1*, 13.5 & SR IV.1)

470. Act No. 026-2006 provides in its Article 24 that financial institutions as well as other subjected entities are under obligation to declare to the CENTIF (i) the sums of money and all other property that are in their possession when the latter could come from money laundering, (ii) operations

53 For example, (i) application of strict standards for identification of customers and enhancement of the counseling, notably on financial issues specific to the jurisdiction, financial institutions with a view to identifying beneficial owners before business relations are established with natural persons or legal entities with these countries, (ii) strengthening of the mechanisms for declaration of correspondence or systematic declaration of financial transactions, considering that financial transactions with these countries are probably suspicious, (iii) taking into consideration, during the consideration of request for approval of establishment in countries applying the counter-measure of subsidiaries or branches or representation offices of financial institutions, the fact that the financial institution concerned is from a country that has not put in place an appropriate AML /FT mechanism, (iv) warning enterprises of the non-financial sector against the risk of money laundering associated with transactions with natural persons or legal entities of this country, or (v) limitation of the business relations or financial transactions with the country or persons identified in this country.

concerning property when the latter could be associated with a money laundering process and (iii) sums of money and all other property that are in their possession, when the latter, suspected of being intended for financing terrorism, appear to come from the realization of operations associated with money laundering. Article 9 further provides that financial institutions declare cases, where doubts remain on the identity of the economic beneficially interested, despite the verifications made.

471. BCEAO Instruction No. 01/2007/RB also comprises provisions on obligations of reporting suspicious transactions that are imposed on certain financial institutions54. Moreover, Article 11 of Instruction No. 01/2007/RB specifies the declaration obligations provided for by the Single Act in case the identity of the beneficial owners is not known. This Article, indeed, provides that financial institutions to which it applies should declare (i) any operation of which the identity of the originator or beneficiaries is doubtful, and (ii) operations made by financial institutions on their own behalf or on behalf of third parties with natural persons and legal persons including their subsidiaries or institutions, acting in the form or on behalf of trust funds or any other instrument for management of a heritage, of which the identity of the constituent or beneficiaries is not known.

472. Finally, Instruction No. 01/2006/SP on the issue of electronic money and electronic money institutions creates a confused obligation of reporting suspicious transactions. Its Article 7 thus provides that "the abnormalities" identified by institutions, issuing or distributing electronic money be declared to the CENTIF. This notion of abnormality is, however, not defined.

Obligation of make STRs for funds associated with terrorism (c.13.2* and SR IV)

473. Article 24 of the AML Act creates an obligation to report to the CENTIF money laundering operations that are also suspicious to be intended for FT. However, in the absence of an act on the financing of terrorism, this declarative obligation as set forth in Article 24 mentioned above, has no practical effective range.

474. Guideline No. 04/2007 on the CFT also provides that member States adopt indispensable measures to ensure that the subjected persons make, without delay, suspicious transaction reports to the CENTIF when they suspect or have reasonable motives to suspect that the funds are related to, associated with or intended for financing terrorism or terrorist acts (Article 10 paragraph 2). This guideline has not been transposed in Burkina Faso.

Obligation of reporting any suspicious transaction (c.13.3*)

475. The STR should be made irrespective of the amount of the operation, pursuant to Act No. 020-2006.

476. There is no obligation to declare attempted operations in Burkina Faso.

Obligation of declaration of suspicious operations associated with financial issues (c.13.4*)

477. The obligation to make STR, in application of the AML Act, concerns any operation that could be associated with ML. ML underlying offences are constituted of all crimes and misdemeanors. They, therefore, include financial issues, which are directly covered by the STR obligation (and cannot be a reason for not making a STR).

Recommendation 14

54 Banks, financial institutions, Post Office financial services, *Caisses des dépôts et consignation* (or organizations playing the same role), Mutual-benefit, savings and credit institutions and cooperatives, structures or organizations not constituted in the form of Mutual-benefit institutions or cooperatives and whose objective is to collect savings and/or grant loans and authorize to carry out manual currency exchange operations.

Protection in case of STR (c.14.1)

478. Article 28 of the AML Act provides that "persons or directors and employees of persons covered in Article 5 who, in good faith, have transmitted information or made any declaration, in accordance with the provisions of this act, are exempted from all sanctions for violation of professional secrecy". The same article stipulates further "that no action in civil or penal liability may be brought, nor any professional sanction pronounced, against persons or directors and employees of persons covered in Article 5 who acted under the same conditions as those covered in the preceding paragraph, even if justice decisions taken on the basis of the declarations covered in the same paragraph have not resulted in any conviction".

479. The protection of the act is also guaranteed in two other circumstances as set forth in Article 30:

480. When the suspicious operation has been executed and that the STR has been made in accordance with the Act (except of course fraudulent collusion);

481. When the operation has been made at the request of the judicial authorities, government agents in charge of the detection and suppression of ML crimes (offences), acting in the framework of a judicial mandate or the CENTIF.

Ban from reporting a STR (c.14.2.)

482. The AML Act provides that the "declarations are confidential and may not be communicated to the owner of the sums of the author of the operations" (Article 24). The drafting is, however, ambiguous since it seems to cover the communication of the declaration, and not that of its existence. Furthermore, this provision does not ban the communication to any third party not duly authorized to have access to it, but only to the owner of the sums or the author of the operations. It is finally too restrictive, since it concerns only the STR, without including the other information communicated or provided to the CENTIF.

483. Article 38 of the AML Act further provides that persons who have intentionally "made to the owner of the sums or to the author of the operations covered in Article 5, revelations on the declaration which they are under obligation to make or on the consequences", be punishable by penal sanctions ranging from six months to two years in prison and a fine of CFAF 100,000 – CFAF 1,500,000 – about US$ 220 – US$ 3,300 respectively-.

Confidentiality of the identity agents of the financial institutions making STR (c.14.3)

484. Act No. 026-2006 provides in its Article 27 that when the CENTIF transmits a report to the State Attorney following an analysis of a STR, the identity of the owner of the declaration should not feature in this report (Article 29 paragraph 2).

Recommendation 19

Analysis of a system of reporting of cash operations (c.19)

485. Burkina Faso has not studied the visibility and usefulness of the implementation of a system through which financial institutions would declare all cash transactions higher than a certain amount to a national central agency having a computerized data base.

Recommendation 25

Guidelines (c.25.1)

486. The Burkinabe authorities have not adopted the AML Guidelines in favor of persons subjected to Act No. 026-2006 even if the Act provides for this faculty.

487. For the banking sector, only BCEAO issued Instruction 01/2007 of 2 July 2007, which contains additional specifications to the AML Act of WAEMU member-countries including Burkina Faso but the latter are too limited. They concern the type of operations that could lead to suspicions (Article 11) as well as the measures to be put in place for applying the provisions of the law in the area of the AML provisions. This instruction is applicable to banks and financial institutions, Post Office financial services, *Caisses des dépôts et consignation* (or organization that replace them), micro-finance institutions and authorized currency exchange units. As far as insurance companies are concerned, there was no AML instruction or guideline by the time we carried out the mission; however, the CIMA Council of Ministers had adopted Regulation No. 04/CIMA/PCA/08 of 04 October 2008 defining the procedures applicable by insurance agencies in the area of AML/CFT. Regarding financial market agents, no guideline has been issued by the authorities to help them to apply and respect their AML obligations.

Feedback on suspicious transaction reports (c.25.2)

488. Article 27, paragraph 2 of the AML Act provides that "the CENTIF shall inform, in good time, those subjected to suspicious transaction reports, about the conclusions of its investigations". The CENTIF was not operational at the time of the mission and there was therefore no feedback.

Recommendation 32

Keeping of statistics (c.32.2)

489. Lack of pertinent statistics.

Analysis of effectiveness

490. It transpired from the discussions that some institutions have already identified doubtful operations. However, the latter did not transmit them to the CENTIF but to the BCEAO or to their parent company (case of an insurance company, for example). In this regard, it should be noted that the only dossier which has so far been referred to the CENTIF comes precisely from BCEAO, to which a STR was wrongly referred. Other institution, knowing that the CENTIF is not yet operational, finally opted for placing suspicious customers under supervision for an indefinite time.

491. Concerning the conditions in which persons subjected should declare their STRs, the formulations "could come from", "could be inscribed" and "appear to come from" are too vague and do not make explicit reference to the notion of suspicion or to the existence of adequate reasons to suspect that the funds come from a criminal activity. In the absence of a sensitization and explanation campaign among those subjected, notably to clarify the concept of suspicion, there is a need to raise doubts about the expected efficiency of the AML provision.

492. The conditions of application of recommendation 13 of FATF are therefore not met.

3.7.2 Recommendations and Comments

Rec. 13

- Specify to the subjected sectors the conditions under which they should declare their suspicious transaction reports and specify that these reports must be done immediately;

- Make operational the CENTIF and make it known to the subjected persons so that they can be in a position to declare their suspicious transaction reports;
- Institute an obligation to make a STR concerning funds for which there are reasonable motives for suspecting or of which it is suspected that they are associated or have a link with, or that they will serve the purpose of terrorism, with terrorist acts or terrorist organizations or with those that finance terrorism;
- Institute an obligation to declare attempts of suspicious operations;
- Rec. 14
- Specify that the protection of financial institutions, their managers and employees are granted (i) even if they did not know precisely which criminal activity was in question, and (ii) even if the unlawful activity having been the subject of declaration of suspicion did not really take place;
- Extend the obligation of confidentiality (i) to the existence and content of any information communicated to the CENTIF and (ii) ban the communication of the latter to any third party not duly authorized to have access to the information;
- Rec. 25
- The CENTIF or the supervision authorities notably are invited to issue as early as possible, guidelines to enable financial institutions and enterprises and designated non-financial professions to comply with their obligations;
- Ensure that the competent authorities and notably the CENTIF ensure the subjected persons a convenient and appropriate feedback, taking into account the guidelines of FATF.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criterion 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	NC	- Vague obligations of declarations and largely ignored by the subjected persons - Lack of implementation - See also the weaknesses noted with regard to underlying offenses in Rec.1
R.14	NC	- Too limited protection of the confidentiality of the information communicated to the CENTIF.
R.19	NC	- Lack of feasibility study of a system of declaration of cash transactions.
R.25	NC	- Lack of guidelines, apart from a poorly detailed instruction from the BCEAO.
RS.IV	NC	- Lack of obligation to report operations associated with FT.

3.8 Internal controls, compliance and branches abroad (R.15 and 22)

3.8.1 Description and Analysis

Recommendation 15

493. Banks: In compliance with Article 13 of Act No. 026-2006, financial institutions are required to develop anti money laundering programs. These programs comprise, notably:
- The centralization of information on the identity of customers, originators, representatives, beneficial owners;
- The processing of suspicious transactions;

- The appointment of compliance officers responsible for the implementation of anti-money laundering programs,
- Ongoing training of staff and
- The institution of an internal control mechanism for the application and efficiency of the measures adopted under this act.

494. The same article adds that the control authorities may, where necessary, specify the content and modalities of implementation of the ML prevention programs. Hence, a circular from the Central Bank of the WAEMU No. 10/2000/CB of 23 June 200055 recommends to banks and financial institutions to put in place an efficient internal control system commensurate to their organization, the nature and volume of their activities, as well as to the risks to which they are exposed. According to Title I of the document, the main purpose of the internal control system is to verify that the operations carried out, the organization and internal procedures are in conformity with the legislative and regulatory provisions in force (and therefore implicitly, those applicable in the area of AML/CFT). It is indicated that the deliberating and executive bodies are responsible for the efficient operation of the internal control system (Title II). Title IV further provides that the system relies mainly on a complete formalization of the procedures, modalities for treatment and registration of the operations and should provide for, at each operational level, an adapted control system. Finally, Title V imposes on banks to guarantee a traceability of the operations (or audit trail) making it possible, notably to reconstitute the operations in a chronological order and justify any information with an original document that should be retained for at least ten years.

495. BCEAO Instruction No. 01/2007/ RB also makes it an obligation for banks and financial institutions to address, within a period of two months from the end of the financial year, to its services and to the Banking Commission, a report on implementation of the entire internal money laundering provision in force in UEMOA member States. This report must contain several items of information that will help appreciate the quality and extent of the controls put in place in each institution. Moreover, still according to the BCEAO, financial institutions other than banks and financial institutions56 must communicate to the BCEAO, within a period of one month from the end of the year, the report of their anti-money laundering unit.

496. Contrary to the provisions of the regional AML Guideline, the 2006 Act does not specify that the internal AML control procedures should particularly take into account non face to face operations. Article 7 of the AML Act on face to face operations only covers not only the customer identification rules in this type of operation but remains silent about internal control. Article 13 of the AML Act on internal control makes no further reference to non face to face operations.

497. Stock market sector: Pursuant to the general Regulation on the organization, operation and control of the WAEMU financial market (Article 54), any company intervening on the market (SGI and SGP) is under obligation to appoint a compliance officer. The main attributions of the officer are to ensure the respect by the company itself of all the professional rules, notably the respect of the prudential rules applicable to it.

498. Besides, the standards for internal control as specified in Article 13 of the 2006 Act mentioned above, are applicable to stock exchange companies (SGI, SGP) since they are part of the institutions subjected to the AML preventive provisions. There is however, no instruction on internal control for

55 It is a circular on application of the prudential mechanism applicable to banks and financial institutions of the WAEMU from 01 January 2000, which, in its Article 6 (Internal Control of Operations), provides that "the obligations of banks and financial institutions in the area of internal control are specified by instructions of the Central Bank or the circular of the Banking Commission".

56 i.e. insurance and reinsurance brokers, the OPCVM and fixed capital investment enterprises.

these institutions, explicitly targeting the AML. A draft circular is being prepared. The supervision authorities have, however, conducted surveys in the WAEMU zone in order to enhance the controls among actors of the market. Their internal compliance officers should, moreover, prepare quarterly reports on the offenses, notably on the issue of identification of customers. The market authorities (CREPMF) indicated57 that these controls, though pertinent for the AML, were not explicitly targeted at combating the ML, but rather the protection of customers.

499. Insurance sector: In the insurance sector, the Act clearly targets among financial institutions subjected to the anti-money laundering Act, insurance companies and insurance and reinsurance brokers (Article 1). In that regard, the sector has not yet considered the obligations weighing on the profession in the area of money laundering. From the discussions of the mission, it was revealed that the control provisions exist but are largely empirical and without direct link with the obligations imposed by Act No. 026-2006, unknown to the operators.

500. Sector of MFIs: For the micro-finance sector, the regional and national texts impose on DFCs the need to put in place, internal control systems.

Obligation to put in place an internal control system (c.15.1)

501. Banking sector: The regional texts impose on financial institutions, particularly banks, to put in place an internal control system.

502. Micro-finance sector: In Burkina Faso, the Code of Ethics and Professional Conduct developed by the Professional Association of Micro-Finance Institutions (APIM) provides in its Article 25 that any decentralized financial company (DFC) must have an internal control system and adequate and efficient internal management procedures.

503. Concerning the financial market: Market companies (SGI and SGP) are under obligation to institute an internal control system pursuant to Article 54 of the General Regulation on the organization, operation and control of the WAEMU financial market.

Appointment of a compliance officer (c.15.1.1)

504. Pursuant to Article 13 of Act No. 026-2006, financial institutions are under obligation to appoint an internal officer in charge of the implementation of the AML programs. In practice, in the banks, it is most often the compliance officer or the internal audit officer who ensures compliance with the AML standards and plays the role of CENTIF correspondent. In the SGI and SGP, this appointment has not taken place. Just as in the MFIs.

Access to information (c.15.1.2)

505. According to the standards in force, described above, the officer in charge of the control of the AML and the other members of staff concerned should have access on a timely manner to the data on identification of customers and other information on the diligence measures, documents on transactions as well as other pertinent information.

Independence and resources of internal control (c.15.2)

[57] Reference to the meeting held in Abidjan with CREPMF, when the World Bank team undertook the evaluation of the compliance of the AML/FT standards for the WAEMU region.

506. The BC-WAMU Circular No. 10-2000/CB on internal control in lending institutions provides in its Title IV that internal control, also called internal audit, must be entrusted to a designated person or a service specially constituted for that purpose, enjoying functional independence and extended prerogatives with regard to its sphere of interventions and communication of data by other structures of the institution.

507. Article 16 of the BCEAO Instruction of 2007 also provides in its Article 16 that "the internal money laundering program must be submitted to the jurisdiction and investigation of a structure or body independent of the one in charge of its implementation. This structure or body is under obligation to periodically report to give account of its controls in the area to the deliberating body".

508. There is no comparable provision for the insurance sector or for micro credit institutions. Concerning stockbrokers, the regulation imposes on them "to put at the disposal of their internal controllers all necessary human and material resources for the accomplishment of their mission" (Article 55 of the general regulation).

Ongoing training of employees (c.15.3)

509. Article 13 of the AML Act of 2006 stipulates that financial institutions should put in place programs for the continuing training of staff. For its part, the BCEAO has also given several specifications in its Instruction No. 01/2007/RB. Indeed, Article 14 of the Instruction stipulates that "financial institutions should put in place a specific policy for information and training of all staff … "

Employment criteria (c. 15.4)

510. The Banking Act in force in the WAEMU zone provides in its Article 17 that anyone who has been convicted (the text refers to Article 15, which lists the offences covered[58]), cannot be employed, in whatever capacity, by a bank or a financial institution.

Autonomy of the AML/FT control officer (c.15.5)

511. In the banks, it is generally the compliance officers who are in charge of ensuring the implementation of the preventive standards. None of the officers met by the mission raised the issue of autonomy.

Recommendation 22

Application of the AML/FT measures to subsidiaries and branches abroad (c.22.1)

512. AML Act No. 026-2006 contains no provisions prescribing to financial institutions to ensure that the principles applicable to financial institutions are also applied by their subsidiaries and their branches with majority control established abroad, particularly in countries that do not apply or inadequately apply the Recommendations of the FATF, to the extent that local laws and regulations permit.

In particular, in host countries that do not apply or inadequately apply the FATF Recommendations (c.22.1.1)

[58] For example, conviction for a common law crime, forgery, swindling, etc.

513. The Burkinabe law contains no provision prescribing to financial institutions to ensure that their foreign subsidiaries and branches established in countries that do not apply or inadequately apply the FATF Recommendations observe AML/CFT measures, in accordance with the obligations as set forth in Act No. 026-2006.

Application of the strictest standards (c. 22.1.2)

514. There are no standards in Burkina Faso prescribing that when the minimal AML/CFT standards of the host and home countries differ, the subsidiaries and branches in the host countries should be under obligation to apply the higher standard, to the extent that local laws and regulations permit.

Information of the supervisor when a branch or foreign subsidiary is unable to observe AML/CFT measures (c. 22.2)

515. The Burkinabe law, like the regional instructions, is silent on this point. Financial institutions are under no obligation to inform the monitoring authorities of their country of origin when a branch or foreign subsidiary is unable to comply with the appropriate AML/CFT measures.

Consistent CDD measures at the group level (c.22.3)

516. This criterion does not exist in Burkinabe law.

Analysis of effectiveness

517. Banking sector. It ensued from the interviews that banks have an internal audit or inspection department, which is in charge of the internal monitoring of AML. Among the banks met, only one has established a "Compliance" department specifically in charge of AML issues. Another bank has created an Intelligence Unit comprising different people in charge of examining suspicious operations.

518. The discussions offered the opportunity to observe several control practices intended to prevent the ML risk. One bank, for example, has produced a document entitled "review of operations of natural person customers ", which records the monitoring activities of the Audit Department over a specific period in order to verify the respect of the AML internal standards. This report identified several anomalies such as lack of detailed information on certain accounts, the lack of coherence between operations carried out by some customers and their profile[59], or the opening of an account with an initial deposit of CFAF 20 million (approx. US$ 45,000[60]). These anomalies compelled the Audit Department service to seek further information about these anomalies in order to remove the suspicions and make recommendations for correcting the errors. This same bank has put in place a monitoring system specifically for the treatment of Western Union operations. Hence, the Compliance Officer must download every day, using a software[61], the operations of the previous day in order to launch the investigation requests. This approach enables him to detect the use of the same ID number by several customers or several ID numbers by the same customer, to detect fractioning operations or to analyze huge volumes of activities on specific corridors. Another local bank has also put in place a system for monthly a posteriori control of the operation of accounts, with publication of customer profiles detected as doubtful and which should require further analysis and annotations of the sheets selected by the system.

[59] A teacher who opened an account with an initial deposit of CFAF 9 million (US$ 20,000).

[60] The bank contacted the customer and visited his work place to clarify the suspicion. He was a trader.

[61] "Voyager" software provided by Western Union.

519. Some banks declared having detected suspicious operations and having referred the cases to BCEAO, since there is no CENTIF in the country. Certain institutions even closed some accounts when they could not eliminate the doubt or in the specific case of freezing bank assets of persons affected by the sanctions in Côte d'Ivoire, pursuant to UN Resolutions 1572 (2004) and 1643 (2005). These practices tend to prove that the control systems are working. Whatever be the case, the lack of an operational CENTIF creates a major legal uncertainty and affects the confidence of banks in the efficiency and relevance of the general AML apparatus.

520. In application of the circular from the BC of the WAEMU mentioned above, several local banks addressed to the Banking Commission reports on their AML device. In these reports, the banks should in principle (i) describe the organization and resources of their establishment in the prevention and fight against money laundering, (ii) indicate the training and information actions conducted during the past year, and (iii) make an inventory of the controls carried out to ensure efficient implementation and respect of the AML procedures. The mission observed that reports to which it had access are mostly too general62. In one case, there was no pertinent information on the results of the controls carried out internally or the cartography of the most common suspicious activities. The report provides no further information on the prospects and program of action for the future.

521. Insurance sector. The AML Act was unknown to the interlocutors of the mission. The latter have put in place internal AML provisions, but at the request of their parent company.

522. Micro-finance sector. In this sector, if the regional texts impose on MFIs to put in place internal control systems, the meetings with the profession showed serious shortfalls. Indeed, none of the institutions interviewed had put in place the internal control provision and procedures for preventing the risk of money laundering. Unaware of the 2006 AML Act, the MFIs constitute, in this regard, an area of vulnerability. Indeed the lack of preventive measures in this very active sector should be of concern to the authorities, given the fact that the divide line between micro-finance activities and more classical banking activities is not clearly defined. Some banks are offering today, quick money transfer services, like the Western Union or Money Gram. Others offer their customers, including transit customers, traditional currency exchange services. On the other hand, authorized foreign exchange bureaus obtain the status of MFI to offer their customers a new range of products. Ignorance of the preventive obligations of the AML Act and total lack of control of these networks in the area of AML constitute a major problem, of which the authorities have so far not assessed the magnitude.

523. Post Office financial services. The financial services of the Post Office (the Caisse Nationale d'Epargne et Comptes de Chèques Postaux, in particular) have not implemented AML detection systems or specific procedures. They are also unaware of AML No. Act 026-2006.

524. In the area of training, banks and insurance companies have made considerable efforts. In practice, most of the banks met declared to the mission that their staff had received AML training. According to some banks, this training targeted the entire staff of the front office (cashiers) and branch managers. One bank declared having sensitized its entire staff since its creation in 2006, including interns. The mission could not, however, establish whether the training courses were organized at the time of recruitment of the staff, or whether they form part of a continuing training program. In the insurance sector, one insurance company belonging to a large group has developed a system for AML training for its workers, who are expected to sign a form certifying that they have completed the training program.

[62] For example, they repeat uselessly the content of certain regulations.

3.8.2Recommendation and Comments

525. The authorities should:

Rec. 15

- Adopt the sectoral regulations apart from those recommended by the BC-WAMU for internal control associated with money laundering, particularly for MFIs and Post Office financial services;
- Clarify the internal control obligations for micro-finance institutions;
- Rapidly initiate the control of the respect of their obligations by those subjected to the Act.
- Rec. 22
- Create, for all banks and financial institutions, an obligation to ensure that their subsidiaries and branches abroad apply the AML/CFT standards.

3.8.3Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	PC	Weak regulatory provision for the banking sector Lack of sectoral provision outside the banking system, notably in the micro-finance sector Lack of effective implementation of the internal control obligations in the fight against money laundering
R.22	NC	Lack of obligation for the non-banking financial sector Lack of obligation of information of the banking supervisor for lending institutions

3.9 Shell banks (R.18)

3.9.1Description and Analysis

Ban on Shell banks (c.18.1)

526. Burkina Faso has no provisions banning directly the establishment of shell banks or the pursuit of their activities on its territory. These aspects are, however, taken into account in the process of authorization and supervision of banks, the respect of which, must, in practice ban the establishment of shell banks or the pursuit of their activities.

Correspondent banking relationship with shell banks (c.18.2)

527. There is no provision in the country prohibiting financial institutions to establish or pursue bank correspondent relationship with shell banks.

Obligation to verify that foreign correspondent financial institutions prevent shell banks from using their accounts (c.18.3)

528. There is no provision compelling financial institutions to ensure that financial institutions that form part of their overseas clients do not authorize shell banks to use their accounts.

3.9.2 Recommendations and Comments

529. The national authorities should consider (i) banning financial institutions from establishing or pursuing correspondent banking relationship with shell banks, and (ii) compelling financial institutions to ensure that institutions that form part of their overseas clients do not authorize shell banks to use their accounts.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying the rating
R.18	NC	-Lack of banning of establishing or pursuing bank correspondent relations with shell banks; -Lack of obligation to ensure that financial institutions that are part of their foreign clients do not authorize shell banks to use their accounts.

REGULATION, SUPERVISION, CONTROL AND SANCTIONS

3.10 Supervision and control system. Competent authorities and self-regulatory agencies. Role, functions, obligations and powers (R. 17, 23, 29 and 30, 32 and 25)

3.10.1 Description and Analysis

NB: This chapter recalls the descriptions that the World Bank made in its previous reports on Mali and Niger. Indeed, since the regulation, supervision, control and the sanction system is regional in nature, the mission deemed it pertinent to rely on its previous reports, each time they could, of course, be transposed to the situation of Burkina Faso.

530. To understand the AML supervision system applied in Burkina Faso, it is important to describe the regional framework. Indeed, in the area of supervision as in other areas, the structure that was retained is the regional type for all WAEMU countries. This structure concerns the supervision of banks and other financial institutions, insurance companies[63], stock markets and micro-finance institutions.

531. Banking sector: The regulation and bank supervision within the Union are organized and regulated by the banking Regulation Act. This framework Act constitutes the basic text of the banking supervision mechanism and, more generally, the organization and monitoring of banking activities within the WAEMU. This framework law – recently amended – has been transposed into the Burkinabe legal order by Act No. 058-2008/AN of 20 November 2008 on the banking regulation in Burkina Faso (promulgated on 23 December 2008).

532. Moreover, a number of legal and regulatory texts have been adopted. They include notably the convention on creation of the Banking Commission, which entered into force on 1st October 1990 and the prudential provision applicable to banks and financial institutions of the WAEMU, amended by the Council of Ministers at its session of 17 June 1999 and which entered into force on 1st January 2000.

533. Concerning precisely banking control, the above-mentioned Framework Act and the new Burkinabe Banking Act mentioned above, define the distribution of the competences between the regulatory and control bodies of the banking activity as well as the conditions of their intervention.

63 In the area of insurance, the supervisory mechanism extends beyond the borders of the UMOA and covers, in fact, the entire franc zone.

Similarly, it makes a distinction between the regulatory functions, on the one hand, and those of control and sanctions, on the other, between the different bodies or institutions: Council of Ministers, Ministers of Finance, Central Bank and Banking Commission.

534. The powers of the Minister of Finance – in Burkina Faso as in each country of the Union – cover mainly the authorization, withdrawal of authorization (c.f. infra c.23.3 for further details), appointment of the provisional administrator or liquidator, suspension of operations of all banks and financial institutions. Moreover, concerning the micro-finance networks, the monitoring powers traditionally given to the Minister of Finance are now transferred jointly to the BC-WAMUand the BCEAO (Article 104 of Act No. 058-2008).

535. –Concerning banking control (outside the micro-finance network), the Central Bank of West African States shares its control powers both on documents and on-site with the WAEMU Banking Commission (Article 59 of Act No. 058-2008). The BCEAO is empowered to conduct missions to banks and financial institutions after having informed the CB, which is, moreover, informed of the findings of the investigation. It is the CB that has all the control prerogatives within the 8 States composing the WAEMU zone, including Burkina Faso. In the exercise of its attributions, it makes a recommendation for authorization of a bank or financial institution, undertakes or orders controls on documents or on-site in subjected institutions. It may eventually extend its controls to related companies.

536. Micro-credit sector. Concerning the micro-finance networks, a Framework Act, commonly called Parmec Act (on regulation of mutual benefit institutions or savings and credit cooperatives, was adopted by the WAEMU Council of Ministers on 17 December 1993. At the level of Burkina Faso, Act No. 59/94/ADP of 15 December 1994 concerns regulation of the decentralized financial systems and entrusts to the Minister of Finance the sponsorship and monitoring of MFIs. Article 67 of the 1994 Act also provides that the CB and the BCEAO may, on their own initiative or at the request of the Minister, carry out on-site controls of financial institutions and all companies under the authority of the latter. The new Banking Act, adopted in 2008, moreover confirms the supervisory role of the CB and the BCEAO on decentralized financial systems (Article 104).

537. Financial market. Financial markets are regulated at the regional level by the *Conseil Régional de l'Épargne Publique et des Marchés Financiers* (CREPMF), a WAEMU regulatory body created in 1996. It is in charge, on the one hand, of organizing and controlling public call for savings, and on the other, empowers and controls actors of the regional financial market. In this capacity, the CREPMF regulates the operation of the market, notably by setting forth a specific regulation for the stock market. It also has disciplinary and legal action powers (complaints).

538. Insurance sector. In the insurance sector, the 14 countries of the franc zone have taken part in the setting up of the inter-African Conference of Insurance Markets (ICIM) under the Yaoundé Treaty of 10 July 1992. This Treaty strives to remedy the excesses of the insurance law through normalization of the latter, thanks to the ICIM Code, which entered into force in 1995. It institutes a legal framework for the exercise of the profession within the franc Zone, and therefore, in Burkina Faso and fixes the powers of regulation and sanctions of the relevant authorities. The Regional Insurance Control Commission (CRCA) of the Conference is the regulatory body and is in charge of the general monitoring of insurance markets and control of companies, ensured in the member States by the National Insurance Departments (DNA); concerning the General Secretariat of the Conference, it ensures, in practice, the control of insurance companies.

Recommendation 23

AML/FT Regulation and control (c.23.1)

539. Act No. 026-2006 determines the list of persons and entities subjected to the AML obligations, particularly financial institutions, which comprises notably banks and financial institutions, Post Office financial services, insurance companies, mutual-benefit savings and institutions, authorized manual exchange outlets. In the stock market sector, apart from the OPCVM, the Bourse Régionale des Valeurs Mobilières, the Central Custodian/Settlement Bank, Management and Intermediation Companies and assets management companies as well as business getters[64] are among natural persons and entities subjected to the AML Act.

Designation of competent authorities (c.23.2)

540. Banking sector. Burkinabe banks and other financial institutions are placed under the supervision of the BC-WAMU and the BCEAO pursuant to Article 13 of the agreement on creation of the CB and Articles 1 and 59 of the Burkinabe law of 20 November 2008.

541. Insurance sector: Insurance companies are under the supervision of the CIMA, based in Libreville (Gabon), and which relies on national insurance departments to exercise this supervision. Insurance intermediaries are under the prudential control of the national insurance departments.

542. Micro-sector sector: The decentralized financial systems are placed under the supervision of the MEF, the CB and the BCEAO. Since the voting of Act No. 058/2008, the BC-WAMU and BCEAO exercise the supervision of DFCs at the level of the umbrella structures.

543. Stock market sector:It is the responsibility of the Conseil Régional de l'Epargne Publique et des Marchés Financiers to ensure the smooth operation of the WAEMU financial market, of which Burkina Faso is a member. Pursuant to Article 23 of the annex to the general regulation[65], the Regional Board controls the activities of all the actors, notably the management structures of the market and authorized commercial actors. It also verifies the respect, through issuers of securities, of the public issue obligations to which they are subjected. In that regard, it may, eventually, conduct surveys among its shareholders, parent companies and subsidiaries or any legal entity having with these actors a direct or indirect relation. It transpired from the discussions with the authorities of the market[66] that no monitoring of AML is carried out, whereas the main actors of the market are subjected to the AML Act (See Article 1 of the Burkinabe law). This point was confirmed during the discussions the mission had in Ouagadougou.

Prevention of the presence of criminals (c.23.3)

544. Access to the banking profession is governed by a regulation that restricts the exercise of the profession to persons offering guarantees of morality. Hence, Burkinabe Act No. 058-2008 on the banking regulation entrusts to the BCEAO the task of obtaining all the information on the quality of persons who provided capital inflow and eventually their guarantors, as well as on the respectability and experience of persons called upon to direct, administer and manage the bank or the financial institution and its branches. It should be noted that Article 26 of the Act keeps away from the banking

[64] Business getters are natural persons or legal entities who put the customer in contract with an SGI or a *Société de gestion du patrimoine* for: a) the opening of a securities account; b) advise on investments or management under mandate; c) the transmission of orders of their customers.

[65] On the organization, operation and control of regional financial markets of the UMOA.

66 These discussions were held in 2008 during the evaluation of Mali.

profession any person who has been convicted for violation of the anti-money laundering legislation67.

545. In practice, the requests for authorization are addressed to the Minister of Finance of Burkina Faso and deposited at the Central Bank, which examines them. The latter verifies whether the natural persons or legal persons applying for authorization meet the relevant conditions and obligations set forth notably in Articles 25[68] and 26 of the above-mentioned Act No. 058-2008. The BCEAO also obtains all the information on the quality of the persons that provided capital as well as on the respectability and experience of the persons called upon to direct, administer or manage the bank or financial institution and its branches.

546. Concerning the control of the origin of the capital, the mission had no knowledge of the existence of a particular ad hoc procedure within the BCEAO. Besides, the mission could not establish that the approval authorities systematically trace back to the beneficial owner when an application for authorization is referred to them.

547. It should be specified that these provisions are applicable when the institution is established in the WAEMU zone for the first time; for other banks already established, it is the single authorization rule that is applied[69].

548. Access to the insurance profession: The authorization applications are presented to the competent authority, the Direction Nationale des Assurances (DNA) and later transmitted to the Commission Régionale de Contrôle des Assurances (CRCA), which makes a recommendation (Title II, Chapter 1, Section 1 of the Insurance Code). This recommendation conditions the issue of the authorization by the minister of the member State (in this case, Burkina Faso) in charge of the insurance sector. In this procedure are examined, in particular, the distribution of the capital, the quality and acceptability of the managers of the company; measures will also be taken to notably ensure that the policy-making bodies have not been convicted of a crime. The CRCA may have to reject an application for authorization notably when the company does not present all the guarantees required for exercising this activity.

549. Particular attention is paid to the body of shareholders at the time of the application for authorization but also during any significant change in capital or voting rights. Hence, Article 329-7 provides that any operation aimed at conferring an equity investment of over 20% or the majority of voting rights must be approved by the Minister in charge of insurance companies, after recommendation of the CRCA. Even so, in the area of insurance, as in the banks, there is no specific procedure for ensuring that capital inflows do not come from a criminal or unlawful activity.

550. Access to the micro-credit profession: Concerning micro-finance networks - which are part of the entities subjected to the AML Act, the conditions of access to the profession are governed by the afore-mentioned Parmec Act. Hence, financial institutions or bodies, whose activities involve the

67 Wins by right the ban to direct, administer or manage a bank or a financial institution or one of their branches any conviction for common law crime, forgery, false public entry, false private entry, trade or bank fraud, stealing, swindling or crimes punishable by penalties for swindling, breach of trust, bankruptcy, embezzlement, abstraction by public depositary, extortion of funds or stocks, issue of dud checks, violation of the legislation on foreign exchange, embezzlement of public funds or for keeping items obtained through these offenses.

68 Nobody can direct, administer or manage a bank or a financial establishment, or one of their branches, if it does not have Burkinabe nationality or that of a member-country of the West African Monetary Union.

69 Pursuant to the decision of the WAEMU Council of Ministers at its session of 3 July 1997 on the adoption of the principle of single approval, and the decision of the WAEMU Council of Ministers at its session of 25 September 1998 on adoption of the modalities of implementation of the single authorization granted to a duly-constituted bank or financial establishment the right to exercise a banking or financial activity in a UMOA member State and establish itself and offer freely services of the same nature in the entire Union, without being obliged to apply for new authorizations.

collection of savings and granting of credit, should first be acknowledged and authorized under specific conditions. Indeed, Act No. 59/94/ADP on regulation of mutual-benefit institutions or savings and credit cooperatives provides that basic institutions, affiliated to a network may not exercise their activities on the national territory without prior acknowledgement and authorization by the Minister of Finance. It is a decree that specifies the conditions for the constitution, establishment and operation of institutions[70]. At the time of the mission, there were three categories of authorization (authorization, acknowledgement and convention), depending on the nature of the institution (basic institution, Union, Federation or Confederation). The existence of 3 categories of authorization could create some confusion; hence, the regional authorities have decided to reform the Parmec Act with a view to simplifying both the modalities of authorization of DFCs and conditions of their monitoring. In future (probably from 2009), approval will be the only form of authorization for exercising the profession and about 60 IMCEC[71] will be placed under direct supervision of the BC-WAMU.

551. The consideration of requests for authorization to exercise concerns, notably, the morality and expertise of the managers. Apart from the obligation to deposit their statutes with the Registry, the DFCs should transmit at the same time the list of the executive directors and the manager with an indication of their profession and domicile (Article 18 of the Parmec Act)[72]. In Burkina Faso, the authorization is issued by the MEF. To back their requests for authorization, the applicants must, among others, attach the statutes signed by the founding members, the list of shareholders, minutes of the constituent general assembly. The morality of the candidates is also verified by means of an extract of the police report. Concerning the illegal origin of the capital, the services of the MEF do not carry out any specific check.

552. From the discussions with the regional authorities, the mission retained that the reform of the regulatory framework of the IMCECs, which should intervene in the course of the year, 2009 was motivated, among others, by some laxity in the conditions of granting authorizations, but also because of inadequate control on the DFCs[73].

553. Access to the stock market: Stock markets are regulated at the regional level by the Conseil Régional de l'Épargne Publique et des Marchés Financiers (CREPMF), a regulatory body of the WAEMU, created in 1996. It is in charge of organizing and controlling public issue, and empowering and controlling the actors on the regional financial market. In this regard, the CREPMF regulates the operation of the market, notably by enacting a specific regulation for the stock market. It also has disciplinary and legal instruction powers (cf. infra c. 29.4 for more details).

554. There is a need to distinguish between two main types of actors on the regional financial market: a) market structures, namely the Bourse Régionale des Valeurs Mobilières (BRVM) and the Central Depository/Settlement Bank; and b) commercial actors: Management and Intermediation Companies (SGI), Asset Management Companies (SGP), Stock Brokers, Introduced Businesses and Soliciting Dealers. In Burkina, there is only one actor, an SGI.

555. Concerning specifically commercial actors (SGI and SGP notably), the modalities of authorization appear more strict. Hence, Article 27 of the above-mentioned General Regulation stipulates that to examine their authorization request, the applicant companies should provide adequate guarantees,

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70 It should be noted that certain activities require specific authorization, such as the exercise of manual currency exchange activities.

71 It concerns the most important DFCs, representing 90% of the transactions and which contribute more than CFA 300 million.

72 Any subsequent amendment of the constitution or the above list of executive directors is subjected to an obligation of deposit to the registry and written declaration to the Minister.

73 The mission was informed that some DFCs requested for authorization after having legally exercised their activity for 2 or 3 years.

notably regarding the composition and amount of their capita, their organization, their human, technical and financial resources, the respectability and experience of their managers, as well as the specific provisions for ensuring the security of customer operations. The same regulation stipulates in its Article 32 that social managers or administrators or a company applying to operate as an SGI, natural persons having been convicted once or several times74 in any country cannot be shareholders. According to the information collected by the mission, the hearing of an applicant company is possible but not systematic. The instruction services also request for a copy of the extract from the police report on the managers. On the other hand, there is no specific procedure aimed at ensuring the legal origin of the capital provided.

556. If, moreover, banks and SGIs may create OPCVM, an approval of the CREPMF will be necessary and the respectability of the managers verified. It should be added that for Burkina Faso, the ML risk seems limited, since there is only one SGI and no SGP. At the time of the mission, there were no specific anti-money laundering rules for financial markets. A draft text is, however, under consideration.

557. Manual money exchange operators: The manual exchange authorizations are issued by order of the MEF after approval by the BCEAO. According to BCEAO Instruction No. 11/05/RC, the validity of the authorizations issued is conditioned by the effective start of the activities of the beneficiary within a maximum period of one year from the date of notification of the said order. The authorization applications are examined by the BCEAO, which controls the police record of the applicant. The BCEAO issues an approval, which is later transmitted to the Ministry of Economy and Finance. The authorization agreement is then issued by the Ministry. Moreover, money changers should make declarations to the BCEAO on the volume of their transactions. In terms of transaction, the money changer risks a withdrawal of the authorization if his activity has not started within the 6 months following the date of issue of the authorization.

Aptitude and respectability criteria (c.23.3.)

558. The aptitude and respectability criteria are examined by the competent authorities for managers of banks, insurance companies and commercial actors operating on the financial market. On the other hand, the examination of this criteria is not explicitly provided for market structures, namely the Bourse Régionale des Valeurs Mobilières (BRVM) and the Central Depository/Settlement Bank (cf. supra c. 23.3) and manual exchange operators. Concerning the DFCs, the rules concerning the control of the aptitude and morality of managers of DFCs are not clearly established.

Application of the prudential regulation for AML/FT (c.23.4)

559. Circular No. 10-2000 of 23 June 2000 of the Banking Commission provides that banks and financial institutions of the WAEMU should institute an efficient internal control system adapted to their organization, the nature and volume of their activities as well as their risk exposure. These standards are obviously applicable to Burkinabe banks and financial institutions.

560. The principles described above in Circular No. 10-2000 of 23 June 2000 provide notably for complete formalization of the procedures and modalities for treatment and registration of operations, a clear delegation of powers and responsibilities as well as a strict separation of functions. The system put in place must institute, at each operational level, a first level control mechanism comparable to

74 For crime or common law misdemeanor, attempt, complicity or concealing stolen goods for (i) forgery or use of forgery; (ii) swindling, breach of trust, embezzlement, extortion of funds or stocks and fake money acts; (iii) violation of the bank and exchange regulations; (iv) or, generally, any conviction for crimes or misdemeanors assimilated with any of those listed above.

authorization or validation. The second internal control level must be ensured by a dedicated and independent audit function. It is the responsibility of the deliberating body to define the internal control policy, ensure the establishment of an adequate mechanism and oversee the activity and results, at least once a year. It must be regularly kept informed of all risks to which the institution is exposed. The deliberating body may create an audit committee in charge, notably of assessing the organization and operation of the control system.

561. These general provisions on the control of risks are pertinent in the context of the fight against money laundering.

Authorization for funds transmission services and money exchange services (c.23.5)
See SR VI.

Monitoring and control of funds transmission services and money exchange services (c.23.6)
See SR VI.

Prior authorization or registration, regulation and control of other financial institutions (c.23.7)

562. Financial institutions other than banks and financial institutions (e.g. DFCs and manual exchange agencies) are also subjected to prior authorization and supervision. The monitoring conditions applicable to them as regards AML are, however, inadequate, or even non-existent in the case of micro-finance institutions.

Guidelines for financial institutions (c.25.1)

563. In the sector of banks and financial institutions, the only instruction is that of the BCEAO adopted on 2 July 2007 (Instruction No. 01/2007/RB on the fight against money laundering in financial institutions). This document is, therefore, of recent creation, to the extent that, for several years, banks and financial institutions in Burkina Faso, as elsewhere, had no detailed information on how to comply with the AML texts.

564. According to its Article 3, the BCEAO Instruction is applicable to banks and financial institutions, Post Office financial services, as well as the Caisses de Dépôts et Consignations or institutions playing that role; Mutual-benefit institutions and savings and credit cooperatives, as well as structures and organizations not constituted in a form of Mutual-benefit or cooperative institutions and having as objective the collection of savings and/or granting of credit; finally, to authorized manual exchange institutions. On the other hand, it is not applicable to funds transfer services.

565. This text incorporates the major outlines of the regional Single Act of 2003. It recalls the provisions on due diligence over financial institutions, particularly the standards of identification, record keeping and detection of suspicious operations. It also recalls the specific obligations on enhanced diligence and those regarding casual financial operations. The instruction also specifies the declaration of suspicion and staff training obligations. Finally, it requests the subjected institutions to put in place an anti-money laundering unit and submit to the BCEAO and the BC-WAMU an annual report75 on the implementation of the entire AML mechanism.

75 According to Article 17, this report must: •describe the organization and resources of the establishment in the area of prevention and fight against money laundering; • relate the training and information actions conducted during the past year; • list the controls carried out to ensure the efficient implementation and respect of the procedures for identification of customers, conservation of data, detection and declaration of suspicious transactions; • publish the results of the investigations, notably concerning the weaknesses identified in the procedures and in their respect, as well as statistics on the implementation of the suspicion declaration mechanism; • indicate eventually the nature of the information transmitted to third party institutions, including to those outside the country of establishment; • prepare a mapping of the most current suspicious

566. A careful reading of this instruction calls for the following remarks:

- The document does not provide all the necessary clarifications, and this, in several areas. In terms of (i) customer identification, the instruction makes no reference to individual customers; it gives no indication on the modalities of identification of legal entity clients. It gives no further precision on how the subjected financial institutions should ensure the identity of the economic beneficiaries in case a customer is not acting on his own behalf. It does not also specify the type of identity document accepted in the sub-region, not more than the enhanced diligence measures with regard to certain categories of customers (e.g. non-resident customers, foreign customers); (ii) implementation of the AML standards within financial institutions, if the instruction indicates that the latter should put in place internal anti-laundering programs, it does not specify the content of these programs, limiting itself to indicating that they should comply with "the legal and regulatory provisions in force in WAEMU member States". The instruction also gives no indication on the obligation for financial institutions to seek information on the purpose and envisaged nature of the business relation or the need to regularly update customer databases.

567. The instruction, moreover, contains provisions that could create some confusion among the subjected financial institutions. Hence, in its Article 4, it stipulates that customer identification must be based, notably, on "specific ethical rules". Apart from the fact that these ethical rules are not specified by the instruction, they do not correspond to the standards of FATF76. Similarly, the instruction stipulates that financial institutions "should define the types of customers that they cannot accept"; without further specification, this provision has no practical application.

568. It should also be specified that the BC-WAMU has issued no circular or circular letter on AML, other than those recommending to the subjected institutions to submit an annual activity report on the AML. Even if the regulatory power belongs to the BCEAO, (since the CB has only a supervisory and control role), it may specify certain points of the regulation in force through circulars. This possibility has not been used in the area of AML.

569. In the light of the foregoing, the mission concludes that the only document currently in force in Burkina Faso, as in the rest of the sub-region, does not establish adequate guidelines to assist financial institutions to apply and respect their AML obligations.

570. In the stock exchange sector, as at the time of the mission, there was no AML instruction applicable to actors of the market. The AML issue was only taken into account very lately. Indeed, it was not until 2007 that the market authorities took an initiative in this area by drafting the AML draft instruction. This text was approved by the Regional Board in September 2007 and should enter into force in the course of 2009. It provides for 3 types of obligations on the measures for customer identification, record keeping and due diligence. It also provides measures of enhanced diligence for atypical operations and recalls the declarative obligations of the actors of the market.

571. Micro-finance sector. The discussions the mission had with both the DFCs and the supervisory authorities helped to observe the lack of AML guideline or guidelines in the profession. Only the BCEAO Instruction of July 2007 was disseminated to the MFIs, but not the national AML Act.

572. In the insurance sector, there are no AML guidelines.

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activities , indicating eventually, the nature and form of the changes observed in the area of money laundering; finally • present the prospects and program of activities for the coming period.

76 Rec. 5 of FATF on the identification of customers does not contain any reference to the ethical rules.

573. In conclusion, with exception of the BCEAO, and in the absence of an operational CENTIF, no competent Burkinabe authority has passed on information to subjected entities of the financial sector.

Recommendation 29

Powers of the control authorities (c.29.1)

574. Banking sector: As mentioned above, banking supervision is governed by regional and national provisions, which are implemented by the four responsible authorities: (i) the WAEMU Council of Ministers, which fixes the general legal and regulatory framework applicable to credit activity; (ii) the Ministers of Finance of member States (as in Burkina Faso), who have, each within the limit of his national territory, powers notably for the issue and withdrawal of authorizations to banks and financial institutions and for dealing with the difficulties facing these institutions; (iii) the BCEAO, whose main attributions are the development and technical transposition of the accounting and prudential regulation applicable to financial institutions and the contribution, through its national Branches, to the supervision of the banking system; (iv) finally the BC-WAMU, chaired by the Governor of the BCEAO, which is in charge of ensuring the organization and control of banks and financial institutions established in the eight States of the Union and which has, to that end, power to impose administrative and disciplinary sanctions.

575. The power of supervision over financial institutions is thus organized. According to Article 13 of the Convention on Creation of the BC-WAMU, the Banking Commission carries out or requests the Central Bank, notably, to carry out documentary or on-site controls in banks and financial institutions, in order to ensure compliance with the provisions applicable to them. The Central Bank may also conduct these controls on its own initiative. It informs the Banking Commission about the on-site controls. The monitoring of micro-finance networks is the responsibility of the MEF of each country, while the BCEAO and BC-WAMU intervene in the supervision of the sector, by verifying the compliance with the manuals of procedure, the standards they enact, the control on documents and monitoring of the financial bodies. Regarding the supervision of manual foreign exchange dealers, it is the responsibility of the BCEAO and the department in charge of external finances (the DGTCP in Burkina); in the absence of precision in the texts, each institution may separately carry out supervision activities. On the other hand, Post Office financial services are controlled by the Audit Office.

576. Concerning money laundering, the monitoring of compliance, by the subjected organizations, with the legal standards is within the competence of the above-mentioned authorities. The CENTIF, either in Burkina Faso or elsewhere in the region, does not exercise supervision powers over the subjected persons.

577. Concerning the control of AML compliance in assimilated banks and financial institutions, it is the BC-WAMU that exercises the main monitoring power, through its General Secretariat (SGCB). In that regard, the supervision consists in documentary and on-site control. The Bank Research Department ensures constant monitoring, on the basis of documentary evidence, with the legal department, which have respectively 25 and 5 agents77. It is the Research Department that is in charge of analyzing the periodic financial statements and end-of-year documents, as well as the inspection reports and preparing letters to follow-up the inspection reports. This same department monitors the implementation of recommendations of the on-site control.

77 2008 figures.

578. The on-site control is conducted by the Inspection Department, with its 22 agents, inspectors and heads of mission (5 in number). Professional secrecy cannot be invoked to impede the work of the inspectors. They have access to all data, including financial or personal data on the bank's customers and managers. The inspectors also have access to the verification database of the auditors. The latter are, moreover, systematically interrogated by the inspectors during their on-site visits. According to the BC-WAMU, every on-site investigation comprises an AML component and this point features in the terms of reference of each mission. The Banking Commission communicates the findings of the on-site controls to the Minister of Finance, the Central Bank and the Executive Directors of the institution concerned or the body playing that role.

579. The bank control in the area of AML suffers from several handicaps:

580. The resources seem highly inadequate. The BC-WAMU indeed has a total of 111 persons, but only 22 inspectors to cover 115 banks distributed on the entire territory of the UMOA zone (for more details, See c.30.1).

581. By the time the interview was held with the WAEMU Banking Commission Services, the Commission's auditing services had not yet carried out a thematic AML study. The inspection department of the BC-WAMU has not yet expedited a thematic AML survey. However, the mission was informed that since 2002, every general investigation comprised a money laundering component. This was confirmed by the mission conducted to Ouagadougou.

582. The controls exercised by the BC-WAMU on AML mechanisms is not thorough enough. According to data collected from Burkinabe banks, the mission observed that the sphere of the controls by the BC-WAMU is limited to a mere analysis of compliance78. No analysis is made of the AML risk to which the bank is exposed nor judgment on the relevance of the bank's own internal AML provision, with regard to its risk exposure. The teams of the CB strive to know whether the bank verified has an AML provision, but the verifications do not seem to be based on an in-depth audit of the operations and databases. It should also be noted that no local bank was called to order - in the form of a follow-up letter, for example – whereas numerous weaknesses were identified by the mission.

583. The level of specialization in the area of AML is limited, given the current low staffing position. An annual training program is instituted for agents of the CB comprising training locally and abroad79. However, the training of agents of the SGCB in money laundering is partial. The different meetings and seminars organized recently on anti-money laundering cannot provide specific knowledge and adequate level of practice. It is more of a sensitization than a real training on AML80.

584. The lack of a CENTIF and AML guidelines for subjected persons and entities, combined with a recent regulatory framework, but not yet definitely fixed, reduces significantly the practical range of the monitoring exercised by the SGCB so far.

78 The authorities of Burkina observe that "the weaknesses observed by the missions of the CB UMOA, when the seriousness of the situation requires it, are the subject of a letter addressed to the Minister of Finance, to the Central Bank and the authorities of the bank concerned.

79 The staff of the CB is mainly constituted by managerial staff a with an appreciable level of university education (Bac +5) and enjoy a credibility confirmed by the profession (source: FSAP).

80 In its 2006 Annual Report, the BC-WAMUUMOA mentions some meeting relating to AML. Hence, at the regional level, the SGCB participated in seminars organized by the BCEAO on "validation of the Guideline on the fight against the financing of terrorism". At the international level, the SGCB participated in several seminars organized by the World Bank, the IMF and the ADB , notably on AML/FT. The report does not, however, indicate how many agents of the SGCB benefited from these training//sensitization activities.

585. The inspection service of the SGCB has only one partial methodological tool for evaluating the level of compliance of banks with AML standards.

586. Concerning constant monitoring, the centralization of the accounting or prudential data transmitted periodically by the banks is still inadequately automated, while their analysis is dependent on extremely long treatment periods81. This situation may affect the early detection of possible money laundering problems. Documentary monitoring is no longer conducted on a consolidated basis, whereas the region had several bank groups.[82]

587. In conclusion, the AML supervision in banks and other financial institutions must be reinforced.

588. Insurance sector: All the countries of the franc zone, including Burkina Faso, are signatories to the treaty of the Inter-African Conference on Insurance Markets (CIMA) and are bound by common law and regulations on insurance. Decisions on the granting or withdrawal of authorizations and on sanctions imposed on insurance companies are taken by the Regional Insurance Control Commission ("the Commission"). The latter is managed by a representative board whose members are appointed by the signatory countries, as well as by representatives of the regional re-insurance company, CICA-RE, and the regional professional insurance association.

589. The supervision of the insurance sector is weakened by the following factors:

- Insufficiency of the resources provided to the Secretariat and the Commission,
- Blurred delimitation of the responsibilities of the Secretariat and the national insurance authorities. Consequently, the role of the national authorities –notably in Burkina Faso- in the follow-up of the decision taken by the CIMA varies, from actual controls to a mere observation of the market.

590. The resources of the CIMA are highly reduced and budgetary constraints have compelled it to reduce the frequency and intensity of its on-site inspections. The resources provided to the national authorities are also highly limited and the latter, therefore, find it difficult to attract and retain competent staff.

591. It is planned to increase significantly the number of inspectors employed by the Secretariat of the CIMA. The plan also provides for greater involvement of the national services in supervision activities. Both the new inspectors and staff of the national services will need training. Besides, the Secretariat should improve the documentary controls and put in place an early detection system. Inspectors of the Secretariat of the CIMA are currently analyzing manually the annual declarations of the companies, which delays considerably the detection of problems.

592. For the micro-finance sector, there was, at the time of the mission, a pile-up of prerogatives between the different institutions, namely the MDF, through services of the MEF, the BCEAO and the BC-WAMU, not to mention the internal control exercised by umbrella structures of certain micro-finance networks. This situation creates confusion on the role of each actor and harms overall efficiency. In terms of supervision, the specific monitoring of micro-finance companies or decentralized financial institutions rests with a unit of the Ministry of Finance. In Burkina Faso, the

81 Source: FSAP, report on the evaluation of compliance with the basic principles of Basel for efficient bank control, 2007.

82 If the regulation provides for the production of consolidated accounts for bank groups, the latter are not subjected to specific controls and the respect of the prudential standards relies on a social base (source FSAP, mentioned above).

MEF has expedited multiple on-site investigations in MFIs (55 in 2008). However, none of these missions was on AML.

593. Money exchange sector: Burkina Faso had 49 authorized money changers as of 31 January 2008. The BCEAO exercises supervision power over these institutions. In 2008, the BCEAO conducted jointly with the MEF a verification mission in several local exchange bureaus.

594. Stock market sector: In the stock market sector, the authorities have not expedited any AML control on the only SIG operating in Burkina Faso.

Power to conduct inspections (c.29.2)

595. In the banks, inspectors from the CB have the necessary powers to inspect financial institutions, including on-site inspections to verify that they meet their obligations. For lack of detailed information, the mission could not make a final judgment on the point of knowing whether the inspections of the CB comprise the analysis of policies, procedures, books and accounting documents and whether they include verifications through survey. According to the discussions held with the CB, it would seem that the inspectors examine these points. Besides, in the FSAP report[83], it is mentioned that "the procedures for on-site and documentary control do not include specific provisions for evaluation of the anti-money laundering provisions".

596. In the financial markets sector, the Regional Board has inspectors whose area of competence extends to all actors making a public issue or who intervene on the basis of an authorization issued by the Regional Board. Similarly, as part of the documentary control, the Regional Board is empowered to request for the production of regular data for which it fixes the content and the conditions of transmission.

597. For the micro-finance sector in Burkina Faso, agents of the MEF have a mission of ensuring the respect of the regulation applicable to DFCs. In this regard, they are in charge of not only conducting the control and monitoring of DFCs, but also proposing sanctions against these entities and ensuring their implementation.

598. For insurance companies, the control power is exercised by inspectors from the CIMA, through National Insurance Departments and the Regional Insurance Control Commission (CRCA).

Powers to have access to the necessary documents (c.29.3)

599. In the banking sector, in the wide sense, the BC-WAMU has most extensive powers to information. Pursuant to Article 16 of the Convention on Creation of the BC-WAMU, "banks and financial institutions are under obligation to provide, on any requisition of the BC-WAMU and on desired aids, all documents, information, clarifications and necessary justification for the exercise of its attributions". Burkinabe Banking Act No. 058-2008 also specifies, in its Article 59, that "lending institutions may not oppose the controls by the Banking Commission and the Central Bank".

600. Concerning the specific micro-finance sector, Article 68 of the Parmec Act stipulates that professional secrecy cannot be invoked to oppose neither the Minister nor the prudential authorities. BCEAO Instruction No. 01/2007 of 2 July 2007 on the fight against money laundering in financial institutions also provides that as part of the control provided for by the above-mentioned Banking Act

83 Report on the Evaluation of the compliance with the Basel basic principles for efficient bank control, 2007.

on banking regulation, "banks and financial institutions should be able to produce all documents required for the appreciation of the quality of their provision for prevention of money laundering".

601. Banking Act No. 058-2008 also specifies that any banker who would intentionally provide false or inaccurate information shall be liable to penal sanctions.

602. In the market sector, it is the general regulation on the organization, operation and control of the regional financial market of the WAEMU that fixes the monitoring prerogatives of the Regional Board. It is also in charge of controlling the regularity of stock market operations. Pursuant to Article 56 of this regulation, "the Regional Board carries out documentary or on-site investigations or controls in Management and Intermediation Companies". Moreover, the annex to the general regulation84 provides in its Article 24 that "the Regional Board has inspectors whose area of competence extends to all actors engaged in public issue or who intervene on the basis of an authorization issued by the Regional Board". In its Article 25, the annex also specifies that "in the framework of its documentary controls, the Regional Board is empowered to request for the production of regular information of which it fixes the content and conditions of transmission". The above-mentioned provisions do not indicate, on the other hand, the specific extent of the right of access conferred on inspectors of the Regional Board when they conduct investigations on actors of the market. There are no explicit provisions in the texts given to the mission stipulating that agents of the RB enjoy the most extensive right of access and communication as, for example, that of inspectors of the BCEAO or the BC-WAMU. This situation is, therefore, not in conformity with the recommendation of FATF (rec. 29) according to which the monitoring authorities should be given the necessary powers to request for the production of all necessary records, documents or information for the monitoring of the compliance with the AML/FT obligations.

603. In the insurance sector, it is the CIMA, through its regional departments, that has powers of access to information.

Power not conditioned by a court decision (c.29.3.1)

604. The power of the monitoring authorities in the area of production of documents or access to documents is not conditioned by a court decision.

Coercion and sanction powers (c.29.4)

605. Banking sector: In application of the powers entrusted to it, the BC-WAMU can impose disciplinary sanctions depending on the grave nature of the offenses committed. The latter may vary from the warning up to the withdrawal of the authorization (Articles 22 - 25 of the Convention), and this without prejudice to the monetary and/or penal sanctions, having been specified that the decisions of appointment of a provisional administrator or a liquidator are within the competence of the Minister of Finance on the proposal of the CB. The injunctions, decisions, views and proposals of the CB must be motivated (Article 30 of the Convention). The decisions of the Commission are legally binding on the entire territory of the Union, from their notification to the interested parties, directly by this body or by the Minister of Finance, in case of a decision of withdrawal of authorization. These decisions are liable to appeal before the CMU, with the exclusion of decisions of withdrawal of authorization notified by the Minister of Finance of the State on the territory of which the decision is legally binding.

84 Annex on the composition, organization, operation and attribution of the Regional Public Savings and Financial Markets Board.

606. Concerning specifically money laundering, Article 35 of Single Act No. 026-2006 on the fight against money laundering stipulates in its Article 35 that, when, following either a serious vigilance flaw or a shortfall in the organization of its internal control procedures, a person subjected to the act has ignored the obligations, notably preventive obligations, instituted by the said act (flaw in customer identification, among others), the control authority having disciplinary power, may automatically act in accordance with the provisions provided for by the specific legislative and regulatory texts in force.

607. In the stock market sector, the CRBV sets forth sanction powers. Article 30 of the amendment to the Convention on Creation of the CREMPF confers on the Regional Board powers to impose non-criminal and/or administrative monetary penalties. It is thus provided that, "any action, omission or act that would be contrary to the general interest of the financial market and its smooth operation, and/or prejudicial to the rights of investors shall be punishable by monetary, administrative and disciplinary sanctions, as the case may be, without prejudice to the judicial sanctions that could be pronounced against the authors on the basis of an action for damage, taken individually by the aggrieved persons due to these acts". It is however, not certain that the provisions of Article 30 are also applicable in the area of AML.

608. In the insurance sector: All countries of the franc zone, including Burkina Faso are signatories to the Treaty of the Inter-African Conference on Insurance Markets (CIMA) and are bound by the common Acts and Regulations concerning insurance. The decisions on the granting or withdrawal of authorizations and the sanctions imposed on insurance companies are taken by the Regional Insurance Control Commission, ("the Commission"). The latter is governed by a representative board whose members are appointed by the signatory countries, as well as by representatives of the Regional Reinsurance Company, CICA-RE and the Regional Professional Insurance Association.

Micro-finance sector: In this sector, the power of coercion is exerted by the MEF.

Recommendation 17

Existence of efficient, proportional and dissuasive sanctions (c.17.1)

609. Banking sector. In case of breach of the banking regulation, the BC-WAMU may impose disciplinary sanctions, without prejudice to the penal or other sanctions that could be pronounced by the competent courts (Article 47 of Banking Act and Article 23 of the Convention). These measures include warning, reprimand, suspension or banning of the totality or part of the operations, limitations in the exercise of the profession, automatic suspension of the managers and, in the most serious cases, withdrawal of the authorization. In the case of money laundering, as in any other prudential matter, it is the classical arsenal of sanctions as set forth in Article 47 mentioned above that is applicable.

610. Until quite recently, the Banking Act made no provision for financial sanctions in case of breach of the prudential standards. Hence, a bank that seriously contravened its due diligence requirements was not liable to any coercion measure other than disciplinary measure. Since the end of 2008, the situation has changed. Burkinabe Banking Act No. 058-2008 provides in Article 77 that the CB may impose, in addition to the disciplinary sanctions, for breach of the banking regulation or other regulations applicable to LIs, a monetary penalty, the amount of which is fixed by instruction of the BCEAO. It should, however, be recalled that no sanction has been pronounced by the CB for breach of the AML obligations85.

85 The CB informed the mission that the sanctions imposed were "global" and were not based on a single breach but on range of offenses which could cover eventual violation of the AML standards. As the mission could not have access, despite its request, to examples of sanctions already imposed, it could not verify this point.

611. In the micro-finance sector, the power of sanction belongs to the MEF. Act No. 59/94 organizes the sanction system and enables the MEF to impose disciplinary sanctions, ranging from warning to blame and eventually withdrawal of authorization. No sanction has been pronounced in Burkina Faso for breach of the AML standards.

612. Stock market sector: The amendment to the Convention instituting the CREMPF provides for two types of sanctions when an actor contravenes the rules of the market. First of all, there are non-criminal monetary penalties. The amount of the monetary penalties decided by the Regional Board depends on the gravity of the misdemeanors, omissions or violations committed (Article 32). However, it should be noted that the criteria justifying a penalty of this type feature on a non-exhaustive list[86] and are only applicable in case an actor of the market violates its AML obligations. The discussions with the representatives of the RB confirm this point of view.

613. The RB may also impose administrative sanctions. These do not seem to be applicable in the area of AML[87.] Finally, the RB has power to impose disciplinary sanctions when it observes a breach of the regulation. It may impose, without prejudice to the criminal or other penalties incurred, one or several of the following disciplinary penalties: (I) warning, (ii) reprimand, (iii) temporary or permanent ban of total or part of the activities, (iv) suspension or automatic removal from office of the responsible managers, finally (v) temporary or permanent withdrawal of an authorization or an approval granted or cancellation from the professional list kept by the Regional Board. In case of breach of AML Regulations, the RB could then take one or several of these measures, in theory at least. It should be noted that, in practice, no disciplinary sanction for AML has been taken in Burkina or elsewhere in the sub-region.

Designation of an authority empowered to apply these sanctions (c.17.2)

614. In the banking sector, it is the BC-WAMU that takes decisions on sanctions against banks and lending institutions. Its chairman is the Governor of the BCEAO (Article 2 of the annex to the Convention on Creation of the BC).

Application of sanctions against managers (c.17.3)

615. In the regional Banking Act or the Burkinabe Banking Act, there is no provision for application of sanctions against managers. For financial markets, the extension of sanctions to managers is only provided in limited cases, notably in cases of insider trading. In the case of a legal entity, the managers by right or by deed shall be liable to the same lawsuits, if they had knowledge of these acts. There is nothing of the sort in the case of AML.

Wide and proportional range of sanctions (c.17.4)

See criterion 17.1

86 Indeed, a monetary penalty will be imposed on any person who, acting alone or in concert with others, will have derived a benefit, defined notably as a material gain or avoided loss, from: a) manipulation of the market, b) use of confidential and privileged information on the market, c) spreading of false information, d) unauthorized use of the savings of investors for personal reasons, e) breach of public information.

87 Article 34 of the amendment stipulates indeed that when the Regional Board observes that a commercial actor has violated the rules of good conduct of the profession and no longer meets the conditions required for the authorization, it may address to the author concerned, either a warning or an injunction, to the effect, notably of taking within a determined period, the necessary corrective measures or all interim measures it may deem appropriate..

Adequacy of the resources of the control authorities (c.30.1)

616. The resources allocated to the BC-WAMU appear highly inadequate (see supra). The transfer to the BC-WAMU of responsibilities for supervision of the greatest DFC networks (about 60, with an outstanding amount of more than CFAF 300 million) should be accompanied by a transfer of resources of about 11 additional agents. The staff from the CB appointed to control tasks, even from 47 to 58, will still be significantly under-sized, given the number and size of the financial institutions to be controlled (175 banks and DFCs). In addition, participation of agents from the national branches of the BCEAO cannot compensate for this shortage, all the more so since their contribution would concern more works related to the needs of the Central Bank as the monetary or exchange control authority.

617. The monitoring of the micro-finance sector in Burkina Faso also suffers from shortage of staff. The Unit of the MEF (Micro-finance Department) in charge of monitoring has about sixteen (16) staff members (of all categories) for a portfolio of 320 entities (mutual-benefit or not). Only six (06) persons are appointed to control tasks *stricto sensu*.

618. Certainly, the BCEAO and the BC-WAMU also intervene in on-site inspections, but this is inadequate with regard to the number of entities to be controlled.

619. In the stock-exchange sector, the control services have a total of about twenty, which seem inadequate in view of the stock exchange activity in the zone.

Integrity of staff of the control authorities (c.30.2)

620. Banking sector: The members of the Banking Commission and persons contributing to its operation are under obligation to observe professional secrecy (Article 6 of the Convention Act on Creation of the BC). The texts given to the mission contained no specific provision concerning the integrity of the persons concerned.

621. Stock-Exchange sector: According to the general regulation on the organization, operation, and control of the WAEMU regional financial market, the members of the Regional Board and persons acting under the responsibility of the Regional Board are under obligation to observe absolute discretion about the facts and acts of which they have knowledge in the performance, or on the occasion of their duties, if these facts and acts are not public. The non-respect of this obligation leads to disciplinary sanctions, as set forth in the framework of the By-laws of the Regional Board, against the author of the violation, without prejudice to the legal proceedings that could be instituted against him. On the other hand, there is no provision stipulating that members of the CREMPF should show great integrity and appropriate skills.

Training of staff of the control authorities (c.30.3)

622. An annual training program is instituted for agents of the BC, comprising training courses provided internally and abroad. However, the training of agents of the SGCB in the area of money laundering is inadequate and the level of specialization in the AML is limited, given the low level of existing staff[88]. The different meetings and seminars organized recently on the fight against money laundering cannot offer specific knowledge and adequate level of practice. It is more of a sensitization activity rather than actual training in the control of AML. In its 2006 Annual Report, the BC-WAMU

88 The CB has no juridical personality and its administrative staff is subject to the same obligations as BCEAO's staff, whose staff regulations include integrity-related provisions.

mentioned some meetings organized on AML. Hence, at the regional level, the SGCB participated in seminars organized by the BCEAO on "validation of the guideline on combating the financing of terrorism". At the international level, the SGCB participated in various seminars organized by the World Bank, the IMF and the ADB, notably on AML/FT. However, the report does not mention how many agents from the SGCB benefited from these training/sensitization activities.

623. Training of staff of the MEF in the fight against money laundering is non-existent. In this regard, the interlocutors of the mission stressed the obvious lack of sensitization and training on the "new" issue, which is poorly apprehended by all the actors of the sector.

Existence of statistics (c.32.2)

624. The BC-WAMU keeps statistics on a number of surveys conducted in the banks and financial institutions. Similarly, the BCEAO keeps statistics on the number of joint surveys it conducted with the MEF. But, no specific figure is available on the number of penalties imposed by the BC and that were motivated, at least partially by lack of AML standards.

Analysis of effectiveness (Rec. 17, 23, 25, 29, 30 and 32)

625. The implementation of the regulatory provision of control and penalty in the financial sector is not satisfactory as it is still highly limited. Actors of the stock exchange and insurance sectors have not received guidelines enlightening them on how to comply with their AML obligations. The guidelines concerning banks are too recent to have been correctly assimilated and implemented. The supervisions of banks are weak in the area of AML and non-existent in the micro-finance stock exchange and insurance sectors. The repressive system is also not implemented. No sanction for violation of the AML standards has been applied in the financial sector. The efficiency of the supervision arsenal, in all sectors, is also compromised by inadequate resources and embryonic training.

3.10.2 Recommendations and Comments

626. As the issue of supervision of the financial sector is treated at the regional level (banks, exchange bureau and other financial institutions), but also in Burkina Faso (micro-finance notably), this section makes a series of recommendations, which are addressed to both Burkinabe and regional authorities.

627. At the regional level, both the BC-WAMU and the BCEAO, each in its relevant area, should ensure full implementation of the regional texts (Single Act, BCEAO Instruction of 2007) and national texts (Act No. 026-2006) within the banking sector. In the financial market sector, the Regional Board should adopt an AML sectoral instruction for all actors, SGI, SGP, investment advisors and others. Generally, the number of regional financial supervisors should be increased to meet the additional load associated with the integration of the fight against money laundering in their mandates. A significant training effort is, moreover, indispensable. The creation of methodological tools for on-site investigation services is also highly recommended in order to promote a supervision based on the risk and not on mere compliance. Similarly, it is important to review the mechanisms for disseminating texts to the subjected institutions in order to ensure rapid and exhaustive dissemination of the AML regulation in all the sectors concerned.

628. At the level of Burkina Faso, and concerning micro-finance enterprises, sensitization and training activities should be initiated as early as possible. The sector is unaware of the texts on money laundering and related risks. With regard to the important amounts managed by DFCs and the weaknesses of the internal and external control mechanisms, a mobilization of the prudential

authorities and micro-finance institutions in a rigorous adaptation of obligations of the fight against money laundering and financing of terrorism in this sector is necessary.

629. Moreover, the mission suggests to:

- Intensify the exchange controls in the informal sector and initiate specific actions against manual money changers in the informal sector. Combined actions by the public authorities (ministry of finance, customs department, police, gendarmerie) could notably be carried out against the most popular informal money changers and who are making the highest amounts of transactions, notably to send out a signal on mobilization of the authorities.
- Consolidate the actions of the public authorities against manual money changers, notably in terms of supervision – without necessarily increasing the "comparative advantages" of informal money changers at the risk of encouraging the latter.
- Conduct sensitization activities within western union sub-delegates so that they can be stricter in terms of customer identification.

3.10.3 Compliance with Recommendations 17, 23 (criteria 23.2, 23.4, 23.6-23.7), 29 and 30

	Rating	Summary of factors underlying the rating
R.17	PC	The nature and scope of penalties applicable to DFCs are not clearly defined. There is a conflict of interest within the BC-WAMU due to the presence of representatives of the BCEAO and the States, who are, at the same time, shareholders in banks.
R.23	NC	The rules on control of the criteria of aptitude and morality of managers of DFCs are not clearly established. There are no special procedures concerning the control of the legal origin of funds mobilized during the creation of a bank and any other financial agency such as DFC, an asset management company or a management or intermediation or insurance company, just as there is no procedure for verifying the effective beneficiary.
R 25	PC	There is no AML Guideline for the insurance and financial market sector. BCEAO Instruction No. 01-2007 of 2 July 2007 was not disseminated to all the recipients. The BCEAO Instruction contains inaccuracies and do not provide all the information that would help the financial institutions to apply and respect their AML obligations. In the absence of a CENTIF, there is no AML Guideline other than the BCEAO Instruction, which is manifestly inadequate, particularly concerning the declarative obligations.
R.29	NC	The AML controls exercised by the BC-WAMU in banks and financial institutions are inadequate and do not appear in conformity with acknowledged international norms and standards/ The monitoring of DFCs is deficient and does not concern the respect of AML standards. The monitoring of Insurance companies is hampered by several shortcomings and do not concern the AML.

3.11 Funds and stocks transfer services (TFV) (RS.VI)

3.11.1 Description and Analysis

630. According to the regional authorities (BCEAO), funds or securities transfer operations cannot be carried out by banks. In Burkina Faso – as in the rest of the other countries of the sub-region, it appears, in practice that banks "delegate" their authorization to transfer houses. This activity is carried out either within banks, or in dedicated stands, or in the framework of pre-existing professions (e.g. travel agencies or transit companies,...). Transfer agencies or offices, therefore, depend on a bank, which lends its name.

631. These transfer agencies are experiencing a boom in Burkina, as elsewhere. Before, they operated from within banks, but the latter, to attain a wider public, have encouraged their establishment outside the bank's premises on the entire national territory, notably where they do not have bank branches. In Burkina Faso, the network of these sub-delegates is very dense.

632. The evaluators received several indications on the existence of informal providers of services in transmission of funds and securities, without specifying the amounts transiting through these operators or their number.

Registration or authorization (c.VI.1)

633. Transfer houses are subjected to due diligence requirements under the Anti-money laundering Act, just like banks that have delegated to them the funds transfer activity. According to the answers given by the national authorities, transfer houses should obtain authorization from the Ministry of Economy and Finance. This authorization is granted following a request from the authorized intermediary bank and in the light of a partnership agreement signed between it and the sub-agent. Indeed, it should be noted that Article 2 of Regulation No. R09 stipulates that "exchange operations, funds transfers and settlements of all kinds between a WAEMU member State and the external world or between a resident and non-resident within the WAEMU, may be made only through the BCEAO, the Post Office Administration, an authorized intermediary or an authorized manual exchange operator, in the framework of their respective competences as defined in Annex 1". Since transfer houses do not depend on the categories of persons mentioned in this article, they would accept responsibility by carrying out financial operations with the external world without authorization from the competent authority.

634. A general census of agents authorized to carry out funds transfer in partnership with banks was carried out by a joint DGTCP/BCEAO mission in December 2008. The number of structures authorized to carry out money transfer was 85 for 122 windows in activity.

635. In practice, however, Burkinabe banks do not only exercise superficial control over the activities of transfer houses in terms of compliance with the 40 + 9 Recommendations of FATF. In any case, a bank visited some of its sub-delegations to verify the respect of the customer identification standards. Several anomalies were detected (vouchers poorly filled, no name of originator), which resulted in informal disciplinary action.

636. Generally, the mission made serious reservations about the application of the standards of FATF in the framework of SR VI. The mission had access to the accounts documents of banks and observed that several transfer slips were poorly completed (no date) or in a partial manner (no address of beneficiary, name of country missing, telephone number instead of address of originator). In one case, a bank even instructed one of its agencies to break-up (into 10 installments of $ 5900) a transfer

operation of US$ 59,000 so as to bypass the Western Union rules, limiting transfers to a maximum of US$ 12,000 at a time, by day and for the same customer.

Control of TFV (c.VI.3)

637. The mission did not receive information about the existence of controls of TFV by the national or regional authorities.

List of TFV agents (c.VI.4)

A list of TFV agents was not provided to the mission.

Penalties (C.17.1-17.4 & c.VI.5)

638. The bank supervisor has never imposed penalties on TFV services. Banks have never been sanctioned for their lack of implementation of the Anti-money laundering Act within the TFV services associated with them.

3.11.2 Recommendations and Comments

639. The authorities should adopt a more proactive approach towards funds transfer services currently operating in the informal sector to get them to comply with the obligations of SR VI.

640. The supervisory authorities should expedite on-site controls to ensure that banks and their sub-delegations respect the customer identification standards and other obligations resulting from the 40+9 recommendations of FATF.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
RS VI	NC	Lack of a competent authority in charge of issuing authorization to exercise TFV services Lack of control of the activity of TFV services Lack of list of agents

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record keeping (R.12)

(Application of R.5, 6 and 8 - 11)

4.1.1 Description and Analysis

641. Article 5 of Act No. 026-2006 of 28 November 2006 extends the obligations of prevention and detection of money laundering to “any natural person or moral entity which, in the framework of the

profession, carries out controls or advises operations resulting in deposits, exchanges, investments, conversions or any other capital movements or any other property", namely:

- Members of independent legal professions, when they represent or assist customers outside any legal procedure (purchase and sale of property, commercial enterprises or goodwill; manipulation of money, securities or other assets belonging to the customer; opening or management of bank, savings or securities accounts; constitution, management and direction of companies, trust funds or similar structures, execution of other financial operations) and the other subjected members, notably:
- Business agents for financial institutions
- Auditors
- Real estate agents
- Dealers in high value articles, such as art works (paintings, masks notably), precious stones and metals
- Conveyors of funds
- Owners, directors and managers of casinos and gaming institutions, including national lotteries
- Travel agencies
- Non-governmental organizations.

642. This definition, comprising a non-exhaustive list of professions ("notably") is in fact very vast, with regard to the enterprises or professionals that are engaged in these operations, and cannot realistically be interpreted as targeting the greater part of economic operators in Burkina Faso.

643. Article 5 mentioned above covers all the sectors covered by R 12 (with the exception of providers of services to companies and trust funds) and even goes beyond, to cover travel agencies, conveyors of funds, traders in art works such as paintings and masks, gaming institutions, national lotteries and non-governmental organizations (cf. R 20 concerning them).

Conditions of application of Recommendation 5 to DNFBPs (c. 12.1)

644. Although Titles II and III of the Anti-money Laundering Act are applicable to DNFBPs (Article 5), it should be noted that several specific obligations concern only financial institutions (customer identification – Article 7, identification of occasional customers – Article 8, identification of the economic beneficiary – Article 9).

Consequently, the only obligations for DNFBPs are:

- Respect of the exchange regulation (Article 6),
- Particular monitoring of certain operations (Article 10),
- Communication of items and documents (Article 12),
- Reporting of suspicious operations (Article 25).

645. Generally, none of the DNFBPs seems to implement for the moment the provisions of the Act of 28 November. No awareness raising or communication relating to the Act has been organized by the authorities responsible for each of the professions listed by the Act.

646. Managers, owners and managers of casinos, gaming institutions and national lotteries should, in addition to the general provisions of Act No. 026/2006/AN and pursuant to Article 15 of this legislative text, meet the following specific obligations:

- Justify to the public authority, from the date of application for authorization to open, the legal origin of the funds required for creation of the institution;
- Ensure the identity, through the presentation of a national id card or any other original official document serving as id, valid and bearing a photograph of which a copy is made, of the players who purchase, bring or exchange gaming chips or tokens for an amount equal to or above CFA 1,000,000 or the value of which is equal to or higher than this amount;
- Record on a special register, in chronological order, all the operations covered in the preceding paragraph, their nature and their amount, with the surnames and first names of the gamblers, as well as the number of the identity document presented, and keep the said register for the last ten operations registered;
- Record in a chronological order, all transfers of funds made between casinos and gaming institutions in a special register and keep the register for 10 years after the last operation registered.

647. In case the casino or gaming institution is controlled by a legal entity owning several subsidiary companies, the chips should identify the subsidiary through which they are issued. Under no circumstance gaming chips issued by a subsidiary shall be reimbursed by another subsidiary, irrespective of whether the latter is situated on the national territory, in a member State of the Union or in a third State".

648. The threshold of CFAF 1,000,000 represents about US$ 2,000 and is less than the standard required by FATF (US$/EUR 3,000) in terms of the threshold for identification of the customer of a casino. Generally, the provisions of the 2006 Act on casinos are not applied by the company managing casinos.

649. Besides, it should be noted that the obligations of identification, record keeping and keeping of a special register are intended for natural persons (managers, owners and directors), and not the legal entity. In case of change of management, owner or manager, it is not assured that the information collected remains with the legal entity.

650. According to the authorities, there is only one casino in the country, established in a hotel in Ouagadougou. The conditions for authorization of casinos are recalled in Inter-ministerial Order No. 2008/41 of 18 February fixing the modalities of application of Act No. 027-2008 of 8 May, 2008.

651. Members of independent legal professions (notaries, lawyers), when they represent or assist clients outside any legal procedure (purchase and sale of property, commercial enterprises or goodwill; handling of money, securities or other assets belonging to the customer; opening or management of bank, savings or securities accounts; constitution, administration of management of companies, trust funds or similar structures, execution of other financial operations), are subjected to the Anti-money Laundering Act.

652. Notaries are public officers instituted for life to receive all deeds and contracts to which the parties should or would like to give the authenticity attached to public authority deeds and ensure the date, conserve the deposit, issue legally binding copies, official copies and extracts (Article 2 of the above-mentioned Act).

653. Notary deeds should contain the surnames, first names, profession and residence of the parties on pain of nullity. The notary must carry out, under his responsibility, the necessary verification to ensure the identity of the parties. The Act, however, makes no provision for obligation of conservation of copies of identity documents produced during the constitution of the deeds. On the other hand, the accounts book of original entry must mention day after day by order date without blanks, or notes in the margin, the names of the parties and amounts of which the notary has been constituted debtor, all kinds of revenues and cash flows.

654. The amounts held on behalf of third parties may not be kept for more than six months by the notary. After this period, he must deposit the funds at the Caisse des dépôts et consignations.

655. The official list comprises 10 notary's offices (8 in Ouagadougou and 2 in Bobo-Dioulasso, the second city of the country). Each office establishes about 600 deeds per annum.

656. Lawyers exercised their profession mainly on individual basis, but the Act authorizes the establishment of legal firms and bar associations. The exercise of the profession as a paid or unpaid collaborator of a lawyer, an association, or a law firm is allowed under Article 18 of Decree No. 200-426 of 13 September 2000. There are 152 lawyers practicing in Burkina Faso, registered at the bar of the Ouagadougou and Bobo-Dioulasso Appeal Courts.

657. The professions of chartered accountant and public accountant as well as the exercise of the mandate of auditor are governed and regulated by Act No. 048-2005/AN-024 of 20 December 2005 on the status of the order of public accountants and chartered accountants. Only the order is empowered to authorize access to the profession of chartered accountant. The chartered accountant is the technician whose normal profession is to organize, verify, appreciate and review accounts of any nature. The certified public accountant may also analyze the situation and operation of businesses under their different economic, legal, financial and social aspects. He is empowered to give expert advice and consultancies in management, corporate organization and taxation.

658. No one may use the title of certified public accountant, nor exercise the profession if he is not registered with the Order, which requires that the person must: enjoy his civil rights, never have been convicted of a crime or misdemeanor liable to soil his respectability, and notably none of those covered by the legislation in force on the banning of the right to manage and administer companies, and should have good character. In 2008, the table comprised 32 independent chartered accountants, 22 chartered accounting firms, 24 independent public accountants, 4 accounting firms and 1 foreign chartered accountant authorized to practice in Burkina Faso.

659. Auditors are specifically concerned by the obligations of the 2006 Money-laundering Act, since they are mentioned in its Article 5. Chartered accountants and public accountants are not covered, specifically, but they should be included in the category of independent legal professions when they assist or advise their clients in the framework of transactions, constitution of companies …

660. The profession of real estate agent is governed by an act, which has just been voted but not yet implemented.

661. Dealers in precious metals and precious stones are governed by Decree No. 2006-629 of 20 December 2006 on the marketing of traditionally-produced gold, which is mandatorily exercised by legal persons with permits authorizing them to open purchasing and exploitation agencies. Holders of a permit for traditional exploitation of gold and traditional gold producers are under obligation to sell their products to authorized common purchasing agencies. No indication is given on the specific

threshold for initiating the due diligence requirements for their profession, which is subjected to the same obligations as the other DNFBPs. There are currently 6 industrial gold mines, one for zinc, one for manganese. The production potential of the gold mines is over 200 tons. A decree passed on 16 November 2004 punishes fraud in the marketing of gold (purchase or sale without passing through authorized agencies, exercise without valid permit …)

662. Traders in high value articles are subjected to the same due diligence requirements as the other DNFBPs.

663. According to the authorities, there are no providers of services to companies and trusts in Burkina Faso. However, Article 5 of the Act mentions, in the framework of activities covered, independent legal professions, "constitution, administration or management of companies, trust funds or similar structures".

Application of Recommendations 6 and 8 to 11 to DNFBPs (c. 12.2)

664. The lack of provisions on politically-exposed persons (Recommendation 6) and the new technologies or in development encouraging anonymity (Recommendation 8) has already been mentioned in Section 3.2. This remark also applies to all DNFBPs.

665. The due diligence measures and record keeping as set forth in the 2006 Act applicable to financial institutions mentioned above (Section 3) are only partially applicable to non-financial businesses and professions. Indeed, even if Titles II and III of the Anti-money Laundering Act feature in Article 5, a number of the identification and communication measures specifically concern only financial agencies.

666. DNFBPs are, therefore, subjected to the following prudential obligations:

- *Special monitoring of certain operations (*Article 10 of the Act): any payment in cash or securities to the bearer of a sum of money, made under normal conditions, the unit or total amount of it is equal to or above CFAF 50,000,000, and any operation involving an amount equal to or above CFAF10,000,000, made under unusual conditions of complexity and/or does not appear to have a economic justification or legal purpose.

- *Communication of items and documents*, with record keeping and the confidential register of monitoring of the above-mentioned operations for 10 years (Article 12 of the Act).

Declaration of suspicious operations (Article 26 of the Act).

4.1.2 Recommendations and comments

667. The recommendations made in Section 3, on non-banking financial institutions, should also be applicable to DNFBPs.

668. The authorities should notably:

- Include the obligation to adopt specific diligence measures concerning politically exposed persons;

- Subject providers of services to companies and trusts to the prudential and declaration of suspicion obligations and specify the liability of chartered accountants in the framework of their consultancy mission;
- Undertake, as early as possible, the dissemination of the 2006 act among subjected professionals, as well as their responsible authorities. A major effort of sensitization on the risks of utilization of the non-financial sector for purposes of money laundering should be made;
- Raise the recognition threshold of clients of casinos;
- Impose prudential obligations on the casino as a legal entity;
- Institute a threshold for initiating vigilance for dealers in precious metals and precious stones, in accordance with the recommendations of FATF.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	NC	Lack of provisions on politically exposed persons Lack of liability of service providers and trusts Lack of specifications on consultancy missions of Chartered Accountants Lack of dissemination of the 2006 Act to liable professionals The recognition threshold of clients of casinos is below the threshold recommended by FATF Prudential obligations are not imposed on casinos as legal persons Lack of threshold for initiating vigilance for dealers in precious metals Lack of regulation of estate agents apart from the law on estate promotion

4.2 Monitoring of transactions and other challenges (R 16) (application of R.13 and 15 to 21)

4.2.1 Description and Analysis

Recommendation 13

669. Article 24 of Act No. 026-2006 of 28 November 2006 provides that the persons covered in Article 5 are under obligation to declare to the CENTIF:
- Sums of money and other property that are in their possession, when the latter could come from money laundering;
- Operations concerning this property, when the latter could be associated with a money laundering process;
- Sums of money and all other property that are in their possession, when the latter suspected to be intended for financing terrorism appear to come from the realization of operations related to money laundering.

670. The observations on STR concerning financial institutions are pertinent for DNFBPs.

Obligation to make STR to the FIU (application of c. 13.1 and IV.1 to DNFBPs)

671. It is necessary to refer to the observations contained in Section 3.

Protection and banning of disclosure in case of STR (application of c. 14.1 and 14.2)

672. It is also necessary to refer to the analysis and description made in section 3.

Internal controls intended to prevent ML/FT (application of c. 15.1 - 15.4)

673. Article 13 of the Act on the internal anti-money laundering program only covers financial institutions. Nothing is, therefore, provided for DNFBPs. Undoubtedly, it should be observed that Article 5 of Act No. 06-066 indicates that its Titles II and III are applicable to both financial and non-financial institutions. However, the wording of Article 13 of the same Act is highly restrictive, since it explicitly covers only financial institutions. Hence, it is impossible to infer that the obligation for these institutions to institute internal anti-money laundering programs is applicable de facto to DNFBPs.

Particular attention should be paid to countries not adequately implementing the Recommendations of FATF (application of c. 21.1 to 21.3)

674. There is no provision compelling DNFBPs to pay particular attention to countries not adequately implementing the Recommendations of FATF, or providing for a particular analysis of the transactions with these countries or the possibility of applying counter-measures.

4.2.2 Recommendations and Comments

675. The recommendations made in section 3 on R13, 14, 15 and 21 are also applicable to DNFBPs.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors underlying rating
R16	NC	No due diligence obligation for DNFBPs regarding their business relations and transactions with natural or legal persons living in countries that do not or poorly apply FATF recommendations. No obligation for DNFBPs to implement internal AML.CFT programmes.

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and Analysis

676. The table below presents for each DNFBP the authority in charge of its regulation and supervision, as well as the general legal basis and scope of application of the measures relating to money laundering.

DNFBP	Regulation/supervision authority	General legal framework	Liability to the 2006 AML Act
Casinos	Ministry of Internal Security/Finance	Act No. 027-2008/AN, Order 2008-41	Yes, owners, managers, directors
Estate agents	Ministry of Housing (pending)		Yes
Dealers in precious stones and metals	Ministry of Economy, Industry and Commerce (MEIC)	Act No. 04-2004/AN, Decree No. 2006-629, Mining Code	Yes
Lawyers	Ministry of Justice/Lawyers	Act No. 16-2000 /AN of 23	Yes

	Association	May 2000	
Notaries	Ministry of Justice /Chamber of Notaries	Order No. 92-52 of 21/10/1992, Decree of 19/05/ 1993.	Yes
Auditors	Ministry of Finance/Order of Accountants and Chartered Accountants	Act No. 048-2005/AN-024 of 20/12/ 2005	Yes

Recommendation 24

Regulation and supervision of casinos (c. 24.1)

677. Act No. 027-2008/AN of 8 May 2008 and Inter-ministerial Order No. 2008/41 of 18 February/2008 regulate gaming and activities of casinos in Burkina Faso.

678. Any legal entity constituted in the form of an incorporated company with a management board may be authorized to open a casino. The request for exploitation of a slot machine institution or a casino is addressed to the Minister of Finance. The request for opening a casino indicates, notably, a statement of the relevant proposals to the level of betting, initial advances and rates of levy. The application, transmitted to the Ministry of Security, is completed by a report on morality investigation expedited by the competent services of the National Police. The Director General and the Technical Director should provide, among others, an extract from the police report, a certificate of nationality, curriculum vitae. The exploitation authorization granted for 5 years by the Minister of Finance, after paying to the accountant of the Treasury, a bank guarantee of CFAF 150,000,000 (US$ 300,000), is renewable. Casinos are established as a priority in four-star hotels or in halls specially equipped for that purpose.

679. Concerning slot machine establishments, the conditions of opening, the constitution of the dossier and issuing of authorization are similar. The only significant difference is the amount of deposit paid to the accountant of the Treasury as bank guarantee fixed, depending on the number of machines, between CFAF 50,000,000 (about US$ 100,000) and CFAF 300,000,000 (about CFAF 600,000). When a casino also exploits slot machines, these machines should be installed in different halls from those devoted to the casino.

680. Finally, it should be noted that lotteries and tombola organized by natural persons or legal persons are subjected to authorization of the Minister of Finance and their operation is mandatorily controlled by agents of the Ministry of Security and a bailiff.

681. Presently, there is no monitoring system guaranteeing that casinos or gaming institutions effectively apply the provisions of the AML Act. The agents of the Ministry of Security seem to exercise general monitoring on institutions concerning, notably monitoring of suspicious persons. The agents of the Ministry of Finance exercise technical control over gaming institutions and should verify the accounts of the institutions. However, many implementing orders prepared by the services of the Ministry of Finance have not yet been signed, and these services feel that they need time and perhaps technical assistance to develop special accounting for gaming provided for by the inter-ministerial order. Hence, the control of the accounting and, more generally, the activity of the casinos or slot machine institutions cannot be effective in these circumstances.

Monitoring and control of other DNFBPs (c. 24.2)

682. No DNFBP is, so far, subjected to a system of monitoring and control of the respect of the obligations instituted by Act No. 026-2006 of 28 November 2006. Some DNFBPs are supervised by an authority or a self-regulatory organization.

683. The profession of notary is organized by Order No. 92-52 of 21 October 1992 and an Implementation Decree of 19 May 1993. To be admitted as a notary, one must enjoy his civic rights and not have been convicted for acts contrary to honor, probity and good character. The surveillance and discipline of the profession are based on the Order of Notaries. Any violation of the professional rules leads to disciplinary sanctions being taken either by the Order of Notaries or, on its proposal, by the Appeal Court or by decree in the case of destitution.

684. It should, however, be noted that due to the particularities of the land system in Burkina Faso, about 90/100 of land sales are not effected through notarial deeds, but mere contracts by private agreement drafted on printed documents at the disposal of the public, and later registered at the lands department. Hence, in most cases, notaries are unable to play their role in the fight against money laundering, using the real estate vector.

685. The legal profession is organized by Act No. 16-2000/AN of 23 May 2000. The Council of the Order is in charge of ensuring the respect of the principles of ethics, probity, selflessness, moderation and confraternity, which form the basis of the Order of Lawyers and exercising the surveillance dictated by the honor and interest of the Order.

686. Decree No. 2003-344 of 10 July 2003 regulates the centralization into the single account at the Caisse Autonome des Règlements Pécuniaires des Avocats (CARPA) the funds, effects, securities received by lawyers in the exercise of their professional activities. Any movement of funds between sub-accounts is banned, except with special justified authorization of the Chairman of the Board of Directors of the bank.

687. Discipline in the profession is assured by the Council of the Order, which may refer cases to itself or handle cases referred to it by the District Attorney of third parties. In case of lack of professional obligations, expulsions may be decided by the Order; some expulsions have already taken place. No expelled lawyer may register again. During the discussion the mission had with the bureau of the Council of the Order, an opposition of the profession to the suspicion declaration obligations as set forth in the AML Act was raised.

688. Auditors and chartered accountants depend on the Order of Public Accountants and Chartered Accountants, which is administered by a Council of the Order, whose main function is to draft the by-laws of the Order, spelling out the rights and duties of chartered accountants. The discipline of the profession is based on the National Chamber of Discipline, which may impose sanctions in case of breach of professional obligations.

689. The National Chamber of Discipline prosecutes and punishes offenses committed by the public accountants and chartered accountants registered on the list. This may be done automatically or at the request of the District Attorney or the government commissioner, or on the initiative of the Chairman of the Council of the Order or the Ethics Committee. The disciplinary penalties are as follows: warning, reprimand, blame, temporary banning, which may not exceed three years, final radiation from the register. The Council takes decisions with sovereign power when it pronounces the warning or the reprimand.

690. The functions of auditor are mandatorily exercised by chartered accountants. Auditing is mandatory in incorporated companies (SA) and limited liability companies (SARL) (depending on the

importance of the turnover for the latter). The high number of cash payments in the economic life of the country renders the exercise of chartered accountancy and auditing missions difficult. The 2006 Act on money laundering has not been disseminated within the profession.

691. Estate agents are not yet organized into a federation officially acknowledged by the public authorities. A recent law on the organization of the profession was mentioned by the public authorities.

Guidelines for DNFBPs (c. 25.1)

692. No text has been published to provide guidelines for DNFBPs to help them to meet their anti-money laundering obligations.

Feedback from the FIU and the competent authorities (c. 25.2)

693. No suspicious transaction report was sent to the CENTIF, not yet operational, by DNFBPs.

4.3.2 Recommendations and Comments

694. Since Act No. 026-2006 AN does not contain any provision on the role of the responsible or control authorities for casinos and DNFBPs in the implementation of the due diligence requirements of these professions, the authorities should ensure the compliance with the Anti-money laundering Act by casinos and other DNFBPs.

695. They should implement, as quickly as possible, the law on casinos and slot machine institutions, as well as on the profession of estate agents. A control of the activities of the latter with regard to the respect of the anti-money laundering regulation is mandatory, all the more so since notaries can only play a highly reduced role in estate transactions.

696. The authorities should establish guidelines for assisting DNFBPs to apply and honor their obligations in the fight against money laundering. These guidelines should, notably make a description of money laundering techniques and methods and indicate the eventual additional measures that DNFBPs could take to enhance the efficiency of their measures. Due to the low level of resources and the limited knowledge of money laundering issues by the authorities in charge of supervising DNFBPs, the function of establishing guidelines could be entrusted to the CENTIF.

697. Pending a feedback on the STR received, the CENTIF could, once it becomes operational, provide DNFBPs with information on the techniques, methods and current trends (typologies), since such information could be taken from the typology report of FATF or cases presented on the website of the Egmont Group.

4.3.3 Compliance with Recommendations 24 and 25

	Rating	Summary of factors underlying the rating
R24	NC	Lack of provision on the role of the responsible or control authorities in the law Inadequate control of casinos Lack of real control of estate agents
R25	NC	Lack of guidelines

4.4 Other non-financial businesses and professions. Modern and efficient fund management techniques (R.20)

4.4.1 Description and Analysis

Other DNFBPs presenting ML/FT risks (c. 20.1, application of R.5, 6, 8-11, 13-15, 17 and 21).

698. Other professions are subjected to the anti-money laundering Act; however, their inclusion in the system has not been analyzed with regard to their vulnerability to the risk of money laundering.

699. Hence, dealers in highly valuable items like works of art (notably paintings and masks), business getters for financial institutions, conveyors of funds, and travel agencies are subjected to the Act. There is no definition of business getters for financial institutions in Burkina Faso.

700. Concerning travel agencies, the authorities concerned (Ministry of Tourism, Ministry of Trade) did not provide data to the evaluators on the risks of money laundering. There is an Association of Travel and Tourism Professionals of Burkina Faso (APVT-BF), regrouping about 33 agencies identified. The Ministry of Tourism exercises a control through activity forms completed each quarter. The agencies often carry out funds transfer activities for which they have an authorization from the Minister of Economy and Finance and which they exercise as sub-delegations of Western Union, under an agreement signed with the delegating bank of this entity. Western Union takes 80% of the commission, and the rest shared between the bank and the agency. The transactions are done on the basis of an ID card of the customer, for which a daily limit of 10,000 Euros (US$ 13,000) is imposed. The officials of the APVT-BF met by the mission were not aware of the Act of 28 November 2006.

701. Estimates concerning Non-governmental Organizations, also subjected to the Act of 28 November 2006, vary considerably, the lowest mentioning about 600 entities operating as an association and which have signed a framework agreement with the State. They are not under the legal obligation of annual submission of accounts, which makes it difficult to control the regularity of their finances.

702. There are several gaming institutions registered in Burkina Faso and natural persons or legal persons may organize raffles. These activities require authorization from the Minister of Finance. Concerning slot machine institutions, the conditions of opening, constitution of a dossier and issue of the authorization are the same as those set forth for casinos. The only significant difference is the amount of deposit to be paid to the Accounts Agent of the Treasury, which represents a bank guarantee fixed, depending on the number of machines, between CFAF 50,000,000 (about US$ 100,000) and CFAF 300,000,000 (about US$ 600,000). When a casino also exploits slot machines, the latter should be installed in separate rooms from those devoted to the casino. It should be noted that depending on what was declared to the authorities met, majority share of the equity of the leading slot machines institution is held by an Ivorian company, itself controlled by Spanish capital. The company, based in Ouagadougou, is one of the very first private employers of Burkina Faso.

703. Finally, a national company, which also owns 20% of the capital of the company mentioned above, manages the national lottery and the PMU, for which bets are placed on horse racing in France.

704. The table below presents the other DNFBPs covered by the Act of 29 December 2006, as well as their regulatory and supervisory authorities and references of their general legal framework.

Other DNFBPs	Regulatory/supervisory authority	General Legal Framework	Subjection to the 2006 AML Act
Dealers in art works (dealers in cultural goods)	Ministry of Culture		
Business getters for financial institutions	Information not communicated by the authorities	NC	Yes
Conveyors of funds	Interior Ministry	Legislation on commercial companies	Yes
Travel Agencies	Ministry of Tourism		Yes
NGOs	Ministries of Territorial Administration/Finance	Act No. 10/92/ADP	Yes
Gaming institutions	Ministries of Finance/ Internal Security	Act No. 027-2008 /AN, Order No. 2008-041	Yes, owners, managers and managing agents
National Lotteries (PMU)	Ministry of Finance		owners, managers and managing agents

Development of modern and efficient techniques for funds management (c. 20.2)

4.4.2 Recommendations and Comments

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R20	NC	- Vague obligations of declaration and largely unknown to the subjected persons; - Existence of two concurrent declaration mechanisms, without coherence between them; - Lack of implementation; - Over protection of the confidentiality of the information communicated to the CENTIF; - Lack of feasibility study on declaration of transactions in cash; - Lack of guidelines, apart from the instruction from the BCEAO with few details. - Lack of obligation to declare operations associated with FT.

5. LEGAL PERSONS – LEGAL ARRANGEMENTS AND NON-PROFIT ORGANIZATIONS

5.1 Legal persons– Access to information on the beneficial owners and control (R.33)

5.1.1 Description and Analysis

705. The Uniform Act relating to General Commercial Law (UAGCL), the Uniform Act relating to Commercial Companies and Economic Interest Groups (UACCEIG) fix the legal system of commercial companies and the conditions of their creation/registration in Burkina Faso.

706. No figure on legal persons was communicated to the evaluation mission.

707. The items of information below are from an analysis of OHADA texts applicable in Burkina Faso.

Measures for preventing illegal use of legal persons (c. 33.1),

708. Registration of commercial companies: Article 27 of the UAGCL imposes on companies and other legal persons covered by the Single Act on the Right of Companies and Economic Interest Groups to request for their registration, within the month of their constitution, at the Trade and Personal Property Register of the jurisdiction on which depends their headquarters.

709. Any request for registration must comprise a certain amount of information, and particularly:

- Corporate name;
- If necessary, the commercial name, logo or sign;
- Activity or activities carried out; legal entity;
- Amount of the equity, with indication of the amount of cash contributions and assessment of contributions in kind;
- Address of the headquarters, and eventually, that of the main institution and each of the other institutions;
- Duration of the company or the moral entity as fixed by its statutes;
- Surnames, first names and personal residence of the partners held indefinitely and personally liable for social debts, with indication of their date and place of birth and their nationality and the date and place of their marriage, the matrimonial regime adopted and enforceable restrictive third-party clauses on free disposition of the property of the spouses or absence of such clauses, as well as requests in separation of property;
- Surnames, first names, date and place of birth of the managers, executive directors or partners having the general power of engaging the company or legal entity;
- Surnames, first names, date and place of birth, residence of the auditors, when their appointment is provided for by the uniform Act relating to commercial companies and economic interest groups.

710. The obligation of registration for commercial companies covers more particularly, companies in collective name, limited partnership companies, limited liability companies, business corporations and economic interest groups.

711. Besides, the UACCEIG requires (Article 10) that the statutes of the companies covered above be established by a notary deed or by any deed offering guarantees of authenticity in the State of the headquarters of the company, deposited with acknowledgement of writings and signatures by all the parties featuring in the minutes of a notary. The mandatory indications to feature in the minutes include:

- The identity of providers of cash, indicating for each of them, the amount of the contributions, the number and value of social securities paid in compensation for each contribution;
- The identity of contributors in kind, the nature and evaluation of the contribution made by each of them, the number and value of social securities paid in compensation for each contribution; as well as
- The identity of the beneficiaries of special benefits and the nature of these benefits;

712. Changes occurring in the life of commercial companies and other legal persons should be updated and mentioned in the register, notably any change concerning the statutes of the legal persons (Article 33 paragraphs 1, 2 and 3 of the UAGCL).

713. The information required by the OHADA texts is relatively extensive but do not make it possible to obtain specific information on the beneficial owners in the sense of the definition retained by R. 33. Indeed, the texts contain no obligation of information when the social capital is held by other legal persons. Similarly, no specific information is required in order to distinguish the pseudonyms of the real shareholders.

714. Record keeping: A trade register is kept in each high court by a Registrar with a status of public agent. Provision is made for the creation of a national register for centralizing the information contained in each local register. However, according to the authorities met, this national register is not yet operational and local databases are still kept manually. A bid has been launched for their computerization.

Access to information on beneficial owners (c. 33.2) and additional elements – Access to information on beneficial owners on the legal structures by financial institutions (c. 33.4).

715. The information contained in the Trade and Personal Property Credit Registers are accessible to the public, notably by the criminal prosecution authorities (police and gendarmerie services and judicial authorities) and financial institutions.

Prevention of the misuse of bearer shares (c. 33.3)

716. According to Articles 744 and subsequent Articles of the UACCEIG, business corporations may issue securities, shares and bonds in the form of “bearer securities or registered securities”. For companies that do not resort to public issue, bearer shares may be transmitted by mere tradition; the securities holder is reputed to be the owner (Article 764 paragraph 1). In the case of companies using public issue, the UACCEIG has, in addition to mere tradition, bearer shares.

717. “may be represented by a registration in an open account, in the name of their owner and held either by the issuing company or by a financial intermediary authorized by the Minister of Economy and Finance; the transmission is then done through account-to-account transfer”.

718. The provisions set forth by the OHADA text do not make it possible to ensure that the bearer share issued by business corporations are not used ill-advisedly.

719. The mission was not provided with figures on the number of legal persons that issued bearer shares, the number of bearer shares in circulation and their current value.

Analysis of effectiveness

720. In terms of implementation of the OHADA law, the mission could not verify in practice, the compliance with the different obligations as set forth in the texts.

721. Given the importance of the number of registrations (more than 4,000 per annum since 2002) the holding of manual databases may constitute an obstacle to their use and rapid access to information intended for public authorities and third parties.

722. Similarly, the mission could not verify the update of the data during the life of the companies and other legal persons.

723. Moreover, it should be stressed that apart from the respect of all the OHADA formalities in the area of registration and statutes of companies, the highly important share of the informal economy makes it impossible to actually obtain adequate pertinent and up-to-date information on the economic operators.

5.1.2 Recommendations and Comments

724. The national authorities are invited to implement all the provisions of the OHADA texts, notably in the area of record keeping and registration of companies and updating of data,

725. -The national authorities are invited to initiate a reflection on the adequacy between the OHADA text and requirements of Recommendation 33 in terms of access to pertinent information on beneficial owners and control of commercial companies and other legal persons. They could envisage entrusting the responsibility for obtaining, verifying and keeping records of documents on the effective ownership and control of legal persons to notaries when the latter establish their statutes.

726. -The national authorities are encouraged to take all appropriate measures to reduce the share of informal economy.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R 33	NC	The information, which should be included in the registers according to the terms of the OHADA texts do not make it possible to know the beneficial owners in the sense of Rec. 33; The mission could not collect complete data on implementation of the OHADA law. The importance of informal activity is impeding access to adequate pertinent and up-to-date information on all economic operators.

5.2 Legal arrangements – Access to information on effective beneficiaries and control (R.34)

5.2.1 Description and Analysis

727. AML Act No. 026-2006 in its Article 5 refers to "the constitution, administration or management of […] trust funds and similar structures […]" in the framework of operations carried out by members of legal professions subjected to the measures of prevention and detection of money laundering. This mention in the law could give the impression that it is possible to constitute trust funds, but the authorities met indicated to the mission that such mechanisms do not exist. No legal provision provides or caters for their constitution; the same applies to foreign Trusts in the country.

5.2.2 Recommendations and Comments

N/A

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R 34	N/A	

5.3 Non-profit organizations (RS.VIII)

5.3.1 Description and Analysis

728. In Burkina Faso, the text applicable to not-for-profit organizations (NPOs) is Act No. 10 /92/ADP of 15 December 1992 on freedom of association. The LFT guideline also contains provisions applicable to these agencies in order to prevent their involvement in activities associated with the financing of terrorism. However, it should be recalled that it has no direct application and that Burkina Faso has not yet transposed this guideline into its internal law.

Analysis of the adequacy of the laws and regulations on NPOs (c. VIII.1)

729. For the moment, Burkina Faso has not carried out a specific review of the adequacy of the Legal Framework applicable to the associations sector, nor conducted any specific study to assess the vulnerability of the associations sector to risks of financing of terrorism.

Assistance to the NPOs sector in order to protect it against abusive use for purposes of financing of terrorism (c VIII.2.)

730. No sensitization campaign among associations was initiated by the competent authorities with a view to informing them on the risks of abusive use for purposes of financing terrorism and on measures available for protecting themselves. This situation is all the more regrettable since a number of them perform funds transfer operations as sub-delegations of Western Union delegate banks, which is, in fact, a significant and uncontrolled vector of daily capital movements in Burkina Faso.

Surveillance and control of NPOs due to the importance of international resources or activities. (c. VIII.3), Information kept by NPOs and public access (c. VIII.3.1), Accreditation or registration of NPOs and availability of this information (c. VIII.3.3)

731. Article 2 of the Act of 15 December 1992 defines the association as “any group of natural persons or legal persons, national or foreign, having as a permanent vocation, for non-profit purposes, and whose aim is to achieve common objectives, notably in the cultural, sporting, social, spiritual, religious, scientific, professional or socio-economic fields”. There are three types of associations: (1) non-declared associations, (2) declared associations; and (3) associations acknowledged as public utility.

732. Associations may be formed freely, without prior authorization or declaration, but only declared associations enjoy legal capacity. The prior declaration is made to the Minister in charge of Public Liberties for associations having national or international vocation or to the competent administrative authority when they are regional or local. Information to be provided during the prior declaration procedure includes: title of the association, its objective, address of its headquarters and its other institutions, names and addresses of those who, in any capacity, are charged with the administration of the association or its management.

733. The law provides that within a period one month from the issue of the receipt, the declared association must be made public, through an insertion in the Gazette. Moreover, the law provides that every person has the right to take communication of the statutes and declaration of any declared association.

734. Article 44 of the Act of 15 December 1992 provides that associations are under obligation to inform the authority that issued the receipt about changes in the administration or management, as well as any amendments to their statutes.

735. The association may be recognized as public utility if it pursues a general interest objective, notably in the areas of economic, social, cultural development of the country or region. This acknowledgement granted by decree adopted in Cabinet enables the association to receive grants or benefits offered by the State.

736. Concerning foreign associations, the exercise of their activities on the territory of Burkina Faso is subjected to prior authorization from the Ministry in charge of Public Liberties, after approval by the Minister for External Relations. Applications for authorization must include the names, professions, residential addresses and nationalities of members of the management board. After the authorization or acknowledgement as public utility, the association must sign with the State (Minister of Finance) an establishment agreement.

737. Any association regularly declared may sign a framework agreement with the State after a period of 3 years of exercise, certified by activity reports and annual financial statements, certified by a chartered public accountant. The framework agreement specifies the agreement of the two parties. A decree adopted in Cabinet determines the modalities of intervention, control and sanctions of association signatories of the framework agreement.

738. Moreover, the CFT Guideline provides as specific due diligence obligations, with regard to NPOs that wish to collect, receive or order transfer of funds, registration on a register created for that purpose by the competent authority. The information required, during initial application for registration, includes “the surnames, first names, addresses and telephone numbers of any person in charge of or assuming responsibility for the operation of the agency concerned and notably the Chairmen, Vice Chairmen, Secretary General, Executive Directors and Treasurer, as the case may be” (Article 16 of the CFT Guideline).

Institution of sanctions for violation of rules of surveillance by NPOs (c. VIII.3.2)

739. In terms of monitoring and control, no provision of the Act obliges associations to keep a statement of their incomes and expenditures and to prepare annual financial accounts and statements of inventory of their furniture and buildings. The obligation is made only to associations recognized as public utility or benefiting from government grant to provide to the interested ministries, the reports of activities, the financial reports, the financial statement of the previous fiscal year, the budgets or annual accounts. For associations declared, wishing to sign framework agreements with the State, the modalities of exercise of these obligations are not explicitly indicated by this text or by any other document handed over to the mission. For the other associations, the Act has not put in place any monitoring and control mechanism.

Registrations of transaction of NPOs and availability of this information (c. VIII.3.4)

740. So far, in Burkina Faso, associations are under no obligation to conserve the statements of their domestic and international transactions.

741. However, the CFT Guideline provides for the obligation to indicate in a register instituted by the competent authority, all the donations made to the NPO (association) including full details of the donor, the date, the nature and amount of the donation (Article 16, paragraph 2). The CFT Guideline also provides that the register must be conserved for a period of ten (10) years, without prejudice to longer conservation periods prescribed by other legislative or regulatory texts in force (Article 16 paragraph 3). The register in which are recorded all the donations made to an association must be put at the disposal of the CENTIF, the authorities in charge of controlling associations, as well as, upon request, judicial police officers in charge of criminal investigation (Article 16 paragraph 3).

742. Moreover, the provision set forth by the CFT Guideline, puts at the charge of the authority in charge of keeping the register, an obligation of declaration to the CENTIF covering:

- Any donation in physical cash made to the association in amount equal to or above CFAF one million (1,000,000) (about US$2,400); and
- Any donation made to an association, irrespective of the amount when the funds are likely to be related to a terrorist enterprise or financing of terrorism.

743. The mechanism put in place by the CFT Guideline goes beyond the recommendations of FATF and, by its heaviness, risks destabilizing or discouraging its legitimate benevolent activities. Indeed, contrary to the mechanism of the CFT Guideline, which requires that all donations be recorded in a register with the administrative authority, SR VIII requires that NPOs should institute internal procedures that will enable them to put at the disposal of the authorities:

- Statements of their national and international transactions sufficiently detailed to be able to verify that the funds are effectively spent for the intended purposes and for the benefit of the organization;
- Information on the objective and purpose of their declared activities and the identity of the person or persons who possess, control or manage their activities, including managers, members of the management board and the executive directors;
- Annual financial statements presenting detailed breakdown of their incomes and expenditures.

744. Furthermore, it is important to note that given the limited resources available to the administrative authorities in Burkina Faso, coupled with the great number of NPOs in activity in the country, the system as set forth in the CFT Guideline does not seem to be coherent with the realities in the field.

Measures aimed at ensuring that the authorities can investigate and efficiently exchange information on NPOs (c. VIII.4)

745. Apart from mechanisms of declaration, Burkina Faso does not only adopt incomplete measures to provide resources for efficient collection of information on associations in order to fight against the financing of terrorism; risks of abusive use of associations for purposes of terrorism financing are taken into account by the intelligence services that are notably interested in the presence or possible action of religious activists of Pakistani origin or of the Shiite religion.

Cooperation, coordination and exchange of information at national level (c. VIII.4.1) Access to information on the administration and management of an NPO in the framework of a survey (c. VIII.4.2); Exchange of information, preventive measures and investigation skills and capacity to examine NPOs that are suspected of being exploited for purposes of terrorism financing (c VIII.4.3) and response to international requests for information concerning NPOs (c. VIII.5)

746. Despite an awareness raising, notably at the level of the intelligence services, risks of abusive use of associations for purposes of terrorism financing, cooperation, coordination and circulation of information on this point between the different national authorities does not seem well developed.

747. Since the financing of terrorism and terrorism as such does not constitute criminal offenses in Burkina Faso, national authorities necessarily have difficulty mobilizing their administrations on the risks of abusive use of associations with a view to perpetrating these acts. Similarly, the lack of criminalization of the financing of terrorism makes it difficult to promote international cooperation in the area.

Analysis of effectiveness

748. Concerning foreign NGOs, Burkina Faso has developed a procedure for official registration of NGOs requiring an acknowledgement receipt from the country of origin, a copy of the statutes, an extract from the gazette of the country of origin, the last summary record of the General Assembly, with the list of the main officials and their address, a report on activities already carried out in Burkina Faso or in Africa, a planned program with financial commitment, an attestation designating the representative of the NGO in Burkina Faso. This representative of the NGO in contact with the department in charge of monitoring NGOs provides him with every additional explanation or document.

749. In the second phase, the NGO signs with the State an agreement stipulating the commitment of the two parties, notably the submission of programs of activity and annual activity reports.

750. These measures constitute a first legal framework of the control of foreign NGOs. However, the role of the department in charge of monitoring NGOs is both crucial and difficult. The estimation of the number of NGOs varies, depending on the documents from 600 to about several thousands. It is obvious that presently the monitoring can only be insufficient.

751. Concerning the other associations, foreign or national, the problem is multiplied by the great number of institutions and a non-binding legal framework, since they do not receive government subsidies.

752. Finally, it should be recalled that NGOs frequently carry out money transfer activities on behalf of Western Union in application of sub-delegation agreements signed with the banks. The latter should normally control their sub-delegate, and remain liable for the operations. However, the conditions of

exercise of this control are difficult. Consequently, NGOs represent a major vector of risk within the AML/CFT mechanism.

5.3.2 Recommendations and Comments

753. The authorities of Burkina Faso are called upon to organize raising awareness campaigns with a view to preventing any risk of abusive use of associations for purposes of terrorism financing. These campaigns should be focused on raising awareness of the associations on the risks and measures of protection.

754. The authorities of Burkina Faso should put in place mechanisms for monitoring and controlling associations and NGOs and increase the staff of the department in charge of the monitoring.

755. The authorities of Burkina Faso are encouraged to examine the difficulties associated with the implementation of the CFT Guideline and initiate a reflection on the establishment of a system that could protect the sector of NGOs against any abusive use.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR VIII	NC	Inadequate monitoring capacities of the authorities in relation to the number of NPOs Lack of obligation to conserve the statements of financial operations of associations Lack of raising awareness campaigns on the risk of terrorism

6. NATIONAL AND INTERNATIONAL COOPERATION

6.1 National Cooperation and Coordination (R.31)

6.1.1 Description and Analysis

756. National cooperation in the field does not pose any specific problems at the operational level, the coordination and cooperation between the national police and the gendarmerie is not formally organized, but assured in a routine manner. In case of conflict or risk of overlapping, the coordination is handled by the District Attorney.

757. The (unilateral) cooperation between the CENTIF and the other authorities or administrations is well regulated by the AML Act (Article 17), even if it is conducted unilaterally. Besides, the CENTIF has provided in its by-laws (planned), which define its internal organization, a Department of Legal and Institutional Affairs, which will be in charge of the delegation with the other national administrative and/or legal institutions.

758. However, an integral cooperation and coordination mechanism, bringing together all the authorities responsible for the national effort to combat money laundering (and financing of terrorism) is not yet instituted in Burkina Faso. It is planned that a “national committee for monitoring GIABA

activities", an inter-ministerial committee also comprising representatives of the private sector, the CENTIF and the judiciary, will be established soon, for the purpose of developing the AML/CFT strategy and coordinating the national action in this area.

Additional element - Mechanisms for consultations between the competent authorities, the financial sector and the other sectors (c. 31.2)

759. The CENTIF has planned in its 2009-2011 Action Program, periodic working sessions with the compliance officials of banks and insurance companies.

6.1.2 Recommendations and Comments

760. Even if national cooperation does not pose serious problems, the lack of a mechanism for bringing together all pertinent actors within the AML/FT and developing a strategy constitutes a serious shortcoming. The CENTIF intends to take initiatives in this regard, but we have to wait until the National Committee for monitoring GIABA activities is instituted and activated so that the national action could be managed in an integral manner.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying the rating
R.31	NC	Lack of a mechanism for coordination and cooperation between the competent authorities in the fight against money laundering and financing of terrorism

6.2 United Nations Conventions and Special Resolutions (R.35 and SR.I)

6.2.1 Description and Analysis

Recommendation 35

Ratification of Conventions relating to money laundering (c. 35.1)

761. Burkina Faso acceded to the 1988 United Nations Convention against Illegal Trafficking of Narcotics and Psychotropic Substances (Vienna Convention) on 2 June 1992 and ratified the 2000 United Nations Convention on Cross-border Organized Crime (Palermo Convention) on 15 May 2002.

762. The provisions of the Vienna Convention have, to a large extent, been transposed into the national legislation through the Drug Act (Act No. 23-94 of 19 May 1994 on the Health Code). It, however, integrates all the obligations of the Vienna Convention (like equivalent confiscation and controlled delivery). The provisions on money laundering are covered by the AML Act.

763. The Palermo Convention found an answer in the AML Act. However, the AML Act does not reflect all the potentially pertinent money laundering provisions: indeed, the Act does not cover the possibility of joint investigations, the measures governing the protection of witnesses and offer of assistance, or protection of victims.

Special Recommendation I

Ratification of Conventions on the financing of terrorism (c. I.1)

764. Burkina Faso ratified the 1999 International Convention on the Suppression of the Financing of Terrorism on 1st October 2003. Besides, Burkina Faso has ratified 12 of the 13 Conventions and Protocols concerning the fight against terrorism, to which the annex of the Convention makes reference.

765. WAEMU Guideline No. 04/2007/CM/WAEMU on combating the financing of terrorism has not yet been transposed into the Burkinabe internal law.

Implementation of Resolutions of the UN Security Council on the prevention and suppression of the financing of terrorism (c I.2)

766. As mentioned earlier, Burkina Faso has adopted in its internal law system the WAEMU reference texts relating to the implementation of Resolution 1267 of the UN Security Council on Al Qaeda and Taliban (see 2.4 above).

767. The Burkinabe authorities have not adopted measures to put in place a comprehensive legal system to facilitate the full application of Resolution 1373 of the UN Security Council concerning measures for combating the financing of terrorism and freezing of terrorist assets. Reference is once again made to the comments in 2.4 above.

Additional element - Ratification or implementation of other appropriate international conventions (c. 35.2)

768. Concerning investigations and prosecution for criminal offenCes, Burkina has signed and ratified the following Conventions and agreements on anti-money laundering and combating the financing of terrorism:

- The United Nations Convention against Corruption, of 09 December 2003, ratified on 23 June 2006;
- The Convention of the Organization of African Union on Prevention and Combating Terrorism, of 4 July 1999, ratified on 15 April 2003;
- The Convention of the Organization of the Islamic Conference (OCJ) for Combating International Terrorism, of 1st July 1999, ratified on 15 December 2004;
- ECOWAS Convention No. A/P1/7/92 on Judicial Cooperation, of 29 July 1992, ratified on 1st April 1998.

6.2.2 Recommendations and Comments

769. Even if Burkina Faso has ratified the Vienna and Palermo Conventions and the International Convention for the Suppression of the Financing of Terrorism, additional efforts are necessary for incorporating the provisions of the said conventions into the Burkinabe internal law. The same applies to the implementation of Resolutions 1267 and 1373 of the UN Security Council. Reference is made to the recommendations made in the relevant parts of this report (2.2, 2.4)

6.2.3 Compliance with Recommendations 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	LC	The provisions of the Vienna and Palermo Conventions are not fully implemented

SR.I	NC	Lack of implementation of UN Resolutions 1267 and 1373 and WAEMU instruments on combating terrorism and its financing. Lack of cooperation in the area of combating FT

6.3 Mutual Legal Assistance (R.32, 36-38, SR.V and R. 32)

6.3.1 Description and Analysis

Legal Framework:

770. With the exception of only one provision in the Act of 10 March 1927 on extradition (Article 30), which is still in force, there are no formal texts governing mutual legal assistance generally. This form of international assistance is mainly offered on the basis of bilateral treaties89 and conventions like the OCAM General Convention on Cooperation in Judicial Matters of 12 September 196190, the Convention of 1/7/92 on the ECOWAS Legal Cooperation in Criminal Matters of 29 July 199291, the Convention on Cooperation and Mutual Aid in Judicial Matters between member States of the Conseil de l'Entente of 20 February 199792. It is, however, also possible to follow-up the rogatory commissions on ad hoc basis (case by case), normally on condition of reciprocity. Requests for mutual assistance occasionally pass through the diplomatic channel or, mostly, through the Ministries of Justice.

771. AML Act No. 026-2006 specifically sets forth mutual legal assistance procedures between WAEMU member States in the fight against money laundering (Articles 51 - 68). These provisions are also applicable to requests for legal assistance emanating from non-WAEMU countries.

Range of mutual assistance measures in the area of AML/CFT (c. 36. 1) – Application of powers of the competent authorities (pursuant to R.28, c.36.6 and c.36.8).

772. Generally, Article 30 of the Act of 10 March 1927 on extradition of foreigners provides that "in case of non-political repressive prosecution in a foreign country", requests for mutual legal assistance in the form of a rogatory commission are made through diplomatic channels and transmitted to the ministry of justice. In case of emergency, the requests are addressed directly to the judicial authorities.

773. ECOWAS Convention No.1/7/92 on Judicial Cooperation in Criminal Matters of 29 July 1992 institutes a full and flexible cooperation system, which will then form the basis of the judicial cooperation section of the AML Act. The Convention on Cooperation and Mutual Assistance in Legal Matters between member States of the Conseil de l'Entente of 20 February 1997 covers every criminal area (rogatory commissions, extradition, transfer of criminal proceedings, seizures and confiscations …) while the OCAM Convention is more limited (since it does not cover the transfer of proceedings and seizures/confiscations). The 1992 and 1997 Conventions contain pertinent provisions

[89] Burkina Faso has signed bilateral conventions in the area of legal cooperation with France and Mali. Mention should also be made of the Convention on assistance and cooperation in security matters between member States of the *Conseil de l'Entente*, signed in KARA (Togo) on 15 February 1996; and the Legal Cooperation Convention signed on 6 August 1994 between ECOWAS member-countries.

90 OCAM member countries are: Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Dahomey (Benin), Gabon, Upper Volta (Burkina Faso), Madagascar, Mauritania, Niger and Senegal.

91 The ECOWAS countries are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

92 Benin, Burkina Faso, Côte d'Ivoire, Niger and Togo.

on criminal assets (resp. Articles 18 - 20 and Articles 28 - 30: “fruits of criminal activity”), which should be seized at the request of the demanding State as “exhibits”.

774. AML Act No. 026-2006 provides a whole range of mutual legal assistance measures that may be offered in the framework of investigations and legal proceedings in the area of money laundering, and defines the applicable procedures. The Act covers mainly cooperation between WAEMU member States, but the measures set forth may also be taken for a non-member State on the basis of a reciprocity agreement. Pursuant to Article 51, the mutual legal assistance may concern:

- The collection of testimonies or statements;
- The offer of assistance for putting at the disposal of the judicial authorities of the requesting state persons detained or other persons, for purposes of testimony or assistance in the conduct of the investigation;
- Transmission of legal documents;
- Police searches and seizures;
- Examination of objects and places;
- Provision of information and exhibits;
- Provision of the originals and certified true copies of pertinent databases and documents, including bank statements, accounting documents, and registers showing the operation of an enterprise or its commercial activities.

775. Article 52 provides that a request for judicial assistance must be in writing and defines the documents to be attached. The procedure applicable in the area of provisional measures (such as police search and seizure) and confiscation that can be taken at the request of foreign authorities is defined in Articles 50 and 60 to 62 of the Act.

776. Mutual legal assistance cannot be granted in the fight against the financing of terrorism in the absence of incrimination of the latter in the national law.

777. Requests transmitted through the Ministry of Justice are immediately forwarded to the appropriate judicial authority, notably the District Attorney of Faso, territorially competent. The authorities did not mention specific problems or unjustified delays in the execution of requests and affirmed that, generally,requests are processed (however, this was not verified during the mission, for lack of detailed statistics). With the exception of a recent case currently being executed, there has not been a case of assistance on money laundering or financing of terrorism.

Mutual assistance in judicial matters not subjected to unreasonable, disproportionate and unduly restrictive conditions (c. 36.2)

778. AML Act No. 026-2006 is explicit with regard to the motives for refusal of a request for assistance in the area of ML (Article 53). A request for assistance may only be refused if:

- It does not come from a competent authority according to the legislation of the requesting country or if it has not been properly transmitted;
- Its execution risks affecting public order, sovereignty, security or the basic principles of the law of Burkina Faso;
- The relevant acts are the subject of criminal proceedings in Burkina Faso or have already been the subject of a final decision on the national territory;

- The measures solicited, or all other measures with similar effects, are not authorized or are not applicable to the offense covered in the demand, pursuant to the legislation in force;
- The measures requested cannot be imposed or executed because of the prescription of the money laundering offence, pursuant to the legislation in force or the law of the requesting state;
- The decision of which the execution is requested is not legally binding according to the legislation in force;
- The foreign decision was delivered under conditions that do not offer sufficient guarantees with regard to the rights of defense;
- There are serious reasons to think that the measures requested or the decision solicited targets the person concerned solely by reason of his race, religion, nationality, ethnic origin, political opinions, sex or status.

Clear and efficient procedures of execution of requests for mutual legal assistance (c. 36.3)

779. The chapter of the AML Act dealing with mutual legal assistance and ECOWAS Convention No. 1/7/92 on Judicial Cooperation in Criminal Matters of 29 July 1992 still referring to "the competent authority" without specifying to whom the requests should be addressed. This authority, however, is undoubtedly the Minister of Justice, as per the practice in member States of the Conseil de l'Entente (Convention on Cooperation and Mutual Assistance in Judicial matters of 20 February 1997, Article 15). The modalities of the mutual legal assistance in the area of money laundering cannot cause unreasonable delays if it is executed with normal haste. The formal conditions concern the content of the request (Article 54), the formalities to be accomplished for transmission of the legal process and judicial decisions (Article 58) and appearance of un-detained witnesses (Article 59) and detained witnesses (Article 60), the requests for police searches and seizure (Article 62), the requests for confiscation (Article 63) and provisional measures (Article 64).

780. As already mentioned, there have not yet been requests for cooperation relating to money laundering. In any case, the monitoring by rogatory commissions is done according to simple and well known procedures that cannot cause complications.

Mutual legal assistance in taxation matters (c. 36.4)

781. The fact that the offense giving cause for the request for legal assistance can also concern fiscal aspects is not one of the reasons for refusal listed in the Act. Consequently, a request for mutual legal assistance will not be refused for the sole reason that it affects taxation issues.

Mutual legal assistance notwithstanding acts imposing secrecy or confidentiality (c. 36.5)

782. Article 53 of AML Act No. 026-2006 provides explicitly that professional secrecy cannot be invoked to refuse to execute the request for mutual legal assistance. In any case, the lifting of professional secrecy or other forms of confidentiality is within the normal competence of the investigating judge.

783. The provisions of AML Act No. 026-2006 allow the use of the powers of the competent authorities as regards money laundering investigation and proceedings in response to a request for mutual legal assistance (Articles 55 - 65). The investigation and instruction measures are executed in conformity with the legislation in force unless the requesting competent authority of the State has requested that it be presented in a particular form compatible with this legislation (Article 55).

Conflicts of jurisdiction (c. 36.7)

784. In case of jurisdictional concurrence of several States (as for example with cross-border crimes), Article 45 of AML Act No. 026-2006 authorizes the transfer of the proceedings when the authority concerned of another UEMOA member State feels, for whatever cause, that the exercise of the proceedings or the continuation of the proceedings comes up against major obstacles and that an adequate criminal procedure is possible on the national territory. The requesting State may, under the circumstances, request the national judicial authority to accomplish the necessary acts against the alleged offender. The request for transfer of proceedings may be accompanied by a request for provisional measures, including detention under remand.

785. The same applies when such request is made by the authorities of a third State, on condition that the prosecuting authorities of the requesting State are legally empowered to introduce such a request.

International cooperation concerning SR. V (pursuant to c. 36.1-36.8 of R.36, c. V.1)

786. In the absence of incrimination of the FT, mutual legal assistance with regard to combating FT is not formally provided for, except if the facts may be interpreted as acts of complicity of common law offenses. However, the mutual legal assistance system leaves enough liberty to responds to the rogatory commissions relating to the financing of terrorism, since the condition of double jeopardy is not applicable, which makes it possible to adopt a flexible approach to such demands.

787. The WAEMU Single Act on the financing of terrorism is being transposed into the legislation of Burkina Faso. This act contains formal and explicit provisions applying rules identical to those of the AML ACT in the area of mutual legal assistance.

Dual Criminality and mutual legal assistance (c. 37.1 and 37.2)

788. In the area of international cooperation, the principle of double jeopardy in common law is established in Article 4, paragraph 2, of the Act of 10 March 1927 on extradition of foreigners. It is specifically applicable to extraditions, but the Act is silent on the application of this rule to rogatory commissions as provided for by its Article 30.

789. The AML Act does not explain this condition for mutual legal assistance in the area of money laundering. However, double jeopardy is implicit and automatic for WAEMU member States, since they are all subjected to the same Single Act, compelling them to incriminate the same money laundering acts as set forth in Articles 35 to 38 of the Act and that according to Article 51, paragraph 1, the requests for assistance must be executed according to the principles stated by the Act. For the requests for mutual legal assistance emanating from third countries pursuant to Article 51, paragraph 2, only the principle of reciprocity is invoked. Nevertheless, in this case too, double jeopardy is implicit, since the Article covers specifically mutual assistance with regard to money laundering.

790. In practice, Burkina Faso enshrines the principle of cooperation as extensive as possible, like Article 2 of the ECOWAS Convention, according to which the member-countries commit themselves to "…the most extensive judicial assistance possible …", which offers great flexibility.

Special Recommendation V

International cooperation concerning SR. V (in application of c. 37.1 and 37.2 of R.37, c. V.2)

791. In the absence of incrimination of the FT, no formal provision is made for mutual legal assistance in combating FT, except if the facts may be interpreted as acts of complicity of common law offense. However, the mutual legal assistance system leaves sufficient liberty to answer the rogatory commissions relating to the financing of terrorism, since the condition of double jeopardy is not applicable, which makes it possible to adopt a flexible approach to these requests.

792. The WAEMU Single Act on the financing of terrorism is being transposed into the legislation of Burkina Faso. This act contains formal and explicit provisions applying rules identical to those of the AML ACT in the area of mutual legal assistance.

Recommendation 38

Requests for mutual legal assistance by foreign countries concerning provisional measures and confiscation (c. 38.1, c. 38.2 and c. 38.6)

793. The ECOWAS Convention (Articles 17 to 20), the Convention of the Conseil de l'Entente (Articles 28 to 30) and the AML Act (Articles 62 to 66) attach great importance to requests for police search, seizure and confiscation. They all refer to the notion of "exhibits" in this context, which is supposed to cover criminal proceeds (or "fruits of criminal activities").

794. The AML Act (Article 61) also refers to "the instrument of one of the offenses covered in this Act". The circumstance whereby it will be difficult to consider the fact that no special mention is made of instruments intended for the commission of an offense as a weakness, since the notion of "exhibits" is sufficiently vast, and that confiscation of the "items …. that were intended … to commit (the offence)" is specifically provided for in Article 55 of the Criminal Code.

795. The confiscation of "property laundered" at the request of a foreign authority is not specifically provided for. Article 34 of the AML Act refers to the power of the investigating judge to seize and confiscate (sic) the property "in connection with the offense". This formulation is, however, not used in Article 61 of the same Act, which only provides for the confiscation of the proceeds or the instrument of the offense. Nevertheless, the dominant opinion is that the concept of "property laundered" is covered by the reference to proceeds of the offense, i.e. the underlying money laundering offense (see comments in 2.3 above).

796. On the other hand, the requests for confiscation of property of equivalent value is confronted with legal impediments, this form of confiscation is not part of the body of laws of Burkina Faso, except in case of merging criminal funds with legitimate property (Article 43 of the AML Act).

797. An issue may arise with regard to the application of the principle of double jeopardy to cases of requests for execution of a confiscation decision. If requests concerning freezing or seizure do not raise any reservation on double jeopardy, the situation is not clear in case of rogatory commissions requesting for the execution of final decisions or confiscation orders delivered by the judge, which requires an "exequatur" procedure. One was of the view that in this case, such judgments could be executed if only the offense is also punishable in Burkina Faso. There is, however, no jurisprudence on this point.

Coordination of the seizure and confiscation with other countries (c. 38.3) and sharing of confiscated assets (c. 38.5)

798. There are no such formal mechanisms for coordination with other countries. The coordination is done in practice between the judicial or ministerial authorities involved in the procedure. Article 64 of the AML Act grants the requesting State the right to dispose of the confiscated property, while leaving open the possibility of sharing agreements. Burkina Faso has not signed such agreements and the authorities have not indicated their intention to do so.

Funds for confiscated assets (c. 38.4)

799. The Act does not provide for the creation of a fund for assets seized, in which any or part of the confiscated property in the framework of anti-money laundering and combating FT would be deposited.

International cooperation concerning SR. V (pursuant to c. 38.1-38.3 of R.38, c. V.3 and c. 38.4-38.6 of R. 38, c. V.7)

800. In the absence of incrimination of the FT, legal cooperation in combating the FT is not formally provided for, except where the facts may be interpreted as acts of complicity of common law offenses. However, the legal cooperation system leaves enough liberty to the rogatory commissions relating to the financing of terrorism as long as the condition of double jeopardy does not come into play, thus making it possible to adopt a flexible approach to such requests. As already mentioned, the principle of double jeopardy could all the same be applied to requests for confiscation of property.

801. The WAEMU Single Act on the financing of terrorism is being transposed into the legislation of Burkina Faso. This Act contains formal and explicit provisions applying rules similar to those of the AML Act in the area of mutual legal assistance.

Statistics (pursuant to R. 32)

802. The information on the rogatory commissions shows a quite reduced activity at the level of international mutual legal assistance (6 requests received and 4 requests executed between 2006 and 2008). The authorities could not provide more detailed statistics on mutual assistance, nor on cases of transfer of proceedings. According to the Ministry of Justice, no cooperation request has been refused.

6.3.2 Recommendations and Comments

803. The mutual legal assistance system is well organized and enables the authorities of Burkina Faso to offer substantial and highly-comprehensive assistance to foreign judicial authorities. The conditions are not prohibitive, and even minimal in the context of the AML Act. The causes of refusal are universally acknowledged. In general, the principle of double jeopardy is not applicable in the area of mutual legal assistance, promoting a vast and flexible approach to rogatory commissions, on condition, however, for request for execution of confiscation judgments.

804. The consequence of the application of the principle of double jeopardy could be that Burkina Faso would not be able to react favorably to confiscation orders based on offenses unknown in the Burkinabe penal system, such as stock exchange offenses. The issue is raised even if this reservation also applies to acts of laundering of proceeds from basic offenses that do not exist in Burkina. A jurisprudential or even legislative resolution is absolutely necessary.

805. Mutual legal assistance may come up against impediments when requests concern the financing of terrorism and the principle of double jeopardy come into play. The rapid transposition of the relevant UEMOA Single Act is also essential in the area of international cooperation.

806. Finally, there is a serious legal flaw that potentially limits the possibilities of offering legal assistance, when the request concerns property of equivalent value, seizure and confiscation of equivalents of actual assets that do not form part of the body of laws of Burkina Faso.

807. It is of utmost importance to optimize the international cooperation system by ensuring a vast and flexible mutual legal assistance in the area of money laundering and financing of terrorism, which are forms of crime with a predominant cross-border aspect. The success of the global effort against these phenomena largely depends on the development of a global network for cooperation between judicial authorities, especially for identification, immobilization and recuperation of criminal assets.

6.3.3 Compliance with Recommendations 32, 36 to 38, and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	LC	o Lack of detailed statistics, making it difficult to analyze the efficiency of the system
R.38	PC	o Doubts – because of the principle of double jeopardy – over the possibility of executing decisions on confiscation of the proceeds and instruments on the basis of underlying offenses not incriminated in BF o Lack of a legal base for executing rogatory commissions relating to equivalent seizures and confiscations o The sharing of confiscated assets with other countries was not envisaged o Lack of mechanisms for coordination in the area of seizure and confiscation
SR.V	PC	o Doubts – because of the principle of double jeopardy – over the possibility of executing decisions on confiscation of the proceeds and instruments on the basis of the financing of terrorism (non incriminated in BF) o Lack of a legal base for executing rogatory commissions relating to equivalent seizures and confiscations o The sharing of the confiscated assets with other countries was not envisaged
R32	PC	o Lack of detailed statistics, which renders the analysis of the efficiency of the system difficult

6.4. Extradition (R.32, 37 & 39, & SR.V and R.32)

6.4.1. Description and Analysis

Legal Framework

808. The general principles of the extradition mechanism are not governed by the Act of 10 March 1927 on extradition of foreigners, which is still in force. It enables Burkina Faso to meet a request for extradition in the absence of treaties. This general act, however, goes against the specific acts that constitute the OCAM General Convention on Judicial Cooperation of 12 September 1961 (Title VIII), the ECOWAS Extradition of 6 August 1994, the Convention of Cooperation and Assistance in Judicial Matters between member States of the Conseil de l'Entente of 20 February 1997 (CH IX), AML Act No. 026-2006 and bilateral treaties, notably the Agreement signed on 24 April 1961 with France and the Convention of 23 November 1963 with Mali.

Recommendation 37

Double jeopardy and mutual legal assistance (c. 37.1 and 37.2)

809. If in the area of mutual legal assistance double jeopardy is not a general rule for acts of money laundering and financing of terrorism, this rule is applicable in the area of extradition (Article 69 of the AML Act). The Burkinabe authorities maintain that, in this regard, they have always taken into account criminal behaviours and not the formal qualifications of the acts. All it takes to meet the condition is for the acts motivating the extradition to relate a criminally sanctioned behaviour in Burkina. Moreover, the same principle is applied in the 1927 Extradition Act, as it frequently refers to the term "acts" that could motivate extradition (Article 4). Its Article 24 is also in the same vein by providing that, in the context of the effects of extradition, "the same jurisdictions are judged from the qualification given to acts that motivated the request for extradition".

810. All the same, a legal problem may be posed if the request for extradition concerns money laundering acts from an underlying offence that is not (yet) repressed in Burkina Faso, such as insider trading. The interlocutors concerned are of the view that in this case, they are going to adopt a constructive position when the underlying acts may reflect similar or approximate offences (like fraud). However, the question remains open in the absence of precedents and a pertinent jurisprudence on the issue.

Recommendation 39

Money laundering as an offense that could result in extradition (c. 39.1)

811. Money laundering is certainly an offence liable to extradition by virtue of Article 69 of the AML Act. The extradition concerns offences provided for by Article 2, 3 and 35 to 38 of the above-mentioned Act, irrespective of the penalty, as set forth in the national act in case of legal proceeding, or irrespective of the penalty delivered by the courts of the requesting State. The principle of double jeopardy is applicable. Article 69 has the same general sphere and is not limited to requests emanating from WAEMU countries. However, the weaknesses observed relating to money laundering offences (underlying crimes) may have negative repercussions on the capacity of extradition of Burkina Faso for these money laundering acts.

Extradition by a country of its own nationals (c.39.2(a)

812. Persons of Burkinabe nationality may not be extradited. Since the AML Act is silent in this regard, the general rule is applicable, notably that of Article 5.1 of the Act on extradition, which bans extradition of national citizens. This principle is taken up in Article 42 of the OCAM Convention.

Cooperation concerning criminal proceedings of its own nationals (c. 39.2(b), c. 39.3)

813. Burkina Faso may assume responsibility for legal action against a suspect at the request of the concerned **WAEMU** State or a third country on condition of reciprocity (Article 45 of the AML Act). This possibility was already provided in Article 42, paragraph 2, of the OCAM Convention. The request is addressed to the judicial authorities of Burkina Faso, which should refuse in case of prescription or "non bis in idem" (Article 46). The resumption of proceedings by the requested judicial authorities is not mandatory, but it should keep the prosecuting authorities of the requesting State informed of the decisions, by sending them a copy (Article 48).

814. In general, the policy adopted by Burkina Faso is to pursue a Burkinabe national who is author of a criminalised act and who finds himself in Burkinabe territory even if the offence was committed outside the territory, on condition that the act is punishable by the authorities of the country where they were committed, to the competent authorities of Burkina Faso (Article 4 of the CP).

Efficiency of extradition procedures (c. 39.4)

815. The lack of detail renders impossible an appreciation based on the efficiency of the extradition mechanism. There is no information on duration of the procedure or its results.

SRV: Extradition FT

816. Since the offence of financing of terrorism is not yet incriminated in Burkina Faso, requests for extradition come up, in principle, against the impediment of double jeopardy. Hence, in these cases, the transfer of proceedings for the financing of terrorism is not legally possible, in the absence of a specific incrimination. However, there is the possibility of obtaining a favourable reaction if the facts may be considered as common law offences or crimes, such as organized crime and assistance to criminals.

Additional element - Existence of simplified procedures concerning extradition (c. 39.5)

817. No simplified extradition procedures have been established in the legal system of Burkina Faso.

Additional element concerning SR V (pursuant to c. 39.5 of R. 39, c. V.8)

Statistics (pursuant to R. 32)

818. The statistical data provided on (active and passive) extradition procedures are quite limited. 2 extradition requests were made by Burkina Faso, respectively to Benin and Mali. 1 request was formulated by Switzerland to Burkina. As already mentioned, the statistics are not detailed enough to meet the international criteria.

6.4.2 Recommendations and Comments

819. The Legal Framework for extradition in the area of money laundering is adequate and in conformity with international criteria. The principle of double jeopardy both for money laundering and for financing of terrorism may constitute a cause of refusal, either through lack of similarity between the underlying offenses, or simply through lack of money laundering offense. There is therefore a need to eliminate these impediments through appropriate adaptation of the penal legislation.

6.4.3 Compliance with Recommendations 32, 37 & 39, and Special Recommendation V

	Rating	Summary of factors underlying the rating
R.37	LC	Doubts – due to the principle of double jeopardy – regarding the possibility of extradition on the basis of money laundering relating to underlying offenses not incriminated in Burkina Faso
R.39	PC	Impossibility of evaluating the effectiveness of the system for lack of statistics
SR.V	NC	Repercussions on the capacity of extradition for FT through lack of incrimination of the FT in Burkina Faso (principle of double jeopardy)

6.5 Other forms of international cooperation (R.32 & 40, & SR.V and R.32)

6.5.1 Description and Analysis

Recommendation 40

Sphere of international cooperation mechanisms (c. 40.1)

1. **<u>Cooperation with foreign counterparts</u>**

820. FIU: The CENTIF can grant to FIU of third countries the largest possible international cooperation. The pertinent legal provisions are indicated in Articles 21 and 22, which treat the relations of CENTIF with the FIU of UEMOA States on the one hand, and with those of third countries, on the other. It should, however, be noted that presently, this cooperation can only concern money laundering, since the fight against money laundering is not yet included in its attributions.

821. According to the terms of Article 21, the CENTIF is under obligation to communicate, at the motivated request of a CENTIF of a member State of WAEMU, in the framework of all information and data on investigations undertaken following a declaration of suspicion at the national level.

822. Concerning the other foreign FIU, the CENTIF may, subject to the principle of reciprocity, exchange information with the financial intelligence services of third countries in charge of receiving and treating declarations of suspicion, when the latter are subjected to similar obligations of professional secrecy.

823. According to the CENTIF, exchanges between the CENTIF and an information service of a third State (non-UEMOA) require a written agreement (Article 22, last paragraph) with the authorization of the Minister of Finance.

824. Police: In the area of money laundering and financing of terrorism, the police and gendarmerie may cooperate with their colleagues through the Interpol network as long as this cooperation is not within the scope of mutual legal assistance.

825. The Customs cooperates on the basis of agreements signed with Mali, Niger, Togo, Ghana, Benin, Côte d'Ivoire, France and Belgium. In addition, the customs services of member countries of UEMOA and ECOWAS, including Burkina Faso, cooperate in the same area of monitoring of regional regulation. It is a member of the WCO.

826. Customs administration: can you cooperate with your colleagues on the basis of the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offenses, of 9 June 1977 and the International Convention on Mutual Administrative Assistance in Customs Matters of 27 June 2003.

2- <u>Cooperation between supervisors</u>

827. Concerning cooperation between authorities for monitoring the financial system (banks, insurance companies and stock markets), the situation is as follows:

828. Banking Sector. Two types of levels are to be distinguished here; that of intra-regional cooperation within the WAEMU on the one hand, and that of international cooperation on the other. An agreement on cooperation and exchange of information was signed in June 2002, between the BC-WAMU and the Conseil régional de l'épargne publique et des marchés financiers (CREPMF), which also has the Governor of the BCEAO as one of its members. Its implementation, according to the officials of the BC, has facilitated exchanges of experience, information missions and bilateral meetings between the two institutions. The Regional Board, a body of the WAEMU, gives account of its activities to the Council of Ministers of the Union93. The Governor of the Central Bank also participates in the CIMA, a regional body in charge of the monitoring of insurance agencies. In the area of supervision of the decentralized financial systems, the framework law on regulation of Mutual-benefit or savings and lending institutions or cooperatives within the WAEMU, adopted in 1993, provides in its Article V Title V, the possibility of exchange and sharing of information, notably with the Banking Commission. According to information gathered by the mission, these cooperation agreements have not had concrete fallouts in the area of AML.

829. Concerning relations with foreign control authorities of the Union, Article 35 of the Agreement provides that the BC-WAMU may transmit information concerning, in particular banks and financial institutions to the authorities in charge of monitoring similar institutions in other countries, subject to reciprocity and on condition that the authorities themselves be under obligation of professional secrecy. In this regard, an agreement on cooperation and exchange of information was signed with the French Banking Commission on 19 September 2000 and the Central Bank of the Republic of Guinea, on 18 July 2003. A similar agreement was signed in July 2007 with the Banking Commission of Central Africa (COBAC). Draft Cooperation Agreements also exist with the Central Banks of Morocco, Nigeria and Rwanda94. Here too, cooperation ties that were established at the international level did not explicitly concern the AML.

830. Stock market sector. By virtue of the text governing the organization, operation and control of financial markets, the Regional Board may sign mutual assistance and cooperation agreements with the organizations for monitoring and controlling foreign savings and financial markets (Article 27). When the investigations are initiated at the request of foreign authorities, following the existence of an international cooperation agreement, it is the responsibility of the Regional Board to access

93 Source: Evaluation report on compliance with the basic principles of Basel for efficient bank control, World Bank, 2007.
94 Moreover, the Banking Commission is a member of several groups of bank supervisors (Group of Francophone bank supervisors, Committee of Bank Supervisors of West and Central Africa, International Liaison Group, etc.).

whether the facts presented in support of these requests constitute a violation of the laws and regulations applicable within the Union. According to the information collected from the CREMPF, no cooperation agreement has so far been signed that could give rise to exchange of information in the perspective of the fight against money laundering.

831. Insurance sector. The mission had no data on cooperation for this particular sector.

Rapid, constructive and efficient assistance (c. 40.1.1)

832. CENTIF: For the moment, there has not yet been any exchange with other CENTIF, nor another form of operational cooperation. It is provided that the communications will be done in a direct manner between the CENTIF. The protection of the lines of exchange does not seem assured. The accession to the Egmont Group will be pursued at an opportune time, which will optimize the exchange of protected information with the colleagues.

Definite and efficient mechanisms for facilitating exchanges between colleagues (c. 40.2):

833. FIU: the cooperation with the FIU WAEMU is unconditional; the cooperation with the other FIU is established on condition of reciprocity and guarantees of confidentiality. Membership of the Egmont Group will help to make use of the ESW secured network of the group to exchange information with the other members of the FIU.

834. The police and customs services use direct communication lines, such as those of the Interpol and the WCO. The police provided frequent late responses, while request remained unattended to.

Spontaneous exchange of information (c. 40.3)

835. FIU: Even if it is not explicitly formulated, exchanges with the FIU of third countries may be spontaneously carried out or on request, the moment there is reciprocity (Article 22). Strangely enough, the Law only provides for communication of information at the request of a CENTIF of the WAEMU (Article 21), but the logic is that one should consider spontaneous exchanges as admitted.

Investigations conducted on behalf of foreign colleagues (c. 40.4)

836. FIU: The formulation of Article 21 gives the impression that the CENTIF may cooperate with a WAEMU CENTIF “in the framework of an investigation”, which seems to imply that it is authorized to conduct investigations on behalf of the colleague. Article 22 uses a different and more restricted formulation and only refers to the exchange of information, which creates doubts as to whether this power to investigate also extends to request from other foreign FIU.

Investigations by the FIU on behalf of foreign colleagues (c. 40.4.1)

837. FIU: It goes without saying that, at the request a non-WAEMU FIU, the CENTIF has the power to communicate the information it already has in its data base. It was not so clear whether this empowerment extends to the collection of information from external sources to which it has access in the performance of its FIU duties (Article 17).

Investigations by the criminal prosecution authorities, on behalf of their foreign colleagues (c. 40.5)

838. Apart from the context of a request for mutual assistance, the judicial authorities are not empowered to conduct investigations, even simple investigations. The police and the gendarmerie, for

their part, have a little more latitude if a request emanates from a foreign police service directly or through Interpol. Nevertheless, they are not investigations per se, that always require a rogatory commission, but it rather concerns the collection of information. The customs departments, on the other hand, have the power to initiate investigations of customs offenses at the request of their colleagues, on the basis of customs treaties.

Lack of disproportionate or unduly restrictive conditions on exchange of information (c. 40.6)

839. FIU: The exchanges of information are subjected to the following conditions:

i. Motivated request from a CENTIF of WAEMU member country, in the framework of an investigation;

ii. For the FIU of third countries, the exchanges are carried out subject to reciprocity and when the latter are subjected to similar obligations of professional secrecy. Hence, there is need for a written cooperation agreement (Memorandum of Understanding), approved by the Minister of Finance, in order to ensure that confidentiality is guaranteed.

Cooperation also on taxation issues (c. 40.7)

840. CENTIF, police, customs: there is no text indicating that a request would be unacceptable because financial aspects could be implied. In any case, none of the interlocutors met saw a problem or a reason for not meeting such a demand.

Cooperation notwithstanding the existence of Acts imposing secrecy or confidentiality (c. 40.8)

841. Article 32 of the AML Act removes professional secrecy for the CENTIF and the control authorities in the performance of their duties, and police officers who conduct money laundering investigations under the direction of the investigating judge.

Controls and guarantees of the use of the information (c. 40.9)

842. According to the terms of Article 19 of the AML Act, members and officials of the CENTIF are under obligation to respect the secrecy of the data collected, which could be used for other purposes than those provided for by this Act.

Additional elements – Exchanges with the non-compliant authorities (c. 40.10 and 40.10.1)

Additional element - Transfer of information to the FIU by other competent authorities at the request of a foreign FIU (c. 40.11)

Statistics (pursuant to R. 32)

6.5.2 Recommendations and Comments

843. Direct international cooperation between the police and customs forces is a nearly daily practical affair. It is applied without real difficulties except for the late responses and unanswered requests without response. The customs administration seems quite limited in its cooperation capacity, based solely on treaties and **WAEMU** and ECOWAS **REGIONAL** regulation. However, it should be noted that there is no request coming in or going out on acts of money laundering or financing of terrorism.

844. Concerning the power of cross-border cooperation of the CENTIF, the situation is not entirely clear. The texts may be interpreted differently: it does not come out undisputedly that the CENTIF may collect information from its sources or external correspondents at the request of a third non-**WAEMU** FIU. The text of Article 22 provides no specification, limiting itself to exchange of information. According to Article 17, it has the power to request for additional information in the framework of the analysis and treatment of the declarations addressed to it, without reference to the case that a request from a colleague requires consultation of external sources. Even if it can be argued that Article 22 contains no ban, it still remains an issue of minimal or maximal interpretation. This issue could be clarified through a provision specifically granting to the CENTIF the same attributions and powers under Article 17, when it wants to act at the request of a foreign FIU. Legally, such a request should have the quality of a declaration in the sense of Article 17 of the AML Act.

845. Finally, the CENTIF does not have the legal powers to exchange information on the financing of terrorism.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors justifying rating
R40	PC	• No exchange in the area of money laundering or financing of terrorism • FIU: The legal base empowering the CENTIF to exercise all its powers of investigation at the request of a non-WAEMU third FIU is doubtful • Concerning the banking sector, it appears that the cooperation is not effective in the area of AML. Besides, it does not exist in the case of CFT. Cooperation in AML/FT matters also seems non-existent for the stock exchange and insurance sectors
SR V	NC	• The exchange of information on suspicions of financing of terrorism is not yet in the attributions of the CENTIF

7 OTHER ISSUES

7.1 Resources and Statistics

846. The description and analysis of Recommendations 30 and 32 are contained in the relevant parts of the report.

847. It is a general rating for each of these Recommendations, which are cross-cutting and concern several parts of the report.

7.1.1 Resources

Compliance with Recommendation 30

	Rating	**Summary of factors underlying rating**
R30	**NC**	• Lack of resources and means and lack of training for services of the authorities in charge of investigations, the penal prosecution authorities and other competent authorities

		• The resources allocated to the control and supervisory organizations are inadequate. The lack of training is general in all the sectors

7.1.2 Statistics

Compliance with Recommendation 32

	Rating	Summary of factors underlying rating
R32	**NC**	• Since no money laundering case was treated in Burkina Faso, no provision for collecting pertinent data is, for the moment, in place • Since the financing of terrorism is, for the moment, not a criminal offense, no provision for collecting pertinent data is in place • Lack of statistics on activities of the CENTIF, since it is not yet operational • Concerning cross-border declaration or communication, Burkina is not in a position to quantify the entries and exits of regular funds and keeps incomplete statistics. • No provision is in place for collecting relevant statistics on declarations of suspicion and other declarations • Lack of statistics on the number of sanctions of the CB concerning, at least partially, weaknesses of the AML standards • Lack of detailed statistics on mutual legal assistance and extradition
		• There are no statistics on international cooperation

7.2 Other relevant AML/CFT measures or issues

848. N/A

Table1. Ratings of compliance with FATF Recommendations

The ratings of compliance are made in accordance with FATF Recommendations based on the four levels mentioned in the 2004 Methodology namely, Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC), or could in exceptional cases be marked as not applicable (N/A).

40 Recommendations	Rating	Summary of factors underlying rating
Legal system		
1. Offence of money laundering	PC	• Terrorism and its financing are not underlying offenses. • It is not specified whether the offense is a crime or misdemeanor. • It is not specified whether the offense is applicable to property representing direct proceeds from the underlying offense. • It is not certain that the author of the latter may also be convicted for laundering illicit profits.
2. Intentionality and personal liability of legal persons	LC	• The intentional element may be deduced from objective factual circumstances, given the principles that underlie the legal system of Burkina Faso, but no specific mention is made in the Anti-money Laundering Act. • The responsibility of the legal persons has been established. • Provision is not made for confiscation in equivalent value
3. Confiscation and provisional measures	PC	• Confiscation is not possible in the area of terrorism. • Specifications should be made on the confiscation of proceeds from the underlying offense and that of the object of

40 Recommendations	Rating	Summary of factors underlying rating
		money laundering offence.
Preventive measures		
4. Laws on professional secrecy	LC	• Lack of a provision ensuring that professional secrecy does not impede the exchange of information between financial institutions when required.
5. Due diligence with customers	NC	• Obligations of identification too limited, particularly for the beneficial owners; • No obligation to seek information on the purpose and nature of the relation; • No obligation of constant due diligence; No obligations on existing customers; • Implementation limited by the banking sector and lack of implementation by the other financial institutions.
6. Politically exposed persons	NC	• - No obligations relating to PEPs.
7. Bank correspondent relation	NC	• -No obligations relating to bank correspondents.
8. New technologies and distant business relations	NC	- Incomplete and unspecific obligations; • - Lack of implementation.
9. Third parties and intermediaries	NC	• Lack of specific standards whereas the use of third parties exits in practice
10. Record keeping	PC	- Lack of adequate specifications with regard to the nature and availability of documents to be conserved, • -Content of the record keeping obligations is often unknown to those subjected (in a context of lack of supervision of compliance with the AML obligations).
11. Unusual transactions	PC	• -Lack of implementation outside the banking sector
12. Designated non-financial businesses and professions - R.5, 6, 8-11	NC	• -Lack of provisions on politically exposed persons • -Lack of subjection of providers of services and trusts • -Lack of specifications on consultancy missions of chartered accountants • -Lack of dissemination of the 2006 Act to the subjected professionals

40 Recommendations	Rating	Summary of factors underlying rating
		• -The threshold of identification of customers of casinos is less than the threshold recommended by FATF • -The prudential obligations are not imposed on casinos as legal persons • -There is no threshold for initiating the vigilance for dealers in precious metals • -Lack of regulation of estate agents outside the law on housing development
13. Suspicious Transaction Reports	NC	- Reporting obligations of are unspecific and largely unknown to the subjected persons; • - Lack of implementation.
14. Protection of reporting entities and ban on warning the customer	NC	• - Too limited protection of confidentiality of the information communicated to the CENTIF.
15. Internal controls, compliance and audit	PC	• -Incomplete regulatory system for the banking sector • -Lack of sectoral mechanism outside the banking system, notably in the micro-finance sector • -Lack of effective implementation of the internal control obligations
16. Designated non-financial businesses and professions – R.13-15 & 21	NC	• DNFBP do not have any due diligence obligation regarding their business relationships and operations with natural and legal persons living in countries that do not or poorly implement FATF's Recommendations.
17. Sanctions	PC	• -The nature and extent of the sanctions applicable to DFCs are not clearly defined • -There is a conflict of interest within the BC-WAMU because of the presence of representatives of BCEAO and the States, who are, at the same time, shareholders in banks

40 Recommendations	Rating	Summary of factors underlying rating
18. Shell banks	NC	• -Lack of a ban on establishment or pursuit of bank correspondent relations with shell banks; • -Lack of obligation to ensure that financial institutions that are part of their international customers do not authorize shell banks to use their accounts.
19. Other forms of declaration	NC	• - Lack of a feasibility study of a system of declaration of cash transactions.
20. Other non-financial businesses and professions and modern fund management techniques	NC	- Vague obligations of declarations and largely unknown to the subjected persons; - Existence of two competing declaration mechanisms, without coherence between them; - Lack of implementation. - Too restricted protection of confidentiality of the information communicated to the CENTIF. - Lack of feasibility study of a system of declaration of cash transactions. - Lack of feasibility study of a system of declaration of cash transactions. - Lack of guidelines, apart from an instruction from BCEAO with few details. • Lack of obligation to declare operations associated with the FT.
21. Attention paid to high-risk countries	NC	• Lack of provision on countries that do not apply or inadequately apply the Recommendations of FATF
22. Subsidiaries and branches abroad	NC	• Lack of obligation for the non-banking financial sector • Lack of obligation of information of the bank supervisor for lending institutions
23. Regulation, supervision and control	NC	• The rules on the control of the criteria on aptitude and morality of managers of DFCs are not clearly established

40 Recommendations	Rating	Summary of factors underlying rating
		• There are no specific procedures concerning the control of the legal origin of funds provided during the creation of a bank or any other financial agency, such as a DFC, a wealth management company or a management and intermediation or insurance company, just as there is no procedure for verifying the effective beneficiary.
24. Designated non-financial businesses and professions - regulation, control and monitoring	NC	• Insufficiency of the control over casinos • Lack of real control of estate agents
25. Guidelines	NC	• There is no AML guideline for the insurance and financial market sector. • BCEAO Instruction No. 01-2007 of 2 July 2007 has not been disseminated to all its recipients. • The BCEAO Instruction contains inaccuracies and does not provide all the necessary information that will help financial institutions to apply and respect their AML obligations • In the absence of CENTIF, there is not AML guideline, other than the BCEAO Instruction, which is obviously inadequate, particularly concerning the declaratory obligations
Other institutional measures		
26. Financial Intelligence Service	PC	• Lack of an effectively operational FIU • The attributions of the FIU do not include the fight against the financing of terrorism • The protection of confidentiality is not completely ensured with the request for additional information
27. Criminal prosecution authorities	PC	• Lack of efficiency in the area of detection and investigation of heritage benefits • The investigations and prosecutions are not focused enough on the financial aspect • Lack of specialization in the area of money laundering and financing of terrorism, at

40 Recommendations	Rating	Summary of factors underlying rating
		the level of both the District Attorney's Office and the Police • Passive attitude and lack of initiatives to acquire the expertise in the field
28. Powers of the competent authorities	PC	Lack of incrimination of the FT is a major handicap in the area of access to information
29. Surveillance authorities	NC	• The AML controls carried out by the BC-WAMU in banks and financial institutions are inadequate and do not seem in conformity with relevant international norms and standards. • The monitoring of DFCs is deficient and does not concern the respect of the AML standards • The monitoring of insurance companies suffers from several weaknesses and does not concern AML.
30. Resources, integrity and training	NC	• The resources allocated to the control and supervisory organizations are inadequate • The lack of training is general in all the sectors • The CENTIF does not have the necessary resources
31. National Cooperation	NC	• Lack of a mechanism for coordination and cooperation between the competent authorities in the area of anti-money laundering and combating the financing of terrorism
32. Statistics	PC	• Lack of statistics, which makes it difficult to assess the efficiency of the system
33. Legal persons – share ownership	NC	• The information that should be included in the registers according to the terms of the OHADA texts makes it impossible to know the beneficial owners in the sense of Rec. 33; • The mission could not collect full information on the implementation of the OHADA Law. • The importance of the informal activity is an obstacle to acquisition of adequate, pertinent and up-to-date data on all the economic operators.
34. Special legal arrangements – share ownership	N/A	
International Cooperation		
35. Conventions	LC	• The provisions of the Vienna and Palermo

40 Recommendations	Rating	Summary of factors underlying rating
		Conventions have not been fully implemented
36. Mutual legal assistance	LC	• Inadequate statistics, which makes it difficult to assess the efficiency of the system
37. Double jeopardy	LC	• Doubts – because of the principle of double jeopardy – with regard to the possibility of extradition on the basis of money laundering relating to underlying offenses not incriminated in BF
38. Mutual legal assistance in confiscation and freezing cases	PC	• Doubts – because of the principle of double jeopardy – with regard to the possibility of executing decisions on confiscation of the proceeds and instruments on the basis of underlying offenses not incriminated in BF • Lack of legal basis for executing rogatory commissions on seizures and equivalent confiscations. • The sharing of the confiscated assets with other countries was not envisaged • Lack of a coordination mechanism in the area of seizure and confiscation
39. Extradition	PC	• Impossibility of evaluating the effectiveness of the system due to lack of statistics
40. Other forms of cooperation	PC	• Police: Lack of information making it possible to evaluate the efficiency of the exchange of information with foreign colleagues. • No exchanges in the area of money laundering or financing of terrorism • FIU: The legal basis enabling the CENTIF to exercise all its powers of investigation at the request of a third non-WAEMU FIU is doubtful • Concerning the banking sector, it appears that this cooperation is not effective in the area of AML. Besides, it does not exist for CFT. Cooperation in AML/FT matters also seems nonexistent for the stock exchange insurance sectors

Nine Special Recommendations	Ratings	Summary of underlying rating
SR.I Implementation of UN instruments	NC	- Lack of practice of implementation of UN Resolutions 1267 and 1373 and WAEMU Instruments on the fight against terrorism and its financing. - Lack of cooperation in the area of the fight against FT
SR.II Incrimination of financing of terrorism	NC	- Terrorism and financing of terrorism were not considered as criminal offenses at the time of the visit.
SR.III Freezing and confiscation of funds of terrorists	NC	- Lack of complete provision ensuring the application of Resolutions 1267 and 1373 (see recommendations and comments above, 259-261). In particular: - The visits to banks established that the lists were not updated under conditions ensuring their effective exploitation - Lack of clear and complete mechanism at the national level, meeting the requirements of Resolution 1267. - Lack of a clear and efficient procedure for giving effect to the initiatives taken in the other countries.
SR.IV Suspicious transaction reports	NC	o Lack of obligation to report operations associated with FT.
SR.V International Cooperation	NC	o Repercussions on the capacity of extradition for FT for lack of incrimination of FT in Burkina Faso (principle of double jeopardy)
SR VI AML/FT obligations applicable to funds or stocks transfer services	NC	- Lack of a competent authority in charge of issuing an authorization to exercise TFV services - Lack of control of the activity of TFV services - Lack of list of agents
SR VII Rules applicable to electronic transfers	NC	- Lack of obligations on electronic transfers
SR.VIII Non profit organizations	NC	- Inadequate monitoring capacities of the authorities in relation to the number of NPOs - Lack of obligation to conserve the statements of financial operations of associations - Lack of sensitization campaigns on the risk of terrorism - Lack of offense of financing of terrorism
SR. IX Cross-border declaration or communication	NC	- Lack of a system of declarations or communications relating to cross-border movements of physical cash in the

		framework of the AML/FT

Table 2: Recommended action plan for improving the AML/FT system

40 + 9 Recommendations of FATF	Main measures recommended
Legal system and institutional measures	
Scope of application of the money laundering offense (R 1, R 2)	AML Act No. 026-2006 should be amended in order to: - Specify whether money laundering offense is a crime or a misdemeanor - Specify that money laundering offense is applicable to property representing indirectly proceeds from crime, that the author of the underlying offense can also be sentenced for money laundering acts and that the intentional element can be appreciated or deduced from objective, factual circumstances - Specify the provisions on additional and optional penalties of confiscation provided for by articles 39 and 43 of the criminal code and by the drug code - Specify that confiscation may be ordered on the equivalent value of the property laundered - Initiate sensitization and training activities - Establish statistical tools on issues relating to efficiency and smooth operation of the anti-money laundering provisions.
Criminalization of the financing of terrorism (SR II)	- Consider as penal offenses, the acts of terrorism and financing of terrorism provided for by the 9 Conventions in the annex to the UN Convention on the FT, and provide for corresponding penalties. - Ensure that the following elements are taken into account during the preparation of the transposition texts of the CFT Guideline: o Provide for definitions of the terms “terrorist organization” and “terrorist”; o Provide for the criminalization of attempted financing of terrorism in order to be in harmony with the AML Guideline; o Specifically provide that the intentional element of the offense of financing of terrorism may be deduced from objective, factual circumstances; o Provide for special mention covering the possibility of initiating parallel procedures, be they penal, civil or administrative, for legal persons separate from their penal liability in the area of financing of

	terrorism; provide for penal sanctions applicable to the offense of financing of terrorism
Confiscation, freezing and seizure of property of criminal origin (R3)	- Institute the possibility of confiscating the proceeds from the underlying offense and the object of the offense. - Implement, as early as possible, act no. 026-2006/an and introduce in the positive law, the incrimination of the financing of terrorism and confiscation of property associated with the commission of this offense and which would be the object, proceeds or instruments. - Provide for a mechanism for knowing the amount of sums seized for money laundering and their management modalities in order to assess the efficiency of the legal measures of seizures and confiscations and quantify the amount.
Confiscation of proceeds from criminal activities or assets used for financing terrorism (SR III)	The provision for freezing funds under Resolution 1267 is highly incomplete and should be amended in order to: o Submit to the measures for freezing funds or other property held or controlled directly or indirectly by persons or entities, explicitly designated by the Sanctions Committee, but also by persons acting on their behalf or on their instructions; o Extend the freezing measures to all "funds and other property", o Extend the scope of application of the regulation to cover all the actors who would hold funds or other property belonging to persons or entities directly or indirectly implicated in the commission of terrorist acts; o Provide for a clear and rapid mechanism for the dissemination of the lists of the Sanctions Committee at the national level, which would be complementary to the regional mechanism. o Put in place appropriate procedures enabling a person or an entity whose funds or other property have been frozen to contest this measure with a view to its re-examination by a court. o Adopt measures to ensure the protection of the rights of third parties acting in good faith. Concerning Resolution 1373, Burkina Faso should: o Be able to designate the persons or entities whose funds and other property should be frozen o Provide for a clear and rapid procedure for examining and giving effect to initiatives taken under the freezing mechanisms of the other

	countries; o Put in place efficient procedures and brought to the knowledge of the public to examine, at the appropriate time, requests for withdrawal from the lists of persons covered and the de-freezing of the funds or other properties of the persons or entities withdrawn from the lists; o Adopt measures to ensure the protection of the rights of third parties acting in good faith. o Transpose the CFT Guideline, incriminate the financing of terrorism and provide for a system for freezing, seizure and confiscation of funds or other property associated with terrorism.
Financial Intelligence Service (R26)	- Disseminate, as early as possible, the model of declaration of suspicions by order of the Minister of Finance, - Appoint correspondents of the CENTIF within the different services concerned; - Reflect on the possibility of recruiting additional staff and consequently provide for additional financial resources to ensure the functional autonomy of the CENTIF; - Extend the jurisdiction of the CENTIF to the offense of financing of terrorism when it is incriminated in Burkinabe law o Solicit the accession of Burkina Faso to the Egmont Group, once the offense of financing of terrorism is incriminated in the local law.
Application of the law, prosecution and other competent authorities (R 27, R28)	- Prepare, at the level of the Chancery, a circular drawing attention to the implementation of the anti-money laundering preventive and repressive system and the measures to be taken. - At the level of the Prosecution Department, examine the possibility of creating specialized sections in the area of financial delinquency, organized crime and terrorism. - The judicial authorities should develop their relationship with the CENTIF in order to optimize the system based on declarations of suspicion.
Declarations or cross-border communications (SR IX)	o Accelerate the establishment of an effective customs control of cross-border movements of physical cash and organize a specific and adequate training in the area.

Preventive measures applicable to financial institutions	
Risk of money laundering or financing of terrorism	o
Due diligence obligation; Customer identification and record keeping obligation (R. 5 to 8)	**Rec. 5** **The authorities are invited to implement the following recommendations:** o -Explicitly ban financial institutions from holding anonymous accounts or accounts under false names; o -Impose on all financial institutions to meet the due diligence requirements provided: -when they effect casual transactions in the form of electronic transfers under the circumstances provided for by the explanatory note of Special Recommendation VII; -in all cases where there is suspicion of ML; -when the institution has doubts on the veracity and relevance of customer identification data previously obtained (including institutions not covered by the provisions of the BCEAO Instruction); o -Clarify the obligation of verification of identity of legal persons; o -Demand from all financial institutions that they verify for the legal structures in the sense of FATF, (i) that any person claiming to act on behalf of the customer is authorized to do so, and identify and verify the identity of this person, as well as (ii) the legal status of the legal structure; o -Impose on financial institutions to appreciate, for all their customers, whether the customer is acting on his own behalf; o -Concerning the beneficial owners, impose on the financial institutions to: -identify the natural person or persons who *in fine* possess or control their customer; -take all reasonable measures to verify the identity of the benficial owners; -to take all reasonable measures concerning legal entity clients or legal structures for (i) understanding the ownership and control structure of the customer and (ii) determine the natural persons who, *in fine* possess or control the customer.

	o -Impose on financial institutions to obtain, in all cases, information on the purpose and envisaged nature of the business relations; o -Create an obligation for financial institutions to exercise constant vigilance on their business relations; o -Compel a financial institution to make careful analysis of the transactions made during the entire period of their business relations; o -Compel all financial institutions to ensure the update and pertinence of the documents, data or information collected during the accomplishment of due diligence obligations vis a vis customers; o -Impose on financial institutions to take enhanced vigilance measures for high-risk categories; o Rec. 6 Compel financial institutions to: -institute adequate risk management systems in order to determine whether a potential customer or beneficial owner is a PEP; -obtain the authorization of their top management (i) before establishing business relations with a PEP, or (ii) to pursue the business relations when a customer has accepted and it eventually appears that this customer or beneficial owner is a PEP or is becoming one; -conduct enhanced and continuing monitoring of the business relations that they have with PEPs; **Rec. 7** o Compel financial institutions to: -gather adequate information on the client institution in order to clearly understand the nature of its activities and evaluate, on the basis of publicly available information, the reputation of the institution and the quality of the monitoring; -evaluate the control systems put in place by the client institution at the level of AML/CFT and ensure their relevance and efficiency; -obtain authorization from the top management before establishing new bank correspondent relations; -specify in writing the respective responsibilities of each

	institution within the AML/CFT mechanism. **Rec.8** o -Compel financial institutions to institute policies or take the necessary measures to prevent abusive use of the new technologies in the ML or FT mechanisms. o
Use of intermediaries (R9)	o -Financial institutions using a third party should be under obligation to obtain immediately from this third party, the necessary information concerning certain elements of the vigilance measures relating to customers (criteria 5.3 to 5.6); o -Financial institutions should be under obligation to take adequate measures to ensure that the third party can provide, on request, and within the shortest possible time, copies of the identification data and other pertinent documents relating to the due diligence obligations vis a vis customers; o -Financial institutions should be under obligation to ensure that the third party is subjected to a regulation and is the object of a monitoring (pursuant to Recommendations 23, 24 and 29), and that he has taken measures aimed at complying with the vigilance measures relating to customers provided for in Recommendations 5 and 10; o -When it comes to deciding in which countries the third party that complies with the criteria may be established, the competent authorities should take into account the information available for knowing whether these countries appropriately apply the recommendations of FATF; o -Finally, the responsibility for identification and verification of the identity should rest with the financial institution that uses third parties. o
Bank secrecy and confidentiality (R4)	-The Burkinabe authorities should consider instituting a provision to ensure that the laws on professional secrecy of financial institutions do not impede the exchange of information between financial institutions, when required by Recommendations 7 and 9 or Special Recommendation VII. o
Record keeping and electronic funds transfer (R10 and SR VII)	**Recommendation 10** o o -Provide that documents may be conserved for

	longer periods if a competent authority requests it in a specific case and for the accomplishment of its mission; o -Provide that documents concerning transactions should be adequate to facilitate the reconstitution of the different transactions so as to provide, where necessary, evidence in case of criminal prosecution; o -Specify that the obligation to financial institutions to conserve for ten years, the items and documents relating to the operations that they have carried out, includes notably the accounts books and commercial correspondence; o -Impose on financial institutions to ensure that all items relating to customers and operations are put at the disposal of the national competent authorities in good time for the accomplishment of their mission. o **Special Recommendation VII** o -The financial institutions of originators should obtain and conserve for all transfers, all useful information on the originator of the transfer (name, address, account number of the originator), o -For cross-border transfers, the financial institution of the originator should include full information on the originator in the message or payment form accompanying the transfer; o -Financial institutions should ensure that non-routine transactions are not treated in batches when this can generate an increased risk of money laundering or financing of terrorism; o -Compel financial institutions to adopt efficient procedures based on an evaluation of the risks involved in order to identify and treat transfers that are not accompanied by full information on the originator; o
Surveillance of operations (R11 and R21)	o -Compel financial institutions to pay particular attention to all complex individual operations of an abnormally high amount, when they are not for apparent economic or legal reason, irrespective of their amount (i.e. not only when they are equal to or above CFAF 10 million); o -Compel financial institutions to pay particular attention to all unusual types of transactions, when

	they are not for apparent economic or legal purpose; o -Facilitate access to auditors to the confidential register provided for in Article 10 of the Single AML Act in the performance of their duties; o -Institute an obligation for financial institutions to pay particular attention to their business relations and transactions (notably with legal persons and financial institutions) residing in countries that do not apply or inadequately apply the Recommendations of FATF; o -Put in place efficient measures to ensure that financial institutions are informed of the concerns raised by the weaknesses of the AML/CFT mechanisms of other countries; o
Suspicious transaction reports (R. 13, R14, R19, R 25 and SR IV)	Rec. 13 o -Specify to the subjected sectors, the conditions under which they should report their suspicions and specify that these declarations should be made without delay; o -Make operational, the CENTIF and make it known among the subjected persons so that they can report their suspicions; o -Institute an obligation to effect a STR concerning funds for which there are no reasonable motives to suspect or of which it is suspected that they are associated or in relation with, or that they will be used to finance terrorism, terrorist acts or terrorist organizations or those financing terrorism; o -Institute an obligation to declare attempts to carry out suspicious operations o Rec. 14 o -Specify that the protection of financial institutions, their managers and their employees is granted (i) even if they did not know precisely the nature of the criminal activity in question, and (ii) even if the unlawful activity, having been the subject of declaration of suspicion, was not actually carried out; o -Extend the obligation of confidentiality (i) to the existence and content of any information communicated to the CENTIF and (ii) ban the communication of the latter to a third party not duly authorized to have access to it;

	o Rec. 25 o -The CENTIF and the supervisory authorities notably are invited to issue, as early as possible, guidelines to enable financial institutions and designated non-financial businesses and professions to meet their obligations; o -Ensure that the competent authorities, notably the CENTIF, provide the subjected persons, appropriate and convenient feedback, taking into account the Guidelines of FATF; o
Internal controls, compliance, audit and establishments abroad (R15 and R22)	o -Adopt sectoral regulations outside subjected persons depending on the BC-WAMU in the area of internal control associated with money laundering, particularly for MFIs and Post Office financial services; o -Clarify the obligations in the area of internal control weighing on micro-finance establishments o -Rapidly initiate the control of the respect of their obligations by the subjected persons o Rec. 22 o -Create for all banks and financial institutions, an obligation to ensure that their subsidiaries and branches abroad apply the AML/CFT standards.
Shell banks (R18)	-National authorities should consider (i) banning financial institutions from establishing or pursuing bank correspondent relations with shell banks and (ii) compel financial institutions that are part of their clients abroad, do not authorize shell banks to use their accounts. o
Regulation and supervision, competent authorities and their attributions (R17, R23, R25, R29, R30)	-At the regional level, the BC-WAMU, like the BCEAO, should ensure the full implementation of the regional texts (Single Act, 2007 BCEAO Instruction) and national texts (Act No. 06-2006) within the banking sector. -In the financial markets sector, the Regional Board should adopt an AML sectoral instruction for all the actors, SGI, SGP, investment advisors and others. -Generally, the number of regional financial supervisors should be increased to deal with the additional load associated with the integration of the fight against money laundering in their mandates. -A significant training effort is, moreover, indispensable.

	-Create methodological tools for on-site investigation services in order to promote a supervision based on risk and not only on mere compliance. -Review the mechanisms for dissemination of texts to the subjected institutions in order to ensure a rapid and exhaustive dissemination of the AML Regulation in all the sectors concerned. -Provide monetary sanctions to be imposed on contravening banks, since the disciplinary sanctions alone appear inadequately dissuasive. -In Burkina Faso and concerning micro-finance enterprises, sensitization and training activities should be initiated as early as possible. -Conduct specific actions against manual money changers of the informal sector. o -Conduct sensitization activities among Western Union sub-delegations so that they show more rigor in customer identification
Alternative funds remittance (SR VI)	-The authorities should adopt a more proactive approach towards money transfer services currently operating in the informal sector, to comply with the obligations of SR VI, -The supervision authorities should expedite on-site controls to ensure that banks and their sub-delegations comply with the customer identification standards and other obligations resulting from the 40+9 Recommendations of FATF. o
Preventive measures applicable to designated non-financial businesses and professions	
Customer identification and record keeping (R12)	-The authorities should notably: o -Include the obligation to adopt specific vigilance measures concerning for politically exposed persons; o -Subject providers of services to companies and trusts to prudential obligations and declaration of suspicion and specify the subjection of chartered accountants in the framework of their consultancy mission; o -Ensure, as early as possible, the dissemination of the 2006 Act among subjected professionals, as well as their responsible authorities. A major effort of sensitization on the risks of instrumentalisation of the non-financial sector for purposes of money laundering should be undertaken. o -raise the threshold of identification of customers of casinos

	o -Impose prudential obligations on the casino as a legal entity o -Institute a threshold for initiating vigilance for dealers in precious metals and precious stones, in accordance with the recommendations of FATF
Suspicious transaction reports (R16)	-The recommendations made in Section 3 on R13, 14, 15 and 21 are also applicable to DNFBPs. o
Regulation, Supervision and Control (R17, R24 and R25)	-The authorities should ensure the respect of the Anti-money laundering Act by casinos and other DNFBPs. o
Other non-financial businesses and professions and modern and efficient fund management techniques (R20)	o -Initiate a reflection on the risks of money laundering in non-financial businesses and professions subjected to the Anti-money laundering Act, in order to sensitize them and ensure efficient control of the application of the mechanism o
Legal persons, legal arrangements and not-for-profit organizations	
Legal persons – Access to beneficial owners and control of information (R 33)	-Implement all the provisions of the OHADA texts, notably in the area of keeping of registers and registration of companies and updating of data, -Initiate a reflection work on the adequacy between the OHADA texts and the requirements of Recommendation 33 regarding access to pertinent information on the beneficial owners and control of commercial companies and other legal persons. -Take all appropriate measures to reduce the share of the informal economy. o
Legal arrangements – Access to share ownership and control of information (R.34)	o
NGOs (SR VIII)	-Organize sensitization campaigns with a view to preventing risks of abusive use of associations for purposes of financing of terrorism. These campaigns should focus on awareness raising among associations on the risks and measures available for protecting themselves, -Put in place mechanisms for monitoring and control of associations and NGOs and increase the staff of the management of the follow-up. -Examine the difficulties associated with the implementation of the CFT Guideline and initiate a reflection on the establishment

	of a mechanism that would protect the sector of NGOs against any abusive use. o
National and international cooperation	
National cooperation and coordination (R31)	o -Put in place mechanisms for coordination and cooperation between the competent authorities in the area of the fight against money laundering financing of terrorism
International Conventions and UN Resolutions (R35 and SR I)	o -Implement in all their components, the provisions of Vienna and Palermo Conventions
Mutual legal assistance (R 32, 36-38 and SR V)	-Implement UN Resolutions 1267 and 1373 and the WAEMU instruments on the fight against terrorism and its financing. o
Extradition (R32, 37 and 39, SR V)	o -Compile statistics to facilitate an evaluation of the efficiency of the mechanism in the area of mutual legal assistance and extradition. o -The incrimination of FT should facilitate mutual legal assistance and extradition in connection with this offense.
Other forms of cooperation (R40 and SR V)	o -Put in place resources aimed at facilitating cooperation between the competent authorities and their foreign counterparts in the area of the fight against money laundering. o -Adopt the Act on FT in order to facilitate international cooperation in the fight against FT. o -Put in place a system of collection of information relating to international cooperation in the area of the fight against AML/CFT o -Intensify the controls and guarantees on exchanges of information and request for cooperation
Other issues	
Other pertinent measures or issues in the AML/CFT framework	o
General structure – Structural issues	o

Annex 1: Lists of Institutions and Organizations met by the Mission

I- Ministries
H.E. the Minister of Economy and Finance
Ministry of Economy and Finance (*Cellule de contrôle et de surveillance des Systèmes financiers décentralisés*)
Direction Nationale du Trésor et de la Comptabilité Publique
Ministry of Justice, including the central authorities in charge of international cooperation.
Ministry of Interior (services in charge of investigations concerning cases of money laundering, financing of terrorism, drug trafficking).
Ministry of Foreign Affairs
Ministry of Mines, Energy and Water (National Energy Department)
Criminal prosecution authorities, including the police and other competent investigation agencies.
Customs Department.
II- Regional institutions
BCEAO, *Bank Centrale des Etats de l'Afrique de l'Ouest*
Conseil Régional de l'Epargne Publique et des Marchés Financiers- Agence nationale
III- Financial Institutions
5 local commercial banks
Network of Savings Banks
Office National des Postes
Union des Caisses Mutuelles d'Epargne et de Crédit
IV- Non-financial Businesses and Independent Professions
Order of Lawyers and Notaries
4 NGOs + the Professional Association
1 Casino
1 Estate Agent

Ministry of Economy

and Finance



Burkina Faso

Unity – Progress – Justice

Official Response of Burkina Faso

to the Report of the Mission for Evaluation of the National Mechanism for Combating Money Laundering and Financing of Terrorism

August 2009

I./ PROCEDURE FOR FORMULATION OF THE OFFICIAL REPONSE

A workshop on the formulation of the official response to the self-evaluation report on the mechanisms for combating money laundering and financing of terrorism (AML/FT) of Burkina was held at the Headquarters of the CENTIF on 18 and 19 August 2009.

It will be recalled that the evaluation of the AML/FT mechanism of Burkina was conducted from 26 January to 06 February 2009 by the World Bank, with the participation of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) as observer.

Chaired by Mr. Jean Baptiste OUEDRAOGO, Technical Adviser to the Minister-Delegate attached to the Minister of Economy and Finance, in charge of the Budget, the workshop was attended by representatives from the following administrations:

Ministry of Economy and Finance

- The *Cellule Nationale de Traitement des Informations Financières* (CENTIF).
- The *Secretariat Permanent pour le suivi des Politiques et Programs Financiers* (SP-PPF).
- The *Direction Générale du Trésor et de la Comptabilité Publique* (DGTCP).
- The *Direction Générale des Douanes* (DGD).
- The *Direction Générale des Impôts* (DGI).

Ministry of Defense

- Headquarters of the National Gendarmerie.

Ministry of Security

- The *Direction Générale de la Police Nationale* (DGPN).
- The National Correspondent of GIABA.

Ministry of Justice

- The *Direction de la Législation et de la Documentation* (DLD).
- The *Parquet du Tribunal de Grande Instance de Ouagadougou*.

Ministry of Foreign Affairs and Regional Cooperation

- The *Direction Générale des Affaires Juridiques et Consulaires* (DAJC).

Regional Institutions

- The Central Bank of West African States (BCEAO).

II./ OFFICIAL RESPONSE OF BURKINA TO THE REPORT ON PEER REVIEW OF ITS AML/FT MECHANISM

2.1/ General Observations

2.1.1 Quality of the Work

The authorities of Burkina, notwithstanding the few specific observations below, commend the quality of the work done by the Experts. They acknowledge the enormous sacrifice made by the Experts and express to them their sincere gratitude. Besides, they are fully aware of the usefulness of this evaluation at a time when they are putting in place the legal and institutional framework of the AML/FT. They pledge to judiciously exploit the recommendations made in the report for improving significantly the AML/FT mechanism of Burkina in the very near future.

2.1.2 Observations on the form

We do not find it necessary to make observations on the form, spelling errors and incoherent formulations, certainly due to the limited time for accomplishing this enormous task.

However, it is important to correct the name of the country, which is “Burkina Faso”, the “Faso” being the republican form of the State and not “Republic of Burkina Faso”, as indicated on the flag page of the report.

2.1.3 Overview of the rating

Since the basic criteria are the elements that should imperatively be used to demonstrate the full compliance with the mandatory elements of each of the recommendations, it is important to verify for each recommendation, the number of essential criteria, which appear to have been met, given the comments of the evaluators, by the legislation of Burkina.

Box 1: Significance of the rating:

Compliant (C): The Recommendation is fully respected with regard to all the basic criteria;

Largely compliant (LC): The mechanism contains only some minor weaknesses, since the vast majority of the basic criteria are fully met;

Partially compliant (PC): The country has adopted a number of significant measures and respects a number of the basic criteria.

Non-compliant (NC): The mechanism contains major weaknesses, as the vast majority of the criteria are not met.

Non applicable (N/A): A prescription or part of a prescription is not applicable, because of the structural, legal or institutional characteristics of a country, for example, a particular type of financial institution does not exist in this country.

Table 1: Basic criteria met by the legislation of Burkina by Recommendation

Recommendation	Number of basic criteria	Number of basic criteria met (LC to C)	Rating
R1	7	5	PC
R2	5	5	LC
R3	6	2	PC
R4	1	1	LC
R5	18	4	NC
R6	4	0	NC
R7	5	0	NC
R8	2	0	NC
R9	5	0	NC
R10	3	2	PC
R11	3	2	PC
R12	2	0	NC
R13	4	3	NC
R14	2	1	NC
R15	4	4	PC
R16	3	Not evaluated	NC

Recommendation	Number of basic criteria	Number of basic criteria met (LC to C)	Rating
R17	4	3	PC
R18	3	0	NC
R19	1	0	NC
R20	2	0	NC
R21	3	0	NC
R22	2	0	NC
R23	7	3	NC
R24	2	0	NC
R25	2	1	NC
R26	10	7	PC
R27	2	0	PC
R28	2	2	PC
R29	4	2	NC
R30	3	1	NC
R31	1	0	NC
R32	2	0	PC
R33	3	1	NC
R34	2	0	N/A
R35	1	1	LC
R36	7	6	LC
R37	2	2	LC
R38	5	3	PC
R39	4	1	PC
R40	9	5	PC

Recommendation	Number of basic criteria	Number of basic criteria met (LC to C)	Rating
SR I	2	0	NC
SR II	4	0	NC
SR III	13	0	NC
SR IV	2	0	NC
SR V	5	0	NC
SR VI	5	0	NC
SR VII	7	0	NC
SR VIII	5	0	NC
SR IX	15	0	NC

Two points appear on the analysis of the above table:

- R16 was not evaluated.
- The ratings of a number of recommendations are not in keeping with the comments made by the report on the realization of their basic criteria. They are R1, R13, R15, R26, R28 and R32. The ratings for their compliance should, therefore, be reviewed.

2.2 Specific Observations

The specific observations concern the following points:

Paragraph 8: The controls of the CB-WAMU in the area of AML/FT, given the recent adoption of the relevant texts, concerned mainly the development and implementation of an internal program on the fight against money laundering in the banks visited. The subsequent missions of the CB-WAMU will no doubt be more detailed.

Paragraph 18: The assets of persons and entities suspected by a third country are frozen by the banks of Burkina Faso, if the related lists are supported by a court decision(s) and subject to an agreement between Burkina and this third country.

Paragraph 27: Write: “inadequate control of the use of the systems for money transfer and issue of foreign notes” instead of “derivatives registered in the use of the systems for money transfer and issue of foreign notes”.

Paragraph 29: Write: “their rapid growth” instead of “their unrestrained growth”.

Paragraph 48: Write “the area of Burkina is 274,187 Km2; the population is estimated at 14.077 million inhabitants according to the 2006 General Population and Housing Survey. Situated in the heart of West Africa, Burkina shares common borders with Mali in the North and the West, Côte d’Ivoire in the South-West, Ghana, Togo and Benin in the South, and Niger in the East. Apart from the capital Ouagadougou (1,475,223 inhabitants), the other main towns are Bobo-

Dioulasso (489,967 inhabitants), Koudougou (138,209 inhabitants), Ouahigouya, Banfora, Kaya, Dédougou, Fada, Tenkodogo, Gaoua… ".

Paragraph 50: Write "The territory is administratively divided into thirteen (13) regions, forty-five (45) provinces, three hundred and fifty (350) departments, three hundred and two (302) rural communes and forty-nine (49) urban communes".

Paragraph 52: Write "Burkina ranked 176th out of 177 countries in the classification of the 2007 UNDP Sustainable Human Development Index".

Paragraph 56: The highest judicial authority of Burkina is rather the Court of Cassation and not the Supreme Court. Indeed, the Supreme Court was dissolved in 2000 with the adoption of the organic laws:

- No.11-2000/AN of 27 April 2000 on the composition, attributions and operation of the Constitutional Council and procedure applicable before it;
- No.13-2000/AN of 09 May 2000 on the organization, attributions and operation of the Court of Cassation and procedure applicable before it;
- No.14-2000/AN of 16 May 2000 on the composition, attributions, operation of the Audit Office and procedure applicable before it;
- No.15-2000/AN of 23 May 2000 on the composition, organization, attributions, operation of the Council of State and procedure applicable before it.

These different acts, therefore, created in place of the High Court, three high jurisdictions, namely the Court of Cassation, which is the high jurisdiction of the judicial order, the Council of State, a high jurisdiction of the administrative order, the Audit Office, a high jurisdiction of the financial order and one institution, the Constitutional Council, whose President represents the Judicial Power in the State protocol.

Paragraph 63: As of 19 August 2009, a report on a declaration of suspicion was transmitted to the District Attorney of Faso at the Ouagadougou High Court of Justice, which entrusted it to an investigating judge.

Paragraph 70: "Several types of fraud are observed in the import-export sector, which are manifested in various ways, including under-invoicing and/or fake invoicing". Aware of the magnitude of the phenomenon, a situation analysis was conducted to apprehend the different manifestations and forms of fraud. The ensuing reports facilitated:

- the establishment of reflection committees within the Ministry of Finance;
- the development of a matrix of ten (10) concrete measures to be implemented with a view to reducing significantly and immediately tax fraud;
- the establishment of the DGI/DGD interconnection to facilitate access in real time to the SYDONIA concerning the monitoring of import operations;
- the protection of certain documents of the taxation authorities;
- the vitalization and strengthening of the Tax – Customs mixed control brigades -, whose activities are being implemented;
- the implementation of a sensitization program by all channels (weekly or monthly television and radio programs, posters) on the domestic tax system;

- the strengthening of capacities of agents of the tax authorities and provision of adequate material resources.

Paragraph 72: The team clearly highlighted the measures taken by the intelligence service of the gendarmerie for preventing any terrorist action in the North of the country. It should be noted that the creation of the Dori outpost is effective and no longer in a project stage.

Moreover, the affirmation that Burkina Faso has no specific provision to punish terrorist acts should be qualified, since Burkina has ratified and internalized the first thirteen (13) international instruments for combating terrorism. Consequently, only a few terrorist may escape prosecution in Burkina Faso.

Paragraph 73: Complete the table of the banking system as follows:

Financial Institutions as of 31/12/2008	**Number of Entities**
- Banks	**12**
- Financial institutions	**5**
- *Office national des Postes* (Post Office financial services)	**1**
- *Caisse des dépôts et consignations*	**0**
- Micro-finance Institutions (decentralized financial systems, DFCs)	**320**
- Authorized manual exchange operators	**49**
- Insurance and re-insurance companies	**10**
- Insurance and re-insurance brokers	**11**
- *Bourse régionale des valeurs mobilières* (BRVM)	**1**
- Central securities custodian and Securities Settlement Bank	**0**
- *Sociétés de gestion and d'intermédiation* (SGI)	**1**
- *Sociétés de gestion de patrimoine* (SGP)	**0**
- *Organisations de placements collectifs en valeurs mobilières*[2] (OPCVM)	**0**
- Fixed capital investment businesses	**0**
- National Branch of the BCEAO	**1**
- Funds or securities transfer companies	**2**
- Pension Funds	**2**
- Public Treasury	**1**
- Electronic Money Issue Institutions	**0**
- Electronic Money Distribution Institutions	**0**
- Electronic Money Institutions	**0**
-Business getters for financial institutions	**0**

Indeed:

- with the prescription of distinction of activities by CIMA, there are in Burkina four (4) life insurance companies (SONAR-Vie, UAB-Vie, AGF-Vie and GA-Vie), and six (6)

insurance companies IARD (SONAR-IARD, UAB-IARD, AGF-IARD, GA-IARD, Colina and Raynal).

- the BRVM has a National Branch in each of the WAEMU countries, including Burkina.
- two companies, SAGAM and BURVAL, are involved in the transfer of funds and/or securities.
- concerning pension funds, there are two of them: the *Caisse Nationale de Sécurité Sociale* (CNSS), which offers pension insurance to employees of the private sector and public enterprises; and the *Caisse de retraite des fonctionnaires* (CARFO), which manages the pension scheme for civil servants.

Paragraph 88: Burkina Faso does not have two bar associations but only one called the "Bar Association of Burkina Faso" within which are registered lawyers practicing for the moment in Ouagadougou or Bobo-Dioulasso.

Paragraph 92: It is indicated that "NGOs are under no legal obligation to deposit annual accounts, thus making the control of the regularity of their finances difficult".

On this point, the Taxation Authorities in its investigation, search and information mission with a view to apprehending the actual NGO record, held exchange and working meetings with the *Direction Générale de la Cooperation* (DGCOOP), notably the NGO Monitoring Department (DSONG). The conclusions of these meetings show that:

- a great number of NGOs are unknown in the records of the Taxation Authorities;
- only NGOs that need to carry out importation operations or request for VAT exemptions are obliged to contact the Taxation Authorities with a view to obtaining a Single Financial Identifier (IFU);
- the lack of a special provision in the establishment agreement, reminding NGOs about the obligation of keeping and producing periodically (civil year) an accounting system in French;
- the reports and financial statements that are presented and deposited at the DSONG at any time of the year do not respect the accounting rules reflecting all the operations carried out by the NGOs, such as operational costs, incomes generated by trading activities that are eventually used to refinance their activities or incomes from consultancy services provided to third parties by certain NGOs;
- the non-keeping of accounting books and entries impedes efficient control of financial and material flows as well as the real destination of property for which the State grants subsidies in the form of exemptions or payment of taxes;
- the establishment agreement signed with the State provides for a procedure for tacit renewal of the latter, which makes it impossible for the administrative structures to appreciate the active or inactive nature of a NGO in the field. This state of affairs largely explains the difficulty in distinguishing active NGOs from those that have seized their activities;
- the convention authorizes the denunciation of the agreement under certain conditions, but no procedure is, however, provided for an eventual removal of NGOs from the directory, when the latter cease their activities.

Paragraph 93: The Uniform Act relating to Commercial Companies and Economic Interest Groups is not applicable to all legal persons but rather and, as its name indicates, only to commercial legal persons and economic interest groups.

Paragraph 95: Accession of States is not done under the Single Act, which constitutes a set of material legal rules directly applicable in the party States immediately after adoption of the Act, but rather the Organization for Harmonization of Business Law in Africa, known as the OHADA Treaty.

It is important to qualify the affirmation according to which, any person wishing to undertake a commercial activity, must chose one of the commercial company forms of provided for by the Uniform Act relating to Commercial Companies and Economic Interest Groups, namely incorporated company, Limited Liability Company, general partnership and limited partnership. Indeed, the above-mentioned Uniform Act declares these commercial companies by the form but does not say that any person wishing to undertake a commercial activity must mandatorily take one of these forms, since there are in Burkina Faso commercial companies by their purpose and which do not have one of the forms provided for in the Uniform and there are also natural persons engaged in trading.

Paragraph 97: The members of the CENTIF are appointed by decree adopted in Cabinet and not by ministerial decree.

Paragraph 104: Write rather:

- "Ministry of Security ..." instead of "Ministry of Internal Security and Civil Protection ….";
- "Ministry of Justice ..." instead of "Ministry of Justice and Keeper of the Seals ….";
- "the National Police Headquarters and Gendarmerie Headquarters....." instead of "Headquarters of the Police and that of the National Gendarmerie …." .

Paragraphs 111, 692 and 693: Act No. 026-2006 dated 28 November 2006 instead of 29 December 2006, which is that of its promulgation decree.

Paragraphs 127, 128 and 129: Contrary to what is written, self-money laundering is indeed punishable in Burkina Faso. However, when it follows a severely punished underlying offense, it is the penalty of imprisonment that is imposed for this offense but the author will, all the same, be found guilty for money laundering, and subsequently sentenced to additional penalties such as confiscation, freezing, etc. The principle thus stated results from Article 6 of the Criminal Code of Burkina Faso, which stipulates: "In case of conviction for several crimes or offenses, the most serious penalty shall be pronounced …".

This comment is also valid for paragraph 150 concerning self-money laundering.

Paragraph 182: Article 536 bis features rather in the draft Criminal Code, following a review of the one in force. However, following the development of the bill on combating financing of terrorism, this article was abandoned.

Paragraph 293: Contrary to what is written, the human resources of the CENTIF are currently inadequate.

Paragraph 295: There are 23 High Courts of Justice (*TGI*) and not 20, as mentioned in the report.

Paragraph 296: Reformulate as follows: “At each level of jurisdiction, public action is exercised by the State Prosecutor, notably the District Attorney and his lawyers/general assistants at the Appeals Court, and the Director of Public Prosecution of Faso, assisted by his assistants at the level of the High Courts of Justice. ……”.

Paragraph 297: It is better to say rather: “The general mission of police services is maintenance of public peace and protection of national institutions. Hence, they are in charge of prevention (Administrative Police), and investigation of any offense, including money laundering and activities associated with terrorism (Judicial Police).

Paragraph 298: There is a need to review the formulation as follows: The National Police, with a total staff of about 6,000 people, comprises a Headquarters, six (6) Central Departments, thirteen (13) Regional Departments and forty-five (45) Provincial Departments, sub-divided into Central Police Stations (45), District Police Stations (9) and Neighborhood Police Stations (132) and eighteen (18) Border Police Posts. This structuring comprises services in charge of the fight against economic and financial offenses (Divisions of Economic and Financial Police and Economic and Financial Brigades) and Services in charge of the fight against terrorism (Divisions of the Surveillance of the Territory and Regional State Security Services).

Paragraph 299: There are a few errors in the organizational chart of the National Gendarmerie. Hence, the paragraph could be corrected as follows: “The Gendarmerie, with a staff of about 5,000 men, assumes the task of administrative police (prevention), military police and judicial police. It comprises a Headquarters; three (03) Gendarmerie Regions, which are sub-divided into Departmental Gendarmerie Groups, Mobile Gendarmerie Groups; Research Companies and Sections, Brigades. The Research Sections are composed of economic and financial units and many others. The economic and financial units are in charge of investigations into economic and financial offenses (e.g.: embezzlements, bankruptcies and money laundering). Besides, the Gendarmerie has a mission of ensuring the operational defense of the territory.

Paragraph 303: At the time of the mission, the CENTIF had not transmitted the report on a declaration of suspicion to the Prosecution Department. The subjected persons rather complain to the Prosecution Department, where necessary.

Paragraph 312: It should be noted that the 356 magistrates are not enough.

Paragraph 313: the Gendarmerie is not only service that has no adequate staff to enable it to cover the entire national territory. It is, therefore, better to say: “organization of police and gendarmerie services appear adequate and well structured. However, according to the interlocutors their human (and financial) resources are quite limited in the face of the challenges. Hence, the staffing position of the national police and the national gendarmerie do not make it possible for the services to cover the entire national territory”.

Paragraph 315: The police officer and gendarme should sit for a competitive examination before being admitted to training institutes. They should not have had a criminal record, they should undergo an examination of morality and attend courses on ethics during their training. It should be noted that the national police has a Code of Good Conduct being reviewed to enhance some of its provisions (cf. Order No. 2004-077/SECU/CAB of 27/9/2004).

Paragraph 317: Police officials receive a training of two (2) years for the grades of Assistants and Police Officers and three (3) years for Police Commissioners.

Paragraph 318: Review this paragraph, taking into account the following appreciations: “The NCOs of the gendarmerie receive a two-year basic training before being appointed judicial police constables. After about ten years in the field, they become Judicial Police Officers (JPOs),

through a competitive examination. All Brigade Commanders are Judicial Police Officers. The Gendarmerie Officers are trained in Officer Cadet Schools in Burkina Faso, Europe or in the sub-region; they then take a specialization course called “Gendarmerie Application”. They are then appointed Judicial Police Officers.

Paragraph 320: Please find attached the statistics of the Police and the Gendarmerie on the number of investigations and seizures. These statistics were transmitted to the mission on 12 June 2009 at its request. The statistics of the Ministry of Justice do not contain details of the confiscations.

Paragraph 327: Regulation No. R09/1998/CM/WAEMU on external financial relations of WAEMU member States known as Regulation R09, dated 20 December 1998 instead of 27 December 1998.

Paragraph 328: Residents travelling abroad may carry on them, in foreign exchange in the form of bank notes, only the equivalent of CFAF 2,000,000, or 3,054 Euros.

Paragraph 348: Although it is not explicitly banned by the text, the opening of anonymous accounts or accounts under false names is not a current practice in the UMOA zone. Indeed, the production of a valid identity card is mandatory for opening accounts in the books of local banks. Besides, full references of the account holders are indispensable to inform the Bank Account Database (BAF).

Paragraph 371: In our view, exemption from identification concerns rather the client financial agency for its own operations and not for operations carried out on behalf of third parties. On the contrary, it should be noted that the exemption from identification of a financial agency client subjected to the same AML Act does not dispense the latter from identification of its customers as provided for by Article 7 of AML Act No. 026-2006.

Paragraph 394: The United Nations Convention against Corruption signed in Merida on 09 December 2003 was ratified by Burkina Faso on 23 June 2006. This information was communicated to the Head of the evaluation team at his request on 12 June 2009.

Paragraph 410: SONAPOST is in the scope of application of Instruction No. 01/2007/RB of 02 July 2007 of the BCEAO (Article 3) and, in this regard, it is under obligation to establish an AML program, since of entry into force of the Instruction.

Paragraph 416: Write: “Article 10 of Act No. 026-2006” instead of “Article 10 of Act No. 06-066”.

Paragraph 434: The information on originators (name, account number) of transfers featuring on their transfer orders. This information is transmitted to the banks of the beneficiaries if they request for it.

Paragraph 545: Withdrawal of manual currency exchange authorization is pronounced by order of the Minister of Finance, after approval by the BCEAO, if among others, it is observed that the exchange bureau is not carrying out any of the activities authorized by the manual exchange authorization order, for at least one (1) year, (Article 3 of Instruction No. 11/RC of 25/08/2005 on conditions of validity and modalities of withdrawal of authorizations on manual exchange permit). The period of six (6) months was granted to exchange bureaus whose authorization was less than one (1) year old on the date of entry into force of the above-mentioned Instruction (Article 6).

Paragraphs 562 and 579: The supervision of manual currency changers does not depend on BCEAO alone but also on the External Finance Department (the DGTCP in Burkina). Indeed, Article 14 of Regulation R09 stipulates that “authorized intermediaries should report to the

External Finance Department and the BCEAO for control purposes, payments made to or received from abroad". Since it was not stated that this control should be jointly done, each institution can conduct separately its supervision activities.

Paragraph 568: Depending on the seriousness of the situation, the weaknesses observed by the missions of the CB-WAMU transmitted by mail to the Minister of Finance, the Central Bank and the authorities of the bank concerned.

Paragraph 588: Since the Regional Board fixes itself the content and conditions of transmission of the information it solicits, this situation, contrary to the conclusions of the mission, is in line with the recommendations of FATF (R29).

Paragraph 592: Write rather: "…....Act No.026-2006 …....." instead of "….. Act No. 2004-09 …..", which is not the AML Act of Burkina.

Paragraph 605: The Unit of the MEF (Micro-finance Department) in charge of monitoring has about sixteen (16) persons (of all categories) for a portfolio of 320 entities (mutualist or not). Only six (06) persons are affected to control tasks *stricto sensu*. This information was communicated to the head of the evaluation team on 12 June 2009.

Paragraphs 619 and 626: Contrary to what is written, transfer houses should obtain an authorization of the Minister of Economy and Finance. This authorization is granted following a request of the certified bank intermediary and in view of a partnership agreement signed between it and the sub-agent. Indeed, it should be noted that Article 2 of Regulation R09 stipulates that "exchange operations, movements of capital and settlements of any kind between the WAEMU and outside, or within the WAEMU between a resident and a non-resident, can only be made through the BCEAO, the Post Office Administration, an authorized intermediary, or an authorized manual exchange operator, in the framework of their respective jurisdictions, as defined in Annex I". Transfer houses do not depend on the categories of persons mentioned in this article; they would engage their responsibility by carrying out, without agreement from the competent authority, financial operations with the outside world.

A general census of agents authorized to effect money transfers in partnership with banks was carried out by a joint DGTCP/BCEAO mission in December 2008. The provisional version of the report is available. The number of structures authorized to effect money transfers was 85 for 122 agencies in activity.

Paragraph 643: At the end of the deliberation of the Council of Ministers on 03 June 2009, the official list comprised ten (10) notary studies (eight (8) for Ouagadougou and two (2) for Bobo - Dioulasso, the second town of the country).

Paragraph 688: It is the Minister of Economy and Finance who grants authorization to exercise electronic funds transfer activity and not the Minister of Tourism.

Paragraph 690: According to official statistics, the first private employer of Burkina is rather the COMOE Sugar Company (SOSUCO), which employs about 4,000 people, including 2,400 permanent employees.

Paragraph 761: It is necessary to complete the list of agreements in the area of mutual legal assistance:

- the Agreement on Cooperation in Judicial Matters of 24 April 1961 signed between Burkina Faso and France;

- the ECOWAS Convention on Mutual Assistance in Criminal Matters, signed in Dakar on 29 July 1992;
- the Convention on Assistance and Cooperation in Security Matters between member States of the *Conseil de l'Entente*, signed in KARA (Togo) on 15 February 1996;
- the General Convention in Judicial Matters of 23 November 1963 between Burkina Faso and Mali;
- the General Convention of Cooperation in Legal Matters, signed on 12 September 1961 between member States of the ex-OCAM;
- the Convention on Mutual Assistance in Judicial Matters signed on 6 August 1994 between ECOWAS member States;
- the Convention on Cooperation and Mutual Assistance in Judicial Matters signed on 20 February 1997 between member States of the *Conseil de l'Entente* (CHP. IX).

Paragraph 790: Since Act No. 026-2006 (Article 64) provided for the possibility of agreements on the sharing of confiscated property with the other countries, such agreements could be negotiated.

Paragraph 799: The general rules of the extradition procedure are still governed by the Act of 10 March 1927 on extradition of foreigners. By virtue of this Act, Burkina Faso can react favorably to a request for extradition and this, even in the absence of a treaty between the requesting State and our country. It should, however, be noted that certain specific internal laws and certain bilateral, regional, sub-regional and international conventions go against this Act of 10 March 1927; they are mainly:

- Agreement on Cooperation in Judicial Matters of 24 April 1961, signed between Burkina Faso and France;
- the General Convention on Cooperation in Judicial Matters of 23 November 1963 between Burkina Faso and Mali;
- the General Convention on Cooperation in Judicial Matters, signed on 12 September 1961 between member States of the ex-OCAM;
- the Convention of Mutual Assistance signed on 6 August 1994 between ECOWAS member States;
- the Convention on Cooperation and Mutual Assistance in Judicial Matters signed on 20 February 1997 between member States of the *Conseil de l'Entente* (CHP. IX).

Pages 160, 164 and 177: Harmonize the ratings for R 37.

Paragraph 815: The Customs Department may cooperate with its colleagues on the basis of the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offenses of 9 June 1977 and the International Convention on Mutual Administrative Assistance in Customs Matters of 27 June 2003.

Page 169: Comment on the following justification of the Rating for R 30: "Lack of measures for guaranteeing the integrity of the staff of the CENTIF": The members of the CENTIF respond to the measures of their administrations of origin in the area of integrity. Besides, they swear an

oath before the Appeal Court to respect the confidentiality of the information collected before the entry into function of the CENTIF. This oath remains in force even after cessation of their activities at the CENTIF. Finally, Decree No. 2007-449/PRE/PM/MEF/MJ of 18 July 2007 on attributions, composition and operation of the CENTIF provides in its Article 6, apart from their salaries, a special monthly work allowance for public servants, during the entire duration of their function at the CENTIF. Concerning the technical and administrative support staff, their integrity is governed by their conditions of recruitment, including an investigation on their morals, the by-laws and code of ethics of the CENTIF. Besides, the members of staff, on their assumption of duty, commit themselves in writing to keep secret the information of the Unit, a commitment which is included in the personal database of each agent.

Pages 169 and 176: Harmonize the rating for R 32 and replace on page 169, 4th paragraph, "Mali" with "Burkina".

Table 1: Rating on compliance with the Recommendations of FATF

R13: In our view, there are no two competing mechanisms of declaration of suspicion since the persons subjected to the declaration are covered in Article 24 of the AML Act. The obligation of declaration provided for in Article 9 is, in reality, not competing but rather complementary to the one set forth in Article 24.

R17: The conflict of interest within the BC-WAMU because of the presence within it of representatives of BCEAO and the States would need further explanation.

R22: Burkina does not have, even during the stay of the evaluation mission, banks with subsidiaries and branches abroad. Hence, the rating N/A could be retained for this recommendation.

R25 :

- Instruction No. 02/2007/RB of 02 July 2007 has been largely disseminated by the National Branch of the BCEAO;
- the development of the AML Guidelines for the subjected persons depend on their control organizations and not the CENTIF;
- the Council of Ministers of CIMA adopted Regulation No. 04 of 04 October 2008 defining the procedures applicable by insurance companies in the area of AML/FT, and a copy of which was given to the mission.

R27: In terms of initiatives for acquiring expertise in the area of AML/FT, magistrates and JPOs of Burkina participate in training courses at the Regional Drug Control Training Centre (FIULD) in Abidjan, Côte d'Ivoire.

R31: Apart from the creation of the National Committee for Monitoring the Activities of GIABA (CNSA-GIABA), the network of correspondents of the CENTIF also play a role of coordination between national structures involved in the AML/FT.

R32: Write "insufficiency of statistics" instead of "lack of statistics".

R33: The comment and rating are not justified because Article 22 of the OHADA Uniform Act on the general commercial law imposes, concerning the inscription on the trade register, on the authorized agent, except if he is a recognized lawyer, bailiff or notary, to justify not only his identity but a power of attorney from the reporting entity. This clause also provides for a National Database of the trade register that may be consulted by any authority.

R35: According to the Constitution of Burkina, International Conventions prevail over national laws.

R40: Police: It should be pointed out that the efficiency of exchanges of information with foreign colleagues is acknowledged and may be evaluated. In the area of cross-border crime, there is permanent cooperation between the National Police and the Interpol network through the I24/7 System. Consequently, any complaint registered results in an investigation. In 2008, thanks to the exchanges of information, 1,062 messages were received and 495 issued, 19 prepared proceedings were transmitted to the Prosecution Department. In 2009, by 30 March 2009, 381 messages had been received and 217 issued, 12 proceedings transmitted with 11 persons handed over to the Prosecution Department of Ouagadougou. During the same period in 2009, 11 stolen vehicles were found by the Police.

Table 2: Recommended action plan for improving the AML/FT system

R1 and R2:

- Measure 5: The sensitization and training activities have started being implemented by the CENTIF. Indeed, an action plan has been adopted, which includes the organization of workshops for all subjected entities by the end of 2009. Already, the workshop for banks was organized from 31 March to 03 April 2009 and another for the staff and correspondents of the CENTIF in the different administrations, from 07 to 09 July 2009. Besides, the CENTIF has had working sessions with five (5) anti-money laundering units of banks and will be pursued with the other banks and insurance companies.

SR II

- Measure 1: The bill on suppression of terrorism and the one on the fight against terrorism were adopted by the Council of Ministers respectively on 06 and 20 May 2009. These two projects were transmitted to the National Representation, which could examine them at its session of September 2009.

- Measure 2: The adoption will concern the Single Act of the WAMU Council of Ministers of 28 March 2008. The elements advocated in this measure can only be addressed in the framework of a regional review of the Single Act on combating the financing of terrorism (CFT).

R26:

- Measure 1: The model form for declaration of suspicion to the CENTIF was adopted by Order No. 2009-0180/MEF/CENTIF of 29 May 2009. The said order, the suspicion declaration form and a data sheet on filling of the form were immediately distributed to the persons and entities concerned, either directly or through the intermediary of their self-regulatory agency.

- Measure 2: Correspondents of the CENTIF in the different administrations concerned swore an oath before the Ouagadougou Appeal Court on 19 March 2009.

- Measure 3: The CENTIF benefited from a detachment from 1st April 2009 of two officials of the administration to occupy the positions of Analyst and Financial and Administrative Officer. Besides, the CENTIF launched on 07 August 2009, through the press, an advertisement for recruiting additional staff, a Computer Specialist and a Bilingual Secretary, two Drivers and a Liaison Officer.

- Measure 4: The bill presented to the National Assembly for adoption already established the extension of the jurisdiction of the CENTIF to cover CFT.

R10 and SR VII:

- Measure 4, R10: There is no provision in the AML legislation of the WAEMU, hence, of Burkina that prescribes for subjected persons and entities the systematic transmission of documents on customers and operations to the competent national authorities. However, the latter have full access, on the spot or at their request, to all the information held by the subjected entities.

R11 and R21

- Measure 3: Article 718 of the Uniform Act relating to Commercial Companies and Economic Interest Group vast access to documents of the businesses by their Auditors and at any time of the year.

R13, R14, R19, R25 and SR IV

- Measure 1, R13: The conditions under which the subjected entities should declare their suspicion are specified by Articles 25 and 26 of AML Act No. 026-2006.

- Measure 2, R13: The CENTIF is operational. Indeed, the members and correspondents were sworn in respectively on 09 December 2008 and 19 March 2009 and the model of declaration of suspicion was adopted by Order No. 2009-0180/MEF/CENTIF on 29 May 2009. Besides, as of 19 August 2009, the CENTIF has received a total of about twelve declarations of suspicion, one of which has been referred to the Prosecution Department.

- Measure 1, R14: The condition of exemption from any sanction for financial institutions, their managers and employees is that the declaration should be made in good faith (Article 28 of AML Act No. 026-2006).

- Measure 2, R25: The feedback to subjected entities is provided for by Article 27, paragraph 2 of AML Act No. 026-2006, which stipulates that “the CENTIF shall inform, at the appropriate time, entities subjected to declarations of suspicions about the findings of its investigations”.

R17, R23, R25, R29, R30

- Measures 8 and 10: The sensitization and training workshops on the AML/FT for Micro-Finance Institutions (MFIs), authorized manual money changers and sub-agents of electronic money transfer companies are provided for before the end of the year 2009.

R12

- Measure 3: The AML legislative and regulatory texts, including Act No. 026-2006 were widely disseminated among the subjected persons and entities in February 2009.

R31:

- Measure 1: A National Monitoring Committee for the Activities of GIABA was created by Inter-ministerial Order No. 2009-0084/SECU/MEF/MJ on 22 June 2009.

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