

INTER-GOVERNMENTAL ACTION GROUP AGAINST
MONEY LAUNDERING IN WEST AFRICA

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

CÔTE D'IVOIRE

NOVEMBER 2013

Côte d'Ivoire is a member of the GIABA. This evaluation was conducted by the GIABA secretariat and was then discussed and adopted by its November 22nd Plenary 2012 as GIABA 14th mutual evaluation.

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MALI
BURKINA FASO
GUI.
LIBERIA
GHANA
Volta Noire
Odienné
Korhogo
Touba
Séguéla
Katiola
Bondoukou
Bouaké
Man
Monts Nimba
Lac de Kossou
Komoé
YAMOUSSOUKRO
Daloa
Lac de Buyo
Abengourou
Sinfra
Dimbokro
Gagnoa
Bandama
Adzopé
Agboville
Divo
Sassandra
Aboisso
Dabou
Abidjan
San-Pédro
Golfe de Guinée
0 50 100 km
0 50 100 mi

ACRONYMS	
AACB	Association of African Central Banks
AUDCG	Uniform Act on General Commercial Law
ANRMP	National Public Procurement Regulation Authority
AUSC-GIE	Uniform Act on Commercial Companies and Economic Interest Group
ATCI	Côte d'Ivoire's Telecommunications Agency
BACI	Banque Atlantique – Côte d'Ivoire
BCEAO	Central Bank of West African States
BCN/Interpol	National Central Bureau of Interpol
BIAO CI	International Bank for West Africa – Côte d'Ivoire
BFA	Bank for Financing Agriculture
BH-CI	Côte d'Ivoire Housing Bank
BICICI	International Bank for Trade and Industry of Côte d'Ivoire
BRL	Regional Liaison Office
BTP	Public Building and Works
BVRM	Regional Stock Exchange
CCD	Law Development Centre
CCP	Criminal Procedure Code
CCJA	Common Court of Justice and Arbitration
ECOWAS	Economic Community of West African States
CEN	Customs Enforcement Network
CEEAC	Economic Community of Central African States
CEMAC	Central Africa Economic and Monetary Community
CENTIF	National Financial Information Processing Unit
CERF	Financial Intelligence Unit
CERT-CI	Computer Emergency Response Team – Côte d'Ivoire
CIMA	Inter-African Conference on Insurance Markets
CILAD	Inter-ministerial Committee on Drug Control
CRCA	Regional Commission for Insurance Control
CNDJ	National Legal Documentation Centre
CNCJ	National Chamber of Legal Advisers
CNCE	National Savings Funds
CNPS	National Social Security Fund
CNCE	National Savings Union Funds

COBAC	Central African Banking Commission
CNSA/GIABA	National Follow-up Committee for GIABA Activities
FIU	Financial Intelligence Unit
CREPMF	Regional Council for Public Savings and Capital markets
CSBAOC	Committee of Banking Supervisors of West and Central Africa
DA	Department of Insurance
DT	Department of Treasury
DM	Department of Micro-finance
STRs	Suspicious Transaction Reports
DGPN	National Police
DNFBPs	Designated Non Financial Businesses and Professions
IMF	International Monetary Fund
FATF	Financial Action Task Force
GIABA	Intergovernmental Action Group Against Money Laundering in West Africa
GIS	Intervention and Security Squad
GIE	Economic Interest Group
JAI	Joint Africa Institute
JO	Official Gazette
AML/CFT	Anti-Money Laundering and Countering Financing of Terrorism
CFT	Countering Financing of Terrorism
OHADA	Organization for the Harmonization of Business Law in Africa
ICPO	International Criminal Police Organisation
IOSCO	International Organization of Security Commissions
NPOs	Non-Profit Organizations
WCO	World Customs Organization
OPJ	Judicial Police Officer
OF	Financial Organisations
OPCVM	Undertakings for Collective Investments in Transferable Securities
OCAM	African and Malagasy Common Organization
UN	United Nations
NGO	Non Governmental Organisation
PARP	Poverty Reduction Support Programme
PEPs	Politically Exposed Persons
GDP	Gross Domestic Product

HIPC	Heavily Indebted Poor Countries
NCCTs	Non Cooperative Countries and Territories
RCCM	Trade and Personal Property Credit Register
LTD	Limited Company
LLC	Limited Liability Company
SECOM	Communication Department
SIGFIP	Integrated Public Finance Management System
SGB CI	Société Générale de Banque – Côte d'Ivoire
MIC	Management and Intermediation Company
AMC	Asset Management Company
DFSs	Decentralized Financial Systems
SYDAM	Customs Computerized Goods Clearance System
MVT	Money or Value Transfer
ISRT	Inter-State Road Transit
AU	African Union
WAEMU	West African Economic and Monetary Union
WAMU	West African Monetary Union
UNODC	United Nations Office against Drugs and Crime

PREFACE

GENERAL INFORMATION AND METHODOLOGY USED FOR THE COTE D'IVOIRE MUTUAL EVALUATION

1. The evaluation of the national regime of anti money laundering and combating the financing of terrorism (AML/CFT) of Côte d'Ivoire was led by the Intergovernmental Action Group Against Money Laundering in West Africa (GIABA), on the basis of the Forty Recommendations of 2003, and the Nine Special Recommendations of 2001 and the Evaluation Methodology of 2004, drafted by the Financial Action Task Force (FATF).

2. The rules, regulations and other related documents provided by the domestic authorities of Côte d'Ivoire were fundamentally the basis of the analysis of this evaluation. Besides, the evaluation mission obtained additional information from heads and representatives of competent governmental organizations, the private sector, and the civil society organizations during the field visit that took place from May 7-12, 2012. A list of the organizations encountered is on the Appendix 3 of the comprehensive report of the Mutual Evaluation.

3. Four (04) experts, representative of ECOWAS member states, were designated by GIABA Secretariat to partake the mission of the Côte d'Ivoire Mutual Evaluation. They had relevant knowledge in the field of AML/CFT and were to be trained beforehand on the FATF Evaluation Methodology. The assessors had also acquired a professional experience in the fields that require their expertise. Two other experts representing France and the United Nations took part in the mission of Mutual Evaluation, as assessor and observer, respectively. The assessor's team was made of:

- **Two financial experts**: Mrs Sévérine Dossou, Director of the Benin FIU and Mister Guillaume MATHEY, lawyer, head of the group in charge of legal matters of the Prudential Control Authority/Bank of France;
- **Two operational experts**: Mr Robert TONDE, inspector of treasury, Director of the Burkina Faso FIU, and Mister Mamadou THIANDOUM, police commissioner, Director of the air and border police of Senegal;
- **A legal expert**: Mr Elpido Jacintho FREITAS, regional consultant on AML/CFT matters, representative of Togo;
- **An observer**: Ms Samia LADGHAM, lawyer at the United Nations Counter Terrorism Executive Directorate Committee.

4. The coordination of the Côte d'Ivoire Mutual Evaluation was handled by the team of the GIABA Secretariat, comprising, Misses Monique Désiré BOCANDE (Mission Secretary), Secretary of the Deputy Director General of GIABA, Mister Madické Niang (coordination assistant), Research and Planing Assistant at GIABA, Mrs. Mariame Ibrahim Touré (Mission Coordinator), officer in charge of Research, Documentation and Planning in GIABA, under the effective supervisor of Doctor Ndeye Elizabeth DIAW, Deputy Director General of GIABA.

5. The experts analyzed the institutional framework, laws related to AML/CFT, regulations, guidelines and other relevant laws, applied in Côte d'Ivoire. The regional institutional and legal framework, namely, the ECOWAS community background, WAMU,

UEMOA, the Inter-African Conference on Insurance Market (CIMA), and OHADA was taken on board for a general appreciation of the anti money laundering and combating the financing of terrorism regime in force in Côte d'Ivoire. Representative of some of these regional institutions were met by the evaluation mission, namely, those from the West African Central Bank (BECEAO), the WAMU Banking commission, SEC and CREPMF.

6. The hereby report is an overview of the institutional and legal matters prescribed on AML/CFT issues in Côte d'Ivoire, the efficiency as well as effectiveness of their implantation. During the onsite visit (7-21 May 2012.) and two months later. The shortcomings of the AML/CFT national regime of Côte d'Ivoire were epitomized on the rating table (refer to table1). Corrective measures were recommended to be implemented by the Ivorian authorities for a better compliance of their national AML/CFT regime with international required norms and standards in the field (see table 2).

I. GENERAL INFORMATION

1.1 General Information on Côte D'Ivoire

1. Côte d'Ivoire is a French-speaking country in West Africa. Open to the Gulf of Guinea, it has an area of 322, 462 square kilometres and is bordered to the East by Ghana, to the West by Liberia and Guinea, to the North by Mali and Burkina Faso. Its political capital is Yamoussoukro and Abidjan, its economic capital.

2. Côte d'Ivoire's population was estimated at 22 million inhabitants in 2010 with an average demographic growth of 1.9%[1]. 52 % of the population is urban. Generally, the West African region is characterized by high population mobility. Thus, Côte d'Ivoire appears as the first immigration country for populations in the sub region with about 26 % of foreigners on its territory.

a. Political and administrative organization

3. The 1st August 2000 Constitution makes Côte d'Ivoire a democratic State with an executive presidential regime. It formally establishes the separation of powers, executive, legislative and judicial. The political and administrative organization as provided by the 2000 Constitution was strongly disrupted by the outbreak of the political and military crisis in September 2002 and the post-electoral crisis of 2011. The presidential election of 28 November 2010 and the parliamentary poll of 11 December 2011 (that elected 255 MPs) marked the resumption of normal functioning of the institutions.

4. Executive power is exercised by a Republic President who is elected by direct universal suffrage for a five-year term renewable once. He is assisted by a government led by a Prime Minister. As regards the legislative power, it is exercised by a unicameral Parliament called National Assembly whose 255 members are elected for a five-year (05) term renewable.

5. The judiciary is based on a sole jurisdictional order.

6. It should be noted the existence of military courts, with jurisdiction to hear offences committed by armed men which were holding sessions to punish offences committed by the military during the socio-political crisis as the mission was conducted.

7. Under the 2000 Constitution, justice is delivered on the entire national territory by the Courts of Cassation, the State Council, the Courts of Appeal, the High Court's (TPI) and their detached sections The establishment of these three supreme jurisdictions mentioned above is yet to be effective. This explains why the specialized chambers of the Supreme Court are still operational.

8. At the lower level there are first and second degree jurisdictions**.** Indeed, first degree jurisdictions namely the High Court's (TPI) and detached sections, handle disputes in the first place. There are seven TPIs divided across the major cities: Abidjan, Abengourou, Bouaké,

[1] Fiche country : Côte d'Ivoire sur www.rfi.fr

Daloa, Gagnoa, Korhogo, Man and Yopougon, as indicated in Decree No.97-673 of 3rd December 1997, establishing the first degree jurisdiction and development of detached sections into first degree courts and determining their headquarters, their provincial outposts and their composition.

9. Detached sections are jurisdictional units established in small communities, to bring justice closer to the people. They work with one or two Magistrates who are competent in all matters.

10. There are three second degree jurisdictions: the Abidjan Appeal Court, the Appeal Court of Bouaké and that of Daloa. The outpost of the Appeal Court of Abidjan covers the High courts in Abidjan, Yopougon and Abengourou as well as their detached sections. That of the Bouaké Court of Appeal covers the courts of Bouaké and Korhogo as well as their detached sections The Daloa Appeal Court covers the TPI in Daloa, Man and Gagnoa as well as their detached sections.

11. Appeal Courts hear appeals filed against decisions delivered by TPI and their detached sections. Each Appeal Court comprises headquarter and a Public Prosecution Office. The headquarters is under the authority of a chief judge and is divided into courts each led by a President of the Chamber assisted by Counsellors. The Public Prosecution Office is headed by a Public Prosecutor who has under his orders General Barristers and General Substitutes. These courts have jurisdiction to handle disputes between associates of a trade company or a GIE, disputes related to commercial transactions, collective procedures of liability clearance, of all disputes. The Commercial courts have also got the jurisdiction for the management, at the level of the registry, the Trade and Personal Property Credit Register (TPPCR). Until the commercial courts are fully established, common law courts have the jurisdiction on trade issues. For the time being, there is only one commercial court which is operational, namely the Abidjan commercial court established by Decree N° 2012-628 of 6th July 2012.

12. Concerning the exequatur and enforcement of authentic instruments and foreign legal decisions, Articles 345 and following of the Ivorian Civil and Administrative Commercial Code determine the conditions necessary for enforcing foreign court rulings. Moreover, a Memorandum of Understanding in the field of Justice was signed between France and Cote d'Ivoire on 24 April 1961. In Article 36, this Agreement provides for the conditions in which a contentious or non-contentious decision issued by courts in either of the two States has full authority over the matter judged in the other State.

13. The exequatur is granted by the President of the Court of the place where the trial should be done.

14. The Constitution also provides for a High Court in charge of judging the President of the Republic in case of High Treason and cabinet members for charges considered as crime or offences in the line of their duties.

15. In terms of administrative territorial division, Côte d'Ivoire has 12 districts, 30 regions, 95 departments, 498 sub-prefectures and 197 local authorities.

16. With respect to foreign relationships, we note that Côte d'Ivoire belongs to many organizations including the United Nations (UN), the African Union (AU), the Economic Community of West African States (ECOWAS), the West African Economic and Monetary

Union (UEMOA), the Council of the Entente, the franc zone, the Organization for the Harmonization of Business Law in Africa (OHADA), the Inter-African Conference on Insurance Markets (CIMA), the Intergovernmental Action Group against Money-Laundering in West Africa (GIABA) and the Mano River Union, among others.

b. Macroeconomic data

Growth over the past decade

17. The economic situation in Côte d'Ivoire has significantly changed over the last ten years and is particularly influenced by the unstable socio political situation the country experienced from 1999 to 2011. According to a 2008 Living Standard Survey (2008 LSS) conducted by the National Statistics Institute (INS), the economic and political crisis increased populations' poverty from 10% in 1985 to 48.9% in 2008. In 2008 Côte d'Ivoire developed a Program to Support Poverty Reduction and MDG Achievement (PARP-OMD) under the auspices of UNDP which was to be deployed from 2009 to 2013 to decrease the poverty rate from 49% to 17%. However, the figures could not be updated following the socio-political events experienced by the country in 2011. The Human Development Index is 0.400 making the country the 168th out of the world's 185 countries evaluated.

18. According to the UEMOA half-yearly Multilateral Surveillance Progress Report of June 2011, economic activity in Côte d'Ivoire in 2010 recorded a 2.4% growth rate against 3.8% in 2009 due to difficulties in electricity supply, declines in major productions of export agriculture and mining as well as the political crisis that occurred in late 2010. The economic activity took place amid low inflationary pressures. Inflation rate went down to 1.8% against 1.0% in 2009. For 2011, the Ivorian economy was marked by the post-electoral crisis that degenerated in armed conflict in the first quarter of 2011. The growth rate would stand at -6.3% according to the UEMOA against a -5.8% forecast for the IMF[2].

19. In 2010, economic growth stood at 2.4% against 3.8% in 2009 and was mainly led by the good performance of the Public Buildings and Works and the agri-food industry. The primary sector increased by 0.5% against 6.4% in 2009 with declines noted in cash crops. Conversely, the production of the food crop sector went up by 3.3% as a result of measures to develop food products, particularly investments in the rice production.

20. Mining declined by 17.6% overall and crude oil production slashed by 21.5% due to the cessation of operations at some wells related to maintenance works. Similarly, gold production receded by 28.0% mainly due to protest movements of populations living near mining areas. On the other hand, natural gas production increased by 8.2%, with the investments made and the high domestic demand to supply power plants for electricity production.

21. The value added of the secondary sector shot up by 4.7% against a 1.5% decline in 2009 due to the 27.2% production hike in the BTP sector. The tertiary sector increased by 2.7%, driven by the dynamism noted across the sectors, notably trade that bounced by 2.6% as well as telecommunications and transports that grew by 5.5% and 0.8% respectively.

[2] http://koachi.com/articles-7131

Ultimately, the primary, secondary and tertiary sectors have contributed to the GDP growth by 0.2 point, 1.0 point and 1.2 point respectively.

22. Under the assumption of final normalization of the socio-political situation and the HIPC Initiative completion rate, the economic activity was projected to grow by 4.0% for 2011. The political crisis has hindered the fulfillment of these assumptions. Contributions to the GDP growth in the primary, secondary and tertiary sectors would stand at -0.1, -1.8 and -4.4 respectively.

23. The year 2012 should confirm the recovery of the Ivorian economy with a normalized socio-political situation and financial supports from development partners as part of the post-crisis reconstruction.

Sectoral breakdown of the Gross Domestic Product (GDP)

24. The GDP was 11, 366.7 billion CFA francs in 2011 and is divided as follows :

	Primary Sector	Secondary Sector	Tertiary Sector	Non-Market Sector	Total GDP
GDP Growth (%)	1.7	- 9.7	- 12.7	3.9	- 5.8
Share in the GDP (%)	28.8	21.6	36.7	12.9	100
Contribution to GDP Growth (%)	0.5	- 2.1	- 4.7	0.5	- 5.8

Source: Economic and Financial Report for the 2012 Finance Act- General Directorate of the Economy

25. The informal sector holds a significant place in the Ivorian economy. It remains vibrant both for agriculture, services and the industry. It seems certain that it is going to experience a significant change because of the politico-military crisis that resulted in the closure of many businesses and loss of several jobs. This sector is marked by a predominance of cash transactions with a banking rate still very low (7.12%). In view of this fact, the money laundering risk becomes real, particularly through manual money exchange and property transactions which are a major concern.

1.2 General Situation of Money Laundering and Terrorist Financing

26. Côte d'Ivoire has expressed its willingness to crack down on corruption and promote good governance. This should translate into the government's requirement to be accountable by promoting the rule of law and strengthening democracy as well as transparency in public resource management and ethics development. A national plan for good governance and combating corruption for 2010-2014 is in the process of validation.

27. Public officers and those under public structures are subject to compliance with a Code of Ethics and to specific Codes depending on their professions. The various private and public professions are subject to a conventional professional or regulatory Code of Ethics.

28. In Côte d'Ivoire, governance has secured gains despite the persistence of many loopholes. At the level of public funds, the advent of Integrated Public Finance Management System (SIGFIP) has defined the electronic management of budgetary operation route. With a view to help generate reliable financial and accounting data that are essential for appropriate decision-making, The Department of Treasury and Public Accounting has set up an accounting, budgetary and modular management software called ''ASTER''. The introduction of these technologies has opened new possibilities of control and transparency.

29. On public procurement, a new procurement code for enhanced transparency has been adopted. Equally, the establishment of the National Public Procurement Regulation Authority helps regulate and arbitrate markets. A special module of the SIGFIP contributes to make effective control of the requirement to contract from an expenditure threshold. At the Customs Department, there is the Computerized Goods Clearance System (SYDAM) charged to secure taxation and collection of duties and taxes. The new version of SYDAM dubbed SYDAM WORLD, builds the customs department's capacity to handle and combat fraud.

30. Regarding domestic taxation, the General Tax Directorate has set up the ''Info centre'' to facilitate tax collection. Similarly, there are budgetary control structures including the General State Inspectorate, the General Finance Inspectorate with a special anti-corruption brigade, the General Treasury Inspectorate, the Public Expenditure Review Unit and the Financial Control Directorate.

31. Regarding its process of compliance with international standards on good governance, Côte d'Ivoire has ratified several relevant international conventions and set up structures in charge of fighting Money Laundering and Terrorist Financing (AML/CFT). Thus Côte d'Ivoire has ratified the United Nations Convention against Corruption, the African Union Convention and the ECOWAS Protocol on combating corruption. Control structures are the National Follow-up Committee for GIABA Activities (CNSA-GIABA) which designs and implements the national policy on the matter and the Financial Intelligence Unit (FIU/CENTIF) whose mission is to collect, analyze and process information required to establish the origin of transactions or nature of operations subject to suspicious transaction reports.

32. In the absence of a typology study and relevant statistics, the overall situation on money laundering could be seen based on information about predicate offences as the law considers all offences and crimes likely to be predicate offence of money laundering in Côte d'Ivoire. Therefore we can identify diverse sources of the proceeds of crime.

a. Predicate offences

33. FATF recommends criminalizing as serious offences at least twenty categories of offences which it has described as such. Côte d'Ivoire has gone beyond this requirement by criminalizing ''any crime or offence'' as predicate offence.

34. The report of the National Police Department indicates that 137, 663 offences were reported in 2007 against 122, 669 in 2008 or a 10.89% decline. The major predicate offences include thefts all categories (59, 497 cases in 2007 and 47, 661 cases in 2008) and financial offences (34, 002 cases in 2007 and 33, 555 cases in 2008). In addition, a new type of offence such as those related to new Information and Communication Technologies emerged. According to the 2008 Report by CENTIF CI, several studies revealed that a large number of

unwanted emails or spams in the forms of Internet fraud come from Côte d'Ivoire. To curb this scourge, the authorities have put in place a Centre for Standby, Surveillance and Handling of Incidents on information networks (CERT CI). Moreover, the government is considering a draft Order against cyber criminality.

35. Data from Côte d'Ivoire's customs department on smuggling show 55 cases in 2006 against 57 in 2007 and 174 in 2008. Monetary values corresponding to these cases increased to 301, 287, 589, 91, 503, 417 and 1, 670, 035, 643 CFA francs. The extent of counterfeiting in the country can be seen through the consequences of the scourge on the country's economy. Indeed, in the textile sectors, three manufactures closed down. In the food industry 14 counterfeiting cases were filed to the courts with 5 convictions and 9 pending trial.

36. On drug-trafficking, the West African sub- region is recognized as a transit point for large quantities of drugs from Latin America.

37. In terms of suppression, statistics of convictions for dominating offences from 2009 to 2011 reveal 4, 940 cases of theft, 1, 728 cases of fraud, 1, 506 cases of breach of trust, 694 cases of drug-trafficking and 519 cases of forgery. Purely economic and financial offences that largely dominate are fraud, breach of trust and forgery.

38. Corruption does not appear as a predominant offence in Côte d'Ivoire because over the period under review, only four convictions were handed down by the Abidjan-Plateau Regional Court while in the previous period up to 2004, only 5 were delivered or a total of 9 convictions in 8 years. This gives an average of 1) offense annually. Yet this scourge is a major concern for national authorities. Indeed according to the Corruption Perception Index published on 1st December 2011 by Ivorian NGO SOS Transparencies reflecting data from its partner Transparency International, Côte d'Ivoire is ranked 154th out of 183 countries with a 2.2 index making the country the 21th most corrupt in the world. The Mo Ibrahim Index which seeks to become the primary assessment of governance in Africa on its part rates Côte d'Ivoire 46th in 2011 out of 53 African countries reviewed (except South-Sudan). However, with the end of the military and political crisis and measures taken by the government ('Ethics Charter signed by all ministers to crack down on corruption and ensure an efficient and transparent administration), we can expect the country to make significant progress at the end of the 2012 and 2013 ranking.

39. The predicate offences mentioned above generate illicit proceeds amounting to almost 397.2 billion CFA francs, according to statistics available from the Directorate of Economic and Financial Police.

40. Finally, on Terrorist Financing and unlike some countries in the sub-region, Côte d'Ivoire is apparently not faced with such phenomenon. However, it may be at risk of terrorist threats or host terrorist financing activities without the knowledge of the authorities.

b. Assessment of national AML/CFT actions

41. In 2010 the CENTIF-CI expanded the list of its partners in the fight by establishing cooperation with the Designated Non-Financial Businesses and Professions (DNFBPs), including Lawyers and Notaries while maintaining consolidated links with the banking system. The significant decline in the number of STRs recorded over the period against 2009

(about 30%) is reportedly due to the slowdown in economic activity in the last quarter of 2010 in Côte d'Ivoire corresponding to an electoral period.

42. At the international level, CENTIF-CI was admitted into the Egmont Group of FIUs which has translated into a substantial increase of information requests recorded by CENTIF against 2009. CENTIF-CI received 56 STRs in 2010 against 81 in 2009 or 30.8%.down. Information requests rose by 250 % as opposed 2009 from 4 to 14.

43. The year 2011 was difficult in terms of actions to improve the situation of anti-money laundering and countering terrorist financing in Côte d'Ivoire with the conflict experienced by the country. However, the recent seminar on the development of the AML/CFT national strategy in Côte d'Ivoire held in late 2011 marks a new beginning for the country in the synergy of the fight and coordination of actions among all stakeholders. The rapid adoption of this strategy will certainly help make a quality leap forward.

44. According to the CENTIF activity reports from 2008 to 2011, the Unit received 198 Suspicious Transaction Reports (STRs) 11 of which were filed to the Prosecuting Departments.

45. In the absence of comprehensive studies on money laundering methods, available data shed light on the clues that led to the STRs received by CENTIF. These include large cash flows that do not match the customer profile (20 cases or 26.3%), suspicions on the economic grounds of various transfers abroad (16 cases or 21.1%), production of forged identity documents or multiple identities and fraudulent transfers or with fraudulent documents (5 cases or 6.6%).

1.3 Overview of the Financial Sector And Designated Non-Financial Businesses and Professions (DNFBPs)

a. Overview of the financial sector

Background

46. Real awareness by public authorities of the multifaceted nature and stakes of money laundering risk has not led the authorities to formalize a specific strategy for preventing and suppressing ML and FT in the financial sector. In the context of a recent revival of measures to raise the awareness of the reporting entities, the Ivorian authorities' willingness which has not yet resulted into programs and actions with clearly defined priorities cannot be assessed in view of the concrete results and acts.

47. The most significant progress over the last years is the adherence of CENTIF Côte d'Ivoire to the EGMONT Group of FIUs. The coming year suggests even greater challenges for the country with the resumption of all structures that were crippled by conflict over the last months.

Anti- money laundering and counter terrorist financing regime

48. In prudential terms, Côte d'Ivoire has not provided a risk-based approach. Therefore, the AML/CFT Act in force does not provide for the possibility for financial institutions to apply reduced or simplified measures even when the risks of ML or TF could be considered as low for example in the areas of micro-finance, currency and life insurance. However reduced and enhanced due diligence obligations are provided for some types of transactions or customers as well as exemptions for the identification of customers or the economic beneficial owner, including in case of suspicion of money laundering contrary to the FATF requirements.

49. The list of financial institutions accountable to the AML Act and CFT Order on the one hand, and the sectoral enforcement standards -Instruction of CREPMF n°35/2008, CIMA Regulation n°004, BCEAO Directive and Circular of the Banking Commission, on the other, is generally satisfactory.

50. The AML Act and CFT Order, as community-inspired laws are the cornerstone of the preventive and supervision system of reporting entities. They set the basic diligence requirements (customer identification as part of a business or occasional relationship, diligence on some restrictive types of transactions, record-keeping, establishment of policy and internal procedure) for financial bodies and other accountable persons. However they have basic weaknesses mainly related to the lack of identification of beneficial owners, enhanced due diligence measures for high risk business relationships and Politically Exposed Persons (PEPs). It is also true for the lack of specific requirement on the identification of former customers even though this category of customers can still hold anonymous accounts, numbered or opened under assumed names in the absence of any AML/CFT audit mission to each financial institution by the competent supervisory authorities.

51. Other provisions are unclear and incomplete. For example the AML/CFT Act makes no provision for general obligation to get information about the purpose and nature of the business relationship or any requirement to stop activities with fictitious financial institutions or keep anonymous accounts or under fictitious names or any obligation to implement specific diligence measures for correspondent banking activities. It includes no specific provision on measures to protect from the misuse of new technologies especially in case of money transfer activities or non-face-to face transactions.

52. In addition to these standards determining the legal framework, the Central Bank and the Banking Commission have issued various standards to specify some obligations of stakeholders in AML/CFT like other regional sectoral authorities. These circulars, instructions and guidelines experience the same weaknesses as the laws they are supposed to specify but they often modify the higher standard making difficult ownership by reporting persons whereas these topics are new to many of them.

53. The Ivorian authorities do not seem to engage with competent regional bodies through national channels (National Insurance Directorate for CIMA, the Ivorian representative within the CREMPF…) and community structures to warn against the need for a regular review of sectoral laws and regulations for updating. Indeed the review and update of the legal framework at regional level has been necessary for several years so as to meet international standards and better prevent the risks and vulnerability specific to Côte d'Ivoire in terms of AML/CFT.

54. To prevent the review of the regulation from becoming an obstacle to innovation and expansion of activities in the financial sector, the Ivorian authorities should initiate a reflection on determining relevant criteria or thresholds in view of potential risks and regulatory due diligence requirements below which we can consider that the activities and operations conducted by structures have only a small risk of money laundering so as to avoid valuable resources (because often very scarce) from being affected by the supervision of less important structures particularly in the areas of micro-finance of manual currency change.

55. It also seems essential for public, community-based or national authorities responsible for the supervision and regulation of the financial institutions to review the laws on money laundering and terrorist financing for greater consistency with the new legal arrangement. Also it is recommended to conduct a broad consultation between community-based, national authorities and relevant professional sectors to ensure the harmonization of the provisions in the sectoral legal instruments.

Financial sector stakeholders

56. The financial sector in Côte d'Ivoire is the most developed among member countries of the UEMOA zone and is still marked by the predominance of some stakeholders in each segment of the financial sector and a high concentration in some districts of the capital and provincial cities.

- **The banking sector**

57. In Côte d'Ivoire, the banking sector is the main component of the financial sector in terms of deposits and loans with five commercial banks controlling over 75 % of loans at the end of 2011. In total assets seven Ivorian banks are among the 13 leading banks in the area. Three major categories make up the banking sector : French-owned banks (BICICI, SGBCI) account for almost 28% of jobs and resources, state-owned banks (BNI, Versus Bank, BHCI, CNCE and BFA) represent about 16% of market shares and 13 regional banks share the 56% of the remaining market shares (including Ecobank, BACI and BIAO CI with about 32%).

58. The banking sector has witnessed the arrival of new stakeholders and is experiencing a major transformation under the influence of a ''stabilization'' of the banking and financial system (increased requirement in own capital, privatization of public banking institutions - BHCI, Versus Bank…-) to create conditions for economic recovery and competitiveness.

59. The provision of products and services includes the management of current accounts, checking accounts, regular passbook savings accounts or fixed-term deposit accounts and the possibility to check account balances on the Internet. The dissemination of cash or electronic payment means is still low. Additionally, the Post Office which financial services were transferred to the business portfolio of another institution continues to offer various banking services (money and currency transfer operations) without these activities be subject to the facts and to a designated supervisory authority under the law.

60. Local banks met during the evaluation mission have internal AML/CFT measures (at least formally) and procedure manuals. The mission however noted difficulties in taking ownership of the regulation for some interlocutors for whom the obligations were limited to the recovery of the internal procedures manual prepared by the head office to comply with the Group's standards.

- **The Insurance sector**

61. Life insurance is dominated by some stakeholders (with the three leading companies making about 60% of turnover in Côte d'Ivoire or 79 billion CFA francs like non-life insurance also dominated by three companies making together almost 50% of this sector activity or 105 billion CFA francs. AML/CFT measures relatively complete –at least formally- are operational in major businesses.

62. The effective establishment of audit and follow-up missions entrusted by CIMA to auditors of the Insurance Directorate (DA) on AML/CFT should be backed by action to support relevant staff so that checks on the compliance with the AML/CFT procedures by insurance companies should be included in CIMA futures missions.

- **The micro-finance sector**

63. The sector of micro-finance institutions which is marked by the hegemony of a network which alone makes up almost 85% of deposits and loans or about one and a half million of accounts, is also deeply changing due to government efforts to strengthen and stabilize the weakest structures and widen the range of financial products and services offered so as to facilitate their access to over one million customers now excluded from the traditional sector. The share of deposits or loans in this sector as shown by the average amount of deposits and loans is still low. The remaining interventions in microfinance is done outside the regulation by unauthorized structures in the form of informal cooperatives (family revolving fund or hawala) which may pose a risk of money laundering especially as all stakeholders were not sensitized on their obligations on the matter.

64. DFSs pose a clear risk of money laundering mainly due to money transfer and manual exchange services sometimes offered and the very limited number of effective controls by the Banking Commission (it should be noted that four microfinance institutions were audited in 2012) sometimes jointly with the directorate of microfinance and Decentralized Financial systems (DMSFD)or the Ministry of Finance. Sensitization, mobilization and support activities should be rapidly initiated for the Microfinance Directorate.

- **Authorized foreign exchange dealers sector**

65. The foreign exchange dealers sector is characterized by a large formal sector of about 72 authorized economic operators in activity, excluding banks. The risk of money laundering seems very high in this sector given the unusually high number of economic operators apparently without any economic rationality highly concentrated in one shopping district in Abidjan. No useful statistic has been filed to the mission but the information gathered during interviews by the evaluation team with the subjected professionals found the existence of an informal sector particularly developed outside the capital, in the North and Eastern part of the country. This informal sector is vulnerable to porous borders and movements of currency in circulation related to the dominance of cash in the economy which would meet the needs of the activities of import-export trade. Furthermore, this sector is believed to address the termination of the BCEAO foreign exchange supply to licensed manual exchangers in the

formal sector. It is therefore urgent to carry out specific actions for licensed manual exchangers in the informal sector to avoid strengthening the compliance of their activities.

- **Money transfer services**

66. Money transfer services are offered by international firms using their human, technical resources as well as their information and management systems as part of partnerships with banks. They are not licensed and not subject to controls especially on AML/CFT. No sanction seems to have been taken against them for non-compliance with the AML legislation by competent authorities. 'Partner'' banks do exert only a reduced if not theoretical supervision on these activities. Most banks indeed do not even have guaranteed access to information about their customers stored in the information systems of partner ''money transfer firms''.

67. Money transfer activities managed by people from the informal sector are also offered in Cote d'Ivoire by phone operators who are developing ''mobile banking'' services for money transfers but these are neither licensed nor controlled. No statistics was provided to the evaluation mission but a large number of stalls offering such services were found along the roads.

68. Moreover, the competent authorities should complete the existing requirements on wire and money transfers regarding the collection, storage and circulation of data to identify principals. Because of weaknesses in its judicial integration, the sub-region cannot be considered as a domestic space as defined by FATF. It is therefore important that requirements imposed to financial institutions for cross border intra-zone transfers reflect this situation.

- **The Regional financial sector**

69. At the end of March 2012, the capitalization of the share market was estimated at about 3 500 billion CFA francs while that of the bond market stood at 800 billion .CFA franc with a total trade of almost 5.8 billion.CFA francs (with 97% of shares traded on the stock market).

70. While efforts have been made on the fight against activities in the informal sector, the CREPMF has not included the AML/CFT issue in its audit missions.

- **The supervision mission**

71. In terms of regulation and prudential supervision related to AML/CFT, Côte d'Ivoire has no real autonomous powers with the exception however of a shared supervision power on micro-finance and insurance structures (see below.). In fact, the responsibility to monitor financial institutions' compliance with their obligations to combat money laundering and terrorist financing rests with Community Authorities (BCEAO, the WAMU Banking Commission, CREPMF and CRCA/CIMA). Indeed these authorities have large powers, of administrative or disciplinary sanction, including on offences to the AML/CFT standards.

72. In consultation with the national authorities (Ministry of Finance), the authorities mentioned above have a shared power to issue license to credit institutions, insurance companies, licensed manual exchangers, to decentralized financial systems as well as their

leaders. In their supervision functions, these authorities have powers to control financial institutions and access all documents necessary to fulfil their missions. On top of that, they have powers of sanctions in case of breaches. The absence of financial sanctions in the CREMPF regulation and the failure to deliver any other type of sanction do not make possible to consider the sanctions sufficient, proportional and efficient for any offence related to activities on the regional financial market. Possible sanctions seem proportional and efficient in AML/CFT laws although these are yet to be implemented. Indeed both prudential desk checks in limited number and the on-site investigations do not include the dimension of anti-money laundering and countering terrorist financing.

73. In addition, it seems urgent that these supervision authorities with very limited human and technical resources and a low expertise on AML/CFT define and implement a policy to control stakeholders in the financial sector components by developing control methodology, preparing control plans and organizing appropriate training for their staff. Similarly, it seems essential for all public, regional or Ivorian authorities responsible for the supervision and regulation of financial institutions to adopt as soon as possible regulatory laws or even good practice guides, if necessary sectoral to supplement the current legal framework. In the short term, a review of community laws on AML/CFT would be preferable to the adoption of amendments in the national laws and that of legal sectoral instruments, profession by profession to reflect the fact that the community instrument also covers the Designated Non-Financial Businesses and Professions and a multiplication, by profession and by Member States, of sectoral regulations would certainly weaken the consistency and harmonization currently secured through the region.

74. A reflection on the harmonization of sanction regimes applicable to the various components of the financial sector should be conducted while current law are reviewed with the introduction of possible fines depending on the types of offence as defined at community level when serious breaches to the legislation are reported to avoid any ‘’forum shopping’ to Member State of the UEMOA Zone that adopted the least severe repressive system.

75. Finally the fight against the expansion of activities of informal sector operators who are at high risk of ML and TF and the effective implementation of the policy for the use of banking services should become a source of major concern for public authorities. In the absence of a relevant policy, the role of non- financial businesses and professions as *‘door openers’’ to financial criminals would be enhanced.*

Share of the financial sector components

As on 31/12/2011 in millions of F.CFA (EUR)	**Deposits**	**Deposits share in % of the financial sector**	**Loans**	**Loans share in % of the financial sector**
Banks	278.375 (425)	75	192.570 (294)	80
Financial Institutions	5.895 (9)	1	21.615 (33)	9
Micro-finance Institutions	90.700 (138)	24	26.800 (41)	11
Total financial sector	374.970 (572)	100,0	240.985 (367)	100,0

Source Treasury Department

Share of market capitalizations per segment

In billion CFA Francs (EUR)	2007	2010
‘’Bonds’’ segment	578 (0.9)	457 (0.8)
‘’Stock’’ segment	3.726 (5,7)	3.471 (5,6)
Total	4.304 (6,6)	3.929 (5,9)

Banking rate / number of accounts

	2004	2006	2008	2010
No. of banks	16	18	19	22
No. of individual account holders	388.200	723.600	707.800	1.800.900
No. of MF Institutions	68	89	99	84
No. of individual account holders	571.400	705.300	972.700	1.300.700
Expanding banking rate	7,4%	7,4%	8,1%	14,7%

Financial sector mapping

Type of institution	Name of institutions operating in Côte d’Ivoire
Banks	• BIAO CI • International Bank for Trade and Industry of CI (BICICI) • National Investment Bank (BNI) • Société Générale de Banques in CI (SGBCI) • Société Ivoirienne de Banque (SIB) • CITIBANK CI • Cofipa Investment Bank CI • Banque Atlantique CI • Bank Of Africa CI • Ecobank CI • Banque de l’Habitat CI • Standard Chartered Bank CI • Access Bank CI • Versus Bank CI • Banque pour le Financement de l’Agriculture BFA • Regional Solidarity Bank CI (BRS CI) • Bridge Bank Group CI (BBG CI) • United Bank for Africa (UBA) • Sahelian-Saharan Bank for Investment and Trade CI (BSIC CI) • Caisse Nationale des Caisses d’Épargne CNCE • BGFI Bank CI • Guaranty Trust Bank CI (GT Bank CI) en cours d’agrément • Alios Finance (SFACA)
Postal Financial Services	• La Poste
Micro finance Institutions :	• Cooperatives: 4 unions (107 Funds) + 55 agencies,

	• 10 Limited Companies: Advans, Crédit du Nord, Mi Moye, Microcred, CICE, Excell Finance, Afrique Emergence et investissement, Première Agence de Microfinance CI, FIDRA, Crédit Access
Authorized foreign exchange dealers	• Authorized Bureaux de change operating: 72 • Bureaux de change authorized : 23
Insurance and Reinsurance companies	• 11 Life Insurance companies • Beneficial Life Insurance Company • Société du Millénaire d'Assurances Vie / SOMAVIE • Colina Vie • La Loyale Vie • Union des Assurances de CI / UA Vie CI • Allianz CI Assurances vie • Nouvelle Société Interafricaine d'Assurance Vie NSIA Vie CI • Le Millénium Assurances Internationales Vie / LMAI Vie • Alliance Africaine d'Assurances Vie / AAA Vie • Société Tropicale d'Assurances Mutuelles Vie / STAMVIE • Compagnie Euro Africaine d'Assurances Vie / CEA Vie • 18 sociétés-IARD • Le Millénium Assurances Internationales / LMAI • Nouvelle Société Interafricaine d'Assurance / NSIA-CI • Allianz CI • Alliance Africaine d'Assurances / AAA • Compagnie Euro-Africaine d'Assurances / CEA • AMSA Assurances • Colina SA • Solidarité Africaine d'Assurances / SAFA • Mutuelle d'Assurance des Taxis Compteurs d'Abidjan MATCA • Axa Assurances CI • Société Ivoirienne d'Assurances Mutuelles SIDAM • Atlantique Assurances CI • Atlas Assurances • Société Nouvelle d'Assurance et de Réassurance /SONAR-CI • La Loyale • Fédération D'Assurances / FEDAS-CI • Génération Nouvelle d'Assurance / GNA • Serenity SA • 5 compagnies Réassurance

	• Avenir RE • CICA-RE • AFRICA-RE • KENYA-RE • CONTINENTAL-RE
Insurance brokers and agents	• 100 insurance brokers • 8 generalstaff (6 Colina SA and 2 GNA) • 6 banks clerks (Banque atlantique) • 223staff trustees (175 Loyale Vie, 35 UA vie, 8 NSIA, 2 Allianz CI, 1 AMSA, 2 LMAI IARD)
Management and Intermediation Company (MICI	• 21 (head office in Côte d'Ivoire : 10) • 1 unlicensed company (West Capital)
OPCVM Management company	• 11 (head office in Côte d'Ivoire : 5)
Assets Management Company (AMCs)	• 1 (headquarter in Côte d'Ivoire : 1)
Custodial Account Operating Banks	• 6 (head office in Côte d'Ivoire : 5)
OPCVM	• 24 (head office in Côte d'Ivoire : 10)
Authorized Business Introducers	• 7 (head office in Côte d'Ivoire : 2)
Apex Structures	• Regional Stock Market (BRVM) • Central Securities Depository/Settlement Bank
Money Transfer Firms	• Western Union • Money Gram • Money Express • Rapid Transfer (ECOBANK internal service) • Coinstar • Orange money • MTN mobile money
Public Treasury	• 1
Electronic Money Institutions	• 3

Category of Financial activity and supervision authority

Category of financial activities (ref. to the FATF glossary)	**Category of financial institutions**	**Regulation Entity Supervision and control Entity/ place**
Receipt of deposits and other repayable funds from the public	• Credit institutions • Micro-finance bodies • Postal Financial Services	• BCEAO CB • MEF CB (1 IMF under control) • Self-control
Credit transaction (including leasing)	• Credit institution including. CNCE • Micro-finance bodies	• BCEAO CB • MEF CB (1 IMF under control)
International Money or value transfers	• Credit institution • Postal Financial Services • Revolving fund and other alternative funds transfer systems	• BCEAO CB • Self-control • No control • Credit institution ou

International Money or value transfers	• Funds transfer firms • Funds transfer firms • Phone operators	self-control • Credit or self-control institution
Issuance and management of payment means (including credit or debit cards, checks)	• Credit institution • Micro-finance bodies	• BCEAO CB • MEF CB (1 IMF under control)
Commitment to sign (warranties, sureties or undertakings)	• Credit institution • Micro-finance bodies	• BCEAO • MEF CB (1 IMF under control)
Transactions on -Money market Instruments -Foreign exchange instruments, interest rates -Securities -Commodity futures Markets	• Credit institution • Financial market stakeholders (MIC, AMC…)	• BCEAO CB • CREPMF
Storage on behalf of licensed issuers and financial intermediaries of securities and other financial instruments, in cash or liquid	• Banks • MIC, central securities depository/ settlement bank	• BCEAO CB • CREPMF
Transaction on Insurance Products and other investment products related to insurance	• Insurance companies and intermediaries (agents and brokers)	• CRCA DNA
Foreign exchange transactions	• Banks • Bureaux de change • Post	• BCEAO CB MEF • BCEAO MEF • Self-control

b. The Designated Non-Financial Businesses and Professions (DNFBPs) sector

76. The provisions of the AML Act and CFT Order apply to ‘’any natural or legal person who, as part of his profession, conducts, controls or advises on transactions involving deposits, foreign exchange, investments, conversions or any other cash flows or movements of cash or other goods’’ . These include the DNFBPs indicated below.

Summary Table of DNFBPs in Côte d’Ivoire

Corporations	Laws governing the profession	Control and supervision authorities	Number
Lawyers	• Law n° 81-588 of 27/07/1988 governing the profession of lawyer ; • Internal Regulation of the Bar ; • Decree n° 68-399 of 03/09/1968 related to the Certificate of Aptitude for the Profession of Lawyer (CAPA);	• Public Prosecutor at the Court of Appeal ; • Chairman of the Bar Association and Bar Council ;	487

Corporations	Laws governing the profession	Control and supervision authorities	Number
	• Decree n° 89-216 related to insurance, financial regulations, accounting and uniforms for lawyers (CARPA).		
Notaries	• Law n° 69-372 of 12/08/1969 amended and supplemented by Law n° 97-513 of 04/09/1997 on the status of legal profession ; • Decree n° 2002-356 of 24/07/2002 setting the modalities for the enactment of the 69-372 Law as amended and supplemented ; • Internal Regulation of the Chamber of Notaries ; • Orders of 11 January 2008.	• Senior Minister, Minister of Justice; • Public Prosecutor at the Court of Appeal ; • Chamber of Notaries (Disciplinary Board of the Chamber).	197
Chartered Accountants and Registered Accountants	• Law n° 92-568 of 11/09/1992 establishing an Association of Chartered Accountants and organizing these professions ; • Decree 95-904 of 03/11/1995 on the modalities for the application of law n°92-568 of 11 September 1992 ; • SYSCOHADA Uniform Act ; • Internal Rule.	• Ministry of Economy and Finance ; • Board of the Association of chartered accountants (Commission of diligence and Ethics National disciplinary Chamber).	111
Real Estate Agents and Developers	• Law n° 99-478 of 02/08/1999 organizing the sale of building and real estate development; • Decree n° 79-718 of 02/10/ 1979 governing the profession of real estate agent, property manager and sales representative or business rental; • Law n° 75-352 of 23/05/1975 Related to business agents	• Minister of Housing Development ;	54

Corporations	Laws governing the profession	Control and supervision authorities	Number
Travel agencies	• Decree N°77-604 of 24 August 1977 governing the profession of travel agency and office ; • Order n°19/MT of 30 September 1977 setting the conditions for issuance and withdrawal of the professional authorization and licenses for travel agencies and offices	• Minister of Tourism	44
NGOs	• Law n°60-315 of 21 September 1960 related to associations ; • Decree n° 2011-388 of 16 November 2011 organizing the senior Ministry, Minister of Interior ; • Decree n° 2011-387 of 16 November 2011 organizing the senior Ministry, Ministry of Foreign Affairs.	• Senior Minister, Minister of Interior ; • Senior Minister, Minister of Foreign Affairs.	94
Dealers in stones and precious metals	• Decree n° 96-634 of 09-08-1996 setting the modalities for the application of Law n°95-553 of 18 July 1995 on the mining code • Law 97-397 of 11-07-1997 related to disputes of exchange control offences	• Minister of Mining, Petroleum and Energy (General Department of Mining and Geology)	4
Cash Couriers	• Decree n° 2005-73 of 03/02/2005 governing the private activities of cash security and transport	• Senior Minister, Minister of Interior	2

77. It should be noted that under the provisions of the AML Act and Order, subject DNFBPS are members of independent legal professions (as part of some activities under the FATF Recommendations), business introducers to financial institutions, auditors, real estate agents, dealers in high value items such as artifacts, precious stones and metals, cash couriers, the owners, directors and managers of casinos and gambling halls, including national lotteries, travel agencies, Non Governmental Organizations.

78. Regarding the constitution of trusts or similar structures, it should be noted that in practice, these activities are not carried out in Côte d'Ivoire.

79. In general, the scope of reporting entities as indicated by FATF for the DNFBPS sector is largely covered by the AML/CFT laws. However, the law does not expressly subject chartered accountants. Only auditors are designated.

80. The mission found that the DNFBPs met are regulated and access to the relevant sectors is subject to an authorization by the competent authorities. They are also subject to the same legal requirements on AML/CFT as Financial Institutions. However, the implementation of any measure required in this regard remains inexistent. Apart from some participation in sensitization and training activities organized by CENTIF or CNSA-GIABA of Côte d'Ivoire, stakeholders in the sub sector are poorly equipped on AML/CFT matters hence the lack of awareness about vulnerabilities of the sector to the risks of money laundering and terrorist financing.

81. The lack of appropriate coaching of the real estate sector is highlighted. Similarly, land management by local authorities, particularly the issuance of village certificates with real vulnerability to the risk of money laundering in this sector. The Mission however notes that a proposed review of the Land Code is underway for better management and support of the sector.

82. In relation to professional associations, money transfer companies, gambling halls, measures on customer identification, record-keeping and Suspicious Transaction Reporting under the AML/CFT Laws do not seem to be a concern. No guideline has been issued by the supervisory authorities or the self-regulatory bodies of these professions. Some professions blamed their absence of cooperation with CENTIF on the lack of confidence in the protection system of reporting entities under their collaboration on AML/CFT.

83. The supervision of DNFBPs is inadequate or inexistent. No DNFBP has been subject to a system of monitoring and verification of the compliance with its requirements on combating money laundering and terrorist financing. In the absence of control and sanction delivered, the efficient, proportionate and dissuasive nature of the sanctions cannot be assessed.

1.4 Overview of the Business Law

84. Under the provisions of the current Treaty of the Organization for the Harmonization of Business Law in West Africa (OHADA), five types of companies can be established in Côte d'Ivoire : capital companies (Limited Company –LTD-, Limited Liability Company - LLC-), Partnership Companies (General Partnership Company –SNC-), Limited Partnership – SC-) and Economic Interest Groups (GIE).

Establishment of legal persons

85. To establish a company under the Ivorian law, individuals should enter the Register of Trade and Personal Property Credit Register (RCCM). The LLC must have a minimum capital of 1 million CFAF and consist of shares of nominal value of at least 5 000 CFAF each. To set up a Limited Company, the minimum capital required is 10 million CFAF divided into shares of minimal value of 10, 000 CFAF each. Equally, the setting up of a business in Côte d'Ivoire, involves:

- Writing and registration of statutes ;
- Deposit with the Registry of the court in the jurisdiction of the head office;
- The legal statement of subscription and payment ;
- Registration with the RCCM ;
- Notice of insertion in the Official Gazette (JO).

86. These measures are aimed at ensuring the true identity of individuals (associate or shareholders).

Basic characteristics of legal persons

87. The statutes stipulate : the type of company followed by its name, where applicable, its acronym ; the nature and scope of its activity making up its corporal purpose ; its head office ; its duration ; the identity of cash contributors with, the amount of contributions for each of them,, the number and value of shares provided in return for each contribution, the identity of contributors in kind, the nature and amount of contribution made by each ; the number and value of social securities provided in return for each contribution; the identity of the beneficiaries of special benefits and the nature of these ; the amount of share capital, the number and value of social securities issued, distinguishing, where appropriate, the various categories of securities created ; the provisions relating to the distribution of the profit, to the constitution of reserves and distribution of the liquidation surplus as well as the operational mode.

88. Information to be included in the register is related to the founders and initial members of the management, administration bodies. These shall file to RCCM a statement in which they recount all operations made to regularly constitute the company whereby they state that this constitution has been made in accordance with the relevant provisions of the Uniform Act of the OHADA. The information document must be effectively published in newspapers authorized to receive legal announcements by providing a brochure accessible for consultation to anyone that makes the request to the headquarters of the issuer and to organizations responsible for maintaining the financial securities service. A copy of this document shall be sent free of charge to anyone interested.

1.5 Overview of the Money Laundering and Terrorist Financing Prevention Strategy

a. AML/CFT Strategies and priorities

i. Government AML/CFT policies and objectives

89. The year 2010 has helped CENTIF-CI to expand its circle of partners in the fight with the beginning of cooperation with Designated Non-Financial Businesses and Professions (DNFBPs), especially Lawyers and Notaries while ensuring strengthened ties with the banking system. The significant decline in the number of STRs recorded in the period against 2009 (of about 30%) is reportedly due to the general slump of the economic activity in the last quarter of 2010 in Côte d'Ivoire, corresponding to an electoral period. The year 2011 for its part, was difficult in terms of actions to improve money laundering and countering financing of terrorism in Côte d'Ivoire with the conflict experienced by the country. However, the recent

seminar on the development of the national AML/CFT strategy of Côte d'Ivoire held in late 2011 marks a new beginning for the country in the synergy of the fight and coordination of actions among all stakeholders. The rapid adoption of this strategy will certainly contribute to make a qualitative leap forward.

ii. The effectiveness of policies and programs implemented

90. No action has been undertaken in Côte d'Ivoire to measure the effectiveness of AML/CFT policies and programs implemented.

b. The AML/CFT institutional framework

Roles and responsibilities of the authorities

91. At the national level, the institutional framework is made up of traditional administrative structures in addition to specific technical bodies. Other structures operate at community level.

92. At the national level, the traditional administrative structures are the ministries of Economy and Finance, Justice, Interior and Foreign Affairs. With respect to specific technical structures, we note CENTIF and the National Committee for the Follow-up of the activities of the Intergovernmental Action Group against Money Laundering in West Africa (CNSA-GIABA).

93. CENTIF was created by Decree n° 2006-261 of 9 August 2006 on the establishment organization and functioning of CENTIF. It is an administrative department with financial autonomy and an autonomous decision-making power on AML/CFT matters. Its mission is to collect and process financial intelligence related to money laundering and terrorist financing, also to forward to the Prosecuting Department any case required. Its establishment results from the provisions of Articles 16 and following of the AML Act. In carrying out its duties, CENTIF can resort to correspondents within the Police, Gendarmerie, Customs as well as state judicial services and any other which support is believed to be necessary under the AML/CFT.

94. CNSA-GIABA was established by Order n° 009/MDPMEF/DGTCP/DIF of 13 February 2006 on the establishment, attribution and composition of the National Follow-up Committee for GIABA Activities. The purpose of CNSA-GIABA is to inspire and assist public authorities in the design and conduct of the national AML/CFT policy, make proposals to enhance international cooperation and foster the establishment of the necessary technical infrastructure.

95. At community level, the institutions involved in AML/CFT are mainly economic and financial organizations, i.e. UEMOA and ECOWAS. Thus, the role of UEMOA is namely to ensure a strengthened competitiveness of the economy of Member States, by ensuring convergence of economic policies. Considering that recycling illicit funds within the Union is a threat to the monetary stability of Member States, weighing unusually on the demand for currency, the UEMOA Commission and BCEAO very early engage in the fight against money laundering and terrorist financing. This fight is an essential component of the UEMOA initiatives to strengthen economic integration and protection of the financial system integrity.

96. Actions undertaken so far have been carried out by BCEAO, especially the process for developing community laws regarding AML/CFT. BCEAO also provides officials that run the Secretariat of CENTIF in member countries of the Union while coordinating their actions at community level. It also seeks to implement measures to monitor banking operations and cash flows together with Credit institutions.

c. Overview of policies and procedures

97. BCEAO, in compliance with the Financial Action Task Force (FATF) standards, has developed two community directives related respectively to AML/CFT in UEMOA Member States. They are Directive n° 07/2002/ UEMOA of 19 September 2002 on AML and Directive n° 04/2007/CM/ UEMOA of 4 July 2007 related to CFT in UEMOA Member States. These directives set out the guidelines to be considered in developing national laws. Their purpose is to define the legal framework related to the fight against these scourges in UEMOA Member States. These directives provided the basis to uniform laws within UEMOA Member States. In Côte d'Ivoire, these laws were adopted through Law n° 2005-55**4** of 2 December 2005 related to AML andOrder n° 2009-367 of 12 November 2009 related to CFT in UEMOA Member States**.**

d. Progress since last evaluation or mutual evaluations

98. Côte d'Ivoire had never gone through an evaluation on AML/CFT.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES (SECTIONS 2.1 to 2.4)

2.1 Criminalizing Money Laundering (R.1 & 2)

2.1.1 -Description and Analysis

99. Côte d'Ivoire has ratified the main legal instruments in the global fight against financial crime signed under the auspices of the United Nations. Likewise for the Con**v**ention on the Illicit Trafficking of Narcotics and P**s**ychotropic Substances of 1988 (referred to as the Vienna Convention) ratified on 19 July 1991 and the United Nations Convention against Transnational Organized Crime of 2000 (known as the Palermo Convention) ratified on 6 December 2011. Both Conventions require State-Parties to consider as criminal offence to conceal or disguise and conversion or intentional transfer of proceeds of crime. Subject to the constitutional principles and basic concepts specific to the national system, they consider it should also be seen as criminal offence: (1) the acquisition, possession or use of proceeds of crime and (2) participation in one of these offences or any other association, understanding, attempt or complicity through the provision of an assistance, support or advice to commit it.

100. Based on Law No. 88-686 of 22 July 1988 on suppressing illicit trafficking and use of narcotics, psychotropic and poisonous substances, Côte d'Ivoire was able to criminalize this type of offense. Thereafter, Côte d'Ivoire adhered to the United Nation convention against illicit trafficking of drugs and psychotropic substances known as the Vienna convention of December 20, 1988 and ratified it on November, 25, 1991. Implementation of the Vienna Convention, concerning the criminalization of the laundering of proceeds deriving from drug trafficking has occurred in the context of the adoption of Law No. 2005-554 of 02 December

2005 on the fight against money Laundering (hereinafter AML law) which designates as the predicate offense, "*any crime or offense*" and therefore includes drug trafficking.

101. The Palermo Convention was implemented through the enforcement of above mentioned AML Law that transposes into Ivorian domestic law Directive n°07/2002/CM/ UEMOA of 19 September 2002 related to the fight against money laundering in UEMOA Member States. Indeed, the approach to combating financial crime is organized on a community basis in the eight Member States of the West African Economic and Monetary Union (UEMOA).

102. This Law is supported by an appendix entitled "*Appendix to the AML law relating to specific obligations of financial institutions in the case of financial operations with customers"* Appendix The Appendix was released in the gazette of the Republic of Côte d'Ivoire (JORCI) dated 24 May 2012 Appendix more than six years after the entry into force of the AML law to which it is attached. During its visit, the mission took note of this fact .

Recommendation 1

Criminalizing money laundering (c. 1.1 physical and material elements of the offence)

103. The AML Act that brings in general criminalization of money laundering in Côte d'Ivoire, extends the scope of predicate offences to ''any crime or offence'', thus supplementing the Vienna Convention and implementing the Palermo Convention as indicated earlier.

104. Under Article 2 of the AML Act, money laundering is defined as ''the offence constituted by one or several actions listed below, committed intentionally, namely :

a) conversion, transfer or manipulation of property whose author knows they come from a crime or offence or participation in a crime or offence to conceal or disguise the illicit origin of the property or help anyone involved in committing this crime or offence to escape the legal consequences of his acts ;

b) concealing, disguising the nature, origin, location, disposition, movement or real ownership of related property or rights whose author knows they come from a crime or offence as defined by national legislations of Member States or participation in this crime or offence;

c) The acquisition, possession or use of property whose author knows while receiving this property that they come from a crime or offence or a participation in a crime or offence''.

105. The material element under this Article 2 of the Law mentioned above, covers a wide range of acts that include, on the one hand, to convert, transfer, manipulate, acquire, possess or use property from an offence with the intention of concealing or disguising their illicit origin and, on the other hand, to assist anyone involved in committing this crime or offence to escape the legal consequences of his acts.

Types of property to which money laundering offence is applicable (c. 1.2).

106. The concept of ‘’property’’ under the combined provisions of Articles 1 and 2 of the AML Act means ‘’all types of assets whether tangible or intangible, movable or immovable, fungible or irreplaceable as well as legal instruments or documents showing the ownership of these related assets or rights’’.

107. The AML Act does not specify whether the property derived from the commission of an predicate offence can include indirect proceeds attached to them. According to the Ivorian party, the term ‘’derive’’ used in the provisions of Article 2 of the AML Act, shall be understood as including the indirect source of the proceeds of crime. With this vagueness of the AML Act and in the absence of jurisprudence, there remains an uncertainty which the lawmaker should usefully help address.

It is not necessary to convict someone for an underlying offence to prove that a property is the proceed of a crime (c.1.2.1)

108. Under Article 3 of the AML Act, it is not necessary to be prosecuted or convicted for any predicate offence to prove that a property is proceeds of crime. Indeed, this article states : ‘’Except if the original offence has been an amnesty law, there is money laundering even:

- If the perpetrator of the crimes or offences has been neither prosecuted nor convicted ;
- If a condition to take legal action following the crimes or offences is missing’’

109. This provision seeks to specify the autonomous nature of the money laundering offence. While the principle of freedom of the evidence enables the judge to freely decide on the elements of evidence shown by the prosecution to be convinced that a property comes from a criminal offence without the perpetrator to necessarily be prosecuted or convicted. However, it should be observed that money laundering being an offence as a result, the elements of the predicate offence must necessarily be characterized in the motivation of the sentence for money laundering. In this regard, assessment difficulties may arise to magistrates who might encounter the problem either in identifying the predicate offence or to characterize it across its elements. No ministerial directive or instruction or even no jurisprudence can, in the current circumstances, address these concerns.

The scope of major offences (c. 1.3) and working method for predicate offences(c.1.4)

110. In defining the types of major or predicate offences that may be prosecuted, Article 2 of the AML Act goes beyond the offences covered by the FATF as it broadly covers any crime or offence. Therefore they are serious offences considered as crimes and offences under Article 3 of Book I on the Criminal Code which states that the offence shall be considered as:

- Crime if it is liable, either to death penalty or to imprisonment for life or a period longer than 10 years ;
- Fine if it is liable to an imprisonment for life under or equal to 2 months and a fine under or equal to 360, 000 CFA francs or to either of the sentences only ;
- Offence if it is liable to a life imprisonment or fine other than the above.

111. Notwithstanding this observation, analysis of the Ivorian criminal Code and other repressive laws considered elsewhere, appears to be necessary to determine whether the 20 categories of serious offences as referred to by FATF are ‘’crimes or offences’’ and as such, are predicate offences of money laundering. Thus, the table below shows the list of serious predicate offences to money laundering as referred by the FATF and that of corresponding laws and penalties under the Ivorian criminal law.

Designated categories of offences	Corresponding criminalization laws	Penalties
• Participation in an organized criminal group	• Criminal Code, Articles 164, 165 (armed groups), 186 (association and harbouring a criminal)	• Imprisonment from 1 to 5 years
• Terrorism, including its financing	• Diversion of aircraft (Article 415 of the Penal Code) • Ordinance n° 2009-367 of 12 November 2009 on the fight against terrorist financing in Member States of the West African Economic and Monetary Union (CFT Order), Article 4.	• 5 years to life imprisonment. • 10 years Imprisonment and a fine of at least five times the value of the property or funds which were the subject of the terrorism financing operation. Order
• Human Trafficking and Smuggling of migrants	• Criminal code, Articles 376, 377, 378 ; • Law n° 2010-272 of 30 September 2010 prohibiting the trafficking and worst forms of child labour	• Article 376 CP: Convention for alienation freedom of third parties. Imprisonment from 5 to 10 years. Fine of 500,000 to 5 million FCFA. • Article 377 CP: Pledging person: Imprisonment from 6 months to 3 years. Fine of 30,000 to 300, 000 FCFA • Article 378 CP: Imposing work or service: Imprisonment from 1 to 5 years. Fine of 50, 000 to 500, 000.FCFA.
• sexual exploitation, including children	• Criminal code, Articles 335, 336 (prostitution).	• Article 335: Imprisonment from 1 to 5 years. • Fine of 1 to 10 million. • Article 336 : • Doubling of penalties in case of aggravating circumstances
• The Illicit trafficking in narcotics and psychotropic substances	• Law n°88-686 du 22 July 1988 Act No. 88-686 of 22 July 1988 on the suppression of the illicit trafficking and use of narcotic	• Articles 1 et 2 Imprisonment from 5 to 10 years ; Fine of 500, 000 to 1 million CFAF

Designated categories of offences	Corresponding criminalization laws	Penalties
	drugs, psychotropic substances and poisonous substances, Articles 1 et 2.	
• Arms trafficking	• Law n°98-749 of 23 December 1998 suppressing offences to the regulation on arms, ammunitions and explosive substances, (Articles 1 and the following)	
• Illicit traffic in stolen or other goods	• Criminal code, Article 414	• Article 414: Imprisonment from 1 to 5 years. Fine of 300, 000 to 3 million of CFAF. • In case of connection with a crime, proportionate tightening of sanctions
• Corruption	• Criminal code, Articles 232, 405 to 409 • Law n° 77-427 of 29 June 1977 on the suppression of corruption	• Imprisonment from 5 to 10 years. • Fine of 200, 000 to 2 million CFAF
• Fraud and Deceit	• Criminal code, Articles 403 to 420 (deceit)	• Article 403: 1 to 5 years of imprisonment. Fine of 300, 000 to 3 million CFAF. In case of public offering : 10 years of imprisonment and Fine of 10 million CFAF • Article 420 : additional sanctions
• Counterfeit currency	• Criminal code, Articles 293, 294, 295, 296, 297	• Life imprisonment (currency as legal tender), from 1 to 5 years (currency that had legal tender). Fine of 200, 000 to 5 million. CFAF.
• Counterfeiting and pirating of products	• Criminal code, Articles 319, 322 • Law n° 96-564 of 25 July 1996 related to the protection of intellectual works and property rights of authors, performers and producers of phonograms and video recordings.	• Articles 319: ‘Counterfeiting and commercial fraud’’ Imprisonment from 3 months to 3 years. Fine of 100, 000 to 1 million FCFA. • Article 322 « Breach of artistic or literary property’’. Fine of 100, 000 to 1million CFAF. Aggravation if the usual nature (imprisonment from one month to 1 year and fine of 200, 000 to 2 million CFAF).

Designated categories of offences	Corresponding criminalization laws	Penalties
• Environmental crimes	• Environmental Code (Law n°96-766 of 3 October 1996), Articles 89 and the following ; • Law n°88-651 of 7 July 1988 on the protection of public health and the environment against the effects of toxic industrial waste and nuclear substances.	• Imprisonment from 2 months to 5 years; fine of 1 million to 1 billion CFAF. Article 2 : • From 15 to 20 years in prison; fine of 100 to 500, 000 CFAF.
• Murders and assault and battery	• Criminal code, Articles 342 and the following ; Article 442 (castration) ; • Ordinance n° 92-80 of 17 February 1992 on the suppression of some forms of violence ; • Law n° 98-757 of 23 December 1998 on the suppression of some forms of violence against women.	Article 343 • Death penalty for murder, parricide, poisoning or crime of castration or sterilization. Article 344 : • Life imprisonment in case of murder. Article 345 • Voluntary assault and battery : - Imprisonment from 5 to 20 years when the assault and battery, even without the intention to kill, have yet caused it ; • Imprisonment from 5 to 10 years and Fine of 50, 000 to 500, 000 francs when the violence have caused mutilation, amputation or loss of a use of a limb, blindness or loss of an eye or any other permanent disability ; • Imprisonment from 1 to 5 years and Fine of 20, 000 to 200, 000 CFA francs when it results to an illness or total incapacity to work for more than ten days ; Imprisonment of 6 days to 1 year and Fine of 10, 000 to 100, 000 CFA francs when it

Designated categories of offences	Corresponding criminalization laws	Penalties
		does not result to any illness or incapacity to work of the species mentioned at the previous paragraph.
• Kidnapping, unlawful detention and hostage-taking	• Criminal code, Article 138.5° (hostage taking), 370, 371 (kidnapping), 373 (unlawful detention).	• Art. 370 and 371: -Kidnapping of under aged children -Imprisonment from 5 to 10 years and fine of 500, 000 to 50, 000, 000 of CFA francs. -Death penalty n the case of death of the under aged or if it resulted to a disability causing permanent incapacity of more than 30%. • Art.373 (Unlawful detention) Imprisonment from 5 to 10 years and Fine of 500, 000 to 5, 000, 000 of francs, anyone who, without order from the Authorities and except in cases where the law requires to arrest the offenders, captures, detains or sequestrates one of several people.
• Theft	• Criminal code, Articles 392, 393, 395, 396.	Article 393 • Imprisonment from 5 to 10 and fine of 300, 000 to 3, 000, 000 CFA francs. Article 394 • (Law n° 95-522 of 6 07/ 1995) • Imprisonment from 10 to 20 years and fine of 500, 000 to 5, 000, 000 of CFA francs in case of aggravating circumstances.
• Smuggling	• Customs Code, Articles 287 and following, Articles 290 and following. • Law n° 64-291 of 1 August 1964 • Amended by Order n°88-225 of 2 March 1988	• Imprisonment from 1 month to 3 years • Fine of to four times the value of the fraud, without • prejudice to the payment of applicable duties and taxes, as well as • confiscation of the object

Designated categories of offences	Corresponding criminalization laws	Penalties
		of fraud, • means of transport, objects used to hide the fraud,
• Extortion	• Criminal code, Article 411.	Article 411 • Imprisonment from 5 to 1à years and fine of 100, 000 to 1, 000, 000 of CFA francs.
• Forgery	• Criminal code, Articles 281 and following (Conspiracy in public writing and use of false documents •), 284 and the following (forgery committed in some administrative documents), 416 (forgery of private trade or bank), 469 (forgery and embezzlement).	• Conspiracy in public writing and use of false documents Article 281 : • Imprisonment from 2 to 10 years and fine of 200, 000 to 2, 000, 000 of francs (official) ; Article 282 • Imprisonment from 1 to 5 years and fine of 100, 000 to 1, 000, 000 of CFA francs (non official) • Forgery committed in some administrative documents Art.284 • Imprisonment from six months to three years and fine of 50, 000 to 500, 000 francs. • Forgery in private trade or bank. Article 416 • Imprisonment from 1 to 5 years and fine of 100, 000 to 1, 000, 000 of CFA francs • Forgery and embezzlement Article 469 • From 2 to 10 years in military detention.
• Piracy	• Criminal code, Article 415 (hijacking) ; • Merchant Navy Code, Articles 228 and following (sea piracy).	• Sea Piracy Article 228 and following Merchant Navy Code: Imprisonment for life or time.
• Insider trading and market manipulation.	• Law n°90-589 of 25 July 1990 governing the banks, Article 19 (insider trading) ; Not applicable to the regional financial market • Criminal code, Article 314.2°	• Laws referred to in the Questionnaire do not cover insider trading and market manipulation.

Designated categories of offences	Corresponding criminalization laws	Penalties
	(market manipulation), 317 (obstruction to the freedom of auctions)	

112. Review of the table above reveals that almost all the 20 categories of offences designated by FATF are properly criminalized in Côte d'Ivoire as serious offences. However, the terrorism, smuggling of migrants as well as insider trading and market manipulation are yet to be criminalized. Moreover, the current legislation does not guarantee the effective prosecution and suppression against emerging forms of criminality such as arms trafficking, sea piracy, and cyber-criminals.

113. Indeed, based on statistics produced, the mission has not come across any case of conviction for arms trafficking. Thus, even though the national legislation severely punishes such offense, it does not seem to be applied. In addition, this legislation should be strengthened by adopting mechanisms and procedures recommended by regional and international legal instruments in the fight against the proliferation of small arms and light weapons (marking, tracing, brokering, registration, checks at borders, exchange of information, etc.).

114. With regard to maritime piracy that generates revenue coming namely from hostage-taking, it should be noted the development of illegal activities on the part of criminal organizations taking advantage of the weaknesses of West African States with a coastline which find it hard to have full control of maritime areas in order to develop. The Gulf of Guinea is affected by this scourge. Legislation should be strengthened by adopting mechanisms and procedures recommended by ad hoc international and regional legal instruments. In the same vein, it should be added the phenomenon of cybercrime often understood in terms of traditional offenses such as forgery or fraud but whose forms call for new types of charges at the national level against fraud, computer virus attacks, espionage, etc...

115. With regard terrorism, not criminalized in Ivorian law, as mentioned above, Côte d'Ivoire has provided to the mission, a draft Bill on the suppression of terrorist acts. This legislation is intended to criminalize and punish terrorist acts related to the safety of civil aviation, maritime navigation and fixed platforms. It seems to reflect the implementation of international instruments already ratified by Côte d'Ivoire on these matters. If this law were to be adopted, it would, particularly strengthen the fight against sea piracy. Indeed, Article 2 of this Bill proposes to punish by imprisonment of 10 to 20 years and a fine of 5 to 10 million CFAF'' anyone who, through violence or any other form of intimidation captures a ship''.

116. In the crackdown against corruption, a Bill on illicit enrichment initiated by the Ministry of Justice was given to the Mission. This Bill falls within the Priority Action Program undertaken by the Ivorian government to enhance good governance. The drafting of a new law related to the repression of corruption was likely ongoing. On this issue, the government has developed a national good governance and anti-corruption Plan for 2010-2014 and taken various initiatives, including the establishment of organizations such as the National Public Procurement Regulation Authority (ANRMP), based on UEMOA guidelines aimed at organizing and controlling public procurement. Comprised of representatives of public department, the private sector and the civil society, this independent administrative

body was set up in 2010 to ensure the regulation and supervision of public contracts which is a potential source of corruption. The civil Society, for its part, participates actively in the fight against corruption through associations such as '' Transparency Justice'' and ''SOS Transparency'' which the Mission met. But both ANRMP and the associations mentioned above are focused on combating predicate offences such as corruption and embezzlement of public funds and not on the separate money laundering offence.

117. Besides, the current laws do not guarantee the effective prosecution and suppression against emerging forms of criminality like arms trafficking. In this regard, it should be noted that internally Côte d'Ivoire has not taken adequate provisions to effectively implement the following laws annexed to the Palermo Convention which it has yet ratified :

- The Protocol against the smuggling of migrants by land, sea or air ;
- The Protocol against the forgery and illicit trafficking of firearms, their parts, components and ammunitions.

118. These deficiencies are weaknesses in the Ivorian AML/CFT regime which, moreover, negatively impacts on international legal cooperation.

Acts committed outside the territory (c. 1.5)

119. Generally, Article 16 of the Ivorian Criminal Code states that the criminal law applies to offences committed partially or wholly abroad in the conditions provided by the Criminal Procedure Code. Most of the provisions of Articles 658 to 665 of the Criminal Procedure Code dealing with crimes and offences committed abroad consider committed on the territory of the Republic any offence which act characterizing one of its components was made in Côte d'Ivoire. In addition, the competence of Ivorian Courts is established against :

- Any Ivorian national who, outside the Republic territory, is found guilty of a crime punished by the Ivorian Law ;
- Any Ivorian national, who, outside the Republic territory, is found guilty of an act considered as offence under the Ivorian law if the act is punished by the legislation of the country where it was committed ;
- Anyone who, in the Ivorian Republic, is found guilty of a crime or offence committed abroad, if the offence is punished both by the foreign law and the Ivorian law provided the offence considered as crime or offence was established by a final decision of the foreign jurisdiction ;
- Any foreigner, who, outside the Ivorian Republic territory, is found guilty or either as perpetrator or accomplice of a crime or offence prejudicial to the State security or counterfeit of the State Seal, national currencies with legal tender, if he is arrested in Côte d'Ivoire.

120. Specifically on money laundering, Article 2 section 2 of the AML Act states : ''there is money laundering even when the facts behind the origin of the acquisition, possession and transfer of property to be laundered are committed on the territory of another UEMOA Member States or that of a Third Party States, non member of UEMOA'' Although there is no jurisprudence on money laundering, the Ivorian authorities met consider that the regime in place allows to a large extent to prosecute and punish perpetrators of predicate offences committed outside the national territory.

Application of the money laundering offence to perpetrators of underlying offence (c. 1.6)

121. The Ivorian party believes that the money laundering offence is separate and that a person may be prosecuted cumulatively for predicate offence and for money laundering offence, since the material and intentional element of the money laundering offence as provided by Article 2 of the AML Act are met only against that person. However there is no legal reference on the matter hence uncertainty as to know if criteria c.1.6 is met..

Related offences (c. 1.7)

122. Under Article 3 of the AML Act are also considered as money laundering offence, ‘’the understanding or participation in an association to commit an offence constituting money laundering, conspiracy to commit such offence, attempts to commit it, assistance, incitation or advice to a natural or legal person with a view to executing or facilitating the execution’’. As regards the Ivorian Criminal Code, it defined in its Articles 26 and following, participants in the offences as co-author and accomplice. Therefore, is considered as co-author of an offence the one, who, without personally committing the offence, participates with others and agrees with them to commit it. Is accomplice of a crime or offence, anyone who, without taking a direct or determining part in its commission :

a) Provides instructions to commit it or causes its commission by using donations, promises, threats, misuse of authority or power, scheme or criminal deception ;
b) provides any means to be used in the action such as: arms, instrument or information ;
c) Knowingly assists directly or indirectly the author or co-author of the offence in the facts using or preparing it.

123. Any co-author or accomplice of a crime or offence or attempt punishable, is also criminally responsible for any offence which perpetration or attempt was a foreseeable consequence of the concerted action or complicity. Any co-author or accomplice of a crime, offence or attempt punishable is liable to same penalties and the same security measures as the author of the punishable crime, offence or attempt. Similarly, Articles 186 ad following of the Criminal code shall punish anyone that joins an association or participates in an understanding regardless of the duration or number of its members with the purpose of preparing or committing crimes against persons or property. The maximum penalty is doubled if he has his own instruments or means to commit crimes against persons or property.

124. Are also punished those who, apart from the cases provided at previous Article, knowingly accommodate a person whom they know have committed a crime or are wanted for crime or who avoid or attempt to avoid the criminal from the arrest or search, including hiding or destroying the objet, product or instruments of the crime or clues, or assist him in hiding or escape. The maximum penalty is doubled if he has own instruments or means to commit the offences or if he carries visible or hidden weapons. Those who, knowingly and without being forced, usually provides asylum, meeting place, means of correspondence or instruments of crime to criminals involved in association or agreement, as referred to in previous Article, are punished as accomplices.

Additional elements - Money laundering offence on the proceeds of crime as a result of conduct that occurred in another country which is not an offence in that other country

(c.1.8)

125. The AML Act does not set the principle of dual criminality and does not specify it there is money laundering offence when the proceeds of crime is obtained as a result of a conduct that occurred in another country that does not constitute an offence in that other country but would have been an predicate offence if it had taken place in Côte d'Ivoire. The Ivorian part believes that there cannot be a money laundering offence which implies, under Article 2 of the AML Act, the perpetration of an offence (crime or offence) which proceeds are intentionally concealed, converted or manipulated with a view to helping their perpetrators escape prosecution. Yet, in this case, such proceeds cannot be considered as derived from criminal acts prior to money laundering. Consequently, these proceeds cannot lead to prosecution for money laundering. It should also be noted that there is no jurisprudence to clarify this issue.

Keeping statistics in accordance with Recommendation 32 (c.2)

126. According to statistics on predicate offences produced by the Ministry of Justice and shown below, theft, fraud and deceit, murder, serious injuries and breach of trust are the main predicate offences followed by forgery, drug trafficking, possession of stolen property and sexual exploitation . The Mission could not know if these statistics cover partially or entirely the Ivorian territory.

Statistics related to some underlying offences

	2010	**2011**	**2012**
- Breach of trust	762	233	167
- Forgery	290	232	131
- Fraud and deceit	1135	961	1783
- Theft	3564	2021	1132
- Extortion	25	08	06
- Murders and serious injuries	940	526	349
- Counterfeiting and piracy	48	23	27
- Trafficking in stolen property (Possession of stolen property)	133	61	26
- Sexual exploitation	141	65	24
- Drug-Trafficking	193	602	59
- Counterfeit currency	29	16	17

127. It is important to observe that these statistics bear no trace of recurrent predicate offences in the sub-region such as misappropriation of funds and arms trafficking which have yet mobilized the national authorities at the highest level namely to strengthen cooperation among ECOWAS Member States. In this regard, we note that while Côte d'Ivoire is party to international ad hoc instruments such as the Convention against the proliferation of small arms and light weapons, the implementation of these instruments does not appear to be effective internally. With respect to the prosecution for money laundering, according to the judicial authorities met, six cases were reportedly under investigation in the office of the senior investigating judge and two cases were being investigated at the Republic Prosecutor. On the other hand, no conviction has yet been issued as no case has entered the trial stage.

Additional elements – Keeping by competent authorities of comprehensive statistics of

conviction for money laundering (c.32.3)

128. There is no statistics on the issue as no conviction has been issued and no case has reached the trial stage.

Recommendation 2

Criminal liability of natural persons (c. 2.1)

129. Under Article 2 of the AML Act, natural persons engaged in money laundering operations, should not only be aware (‘’whose author knows’’) of the criminal or unlawful origin of the property to be laundered but they should also have the intent to (‘’acts …committed intentionally’’) act in order to launder the property. For the Ivorian party, the term ‘’know’’ used in Article 2 of the AML Act refers to the assumption whereby the person acted knowingly. It is a reduction of the evidence overcoming the difficulty in establishing the subjective proof of the element of knowledge and not a criminalization of the author(s negligence.

The intentional element (c. 2.2)

130. The AML Act is silent on the possibility of inferring the intentional element of money laundering offence of objective factual circumstances. For the Ivorian party, the intentional element may be inferred from be objective factual circumstances by the judge as authorized by Articles 348 and 418 of the criminal code. Indeed, under Article 348 of this Code, ‘’the law does not require judges to account for the means whereby they were convinced, it does not lay out any rule on which they should particularly build the fullness and sufficiency of an evidence. It requires them to question in silence and contemplation and to seek, in the sincerity of their conscience, what impression on their reason, the evidence leveled against the accused and the means of defense. The law asks them only this question which contains all the scope of their duties: Do you have a firm conviction?’’ In addition, under Article 418 of the Criminal Code, ‘’apart from cases where the law provides otherwise, offences can be established by any mode of proof and the judge decides according to his firm conviction ‘’. In support of this statement, three convictions have been issued and related to small cases of theft and possession of stolen property.

Criminal liability of legal persons (c. 2.3)

131. Criminal liability in case of money laundering applies to legal persons. Indeed under Article 42 of the AML Act : ‘’ legal persons other than the State, on behalf or for whom a money laundering offence or one of the offences provided by this law has been committed by one of its structures or representatives, shall be punished with a fine at a rate equal five times those incurred by natural persons … .’’ Specifically with regards to Credit institutions, the banking law provides in Article 68 : ‘’Credit institutions can be declared criminally liable, in conditions provided by the provisions of Article 42 of the Uniform Act related to the fight against money laundering in Member States of the West African Economic and Monetary Union (UEMOA)’’

Additional sanctions (c. 2.4)

132. The AML Act provides, in addition to criminal sanctions, for other types of sanctions applicable to legal persons in case of money laundering offence. Article 35 of this law provides for the possibility to sanction legal persons in the administrative and disciplinary plans. Thus when, subsequent to a serious lack of vigilance, or a deficiency in the organization of its internal audit procedures, a legal person liable has ignored the preventive obligations under the AML Act, the supervisory authority with disciplinary power may act in conditions provided by specific laws and regulations in force.

133. Moreover, when these legal persons are financial institutions, the competent supervisory authority, upon request from the Prosecutor of any prosecution against this financial institution, may take appropriate sanctions in accordance with the specific laws and regulations in force. Such sanctions are administrative and disciplinary.

134. The financial entities under the AML Act are :

- Banks and financial institutions ;
- Financial services of the Post as well as the Caisses de dépôts et consignations or entities acting as such in Member States;
- insurance and reinsurance companies, insurance and reinsurance brokers ;
- Mutual institutions or savings and credit cooperatives as well as unincorporated structures or organizations as mutual or cooperative with the purpose of collecting savings and/or granting credit ;
- The regional stock market, the central securities depository/settlement bank, management and intermediation companies, assets management companies ;
- The OPCVM ;
- Investment companies with fixed capital ;
- Authorized foreign exchange dealers.

135. More generally, Article 99 of the criminal code provides that when an offence is committed as part of the activity of a legal person, the latter, considering the circumstances of the offence, may through informed decision, be declared responsible jointly with the culprit (s) for the payment of all or part of the fines, costs and expenses to the State as well as civil damages.

Proportionate, effective and dissuasive criminal, civil and administrative sanctions (c. 2.5)

- **Simple laundering**

Criminal sanctions for natural persons

136. Under the provisions of Article 37 of the AML Act, ‘’ natural persons who are guilty of a money laundering offence shall be punished for imprisonment from 3 to 7 years and a fine three times equal the value of the property or funds covered by money laundering operations’’. The AML Act also provides that if the crime or offence generating the property of amounts of money covered by the money laundering offence shall be punished with an imprisonment longer than the duration of the imprisonment incurred, money laundering shall

be punished with penalties attached to the initial offense whose author is aware of, and, if this offence is accompanied by aggravating circumstances, penalties attached to only circumstances of which he was aware.

137. In addition, Article 41 provides against natural persons, the following optional additional sanctions:

a) Permanent ban of the national territory or for a period of one year against any convicted foreigner ;

b) Refusal of stay for a period of one to five years on the national territory, except in the home district of the convicted ;

c) Ban to leave the national territory and withdrawal of passport for a period of six months to three years ;

d) Denial of civic, civil and family rights for a period of six months to three years ;

e) Prohibition to drive land, sea and air motor vehicles and withdrawal of licenses for a period of three to six years ;

f) Permanent prohibition or for a period of three to six years to exercise the profession or activity during which the offence was committed and prohibition from holding public office ;

g) Prohibition to issue checks other than those for withdrawing funds by the drawer from the drawee or those certified and to issue credit cards for a period of three to six years ;

h) Prohibition to possess or carry a weapon subject to license for three to six years;

i) Confiscation of all or part of the illicit property of the convicted ;

j) Confiscation of the property or thing that was used or intended to commit the offence or thing which is the product, except for objects likely to be returned.

Penalties applicable to legal persons

138. Article 42 of the AML Act punishes legal persons other than the States, on behalf or for whom a money laundering offence or one of the offences provided by this Law has been committed by one of its structures or representatives, to a fine at a rate five times equal those incurred by natural persons, without prejudice to the convictions of the latter as perpetrators or accomplices of the same offences. These legal persons may also be sentenced to one of more of the following :

a) exclusion from public procurement, permanently or for a period of 5 years or more;

b) confiscation of the property used or intended to commit the offence or the property generated ;

c) placing under judicial supervision for a period of five years or more ;

d) prohibition, either permanently or for a period of five years or more, to exercise directly or indirectly one or more professional or social activities during which the offence was committed ;

e) closing permanently or for a period of five years or more, offices or one of the offices for the company that was[2] used to commit the offense ;

f) dissolution, when they have been established to commit the offenses ;

g) Exposure of the ruling or broadcasting by the print press or by any audiovisual communication means at the expense of the convicted legal person.

- **Aggravated laundering**

139. Article 39 of the AML Act provides for aggravating circumstances against natural persons. Indeed, penalties are doubled when the money laundering offence is committed (i) in a usual manner or by using facilities attached to exercising a professional activity, (ii) when the offender a recidivist; in this case, the convictions abroad are considered in determining the repeated offence, and finally (iii) when the money laundering offence is committed in organized group. The same article states that when the crime or offense from which the goods or money which were the subject of money laundering offense is crimininalized with a penalty of deprivation of liberty for a period exceeding that of imprisonment incurred pursuant to Article 37, the money is subject to the penalties attached to the original offense of which the author is aware, and if the offense is accompanied by aggravating circumstances, the penalties attached to only circumstances of which he/she has knowledge. In addition, causes of exemption and mitigation of the penalties are provided in Article 43. These are cases where a person, by revealing the existence of an agreement, helps identify other people involved and avoid the offence from being committed. It is also true in the case when, prior to prosecution, a person helps identify other perpetrators, or, after start of prosecution, helps to arrest them.

140. These sanctions appear to be proportionate compared to other serious offences considered as crimes or offences. But their effectiveness and deterrent nature cannot be assessed, for lack of conviction in court.

Keeping of statistics under recommendation 32 (c.2)

141. According to figures from CENTIF, 12 cases in total were filed to the Public Prosecutor. From the exact number of cases handled since the passage in 2005, of the AML Act, the figures vary between the Prosecutor (8 cases with 2 received on a tip-off) and investigating offices (6 cases with 1 reached the pre-trial stage).

Analysis of effectiveness

142. Only six criminal prosecutions have been initiated and no case has been brought before the Ivorian courts since the passage of the AML Act in 2005 or for almost seven years. Similarly, the authorities in charge of prosecution and suppression do not all seem to have a good knowledge and understanding of the AML Act. The Ministry of Justice has not published circular explaining and commenting the AML Act in order to help judges understand, interpret and apply it where necessary. Only a few judges have followed training provided by GIABA and the Law Development Centre (CDD). The need to organize and expand the training of judges is imperative. There are no statistical tools on issues related to the effectiveness and proper functioning of anti-money laundering regimes.

2.1.2 Comments and Recommendations

143. The Ivorian authorities should ensure :

- Appendix Reviewing the AML Act so that the ML criminalization is fully compliant with the Vienna and Palermo Conventions stating that money laundering offence applies to property indirectly representing the proceeds of crime ;
- Clarifying that the author of the predicate offense may be prosecuted for ML;
- Criminalizing terrorism, smuggling of migrants, insider trading and market manipulation offenses and and indicate the penalties for these offenses ;
- Disseminating and explaining the AML Act to law enforcement authorities (for example : judges) ;
- Properly planned training for judges ;
- Effective law enforcement by bringing before the courts, within a reasonable time, cases meeting conditions to enter the trial stage ;
- Defining an appropriate policy to keep statistics ;
- Introducing statistical tools designed to evaluate the functioning and effectiveness of the AML legal regime.

2.1.3 Compliance with recommendations 1 and 2

Rec.	Rating	Summary of factors underlying rating
R.1	**PC**	• Appendix No criminalization of terrorism, smuggling of migrants, insider trading and market manipulation ; • Lack of clarity about the source of indirect proceeds of crime; • Uncertainty about the applicability of the offense of money laundering to the persons who commit the predicate offense; • Lack of clarity on whether the perpetrator of the predicate offence may also be convicted for money laundering offence ; • Lack of ownership of the AML Act by all authorities responsible for the prosecution and suppression ; • Lack of effective implementation of the AML Act. • Lack of policy and statistical tools dedicated to AML.
R.2	**LC**	• Effectiveness and dissuasive nature of sanctions cannot be assessed, for lack of effective application of penalties, seven years after the entry into force of the AML Act ; • Lack of statistical tools to evaluate the functioning and effectiveness of the AML legal system.
R.32	**NC**	• Lack of statistics on the prosecution, convictions and sanctions for money laundering ; • No policy to keep statistics in courts.

2.2 Criminalizing terrorist financing (SR.II)

2.2.1 General description of laws and other measures, situation or background

144. In the wake of the September 11 attacks in the US and following a meeting of the ministers of Finance of the franc zone held on 25 September 2001 in Paris, the Central Bank of West African States, pending a formal decision of the Council of Ministers of the West African Economic and Monetary Union, took a number of protective measures to fight terrorist financing.

145. To this end, BCEAO sent the list of people and organizations referred by the United Nations to banks and financial institutions within the UEMOA requesting them to identify their accounts kept in their books and to monthly provide to the Minister of Economy and Finance as well as to BCEAO information about movements on these accounts pursuant to the provisions of Article 42 of the Banking Act. These accounts should, moreover, be closely monitored and strictly applied the provisions of the regulation of foreign currencies for any transfer abroad. Finally, in case these people hold foreign accounts in francs or currencies, these should be immediately closed. It should be noted that no measure to freeze or seizure was prescribed. Subsequently, based on a community strategy of fight, a more comprehensive regulation has been set up to implement the relevant UN resolutions and the International Convention on the suppression of terrorist financing.

146. The legislation in countering terrorist financing in Côte d'Ivoire mainly comprises the following laws:

- The International Convention for the Suppression of Terrorist Financing, ratified by the State of Côte d'Ivoire on 13 March 2002
- Resolution S/RES/1267 (1999) of the United Nations Security Council, adopted on 15 October 1999 ;
- Resolution S/RES/1373 (2001) of the UN Security Council adopted on 28 September 2001 ;
- Regulation N° 14/2002/CM/ UEMOA of 19 September 2002, related to the freezing of funds and other terrorist assets in countering terrorist financing in the Member States of the West African Economic and Monetary Union (UEMOA) ;
- Regulation n°09/2010/CM/ UEMOA of 1 October 2010 related to the external financial relations of Member States of the West African Economic and Monetary Union (UEMOA)
- Directive n° 07/2002/CM/ UEMOA of 19 September 2002, related to the fight against money laundering in UEMOA Member States ;
- Directive n°04/2007/CM/ UEMOA of 4 July 2007, related to the fight against terrorist financing in UEMOA Member States.
- Decision n°09/2008/CM/ UEMOA amending Decision n°9/2007/CM/ UEMOA of 6 April 2007, related to the list of people, entities or organizations covered by the freezing of funds and other terrorist assets as part of the fight against terrorist financing in UEMOA Member States;
- Law n° 2005 – 554 of 2 December 2005 related to the fight against money

laundering ;

- Ordinance n° 2009-367 of 12 November 2009 on combating terrorist financing in Member States of the West African Economic and Monetary Union .
- The Criminal Code (Article 415 : aircraft hijacking)

147. Order n° 2009-367 of 12 November 2009 mentioned above (hereinafter CFT Order) transposes Directive n°04/2007/CM/ UEMOA of 4 July 2007, related to the same topic, thus implementing the International Convention for the Suppression of terrorist financing ratified by the State of Côte d'Ivoire on 13 March 2002. According to the Order Ivorian authorities, the use of this legal instrument is justified by the exceptional circumstances as provided for by article 48 of the Constitution. But neither the competent authority, nor the monitoring rules and conditions for the use of the instrument was clearly stated by the Mission to enable it assess the true legal basis of this Order.

148. Furthermore, the appendix, Appendix that was supposed to support this Order as required by the initial community directive has not been transposed into domestic law. This document covers the 9 international legal instruments Appendix to the UN Convention of 9 December 1999 on the suppression of terrorist financing.

Criminalizing terrorist financing (c. II.1)

149. The material elements of the terrorist financing offence are described by Article 4 of the CFT Order which defined the terrorist financing offence as ''the offence constituted by the fact, by any means whatsoever, directly or indirectly, deliberately, to provide, collect or manage or attempt to provide, collect or manage any funds, property, financial services or other, with the purpose to see them used or knowing, they will be used wholly or partly to commit :

a) an act constituting an offence under one of the international legal instruments Appendix to this Order, irrespective of the occurrence of such act ;

b) Any other act intended to kill or seriously hurt a civilian or any other person that does not participate directly in hostilities in a situation of armed conflict when, by its nature or context, this act aims at intimidating a population or force a government or international organization to carry out or refrain from carrying out any act''.

150. The lack of transposition of the Appendix which is mentioned above is a problem insofar as the criminalization covers ''an act constituting an offence under one of the international legal instruments attached as Appendix to this Order''. Thus Article 4 of the CFT Order requires Côte d'Ivoire to be party to the nine conventions referred to and criminalize in its criminal law offences provided by these conventions.

151. It should be noted that in practice, Côte d'Ivoire has ratified most of these instruments even though all of them have not been effectively implemented domestically. However, the Ivorian Penal Code Article 415 incriminates the offense of hijacking. Moreover, if in its Article 4, the CFT Order refers to the financing of terrorist acts (c.II.1.a.i), it remains silent on individual terrorists and terrorist organizations (c.II.1.a.iii et a.ii)..

152. Article 4 of the CFT Order refers to ''any funds, property, financial services or other''. The term ''property'' is defined at Article 1 of the same law as follows : ''any types of assets,

whether tangible or intangible, movable or immovable, tangible or intangible, fungible or not fungibles as well as legal instruments or documents evidencing the ownership of these assets or related rights''. Similarly, Article 1 of the CFT Order defines the ''funds and other financial resources all financial assets and economic benefits of any kind, including, but not exclusively, cash, checks, claims in cash ,drafts, payment orders and other payment instruments, deposits with bank and financial institutions, account balances, [...(c.II.1.b)''.

153. Offense of under Article 4 of the CFT Order, the offense of terrorist financing is constituted even if the funds have not been effectively used to commit the terrorist acts referred to **(c.II.1.c –i-)**. Equally, the offences of terrorist financing provided by the Order are not related to one of several specific terrorist acts but to the acts constituting an offense *under one of the international legal instruments annexed to the CFT Order* and to any other act intended to kill or seriously hurt a civilian, or any other person that does participate directly in hostilities in a sit*uation of armed conflict, when, by its nature or context, this act aims at intim*idating a population or force a government or an international organization to carry out or refrain from carrying out any act **(c.II.1.c –ii-)**.

154. The CFT Order criminalizes in its Article 4, the fact of attempting to ''provide, collect or manage'' funds for the terrorist financing purposes). The same Article states that the offence of terrorist financing is also constituted even if the funds have not been effectively used to commit the offences (c.i).. Finally, Article 32 section 3 of the CFT Order related to penalties incurred by the natural persons indicates that the attempt of terrorist financing shall be punished to the same penalties as the terrorist financing offence **(c.II.1.d)**. Under Article 5 of the CFT Order, *'Is also an offense of terrorist financing, the agreement or participation in an association to commit an act constituting a terrorist financing, … the association to commit the facts, assistance, incitation or advice to a natural or legal person to commit or facilitate its execution''***(c.II.1.e).**

Predicate offences to money laundering (c. II. 2)

155. Article 6 paragraph 2 of the CFT Order states that the acts of terrorist financing as well as related offences*« may also constitute predicate offences of money laundering''.*

Territorial jurisdiction (c.II.3)

156. Under Article 4, paragraph 3 of the CFT Order, '' there is terrorist financing even if the facts behind the acquisition, possession and transfer of property intended to finance terrorism, are committed on the territory of another Member State or on that of a third party State''. It is therefore not necessary for providers of funds intended or used to commit terrorist acts in Côte d'Ivoire to be Ivorian nationals or residents. They are liable to criminal prosecution for terrorist financing by Ivorian courts wherever they are. Similarly, the competence of Ivorian courts is exercised in cases where terrorist financing is committed on the Ivorian territory and the terrorist act is committed in a foreign territory. Indeed, Article 4 paragraph 1, section 2 of the CFT Order considers that there is terrorist financing when the provision, collection or management of funds is done with the intention of seeing them used to commit any act of homicide or attack on physical integrity, in a bid to ''intimidating a population or … force a government or international organization to commit or refrain from committing any act''.

157. Ivorian lawmakers have thus established the competence of national courts to settle the offence of terrorist financing, even when the terrorist act seeks targets other than the Ivorian population or government, i.e. when this act occurred in another country. Finally, Ivorian judges are competent to settle an offense of terrorist financing when: (i) it was committed abroad and the terrorist act was perpetrated on the national territory, (ii) it was committed on the national territory and that the terrorist act was perpetrated abroad.

Assessment of the intentional element pursuant to c.2 of Recommendation 2 (c.II.4.a)

158. The CFT Order makes no provision for the intentional element of the terrorist financing offence to be inferred from objective factual circumstances. However, for the Ivorian party, unlike the AML Act, the terms *''willfully''*, *'' with the intention'' or 'knowing''*, used in Article 4 paragraph 1 of the CFT Order, refers to the assumption whereby the person could not ignore that the funds, property, financial services or others would be used to commit a terrorist act as the objective circumstances and the gravity of the facts are such that it could not find themselves playing this role of financier incidentally or accidentally. His distrust must necessarily be roused. This is a reduction of the evidence overcoming the difficulty in establishing the element of subjective knowledge and not a criminalization of the perpetrator's negligence. Thus the intentional element could be inferred from objective factual circumstances. But as already indicated for the case of money laundering offence, there is no general principle of the law or jurisprudence to support the position of the Ivorian authorities.

Criminal liability of legal persons for money laundering offences pursuant to criteria 3 and 4 of Recommendation 2 (c.II.4.b)

159. The criminal liability of legal persons can be established in case of terrorist financing. Indeed, under Article 38 of the CFT Order , *'' legal persons other than the State, on behalf or for whom an offence of terrorist financing or one of the offences provided by this law has been committed by one of their entities or representatives, shall be punished with a fine at a rate five times equal to those incurred by natural persons … ''* The fact of subjecting legal persons to the criminal liability on money laundering matters does not prejudice the possibility to take parallel procedures against them, whether criminal, civil or administrative, in countries providing for many forms of liability. Procedures parallel to criminal liability on terrorist financing exist against natural persons. Article 99 of the Criminal code provides that when an offence is committed as part of the activity of a legal person, the latter, given the circumstances of the offence, may, by informed decision, be declared responsible jointly with the convict (s) for the payment of all or part of the fines, costs and expenses to the State as well as civil damages.

Sanctions for terrorist financing pursuant to criterion 5 of Recommendation II (c.II.4.c)

- **Natural persons**

160. Under Article 32 of the CFT Order, ''natural persons guilty of an offence of terrorist financing, shall be punished by imprisonment of 10 years at least and a fine at least five times equal to the value of the property or funds covered by terrorist financing operations''. In accordance with Article 36 of the same Order, these people shall also be punishable by optional additional penalties, which include permanent or temporary prohibitions (refusal of stay, to leave the national territory, to exercise civic, civil and family rights, to drive land, sea

and air motor vehicles, to exercise the profession or activity during which the offence was committed, to issue checks other than those allowing the withdrawal of funds by the drawer from the drawer or those that are certified, to use payment cards, possess or carry a weapon subject to license). Moreover, confiscations are provided for and cover all or part of the property with unlawful origin of the convicted as well as the property or things used or intended to commit the offence or items derived thereof.

161. Article 34 of the CFT Order for its part provides for aggravating circumstances against the same people. Indeed, penalties shall be doubled when the offence of terrorist financing is committed (i) in a usual manner or by using the facilities in exercising a professional activity, (ii) when the perpetrator of the offence is a recidivist; in this case, the sentences abroad shall be taken into account in establishing the recidivism, and finally (iii) when the offence of terrorist financing is committed in organized group.

- **Legal persons**

162. For those declared responsible for offence of terrorist financing, Article 38 of the CFT Order states that they shall be punished by a fine at a rate five times equal to those incurred by natural persons . The fine is the only main penalty applicable to natural persons. But, they may be sentenced to additional penalties such as exclusion from public contracts, confiscation of the property used or intended to commit the offence or the property generated, placing under judicial supervision, the prohibition to exercise one of several professional or social activities during which the offence was committed, closure of institutions, dissolution, display of the decision issued.

163. Causes of exemption and mitigation of the penalties are provided like those considered for money laundering offence (see supra). It should also be noted that any possibility of suspension is ruled out by the CFT Order.

164. The criminal sanctions provided by the CFT Order appear to be proportionate in view of the scale of penalties for serious offences in Côte d'Ivoire or in other UEMOA Member States. The effective and deterrent nature of these sanctions, however, cannot be assessed in the absence of effective convicted of terrorist financing offence.

Keeping of statistics under Recommendation 32 (c.2)

165. No prosecution has been initiated for the offence of terrorist financing in Côte d'Ivoire nor is there any policy for statistics keeping or tool to evaluate the functioning and effectiveness of the CFT system.

Analysis of effectiveness

166. The Ivorian authorities seem to consider as fairly low the risk of terrorist financing on their territory. Reporting entities mostly do not know about the CFT Order and therefore cannot ensure compliance with their obligations resulting from it (on this issue see developments about R.33 to SR.VIII).

2.2.2 Comments and recommendations

167. The existence of hotbeds of tension in neighboring countries on the one hand and of various non-profit organizations without special supervision in the field on the other, should bring the Ivorian authorities to raise the general level of awareness about the risk of terrorist financing and effectively use the instruments at their disposal that are yet to be improved to detect, prosecute and punish perpetrators of terrorist financing.

168. In any case, the Ivorian authorities should take all useful measures that help :

- To finalize and finally adopt the bill on the suppression of acts of terrorism;
- To sign all anti-terrorist conventions and incorporate them into domestic law;
- To make clarifications on the propriety of the order CFT and, if necessary, appropriate corrections, and convert the Appendix to UEMEAO CFT Guidelines into domestic law;
- To review Order Appendix the CFT Order to reflect the following elements:
  - criminalization of the financing of a ‘’terrorist organization’’ and an ‘’individual terrorist’’ ;
- The implementation of the CFT Order should be effective, through a wide dissemination with the reporting entities that should be trained to raise their level of awareness about the risk of FT.
- An appropriate policy to keep statistics and tools to evaluate the CFT system should be put in place.

2.2.3 Compliance with Special Recommendation II

Rec.	Rating	Summary of factors underlying rating
SR. II	**PC**	• Order Appendix No criminalization of the financing of a ‘’terrorist organization’’ and the financing of a ‘’terrorist individual’’ ; • No ratification of certain UN conventions on the fight against terrorism; • Lack of internal implementation of United Nations Convention on the fight against terrorism • General ignorance of obligations of reporting entities on CFT ; • Difficulty in assessing the effectiveness and deterrent nature of sanctions, for failure to enact penalties.
R.32	**NC**	• No statistics about the prosecution, conviction/sanction for terrorist financing ; • Lack of policy to keep statistics or tools to assess the functioning and effectiveness of the CFT system.

2.3 Confiscation, Freezing and Seizure of Proceeds of Crime (R.3)

2.3.1 General description of laws and other measures, situation or background

169. The regime of confiscation, freezing and seizure of proceeds of crime is established by the following laws :

- Law n°88-686 of 22 July 1988 on the suppression of the trafficking and illicit use of narcotics, psychotropic substances and poisonous substances ;
- The AML Act ;
- The CFT Order;
- The Criminal Code ;
- the Criminal Procedure Code ;
- the Customs Code.

Mandatory confiscation of property (c.3.1)

- **On money laundering**

170. The mandatory confiscation of property constituting the proceeds from the commission of a money laundering offence is provided at Article 45 of the AML Act which states : ''In all cases of conviction for money laundering offence or attempt, the courts shall order confiscation for the Public Treasury, the proceeds from the offence, movable or immovable property in which these proceeds are transformed or converted and, up to their value, of the property acquired from legitimate sources which products are involved as well as incomes and other benefits derived from these proceeds, property into which they were transformed or invested or property to which they are mixed, to anyone who own these proceeds and property, unless their owner establishes he is not aware of their fraudulent origin''

171. Article 41 of the AML Act provides within the optional additional penalties to natural persons guilty of money laundering ''the confiscation of all or part of property with licit origin of the convicted and the confiscation of the property or thing that was² used or intended to commit the offence or the thing that is generated, except for objects subject to restitution''. Similarly, Article 42 of the AML Act sanctions natural persons, as additional and optional, the confiscation of the property used or intended to commit the offence or the property that is generated.

- **On terrorist financing**

172. Article 41 of the CFT Order prescribes, in paragraph 1, in all cases of conviction for offence of terrorist financing, the mandatory confiscation in favour of the Public Treasury of funds and other financial resources related to the offence and of all movable and immovable property intended or used to commit the offence. As formulated, the provisions of this article do not cover property from the offence of terrorist financing but only property intended or used to commit it. On the other hand, the confiscation of the property of equivalent value in case of terrorist financing is provided by the same article which states that : ''when funds, property and other financial resources to be confiscated cannot be represented, their confiscation may be ordered in value''.

173. Article 36 of the CFT Order provides, as additional sanction for natural persons, the confiscation of the property or thing used or intended to commit the offence or the thing that is its product, except for objects subject to restitution. The licit property of the convicted may also be partly or entirely confiscated. Concerning legal persons other than the State, Article 38 of the CFT Order provides as sanction against them, the confiscation of the asset used or intended to commit the offence or the assets derived from it.

- **On predicate offenses**

174. Law n°88-686 of 22 July 1988 on the suppression of the traffic and illicit use of narcotics, psychotropic substances and poisonous substances provides at Article 5 that ‘’shall be confiscated movable and immovable property belonging to the convicted. They are suspected to be the proceeds of the offence or used to commit it’’. The Law states that this suspicion is simple. But the burden of proof rests with the accused. Equally, the Customs Code provides in articles 285 and following that, is liable to confiscation of contentious goods, any violation of the laws and regulations that the Customs department is responsible for enacting.

175. In more general terms, Article 63 of the Criminal Code provides for confiscation of the property of the perpetrator of an offence when, these are the proceeds of the offence or they were used to commit it. Thus, all assets of the perpetrator of an offence of money laundering or terrorist financing subject to a confiscation measure may be so even if they are held by a third party. The third party is moreover requested to make such assets known in accordance with Article 60, paragraph 2 of the Criminal Code which stipulates that : ‘’any holder, in any capacity, any manager of movable or immovable property belonging directly, indirectly or by the intermediary, to people whose heritage is confiscated in total or in part, any debtor of sum, value, or object of any kind to the same people, for any reason whatsoever, shall report it within 3 months from the publication or any act subject to reporting’’.

176. For the Ivorian part, the judge has power to freeze, seize or confiscate assets of equivalent value, at all stages of the procedure, pursuant to his powers and interpretation margins allowed in the drafting of applicable legislation. But no precedent and no jurisprudence on AML/CFT matters can support this position.

Provisional measures (c.3.2)

177. Both the AML Act and the CFT Order provide for provisional measures to prevent any transaction, transfer or disposal of property subject to confiscation. To this end, Article 36 of the AML Act states that ‘’the investigating judge may prescribe protective measures under the ordering Law, at the expense of the State, including the seizure or confiscation of assets in connection with the offence under the investigation and all elements that can help identify them as well as the freezing of sums of money and financial operations involved in such assets’’.

178. Article 29 of the CFT Order for its part, provides that ‘’the investigating judges can, under the Law, prescribe protective measures ordering mainly, at the expense of the State, the seizure of funds and assets in connection with the offence of terrorist financing covered by the investigation and any elements that can help identify them as well as the freezing of money

and financial operations involving such assets''. Law n°88-686 of 22 July 1988 on the suppression of the trafficking and illicit use of narcotics, psychotropic substances and poisonous substances provides also at Article 5 that the investigating judge can, in the pre-investigating stage, deliver the sequester of the property of the accused.

179. In addition, Article 65 of the Criminal Code allows placing the property of an accused on sequester, to administer and resituate them in case of dismissal or acquittal. Article 30 of the CFT Order related to the freezing of funds and other financial resources provides that the competent authority shall order, by administrative decision, the freezing of funds or other financial resources of terrorists as well as of anyone financing terrorism and terrorist organizations.

Ex parte filing (c.3.3)

180. The AML Act does not require the ex parte filing without prior notification of an initial request of freezing or seizure subject to confiscation. But the core principles of the Ivorian domestic law do no set such an obligation. In addition, Articles 65 and 225 of CC and 97 of CPP make possible the seizure and sequestration without prior notification to the accused. These laws are of strict interpretation.

181. In Article 30 para.1, CFT Order allows the competent national authority to order, without delay and prior notification to relevant people, entities or organizations**,** the freezing of funds and other financial resources of terrorists as well as of all those financing terrorism and terrorist organizations.

Adequate prerogatives to identify and trace the origin of funds subject to confiscation (c.3.4)

182. The prosecuting authorities (Prosecutor, Investigating judges and other officers of the judicial police), the National Financial Intelligence Processing Unit of Côte d'Ivoire (CENTIF-CI) have powers to detect and trace the origin of property that are or may be subject to confiscation or is suspected of constituting the proceeds of a crime. Thus

183. The Prosecutor is the head of the judicial Police. Under Article 41 of the Criminal Procedure Code, he ''*takes or orders taking all actions necessary to search and prosecute offences to the criminal law''*. In this respect, he has powers of seizure, search, hearing…allowing him to trace the origin of property subject to confiscation. As for the investigating judge, he enjoys identical powers which the AML Act states further. Indeed, to enable him establish the p*roof of the initial offence and the proof of the offences related to money laundering, Article 33 of this law gives him power to* order the supervision of bank accounts and those related to bank accounts, when serious evidence allow to suspect that they are used or can be used for operations related to the initial offence or offences of money laundering. Moreover, Article 36 of the same law allows investigating judges to freeze, seize or confiscate any asset in connection with money laundering and all elements that can help identify them.

184. Under Articles 53 and following of the Criminal Procedure Code, Officers of the judicial police enjoy powers identical to those recognized to the Prosecutor and the Investigating judge. Finally on CENTIF, Article 28 of the AML Act allows him, based on

serious reliable information in his possession, to oppose the execution of any suspicious operation, for a period of two days. Article 34 also prohibits all subjects to oppose the professional secrecy for refusing to provide information.

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

185. The provisions of the domestic law, particularly Articles 57 and 58 of the Criminal Code protect the rights of bona fide third parties in the implementation of seizure and confiscation measures under Article 12.8 of the Palermo Convention. Indeed, these articles underline that the property confiscation measures should be taken without however infringing on the rights of third parties on such property. According to Article 58 of the Criminal Code, ''the general confiscation covers all or part of the existing property of the convicted, of whatever nature, whether movable, or immovable, divided or undivided, without however infringing on the rights of the third parties on such property''.

186. In addition Article 99 of the CC provides that ''the defendant, the plaintiff or any other person that claims to be entitled to an object seized by the justice can claim its restitution from the investigating judges''. Equally, Article 62 of the CC states that ''Any unsecured creditor shall disclose the amount of its credit in the conditions provided at Article 60 and provides all evidence necessary for its admission to the liability on the property confiscated. Failure for him to have made the disclosure in the prescribed time, he can no longer perform action for the share of the property vested in the State, except to justify that the impossibility in which he found himself to make the disclosure in such period was due to a legitimate cause such as remoteness, absence or inability. If such cause is proved the time to make the disclosure is three years''.

187. Finally, Article 45 of the AML Act provides for the confiscation of proceeds and property generated by the offence, to anyone these proceeds and property belong, unless their owner e*stablishes that he is not aware of their fraudulent origin''. Similarly, A*rticle 41 of the CFT Order states that *''any person who claims to have a right on a property or funds that were subject to confiscation may, to be restored in his rights, seize the jurisdiction that issued the decision of confiscation within six months from the notification of the decision''.*

Additional elements - Confiscation of assets of criminal organizations (c.3.7.a); Confiscation of assets in the absence of any conviction (c.3.7.a); Establishment of the proof of the lawful origin of the property subject to confiscation (c.3.7.c)

188. The Law does not provide for the confiscation: of the property of organizations for which, it is established they are, primarily criminal (i.e. organizations which primary mission is to conduct or help conduct illegal activities), or property subject to confiscation, in the absence of conviction of anyone (civil confiscation).

189. Regarding property subject to confiscation and which require the suspected perpetrator of the offence to establish the proof of their licit origin, they are subject to the principle whereby it is up to the prosecution to provide the proof of the illicit origin of the property subject to confiscation. However, this principle may suffer exception when the law provides it. Likewise for the reversal of the proof burden provided by Article 335 para.3 of the Criminal code which requires the suspected procurer to demonstrate the lawful origin of his property.

190. The AML Act does not expressly provide for the confiscation of property belonging to a criminal organization as such. However, the Ivorian Criminal Code criminalizes and punishes criminal association defined as: ‘’Any association or agreement formed, whatever the duration and number of membership, in order to prepare or commit crimes against people or properties’’ In the context of criminal prosecutions and convictions, property belonging to a criminal association or its members may be subject to seizures under the powers of criminal police officers, the prosecution department or investigating judges during their investigations. They may also be subject to confiscation if they were used or intended to commit the offence or if they are generated by it.

191. Moreover, Law n°60-315 of 21 September 1960 related to associations prohibits any association based on an illicit cause or object, contrary to the laws, morals, under penalty of nullity with dissolution by Decree that may order the confiscation or destruction of the property that were used in the activities of the association (Articles 4 and 5).

192. Apart from these mechanisms, there is no civil confiscation procedure or system to reverse the charge of the proof in Côte d’Ivoire.

Statistics related to confiscation/freezing (c.32.2 and 3)

193. Competent authorities do not keep comprehensive statistics in relevant areas of the effective measures put in place to combat money laundering and terrorist financing. Likewise for keeping comprehensive statistics on the number of cases and the amount of assets frozen, seized, or confiscated in connection with the offences mentioned above.

Analysis of the effectiveness

194. Existing laws provide for good possibilities and give competent authorities broad powers of seizure and confiscation of the proceeds of crime. These measures, including those put in place by the AML Act and the CFT Order, however do not appear to be implemented. Indeed, the Mission could not get any information on the implementation of measures of freezing and seizure in connection with cases being investigated or followed by the Prosecutor. As no case has been tried, there is therefore no confiscation decision as sanction. There is no statistics either to assess the amount of money possibly seized.

2.3.2 Comments and recommendations

- The Ivorian authorities should ensure the effective implementation of laws related to freezing, seizure and confiscation for offences related to money laundering, terrorist financing and predicate offences.
- The Ivorian authorities should provide for a system so as to know the amount of money seized for money laundering /terrorist financing /predicate offences and their management modalities in order to measure the effectiveness of judicial measures of seizure and confiscation and to quantify the amounts generated.

2.3.3 Compliance with Recommendations 3 and 32

Rec.	Rating	Summary of factors underlying rating
R.3	**PC**	• No effective implementation of the laws related to the freezing, seizure and confiscation for offences related to money laundering, terrorist financing and the predicate offences; • Lack of measures to know the amount of the money seized for laundering and their management modalities so as to measure the effectiveness of judicial measures of seizure and confiscation and quantify the amounts.
R.32	**NC**	• No statistics is provided or a policy to keep relevant statistics.

2.4 Freezing of Funds Used to Finance Terrorism (SR.III)

Special Recommendation III

2.4.1 General description of laws and other measures, situation or background

195. Like the fight against money laundering, the UEMOA Member States have opted for a community strategy on combating terrorist financing. This explains the adoption of a community legal instrument, Community Regulation n°14/2002/CM/ UEMOA (herein after referred to Regulation 14/2002) which is directly applied, to organize measures to freeze assets pursuant to Resolution 1267 of the UN Security Council in UEMOA Member States including Côte d'Ivoire.

196. This regulation is implemented by decisions of the UEMOA Council of Ministers establishing and updating the list of people, entities and organizations whose funds should be frozen. Decisions to update the lists were taken following an annual calendar. However the latest decisions taken in this regard dates back in 2008 (Decision n°09/2008/CM/ UEMOA amending Decision n° 09/2007/CM/ UEMOA of 6 April 2007).

197. Under the community approach, Regulation n°14/2002 is completed by the CFT Order transposing Directive n° 04/2007/CM/ UEMOA of 4 July 2007 related to the fight against terrorist financing in UEMOA Member States.

Laws and procedures of assets freezing pursuant to the provisions of Resolution 1267 (c.III.1)

198. Article 2 of Regulation n° 14-2002-CM- UEMOA related to the freezing of funds and other terrorist assets as part of the fight against terrorist financing in UEMOA Member States states its object: ''This Regulation seeks to set the rules related to the freezing of funds and other terrorist assets in Member States by people referred to in Article 3, pursuant to Resolution n° 1267 (1999) of the UN Security Council, in order to prevent the use of banking and financial channels of the Union to finance terrorist acts''. Its article states: ''all funds and other financial resources belonging to any natural or legal person, any entity or organization designated by the sanctions Committee, shall be frozen''. As formulated, the provisions of this Article subject exclusively to the regime of freezing ''natural or legal persons'', entities or organizations explicitly designated by the Sanctions Committee''. Yet, Resolution 1267

requires also to be frozen the funds or other property held or controlled by people acting on behalf or at the instruction of the targeted people and entities.

199. Article 1 of this Regulation defines the funds and other relevant financial resources as, ‘’all financial assets and economic benefits of any kind whatsoever, including but not exclusively, cash, checks, claims on money, drafts, payment orders and other payment instruments, deposits with banks and financial institutions, account balances, debts and debt securities, traded securities and debt instruments, including shares and other equity securities, stock certificates, bonds, promissory notes, warrants, debentures, derivatives contracts, interests, dividends or other income or realized gain levied on assets, credit, right of set-off, guarantees, performance bonds or other financial commitments, letters of credit, bills of lading, sales contracts, any document demonstrating ownership of shares of a funds or financial resources and any other export financing instrument’’. This definition of ‘’funds’’ submitted to the freezing system is not consistent with the requirements of Resolution 1267. This retains the obligation to freeze without delay the ‘’funds or other property’ owned or controlled by people or entities listed. We mean by ‘’funds or other property’’ the financial assets but also the property of any kind**,** whether tangible or intangible, movables and immovable as well as the legal documents or instruments in any form proving the ownership or interests on such property.

200. Article 3 of the Regulation limits its scope to ‘’banks and financial institutions under the law on banking regulations operating on the territory of UEMOA Member States, whatever their legal status, headquarters or head office and the nationality of the owners of their share capital or their leaders’’. Under the Regulation, these ‘’reporting entities’’ have the obligation of information and cooperation with BCEAO and the Banking Commission to whom they are required as soon as they are aware, to immediately provide all information which would facilitate compliance with this Regulation, particularly with regards to frozen funds and financial resources. Non compliance with these obligations is a violation of the Regulation punishable of sanctions provided at Article 52 of the law on banking regulation, and without prejudice to administrative or disciplinary sanctions within the jurisdiction of the banking Commission.

201. It thus appears that only banks and financial institutions are referred to as potential holders of targeted funds while other financial institutions even DNFBPs (notaries or lawyers for example) in carrying out their professional activities, are likely to hold funds or assets belonging to the targeted individuals and to those acting on their behalf or at their instructions. The obligation should therefore be extended to reporting entities other than banks and financial institutions to meet the requirements of Resolution 1267.

202. Freezing measures are carried out without prior notification to the targeted individuals. The CFT Order, restates in Article 30 the prescriptions of the Regulation and clarifies : ‘’Moreover, the competent authority ensure the enforcement of laws related to assets freezing, including Regulation n° 14-2002-CM- UEMOA related to the freezing of funds and other terrorist assets in combating terrorist financing in the UEMOA Member States as well as Decisions of the Council of Ministers of the Union related to the list of individuals entities or organizations covered by the freezing of assets and other financial resources, particularly the one established by the UN Security Council and its updates’’.

203. In Côte d’Ivoire, in addition to the BCEAO channel, the lists of the Sanctions Committee made pursuant to Resolution 1267 (1999) goes the Ministry of Foreign Affairs

though the diplomatic representation of the Ivorian State at the UN. Upon receipt, the Ministry of Foreign Affairs sends lists to the Ministry of Finances which General Directorate of Treasury and Public Accounting files them only to banks (excluding financial institutions and other stakeholders in the AML/CFT) regime restricting even further the number of reporting entities that can usefully be put to use.

204. Between two sessions of the Cabinet Ministers, held quarterly, regulation 14/2002 empowers the Chairman of the Cabinet, on the proposal of the Governor of the Central Bank, to amend or complement the list of persons, entities or organizations whose funds should be frozen, based on the decisions of the Sanctions Committee. Such measures should then be approved by the next Cabinet meeting. Such has never been the case.

205. The decision making process and procedures for the distribution of the list of persons targeted seem to be cumbersome and do not make for the "timely" distribution of the lists, that is, immediately to member States as required by Resolution 1267.

Laws and procedures to freeze assets in accordance with the provisions of Resolution 1373 (C.III.2)

206. Article 30 of the CFT Order provides: ''Competent authority, by administrative decision, order the freezing of funds and other terrorist assets as well as of all those that finance terrorism and terrorist organizations. This freezing comes without delay and without prior notification to relevant individuals, entities or organizations. A list can, if necessary, be prepared'' Côte d'Ivoire has however not yet designated this competent authority on administrative freezing. In addition, it is yet to make a national list of terrorist individuals, entities or organizations. The Ivorian authorities are yet to implement Resolution 1373(2001). By contrast, Côte d'Ivoire has sent two reports to the UN Secretary General as part of the requirements under Resolution 1373(2001). The last report sent dates back in 2005.

Effective laws and procedures to examine initiatives taken under the freezing mechanisms of other countries to be given effect (c.III.3)

207. There is no legislation or procedure specifically dedicated to the review of initiatives taken under the freezing mechanisms of other countries in order to give them effect. In practice, this approach falls within the legal cooperation conventions between Côte d'Ivoire and third countries. Failing an agreement on mutual legal assistance with third countries, the principle of reciprocity shall be applied. In addition, the United Nations Conventions on the issue provide that they can serve as basis of legal cooperation in the absence of any other convention on mutual legal assistance.

208. Article 29 of the CFT Order allows investigating judges to take any provisional measure necessary. It stated even than in case where it opposes the execution of measures not provided for by the national legislation, the judicial authority[3] with a request related to the execution of provisional measures delivered abroad, may substitute for these measures

[3] Considering the fact that the freezing measure is based on a legal procedure under Article 29 of the CFT Act, it is unlikely that the freezing request will be swiftly executed, that is, on the basis of reasonable motive as required by criterion III.3. Besides, these are only assets and amounts of money associated with the FT offence whereas Resolution 1373 require that all funds and other assets belonging to, controlled, etc..by the persons targeted, terrorists, terrorism financiers, terrorist organizations, should be frozen.

provided by the domestic law which effects match best the measures for which execution is sought.

209. As part of the transfer of prosecution, Article 44 of the CFT Order provides : ‘’Requests sent by foreign competent authorities to establish offences of terrorist financing, execute or deliver provisional measures and a confiscation or for extradition purposes, shall be filed through diplomatic channel. In case of emergency, they may be communicated through the International Criminal Police Organization (ICPO-Interpol) or directly communicated by the foreign authorities to the national judicial authorities, or by any other rapid transmission means leaving a written mark or materially equivalent. Requests and their Appendixes must be accompanied by a translation in the official language of the Republic of Côte d’Ivoire’’.

Freezing measures applicable to funds and assets owned and generated by terrorist funds (c.III.4)

210. Based on Article 30 of the CFT Order, the freezing measures are applicable :

a) To funds and other property owned or controlled entirely or jointly, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organizations;

b) To funds or other property derived from/or generated by funds or other property owned or controlled, directly or indirectly by designated persons, terrorists, those financing terrorism or terrorist organizations.

211. Furthermore, under Article 29 of the CFT Order, provisional measures can be applied to all funds and other property in connection with the offence of terrorist financing.

System to forward lists to financial institutions on assets freezing mechanisms (c.III.5)

212. Regulation 14/2002 gives power to the Council of Ministers of the UEMOA to draw up the list of targeted person, entities and organizations (Article 4). In practice, it is up to BCEAO which is charged jointly with the Banking Commission of monitoring and enforcing the Regulation for dissemination to banks and financial institutions, the list of targeted persons and entities sent by the Council of Ministers.

213. . There are no clear procedures or guidelines issued to reporting entities to help them understand and effectively meet their freezing obligation.

214. Communication to the financial sector of measures taken as part of freezing mechanisms is done through two channels. Through the first one, the list of persons, entities and organizations whose funds must be frozen, is received on behalf of the State of Côte d’Ivoire by the Council of Ministers of UEMOA. This Council, through a decision by its chairman, tasks BCEAO and the Banking Commission to effectively implement the freezing measure. The BCEAO Governor forwards the aforesaid list to the National Director of the Central Bank of West African States (BCEAO), which in turn, forwards it to banks and financial institutions for enforcement. Alongside this aforesaid procedure, implemented within the UEMOA, lists are also subject to a parallel processing at national level which is the second channel.

215. Through the second channel, the UN directly sends the lists of persons, entities and organizations whose funds must be frozen to the State of Côte d'Ivoire via the Ministry of Foreign Affairs, which, because of their financial impact, charges it to the Ministry of Economy and Finance. The latter refers to the General Directorate of Treasury and Public Accounting which makes the Treasury Department accountable. This Department forwards the lists to banks and financial institutions for execution.

216. This parallelism in the communication process of the lists established on the basis of Resolution 1267 of the UN Sanctions Committee does not guarantee any effectiveness in practice and appears as a major obstacle in the CFT regime in Côte d'Ivoire.

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

217. There are no clear instructions or guidelines provided to recipient banks or to any other person under the modalities of freezing of funds and other terrorist assets of targeted persons and entities. But they know they are required as soon as they are aware, to immediately provide to BCEAO and the Banking Commission any information likely to foster the implementation of the freezing measure. However it is not certain they know that throughout the freezing measure, these funds or other financial resources shall not be, directly or indirectly, available or used for people targeted by the measure.

Effective procedures and publications of de-listing and unfreezing requests (c.III.7)

218. Article 30 paragraph 5 of the CFT Order states that ‘’any decision to freeze or unfreeze must be brought to the attention of the public through publication in the official gazette and in a newspaper of legal notices. Likewise for procedures to be observed by any natural or legal person registered on the list of targeted persons, entities or organizations, for the withdrawal of such registration and, if necessary, the unfreezing of funds belonging to him’’. However, no appropriate procedure has been provided to allow the implementation of this legal provision in Côte d'Ivoire.

219. It is also worth mentioning that for Resolution1267, that there is a procedure prescribed by the 1267 Committee (refer to the website of the said committee). With regard to resolution 1373, it is incumbent on each State to adopt relevant procedures.

Procedures to unfreeze the assets of persons inadvertently affected (c.III.8)

220. No procedure is provided for in Cote d'Ivoire to release the funds of persons inadvertently affected

Appropriate procedures for access to frozen funds to cover basic expenses (c.III.9)

221. Côte d'Ivoire has not yet put in place appropriate procedures for allowing access to funds or other assets frozen under Resolution 1267(1999) and for which it was decided they would be used to cover basic expenses, payment of some types of fees, costs and payments of services as well as extraordinary expenses.

Procedures for challenging freezing measures for review by Court (c.III.10)

222. Regulation 14/2002 has not provided putting in place appropriate procedures allowing a person or entity whose funds or other assets were frozen to challenge this measure for review by a court.

223. Under Article 31of the CFT Order, any natural or legal person whose funds and other financial resources have been frozen and who believes that the freezing decision results from a mistake can file an appeal against this decision from the date of publication in the Official Gazette. The appeal is filed with the competent authority that ordered the freezing, indicating all elements that can demonstrate the mistake. Côte d'Ivoire has not designated the competent authority to take measures on administrative freezing.

224. The Ivorian authorities indicated that the challenge of a freezing measure of administrative nature shall be brought before the administrative ordering authority in accordance with the principle of parallelism. In case of failure or inaction, the applicant would file to the administrative chamber of the Supreme Court an appeal for misuse of power allowing the applicant to refer the decision of the administrative authority to the judicature. There is no jurisprudence from the application of Regulation 14/2002 and the CFT Order.

Freezing, seizure and confiscation in other circumstances pursuant to criteria 1 to 6 of Recommendation 3 (c. III.11)

225. Côte d'Ivoire has not criminalized terrorism.

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

226. The provisions of the domestic law, notably Article 58 of the Criminal Code, protect the rights of bona fide third parties in implementing the measures of seizure and confiscation under Article 12.8 of the Palermo Convention. Article 58 mentioned above emphasizes that measures of confiscation of property shall be conducted however without prejudice to the rights of third parties on such property. This provision joins Article 8, section 5 of the Convention on the suppression of terrorist financing which requires that there should not be prejudicial to the rights of bona fide third parties in implementing measures of confiscation of funds used or intended to commit offences of terrorist financing.

227. Regulation 14/2002 does not make any provision ensuring the protection of the rights of third parties acting in good faith, and there is no legal or regulatory provision guaranteeing protection of the rights of bona fide third parties as part of assets freezing mechanisms, pursuant to Resolutions 1267 and 1373 of the UN.

Effective monitoring of the implementation of the legal requirements related to SR.III in Côte d'Ivoire (c.III.13)

228. Under Article 28 of the CFT Order, when, as a result of a serious lack of vigilance, or a deficiency in the organization of its internal audit procedures, a person required to take the freezing measures, ignored this obligation, the supervision authority having disciplinary power can act ex-officio.

229. The obligations of freezing and confiscation of terrorist property relate more specifically to the financial sector due to the significant risk of terrorist financing associated with it. This is subject to the supervision of BCEAO and the Banking Commission of WAMU. These institutions are responsible for enforcing relevant laws, rules or regulations governing banks and banking institutions namely the obligations provided by Regulation n°14/2002 and apply, where appropriate, sanctions corresponding to any violation. These sanctions as provided by Article 7 of Regulation n° 14/2002/CM/ UEMOA of 19 September 2002 on the freezing of funds and other terrorist assets in combating terrorist financing in UEMOA are administrative, disciplinary, financial and criminal.

230. Besides, it should be noted that article 30, in its paragraph 2 of the CFT decree gives mandate to the competent authority to ensure the enforcement of legislations related to the freezing, namely the regulation of 14/2012. This authority is yet to be appointed by Côte d'Ivoire.

231. It should be noted that Côte d'Ivoire does not have an appropriate system to conduct an effective monitoring of the compliance with the relevant laws, rules or regulations governing the obligations provided by Special Recommendation III of FATF.

Additional elements – Implementation of measures recommended in the document on international best practices (c.III.14)

232. Côte d'Ivoire has established no measure related to the implementation of international good practices as part of the compliance with obligations from SR.III.

Implementation of procedures to access frozen property (c.III.15)

233. The procedures for accessing frozen funds and other property under Resolution 1373 have not been implemented in Côte d'Ivoire.

Keeping statistics under R.32 (c.32.2)

234. There is no mechanism for collecting information related to the measures of freezing taken under Resolutions 1267 and 1373 of the UN. Moreover, the implementation of related legal obligations is not effective in that there is no statistics on the freezing of terrorist funds or assets in Côte d'Ivoire.

Analysis of Effectiveness

235. Among financial institutions and designated persons and non financial businesses met by the Mission, only banks have said they knew about the lists disseminated by BCEAO and the Ministry of Finance in connection with the freezing of funds and other resources belonging to persons and entities referred to by Resolution 1267 of the UN Security Council.

236. The Professional Association of Banks and Financial Institutions in Côte d'Ivoire (APBEF-CI) said it is also disseminating lists of targeted persons and entities received from

the Ministry of Finance, within the profession. However, some interlocutors believed that more specific and clearer instructions would be helpful for better implementation of the freezing measures.

237. At the Ministry of Foreign Affairs, the Department of Strategic Affairs, Security and Arms Control is responsible for monitoring the implementation of measures of sanctions and freezing of funds and other terrorist assets of persons and entities targeted by Resolution 1267 (1999). But the Mission was not told how this Department is conducting this monitoring and the results arising from it**.** No decision of freezing effectively applied has been communicated to the Mission either.

2.4.2 Recommendations and Comments

- For Resolution 1267, the Ivorian authorities should :
  - 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 of the UN Security Council but also by people acting on their behalf or on their instructions ;
  - Extend the freezing measures to all 'funds and other property'' which, in compliance with the Resolutions mentioned above, would help cover all financial assets, property of any kind whether tangible or intangible, movable and immovable as well as legal documents or instruments in any form proving the ownership or interests on such property;
  - Extend the scope of the Regulation to all stakeholders who hold funds or other assets belonging to people and entities directly or indirectly involved in the commission of terrorist acts and provides for an effective monitoring of compliance with these obligations by the supervisory authorities ;
  - Provide for a clear and rapid mechanism for disseminating the lists of the Sanctions Committee ;
  - Establish effective procedures brought to the attention of the public to unfreeze, as soon as possible, funds or other assets of people or entities inadvertently affected by a freezing mechanism, after verification that the person or entity is not targeted ;
  - Put in place appropriate procedures for authorizing access to funds or other assets that were frozen under Resolution S/RES/1267(1999) and so it was decided to use them to cover basic expenses, the payment of some types of fees, costs and payments of services as well as extraordinary expenses ;
  - Put in place appropriate procedures allowing a person or entity whose funds or other property were frozen to challenge this measure for court review.
- Regarding Resolution 1373, Côte d'Ivoire should:
  - Be able to designate, if necessary on a national list, the persons and entities whose funds or other property must be frozen ;
  - Provide for a clear and rapid procedure to examine and give effect to the initiatives taken as part of freezing mechanisms of other countries ;
  - Put In place appropriate procedures brought to the attention of the public to examine in a timely manner requests to withdraw from list of persons targeted and unfreeze funds or other property of persons or entities removed from the lists ;

- Put in place effective procedures brought to the attention of the public to unfreeze, as soon as possible, funds or other property of the persons or entities inadvertently affected by a freezing mechanism, upon verification that the person or entity is not targeted ;
- Put in place appropriate procedures allowing to a person or entity whose funds or other property were frozen to challenge this measure for court review;
- Adopt measures that can protect the rights of third parties acting in good faith.

2.4.3 Compliance with Special Recommendation III and R.32

Rec.	Rating	Summary of factors underlying rating
SR III	**NC**	• many deficiencies related to the implementation of Resolution 1267(1999) : - limitation by Regulation 14/2002 of freezing measures to ‘’funds and other financial resources’’ ; - scope of dissemination of lists limited to banks ; - process for decision-making and dissemination of lists too cumbersome ; - Lack of effective procedures brought to the attention of the public to unfreeze, as soon as possible, funds or other property of persons or entities inadvertently affected by a freezing mechanism ; - Lack of effective procedures brought to the attention of the public to examine in a timely manner, requests of withdrawal from the lists by persons targeted and unfreezing of funds or other property of persons or entities removed from the lists ; - Lack of appropriate procedures to allow access to funds or other property that were frozen under Resolution S/RES/1267(1999) and for which it was decided they would be used to cover basic expenses, the payment of some types of fees, costs and payment of services as well as extraordinary expenses ; - Lack of appropriate procedures to allow a person or entity whose funds or other property were frozen, to challenge this measure for court review. • Lack of implementation of Resolution 1373(2001).

2.5 The Financial Information Unit and its Functions (R.26, 30 And 32)

2.5.1 General description of laws and other measures, situation or background

238. The legal framework consists of:

- Directive n° 07/2002/CM/ UEMOA of 19 September 2002, related to the fight against money laundering in UEMOA Member States ;
- The Uniform Act related to combating money laundering of 20 March 2003 ;
- Law n° 2005-554 of 2 December 2005, related to the fight against money laundering

(AML) ;

- Decree n° 2006-261 of 9 August 2006, on the establishment, organization and functioning of the National Financial Intelligence Processing Unit (CENTIF).
- Regulation n°14 /2002/CM/ UEMOA of 19 September 2002 related to the freezing of funds in countering terrorist financing within the UEMOA;
- Directive n°04/2007/CM/UEMOA of 4 July 2007 on countering terrorist financing in UEMOA Member States ;
- The Uniform Act related to the fight against terrorist financing of 28 March 2008 ;
- Ordinance n°2009-367 of 12 November 2009 on countering terrorist financing (CTF).

Recommendation 26

Establishment of a Financial Intelligence Unit (c.26.1)

239. In compliance with Directive No. 07/2002/CM/UEMOA of 19 September 2002 on the fight against money laundering in UEMOA member countries, Côte d'Ivoire passed Act No. 2005-554 of 2 December 2005 on Anti Money Laundering (AML). Pursuant to the provisions of Article 16 of the AML Act, Ivorian authorities established the National Financial Intelligence Processing Unit (CENTIF), which is the Ivorian Financial Intelligence Unit (FIU), by instituting it through Decree No. 2006-261 of 9 August 2006 on the establishment, organization, and operation of the NFIPU.

240. CENTIF became operational in 2007 after the six (06) members who compose it were appointed by Decree No. 2007-653 of 20 December taken by the Cabinet Meeting. It is an administrative body under the supervision of the Minister of Economy and Finance, with financial autonomy and an independent decision-making power over matters within its competence. It is mandated to collect and process financial information on money laundering (Art. 17 of AML Act) and terrorist financing (Art. 17 Order No. 2009-367 of 12 November 2009 on CFT) circuits. As such, it is responsible for receiving, analyzing, and processing the information crucial to establish the origin of transactions or the nature of transactions subject to suspicious transaction reports required from reporting entities. It also receives any other relevant information necessary for the fulfillment of its mission, including information provided by both supervisory authorities and law enforcement officers. As an illustration, the FIU had on 31 December 2011 a portfolio of one hundred and ninety eight (198) STRs which, after processing and analysis, thirty-seven (37) cases have been provisional classification and eleven (11) cases referred to the prosecutor. Hundred fifty (150) other STRs remaining were still under investigation. It should be noted that the FIU has developed a guide to internal procedures for processing STRs. In addition, fact sheets algorithms are used as tools for analyzing suspicious transaction by the Unit. At the time of the site visit, no STR related to the financing of terrorism had been registered with the CENTIF Côte d'Ivoire. Indeed, suspicious activity observed in the treatment of STRs are related to:

- ✓ Use of fictitious companies or shell companies;
- ✓ Repeated deposits and withdrawals of cash and transfers;
- ✓ Issuances and sales of securities;
- ✓ Important movements do not match the profile of the client;
- ✓ Doubts about the economic rationale of various transfers with foreign countries;
- ✓ Atypical transactions in connection with a tax haven;

- ✓ Scams bank cards;
- ✓ Production of false documents or plurality of identity;
- ✓ A typical transaction exchange;
- ✓ Lack of information on the actual sender.

241. The FIU may request that reporting entities and any natural or legal person disclose information that they hold, and which are likely to help enrich the Suspicious Transaction Reports (STRs) that it receives (Art 3, paragraph 3, Decree No. 2006-261). In addition, when the transactions draw attention to facts likely to constitute a money laundering offense, CENTIF submits (Article 29 of AML Act) a report on such facts to the public prosecutor.

Guidance on suspicious transaction reporting (c.26.2)

242. On CENTIF's proposal, the Minister of Economy and Finance, pursuant to Article 26, para. 1 of AML Act, set by Decree No. 388/MEF/NFIPU of 16 May 2008 a suspicious transaction reporting template. This suspicious transaction reporting template consists of the following: identification of the reporting entity (i) general information (ii) analysis (iii) evidence of money laundering (iv) identification of the natural and/or legal entity and other additional information (v).

243. Since the beginning of its activities, CENTIF has held working sessions with the reporting entities, including banks and financial institutions, micro-finance institutions, regional financial market stakeholders and insurance companies, in order to provide them with guidance on Suspicious Transaction Reporting (STR). Generally, such guidance has laid the emphasis on reminding reporting entities' professional obligations, presenting the STR template and showing how to feed it both manually and electronically. In case of electronic reporting, reporting entities are encouraged to confirm it by any written means within forty-eight (48) hours (Article 27 of AML Act). CENTIF rules specify the procedures for submission of suspicious transaction reports (STRs) to CENTIF.

244. However, with the adoption by Ivorian authorities of the order on combating the financing of terrorism, the STR template appears unsuitable for suspicious transaction reports relating to the financing of terrorism. Consequently, the review of the STR template is highly recommended.

245. Some guideline outlines have been developed by the CENTIF in order to improve guidance in training of and awareness-raising among national stakeholders involved in the implementation of the national AML/CFT regime. Despite such efforts, some categories of reporting entities are not fully knowledgeable about national AML/CFT laws and regulations. CENTIF should keep the focus on raising awareness about as well as extending the AML/CFT legislation to some professions subject to the regulation, which contribute very marginally to the required reporting system. In addition, CENTIF should produce clear guidelines and develop sectoral AML/CFT typologies.

246. As part of guidance to the reporting entities, CENTIF has instituted regular meetings with the CENTIF focal points within the financial institutions. During such meetings, discussions generally address procedures to follow before, during, and after a suspicious transaction report (suspicion evidence or money laundering indicators, confidentiality rules to observe, reporting both before and after, improvement of STR quality, etc.). During awareness sessions, the focus is on the mandatory nature of suspicious transaction reporting to

CENTIF, notwithstanding any other report submitted to an authority in pursuance of any text other than the AML/CFT laws.

247. Indeed, the last paragraph of Article 26 of the AML Act provides: "No report to an authority in pursuance of a text other than this law may have the effect of exempting the persons referred to in Article 5 from the implementation of the obligation to report under this article."

Access to timely information (c.26.3)

248. In compliance with the current laws, CENTIF has broad powers to carry out its financial investigation mission. Thus, under Article 17 of Act N° 2005-554 of 2 December 2005, section 2, paragraph 3, the NFIPU receives information from the reporting entities systematically. It may also require reporting entities and any natural or legal person to provide any information relevant to its mission.

249. Under Articles 19, 28 and 34 of AML Act, CENTIF has also access to financial, administrative and police information held by controlling authorities, law enforcement officers, provided that such information is necessary for the performance of its mission and likely to help improve and analyze suspicious transaction reports. Access to such information is indirect, either by requisitioning or by requesting information, as appropriate, through the relevant representatives appointed as of right. Access to such information may be timely, subject to the establishment of interconnection systems between CENTIF and the abovementioned administrations. It should be noted in this context that CENTIF is interconnected to the information system I/24 of Interpol, CENCOM of the World Customs Organization (WCO) and EGMONT SECURE WEB.

250. Professional secrecy is not opposable to CENTIF in the exercise of its normative powers. Indeed, the AML Act (art. 28) and CFT Order (Art. 27) provide for the lifting of professional secrecy to enable CENTIF to access all relevant information in order to properly fulfill its mission.

251. Pursuant to Article 19 of the AML Act, CENTIF has the possibility to designate representatives in some public services. Thus, it currently has twelve (12) representatives in the following institutions: police (02), gendarmerie (01) customs (02), judiciary (03), treasury (02) public finance (01), tax office (01). These representatives are CENTIF's focal points within their respective services.

252. A focal point procedural guide has been validated to define the collaboration framework between these designated focal points and CENTIF. According to this guide, focal points are required to provide any relevant information upon request for information from CENTIF in the context of STR analysis, just as they may, on their own initiative, provide information related to AML/CFT to CENTIF.

Collecting additional information from reporting entities (c.26.4)

253. CENTIF has the power to get Additional elements from reporting entities in order to properly perform its duties, without professional secrecy being invoked to refuse to disclose the required records or documents likely to facilitate financial investigations. Indeed, under Article 17 of the AML Act, CENTIF has the authority to request Additional elements from

the reporting entities referred to in Article 5, and from any natural or legal person who holds any information likely to help enrich the STRs. In compliance with Article 17 of the CFT Order, CENTIF's powers provided for in Article 17 of the AML Act are extended as regards collection of information and enquiries on the financing of terrorism.

254. In addition, through its focal points, CENTIF may, where applicable, collect also the required information to perform its duties. The collection of information through its focal points is made in strict compliance with privacy and protection obligations.

Dissemination of Financial Information (c.26.5)

255. CENTIF has the power of direct referral to the relevant judicial authority, particularly the public prosecutor, who is the exclusive recipient of its investigation reports, when operations draw attention to facts likely to constitute money laundering and/or terrorist financing offense. The prosecutor immediately submits to the investigating judge the investigation report by CENTIF, which may have value of proof until evidence is provided to the contrary.

256. Indeed, CENTIF is empowered, when it establishes money laundering and/or financing of terrorism suspicion as a result of its STR investigations, to submit a report on such facts to the prosecution, under Article 29 of the AML Act and Article 17 of CFT Order. The CENTIF report is supported by all relevant documents, with the exception of the suspicion report. The reporting entity's identity may not appear in the report. CENTIF notifies « in due time » the reporting entity of the findings of its investigations, but the feedback received is not satisfactory according to the information received from some reporting entities during the onsite visit.

257. Effectiveness-related issues arise due to the small number of cases referred to the Prosecution by the Prosecution owing to the numerous STRs received by CENTIF. Indeed, the mission notes a deficiency in the processing and referral of cases to the relevant judicial authority. Out of 198 STRs received, only 11 cases have been referred to the court, which represents about 5% of the suspicious transaction reports. But this low number of files sent could be accounted by the quality of the survey sent and the credibility of the FIU in the framework of its collaboration with judicial authorities. According to the FIU, the bulk of STR received, after analysis, does not lead to the confirmation of the suspicion of Money Laundering. Besides the processing of some files require more time end means, given their complexity.

258. Pursuant to Article 10 of Decree No. 2006-261 of 9 August 2006 on the establishment, organization, and operation of CENTIF, the latter is responsible for creating and running a database containing any relevant information relating to suspicious declaration reports. In this prospect, CENTIF has established a Technological and Communication Monitoring Committee, whose main task is to facilitate consideration of the creation of such database. For reasons of confidentiality and protection, only CENTIF will access that database.

259. Finally, there is a lack of both a real information system and a computerized database at CENTIF. It has been nevertheless indicated to the mission that software was being developed to address this concern.

260. The PDVF soft ware is designed to:

- Store in a single database all information contained in the STR submitted by the reporting entities ;
- Register almost all information obtained during the investigation ;
- Process STRs using analytical functions based on which reconciliations and overlaps of information needed for the eventual detection of money laundering and terrorist financing channels are established.

Operational independence and autonomy (c.26.6)

261. The law gives CENTIF operational independence and autonomy so that it may be free from any influence or possible interference likely to impede its smooth running. Indeed, under Article 17 of the AML Act, CENTIF is vested with an independent decision-making power over issues within its competence.

262. In practice, the mission has noted that at the operational level, particularly in processing STRs, CENTIF has full autonomy. It works independently from its supervisory authority in its area of competence.

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

263. Under Article 20 of Act No. 2005-554 on AML of 2 December 2005, Articles 8 and 9 of Decree No. 2006-261 of 9 August 2006 on CENTIF, CENTIF members and focal points take an oath before taking office. They are bound by professional secrecy, and collected information may not be used for purposes other than those prescribed by law. Article 18, paragraphs 2 and 3, and Article 20 of the Rules of Procedure lay down the principles providing for the protection of information for reasons of the obligation of confidentiality and professional secrecy incumbent on CENTIF members. Similarly, CENTIF technical staffs are subject to the rules of confidentiality. In this regard, a code of conduct and ethical charter has been developed and is applicable. In case of violation of the professional privilege or confidentiality rules by its members, the correspondents as well as the staff, criminal and administrative sanctions are applicable to them in compliance with relevant existing procedures.

264. In addition, the law provides for circumstances where operational information held by CENTIF may be disclosed (Art. 23, 24 and 29 of AML Act), namely the submission of a report to the Public Prosecutor when facts constituting money laundering or financing of terrorism are established (i), information exchange with a UEMOA member state’s FIU on duly substantiated request (ii), and information exchange, subject to reciprocity, with third countries' Financial Intelligence Units (FIUs) responsible for receiving and processing suspicious transaction reports, when they are subject to similar obligations of confidentiality (iii).

265. With regard to the physical protection of materials, safety measures have been taken to protect data kept in the premises of CENTIF (Article 6 of Code of Conduct). Such measures include security systems, such as the physical check of persons at the entrance, electrical grid, video surveillance, possibility of encrypting the computer network and providing staffs with safes. CENTIF has also established an internal STR processing and management procedure to fully guarantee security for the data.

Publication of periodic reports (c.26.8)

266. From the provisions of Article 17 of the AML Act and paragraphs 4,5 and 6 of Article 3 of the abovementioned Decree, it emerges that CENTIF is required to publish periodic reports on the development of techniques used (typology), trends (statistics), as well as information on its activities. Therefore, since its establishment, CENTIF has regularly published quarterly reports and two annual reports (2009 and 2010). Those reports include statistics on the number of STRs received, processed, and submitted to the public prosecutor's office or closed temporarily, trends and evidence that have led the reporting entities to make STRs, as well as information on CENTIF's activities both at the national and international levels. However, it should be noted that those reports do not really include AML/CFT typologies. These different reports were released and some of them are available on hard copies, still others are online on the CENTIF website (www.centif.ci). It is worth noting that the CENTIF periodic reports are sent to the Minister of Finance and Economy and the BCEAO.

267. The mission points out that the CENTIF does not provide adequate feedback to financial institutions, be it generally in relation to trends, as well as with regards to STRs they carry out. Generally, the CENTIF should ensure regular feedback to reporting entities.

268. 262. In the framework of the outlook, CENTIF contemplates to carry out typology studies on money laundering, (risk related to cyber-crime money laundering risk related to the trade of second hand cars, money laundering risk related to the real state sector). The CENTIF is also empowered to say their minds on the implementation of the state policy related to anti money laundering and terrorism financing. To that end, it is worth noting that the CENTIF takes part in the deliberations for the definition of the strategic action plan of the ministry of Finance and Economy, the drafting of strategic orientation paper by the State department, the Ministry of Planning and Development, and the survey aiming at implementing the national plan of good governance and anti corruption 2010-2014 of the domestic secretariat to governance and capacity building. As such, the CENTIF proposes any reform necessary to enhancement of the efficiency of anti money laundering and terrorism financing.

Egmont Group Membership (c.26.9)

269. Côte d'Ivoire's CENTIF has been an Egmont Group member since 1 July 2010, when it was admitted at its plenary meeting in Cartagena, Colombia. This membership gives international recognition to its status as operational FIU meeting the required relevant standard.

Compliance with Egmont Group principles by NFIPUs (c.26.10)

270. Côte d'Ivoire, through its FIU, takes into account the Egmont Group's « Mission Statement » and its « Principles for information exchange between FIUs on money laundering cases. » The Egmont Group membership is subject to compliance with the « Mission Statement. » These principles have been already set out in Article 24 of AML Act, which stipulates that “CENTIF may, subject to reciprocity, exchange information with third states' financial intelligence services responsible for receiving and processing suspicious transaction reports, when the latter are subject to similar obligations of confidentiality.”

271. The connection of CENTIF to the EGMONT SECURE WEB, which was suspended after the damage to the body in the post-election crisis in 2011, was reinstalled on 18 April 2012, after the Egmont Group's satisfactory on-site visit.

272. Since the beginning of its activities CENTIF has, as part of the cooperation with the FIUs, processed requests for information from the FIUs in Burkina Faso, Benin, Togo, Senegal, France, Canada, Luxembourg, Moldova, Kurdistan, Tajikistan, Belgium and Germany. CENTIF also signed cooperation agreements with foreign FIUs, including that of Nigeria on 13 October 2010, Ghana on 6 January 2012 and France on 5 April 2012.

Recommendation 30

Structure of the FIU and financial, human, and technical resources available (c.30.1)

a) Human and material resources

273. CENTIF is composed of statutory members and administrative and technical support staffs. Indeed, under Article 18 of the AML Act and Article 4 of the Decree on the establishment, organization and operation of the NFIPU, it is composed of six (6) statutory members appointed by decree, as following:

- A senior official from either the Customs and Excise or the treasure or the revenue office, holding the rank of director of central administration, appointed by the Ministry of Finance. He/she is of the chairperson of the NFIPU;
- A magistrate specializing in financial matters appointed by the Ministry with responsibility for Justice;
- A senior law enforcement officer appointed by the Ministry with responsibility for Security;
- A BCEAO representative serving as CENTIF Secretary;
- An investigation officer, customs inspector, appointed by the Ministry with responsibility for Finance;
- An investigation officer, law enforcement officer, appointed by the Ministry with responsibility for Security.

274. They perform their duties on a permanent basis, for a three (3)-year term, which is renewable once. The current CENTIF members were appointed by Decree n° 2011-118 of 25 July 2011. They are assisted in their missions by twenty-eight (28) administrative and technical staffs. The seventeen (17) technical staffs include five (5) financial analysts, two (2) lawyers, two (2) computer technicians, two (2) investigators and six (6) officers responsible for the financial and budget department. As for the administrative staffs, they are eleven (11) people.

275. Overall, Ivorian CENTIF has thirty four (34) staffs divided among its various departments. The human resources seem to be adequate and are suitable for the rate of the NFIPU's activities. The mission also noted a good work organization within the NFIPU, except the low rate of referrals to the prosecution and the lack of AML/CFT typology exercise. In fact, in addition to the presidency, the NFIPU has three (03) major departments,

including a General Secretariat, the Department of Investigation and the Department of Legal Affairs and Cooperation, which are subdivided into various services.

276. With regard to the financial resources, Article 22 of Law n° 2005-554 of 2 December 2005 on anti-money laundering states that "*CENTIF's resources come from contributions from the state, UEMOA institutions and development partners.*" Article 17, paragraph 1, of the same Law provides that "*CENTIF has financial autonomy and independent decision-making power on matters within its competence.*" To date, CENTIF's financial resources come exclusively from the Ivorian public budget. The budget allocations from 2008 to 2012, which include operating, investment costs and staff compensations, are presented in the table below.

Years	Allocated amounts (in FCFA)	Achievements (disbursements)	Completion rate (%)
2008	829 071 965	-	-
2009	832 514 980	416 257 490	50%
2010	769 670 740	641 873 648	83.39%
2011	582 414 980	420 805 917	72.25%
2012	1 088 181 000	-	-
TOTAL	2 184 600 700	1 478 937 055	67.69%

Source: NFIPU

277. These allocated budgets represent half of CENTIF's provisional budgets. In addition, in terms of cash availability, the funds disbursed over these years are around 60%.

278. Concerning the technical resources, the endowments are as follows:

- **Means of transport**: 02 vehicles;
- **Means of communication**: 32 fixed telephones, 02 faxes, 01 broadband Internet connection;
- **Computer equipment**: 25 desktop computers, 10 laptops, 01 data security system;
- **Local Security Equipment**: surveillance cameras, 01 power protection system, 01 automatic standby generator.

279. It should be noted, however, the inadequate rolling stock regarding the body's operating needs.

Integrity of FIU staff (c.30.2)

280. CENTIF staff is recruited in compliance with the rules provided for by its inception texts. Indeed, the selection of the CENTIF members is made according to criteria of competence and specialization. Thus, under Article 18 of the AML Act, the members come from the economy and finance, security, judiciary and BCEAO administrations. The abovementioned text requires them to be senior civil servants and have the required skills and expertise in financial matters. The staff members were proposed by their superiors from their original administrations and subjected to moral investigation prior to their appointment by decree of the Council of Ministers. Before taking office, they have taken an oath of loyalty, integrity and compliance with confidentiality of collected information that could not be used

for purposes other than those provided for by the AML Act (Article 20). The oath was taken in the court.

281. Regarding the technical staff, Article 18, paragraph 3 of the CENTIF Rules of Procedure provides that they shall commit themselves, in writing, to complying with the same obligations in the form of an oath, the terms of which are previously defined. Similarly, the job applications to CENTIF shall be received by the Chairman, who convenes a special meeting of the Commission for the purposes of file-based short-listing. The shortlisted applicants are then invited for an interview. The successful applicants are subject to a prior vetting before any final commitment. They take an oath to the CENTIF Chairman before taking office (Article 18 et seq.) Under paragraph 4 of the same Article, « *private visits are prohibited within* CENTIF *premises. Any violation of these rules may result in administrative and/or disciplinary action without prejudice to any possible legal action.* »

Appropriate training for FIU staff (c.30.3)

282. CENTIF's statutory members and technical staff have attended various AML/CFT training courses and have adequate experience in their respective fields. They have also visited some FIUs to understand how they work and take inspiration from them.

Summary of training and awareness seminars for NFIPU members and staff

N°	Theme of training	Dates
1	Economic Community of Central African States (ECCAS) and Central African Economic and Monetary Community (CEMAC) Regional Workshop on AML/CFT	07-09 April 2008
2	Impregnation missions to Senegal's NFIPU	April 2008
3	GIABA support and training Seminar (Abidjan)	21-25 April 2008
4	Training seminar held by TRACFIN (Paris)	22-23 May 2008
5	Impregnation mission to Belgian CTIF	07-09 July 2008
6	African Multilateral Institute (AMI) workshop, Tunis	13-17 Oct. 2008
7	Training Seminar on securities, Toronto	20-24 Oct. 2008
8	Forum on financing of terrorism, Dakar	18-19 Dec. 2008
9	Training program on AML/CFT, Arlington	17-21 Nov. 2008
10	Financial investigators' regional training workshop, Abidjan	15-19 Dec. 2008
11	Training on the preparation of the Mutual Evaluation (by videoconference)	23-25 Feb. 2009
12	Training Seminar for Financial Analysts (Cotonou)	09-13 Mar. 2009
13	Seminar of Mutual Pre-Evaluation of Benin (Cotonou)	02-04 Mar. 2009
14	Training workshop for banks and financial institutions, Ouagadougou	31 Mar. - 03 Apr. 2009
15	Seminar on Banking Supervision, Casablanca	04-06 May 2009
16	Seminar on Cyber crime (École nationale de police, Abidjan)	11-15 May 2009

N°	Theme of training	Dates
17	Regional training and awareness workshop for DNFBPs	17-19 June 2009
18	NFIPU-CI Evaluation Mission by Mr. DEV Bikoo, Director General, Mauritius NFIPU	13-17 July 2009
19	Training Seminar on OIPC-Interpol I-24/7 system (Grand-Bassam)	28-30 July 2009
20	Training Seminar on Ethics (Abidjan)	10-14 August 2009
21	Training Seminar on the STR processing software package PVDF, Paris	08-09 Oct. 2009
22	Training workshop on FIU financial intelligence analysis organized by UNODC, Ouagadougou	19-23 Nov. 2009
23	Regional Seminar on investigation techniques in the fight against the use of forged documents, financial fraud and online banking, Grand-Bassam	16-26 Nov. 2009
24	Regional seminar on technical intelligence in the fight against criminal organizations in sub-Saharan Africa, Grand-Bassam	07-11 Dec. 2009
25	Seminar for executives of public administrations and companies, Ouagadougou	01-08 Dec. 2009
26	Workshop on AML/CFT regime for the sector of precious metals and stones, Tunis	08-12 Mar. 2010
27	UEMOA experts' sub-regional workshop on asset freezing in the fight against financing of terrorism, Dakar	09-11 Mar. 2010
28	Seminar on AML/CFT for ECOWAS French-speaking and Portuguese-speaking judges, Bamako	22-26 Mar. 2010
29	International workshop on the 3 steps in the effective prevention of fraud and money laundering, Johannesburg	22-26 Mar. 2010
30	Eighth regional training round for NCBs' officials in French-speaking countries in West Africa	29 Mar.-02 Apr. 2010
31	Specialization session for the NFIPU/Liechtenstein Programme, Abidjan	31 May-04 June 2010
32	Seminar on economic forecasting, intelligence and economic and financial information analysis within police forces in West and Central Africa, Grand Bassam	19-30 Apr. 2010
33	Seminar on Cybercrime, Cotonou	07-11 June 2010
34	Seminar on distance banking, Dakar	15-16 June 2010
35	Regional training workshop on money laundering and crime investigations, Ouagadougou	19-23 July 2010
36	Study Tour on international crime, United States	02-15 Oct. 2010
37	GIABA regional workshop on prosecution of economic and financial crime, Cotonou	04-08 Oct. 2010
38	Course on the theme « fight against financial crime, money laundering and financing of terrorism",	11-22 Oct. 2010

N°	Theme of training	Dates
	Ouagadougou	
38	FATF meeting on money laundering and financing of terrorism typologies, Cape Town	16-18 Nov. 2010
39	Awareness seminar on AML/CFT for ECOWAS French-speaking and Portuguese-speaking judges, Dakar	06-08 Sept. 2011
40	Financial sector's AML/CFT awareness seminar, Dakar	10-12 Oct. 2011
41	Regional seminar on recovery of criminal assets, Praia	12-14 Dec. 2011
42	Regional seminar on the Kimberley process, Ouagadougou	23-24 Feb. 2012

Checking effectiveness of AML/CFT regime (c 32.1)

283. CENTIF has never checked the effectiveness of the AML/CFT mechanism.

Statistics keeping by FIU (.32.2)

284. CENTIF keeps comprehensive statistics on its activities. The statistics below cover the period from June 2008 (date of the effective start of NFIPU's activities) to 14 May 2012.

I - STRs received by CENTIF and broken down by type of reporting entities

	2008	2009	2010	2011	TOTAL
Number of reports received per year	24	81	56	37	198
BCEAO	05	-	-	-	05
Banks	17	69	56	36	178
Insurance companies	01	-	-	-	01
Micro-finance institutions	-	02	-	-	02
Money transfer companies	-	02	-	-	02
Regional financial market bodies	-	-	-	01	01
Other organizations and bodies	01	08	-	-	09

Source: NFIPU

Detailed statistics on all files received by NFIPU-CI as at 14 May 2012

Number of files received	2008	2009	2010	2011	2012	Total
Number of STRs	24	81	56	37	16	214
Number of information requests from foreign FIUs	01	02	08	09	02	22
Number of information requests at local level	-	-	05	05	01	11
Other information	-	-	09	04	01	14
Total	25	83	78	55	20	261

II – Breakdown of STRs analyzed and submitted

	2008	2009	2010	2011	TOTAL
Number of reports submitted to the Public Prosecution	02	05	04	00	11
Number of closed cases	09	22	06	00	37
Number of information requests processed	03	03	06	10	22

Source: NFIPU

III - International Wire Transfers

Year	2008	2009	2010	2011	TOTAL
Number of STRs involving international transfers	7	20	NC	00	27

Source: NFIPU – NC: Non communicated

Additional elements - keeping comprehensive statistics on STRs leading to investigations, prosecutions or convictions for money laundering, financing of terrorism or predicate offense by the FIU (C.32.3)

285. So far, CENTIF has not received from jurisdictions any feedback on the follow-up of reports submitted to the public prosecutor. This results from the fact that none of the twelve (12) files submitted by CENTIF has been the subject of a trial or closed by the court.

286. CENTIF's Magistrate is responsible for monitoring the cases referred to the prosecution. As such, his department, namely that of Legal Affairs and International Cooperation, is responsible for keeping statistics on the follow-up of cases referred to the Prosecutor by CENTIF.

Other data or documentation regarding effectiveness and proper operation of the FIU's AML/CFT mechanism

287. CENTIF is aware of the need to keep accurate, detailed, and reliable statistics. It has initiated the development of an information system with a database recording the main information relating to the predicate offenses, in addition to the statistics. This information relates to the nature of the offenses, the perpetrators' IDs and backgrounds, and the amount of the damage.

288. This database will be supplied periodically with data collected from the police, gendarmerie, customs and courts.

Analysis of Effectiveness

289. CENTIF is fully operational. It is an Egmont Group member, which gives it international recognition. CENTIF's statutory members and technical staff, who were encountered during the field visit, showed a mastery of their craft and knowledge of the AML/CFT issues. However, the CENTIF's financial and technical resources seem inadequate given the body's huge operating and effectiveness needs. Similarly, CENTIF does not provide appropriate feedback to the financial institutions, following the submission of suspicious transaction reports (STRs). CENTIF does not develop any money laundering and terrorist financing typology. The mission has noted insufficiency in awareness-raising among all relevant sectors as well as in issuance of formal guidelines. It should also be noted that the

current STR template in Côte d'Ivoire is not suitable for cases related to the financing of terrorism.

2.5.2 Recommendations and Comments

290. CENTIF shall:

- Develop sector-based AML/CFT typologies;
- Extend its information and awareness sessions to reporting entities in order to cover all designated AML/CFT areas;
- Provide regular feedback to reporting entities on the follow-up of their STRs;
- Develop formal guidelines and AML/CFT typologies;
- Review its AML STR template to include aspects related to the financing of terrorism;
- Find more technical and financial resources;
- Initiate and participate in the evaluation of the effectiveness of the AML/CFT mechanism in Côte d'Ivoire;
- Improve its AML/CFT statistics keeping policy.

2.5.3 Compliance with Recommendations 26, 30 and 32

Rec.	Rating	Summary of factors underlying rating
R.26	**LC**	• Despite the existence of advice provided to reporting entities on how to develop the STRs, some professions concerned (including DNFBPs) have vague and incomplete knowledge of the national AML/CFT regime; • The Suspicious Transaction Report (STR) template does not take into account transactions related to financing of terrorism; • Lack of appropriate feedback to financial institutions, after submission of STRs; • Lack of reports on AML/CFT typologies and studies; • Low number of files submitted to the prosecution.

2.6 Authorities Responsible for Investigations, Criminal Prosecution, and Other Relevant Authorities – Framework for Investigating and Prosecuting Offences, and for Confiscating and Freezing (R.27, 28, 30 & 32)

Recommendation 27

2.6.1 Description and Analysis

291. In accordance with AML/CFT laws, the Public prosecutor, in his capacity as representative of the public prosecution and director of investigations, receives a report from CENTIF after an STR has been processed in the instance where the operations concerned draw attention to facts likely to constitute a money laundering or terrorist financing offense. The relevant Prosecutor shall immediately open a preliminary investigation by referring the case to an investigating judge (Article 29 of AML Act). As part of such investigations, the

latter may, in compliance with provisions in the Ivorian Code of Criminal Procedure (CCP), give commissions of inquiry to the Law Enforcement Officers (LEOs) to carry out an investigation under his supervision (Art. 79 of CPP).

292. Under Article 16 of the CPP, the following are considered as LEOs:

- Public prosecutors and their deputies;
- Investigating judges;
- Division judges;
- Mayors and deputies;
- Police directors;
- Police superintendents;
- Detectives appointed as law enforcement officers in the conditions provided for by decree;
- Gendarmerie officers;
- Gendarmerie non-commissioned officers, gendarmerie commanders or station chiefs;
- Gendarmerie non-commissioned officers who have successfully passed the law enforcement officers' examination and designated by name in conditions provided for by decree.

Designation of relevant criminal prosecution authorities (c.27.1)

293. Before the anti-money laundering and terrorist financing laws came into effect, the Ivorian legislation had already provided for criminal prosecution authorities responsible for reporting, collecting evidence, investigating and prosecuting perpetrators of offenses termed as crimes and misdemeanor. For the purpose, the Code of Criminal Procedure and the Criminal Code have provided for, in various sections, powers and procedures to enable such authorities to perform their duties.

294. The AML Act and CFT Order refer to those criminal prosecuting authorities for the prosecution of money laundering and terrorist financing offenses. Their powers are set out in Articles 29, 33, 35 to 45 of the AML Act. Under the CFT Order, these powers are provided for in Articles 21, 28, 37, 44, 67 and 71.

295. Thus, under Article 12 of the Code of Criminal Procedure, the public prosecutor is the director of the judicial police, the main initiator of public action. He has prosecutorial discretion. This capacity allows him to report or direct for an infringement of the criminal law to be reported by law enforcement officers and staff; to collect evidence through various means, such as search, requisition, hearings, interrogations, as well as investigation and prosecution of perpetrators. He has the power to take action for custody, seizure, and confiscation. He has the right to directly call upon the police in order to carry out his mission.

296. As for the investigating judge, he derives his authority from the Code of Criminal Procedure, Articles 49 et seq. When the Prosecutor refers a case to him, he uses his powers provided for under Articles 53 to 76 of the Code of Criminal Procedure and vested in law

enforcement officers. It should be noted, however, that there is no investigating judge specialized in AML/CFT in Côte d'Ivoire.

297. Law enforcement officers, who get their powers from Articles 53 to 76 of the Code of Criminal Procedure, report violations of criminal law, search for offenders and evidence. They exercise these powers under two legal regimes, investigation for *flagrante delicto* and preliminary investigation.

298. There exists a service specifically responsible for tracking and reporting economic and financial crimes, namely the directorate of economic and financial police, whose attributions are provided for by Decree No. 2011-388 of 16 November 2011 on the organization of the Ministry of State, Ministry of Interior, in its Article 34. This directorate includes a tax evasion and money laundering section. As for the Customs and Excise, it is the directorate of the customs investigation that is responsible for detecting and investigating customs offenses. This directorate does not currently have a unit specifically dedicated to AML/CFT.

Possibility to defer or not to carry out arrests and seizures for the proper conduct of the investigation (c.27.2)

299. The AML/CFT laws have expressly not provided for the deferred arrest of persons and seizure in order to allow the relevant authorities investigating money laundering cases to identify any individuals involved. However, Article 33 of the AML Act and Article 26 of the CFT law allow the investigating judge to use a range of techniques, including surveillance of bank accounts, access to used computer systems, networks and servers, etc., in order to establish proof of the original offense.

300. It should also be noted also that nothing prevents police officers investigating ML and FT cases or predicate offenses from deferring an arrest or seizure in collaboration with the Public Prosecutor, though nothing in the investigating authorities' practice makes it possible, as of now, to assess the effectiveness of such technique.

Additional - Authorization of special investigation techniques (c.27.3)

301. Under Article 41 of the Code of Criminal Procedure, “the prosecutor initiates or procures all actions necessary for the search and prosecution of violations of the criminal law.” For this purpose, he leads the activities of the law enforcement officers and staffs. Similarly, Articles 74 through 76 of the Code of Criminal Procedure allow a law enforcement officer to use investigative methods and techniques likely to lead to undercover operations, shadowing, and static surveillance. However, it should be noted that in the current state of the judicial police's practice in Côte d'Ivoire, there is nothing to confirm that such special techniques have been used by investigating authorities.

Framework for the use of special investigative techniques (c.27.4)

302. The criminal prosecution authorities' powers provided for in Articles 74 through 76 of the Code of Criminal Procedure, which allow a law enforcement officer to use investigative methods and techniques leading to undercover operations, shadowing and static monitoring, may be used to investigate ML or FT.

Specialized groups and international operational cooperation (c.27.5)

303. Where necessary, such groups are immediately formed by statutory instrument. Such was the case when combating child exploitation in coffee and cocoa plantations in Côte d'Ivoire and when investigating environmental offenses (toxic waste), but never for the proceeds of criminal activities to be frozen, seized or confiscated.

304. In addition, Côte d'Ivoire is bound by cooperation agreements with some countries. Those agreements provide legal basis for legal authorities to prosecute. They include the bilateral agreement with Mali on child trafficking (HORONZO Group and Mali Issue 2000) and the cooperation agreement on criminal police among the ECOWAS member countries.

Review of ML/FT trends by the authorities (c.27.6)

305. An outline of money laundering and terrorist financing methods, techniques and trends is contained in CENTIF's annual report and disseminated to authorities and on its website. It should be noted, however, that there is no real study on the vulnerability and risk of money laundering and financing of terrorism involving all relevant authorities, geared toward identifying related trends and typologies.

Recommendation 28

Authority to require and collect all documents and information (c.28.1)

306. CENTIF investigators have required and obtained the documents or records (account opening form, copies of ID documents, history of bank accounts, etc.) necessary for AML/CFT investigations. Professional secrecy has never been opposed to them. Indeed, Article 17 of the AML Act and Article 27 of the CFT Order state that CENTIF « [...] *may request from the reporting entities and all natural or legal persons the disclosure of information likely to help enrich the STRs. Professional secrecy may not be invoked by the persons so as to refuse to provide information to the supervisory authorities and CENTIF. The same applies to the information required as part of a money laundering investigation ordered by the investigating judge or carried out under his supervision by government officials responsible for detecting and combating money laundering-related offenses*. »

307. Law enforcement officers have the same powers under the supervision of the judge (Article 34 of the AML Act, Art.27 of the CFT Order). The same applies in case of search and seizure. The Code of Criminal Procedure also gives both Law Enforcement Staffs (LES') and Law enforcement Officers (LEOs) broad investigative powers (Art. 17, para. 4).

308. Thus, in compliance with the powers conferred on them by Articles 74 to 76 of the Code of Criminal Procedure, investigating and criminal prosecution authorities may require, search home or facilities when looking for and seizing/collecting documents relating to transactions, ID data collected during a customer due diligence procedure, account books and business correspondence and other materials, documents or information held or kept by financial institutions and other companies or individuals, for all criminal offenses, including ML and FT.

Authority to collect and use evidence (c.28.2)

309. Under Articles 62 and 101 of the Code of Criminal Procedure, Article 59 of the AML Act and Article 56 of the CFT law, the abovementioned relevant authorities are empowered to collect and use evidence in money laundering or terrorist financing investigations and proceedings and other predicate corresponding offenses or related actions.

Recommendation 30

Adequacy of resources available for criminal prosecuting and investigation authorities (C.30.1)

310. Criminal prosecuting authorities include judicial authorities, police and gendarmerie.

I - Judicial authorities

- **Structure of the Ministry of State, Ministry of Justice**

311. Under Article 102 of the Ivorian Constitution, the judiciary power is exercised by courts of first and second degree, as well as the supreme jurisdictions (Court of Cassation, State Council, Court of Auditors). The judiciary is independent from the executive and legislative powers. The Ministry of State, Ministry of Justice, responsible for ensuring the exercise of the judiciary power, is organized under Decree No. 2011-257 of 28 September 2011 on the organization of the Ministry of State, Ministry of Justice.

312. Côte d'Ivoire has three (3) Courts of Appeal and thirty four (34) courts. In addition to these, there are thirty-three (33) prisons and three (3) observation centres and a rehabilitation centre for minors. The Custodian of the Seals and Minister of Justice has services working under his office, two directorate generals, two central directorates and external services, that he organizes through orders. The services attached to the Ministry include a General Inspectorate of Judicial and Prison Services responsible for: monitoring the normal and smooth running of the central services of the jurisdictions and other services under its supervision; preparing monthly reports on the running of central services, jurisdictions and other services under its supervision, and making proposals on the organization and running of central services, jurisdictions and other services under its supervision.

313. The ministry also has two directorate generals. The directorate general of judicial services includes four (04) directorates, which are, respectively, responsible for studies, legislation and documentation (i), civil affairs and seal (ii) criminal cases, pardons and cooperation (iii) legal and judicial integration (iv). The directorate general of human rights and prison affairs also includes four (04) directorates for the promotion of human rights (i), protection of human rights (ii), prison administration (iii) and judicial protection of children and youths (iv).

- **Financial Resources**

314. The Ministry of Justice and Human Rights has a budget. Each head of jurisdiction has an allocated budget and is responsible for the incurred expenses. In addition to the resources from the general budget, the jurisdictions have court registry funds.

- **Human Resources**

315. Each jurisdiction is endowed with its own human resources allotted through a decision of the President of the Republic. Magistrates are divided into two grades: first grade magistrates and second grade ones.

- **Technical resources**

316. Each jurisdiction is provided with conventional technical resources: desktop computers and laptops, official cars, Internet connection for the prosecution offices, gowns, caps, belts, a National Legal Documentation Centre (CNDJ). Computerization projects are being implemented in order to provide all the Ministry of Justice's services with modern equipment necessary for the fulfillment of their mandates. For this purpose, data management software is being developed.

II - The National Police

317. The criminal prosecuting authorities from the police work under the Ministry of Interior, which is responsible for ensuring security. The department responsible for the AML/CFT issues in this ministry is the Directorate General of National Police (DGPN). The presentation of this service focuses on its structure, financial, human and technical resources. In its operation, it turns to services attached to the minister's office. The structure of the Ministry of Interior's security branch is as follows:

a. Minister's office and attached services
   - Central Principal Private Secretary;
   - Deputy Principal Private Secretary for Interior;
   - Deputy Principal Private Secretary for Security;
   - Directorate of Territorial Surveillance;
   - Intelligence Directorate;
   - Directorate for Financial Affairs and Equipment;
   - Drug Enforcement Interdepartmental Committee (CILAD);
   - National Security Fund;
   - Office of Examinations and Competitions.

b. Directorate General of National Police
   - Directorate for Training and National Police Academy;
   - Directorate for National Police Personnel;
   - Directorate for National Police Health Services.

- Sub-Directorate General for Judicial Police (includes all major investigating services)
   - Directorate of Economic and Financial Police;
   - Sub-Directorate of Financial Investigations;
   - Sub-Directorate of Economic Investigations;

- Directorate of Criminal Police;
- Directorate of Drug Enforcement Police.

- Sub-Directorate General for Public Security (maintenance and restoration of public order)

  - Directorate of Intervention Units;
  - State Security Companies;
  - Special VIP Protection Squad;
  - Riot Squad;
  - Anti-Terrorism Squad
  - Police Headquarters
  - Police Districts (Police Stations).

- Sub-Directorate General for Scientific Police (provides support to all police services)

  - IT and Technological Trace Directorate;
  - Directorate of Forensic Identification;
  - Directorate of National Police Central Laboratory.

- **Financial Resources**

318. A budget is allocated to the directorate generals, central directorates and services. Each head of department is responsible for the incurred expenses.

- **Human Resources**

319. Each department of the General Directorate of National Police is provided with specific human resources, designated by the relevant Minister or appointed by decree by the Cabinet Meeting. These staffs are divided into three main corps: superintendents (529), officers (1 849) and NCOs (15 678).

- **Technical resources**

320. Each department of the Directorate General of the National Police is provided with conventional technical resources, namely batons, whistles, handcuffs, VHF transmitter/receiver devices, intervention vehicles, etc. The Ivorian police are also equipped with modern technology available to forensic science consisting of the complete equipment necessary for conducting crime scene investigations. They cooperate with the Ivorian Telecommunications Agency (ATCI) to identify people who use new communication technologies for criminal purposes (cybercrime), through a watch centre called CERT-CI.

321. Projects are underway to modernize the police equipment in order to provide the services with means to access databases centralizing the information necessary to fulfill their missions.

III - The National Gendarmerie

322. Criminal prosecution authorities from the gendarmerie are under the Ministry of Defence. Act No. 60-209 of 27 July 1960 established the national armed forces. The gendarmerie is divided into two bodies: the departmental gendarmerie and mobile gendarmerie. Its presentation focuses on its structure, financial, human and technical resources. Decree No. 67-331 of 1 August 1967 regulating the gendarmerie service is on the overall organization and definition of its missions, as well as the performance of the duties within its powers.

323. The national gendarmerie has been established to ensure public security, order and law enforcement, in order to protect the institutions, people and property. The National Gendarmerie's action is both preventive and suppressive. However, its preventive action represents 55% of its activity against 35% for its suppressive action.

- **Structure of the National Gendarmerie**

324. The High Commander, assisted by his deputy, in responsible for:

✓ The central organization

- The Office;
- The Health Service;
- The Group of Command and Services;
- The Intervention and Security Group (GIS);
- The Brigade;
- The Communication Service (SECOM).

✓ The Offices

- Telecommunications and IT Office;
- Telecommunications Section;
- IT Section
- National Security Database
- Logistics Office;
- Study Section;
- Planning and Budget Section;
- Real Estate and Land Section;
- Human Resources Office;
- Officers' Section;
- NCOs' Section;
- Personnel Section;
- Chancery Recruitment Section;
- Operations and Employment Office;
- Organization Section;
- Employment Section;
- Instruction Section;
- Defence Section;

- Training and Development Group;
- Operational Information Centre.

✓ Gendarmerie Administrative Technical Centre
- Divisions of financial resources (pay, travel, funds, mutual fund, advance payment);
- Support Division (hardware, supply, vehicles, fuel);
- Quartering Service (housing).

✓ Territorial Bodies and Units Forming Corps
- The Gendarmerie Legions;
- The Honorary Service Platoons.

✓ The Intervention and Security Group
- VIP Protection Squad;
- Intervention Unit;
- Port Security Group;
- Airport Security Group;
- Armoured Squad Group.

✓ The Documentation and Research Group.

- **Financial Resources**

325. The national gendarmerie is provided with a budget distributed among the various legions. The management of the budget is assigned to an accountant responsible for distributing it between the various brigade staffs under his responsibility.

- **Human Resources**

326. The National Gendarmerie recruits up to one thousand two hundred (1,200) men per year. These human resources consist of NCOs and officers. Officers are recruited in two ways: a selection among the officers from the armed forces academy, a competitive examination is then organized among the most deserving NCOs.

- **Technical resources**

327. Each national gendarmerie brigade is provided with conventional technical resources, namely batons, whistles, handcuffs, VHF transmitter/receiver devices, intervention vehicles, motorcycles, etc. The mobile motorcycle gendarmerie is equipped with VHF transmitter/receiver headphones.

328. The gendarmerie is equipped with appropriate software at various levels, including: administrative *management* (equipment « GESTMAT, » staff « PERSGEND »), leasing management (personnel house rental, identification of personnel houses and task allocation) and daily processing (management of complaints, requisitions, etc.).

IV – Customs

- **Structure, Financial, Human and Technical Resources of Customs**

329. The Customs Directorate General is under the Ministry of Economy and Finance. The presentation of the service relates to its structure, financial, human and technical resources.

✓ **Structure of the Customs Directorate General**

- The Customs Director General;
- Two Deputy Director Generals;
- General Inspectorate;
- Central Directorates;
- Regulation and Legal Directorate;
- Directorate for Co-operation and Administrative Assistance;
- Directorate of Risk Analysis, Intelligence and Value;
- Directorate of Human Resources and Staff Programming;
- Directorate of General Resources;
- Information Technology Directorate;
- Directorate of Abidjan Customs;
- Directorate of Southern External Services;
- Directorate of Northern External Services;
- Directorate of Customs Investigations
- Directorate of Surveillance and Interventions;
- Directorate of Statistics and Economic Studies;
- Directorate of Communication and Quality.

330. The directorate responsible for AML/CFT issues is the directorate of customs investigations based on its general powers. The tasks of this directorate include search and suppression of documentary fraud throughout the national territory, post-control of reports and fight violations of foreign exchange regulations. It is composed of two sub-directorates responsible for auditing and financial investigations, respectively.

331. The sub-directorate of financial investigations was established by Decree 2007-468 of 15 May 2007 on the organization of the Ministry of Economy and Finance. In 2004, it was only a service, but in view of its satisfactory results, it was erected into a sub-directorate. In the performance of its duties, it signs partnership agreements with some companies. These include the agreement signed with the UNIWAX company to fight against counterfeiting.

• Financial Resources

332. Under the annually adopted budget, the Directorate General of Customs, with its different directorates, is allocated a budget. In addition to these general resources, the directorate of customs investigations has its own financial resources coming from fines and confiscations. There are also an anti-fraud fund and a special equipment fund. It is the

directorate of general resources which allocates these funds under Article 2 of Decree No. 64-313 of 17 August 1964 on the distribution of customs fines and confiscations.

• Human Resources

333. Each service of the Directorate General of Customs is provided with its own human resources. These are officials of different grades, including administrators, inspectors, controllers and NCOs. They are divided into three main groups of design officers (directors and inspectors), enforcement officers (controllers) and implementation staffs (Customs NCOs).

• Technical resources

334. Each service of the Directorate General of Customs is provided with conventional technical resources, including receivers, weapons and intervention vehicles. The Ivorian customs administration is also equipped with modern technology. It is equipped with an Automated Goods Clearance System (SYDAM). It contributes to the speediness of clearance operations. This system goes beyond the declaration and involves the liquidation report, receipt of payment, foreign trade statistics and databases.

Integrity of the staff (c.30.2)

I - Judicial authorities

• Recruitment

335. Law n° 78-662 of 4 August 1978 on the status of the judiciary in Articles 20 and following lists the conditions of recruitment of magistrates. Articles 20, 24, and 25 indicate that the magistrates shall be recruited on test or title.

• Competence

336. Under Article 20 of the abovementioned Law, nobody may be appointed as magistrate if he/she has not previously attended a vocational training course and taken successfully the exams at the end of the course. The magistrate receives an initial one-year theoretical training and a continuous training based on new subjects and needs.

• Integrity

337. Under Article 21 of the abovementioned Act, the applicant must enjoy his/her civil rights and be of high moral standards. Under Article 29 of the same Law, it is established a commission responsible for drawing up and setting the promotion scale and reserve lists. Under Article 31, the requirements for being on the promotion scale and reserve lists are set by decree from the President of the Republic. The criterion of integrity is at the top of such conditions.

- **Confidentiality**

338. The magistrate is subject to professional secrecy and confidentiality (Article 16 of Act n° 78-662 of 4 August 1978 on the statute of the judiciary).

II - The National Police

• Recruitment

339. Act No. 2001-479 of 9 August 2001 on the Staff Regulations for the National Police staff, in Articles 4 and following, lists the recruitment conditions for the National Police. These include nationality, enjoyment of civil rights, high moral standards, age, and physical and intellectual fitness of applicants. Under Article 1 of Decree No. 2001-782 of 14 December 2001 setting the terms and conditions for the enforcement of Law No. 2001-479 of 9 August 2001 on the Staff Regulations for the National Police, relating to recruitment and training of the national police staffs, the latter are recruited through direct, professional, or special competitive examination.

• Competence

340. Article 6 of the abovementioned Law provides for an initial training and continuing training, the programmes of which reflect the requirements and specific tasks assigned to each corps staff, as well as specialties.

• Integrity

341. Under Article 7 of the abovementioned Act, vetting is conducted on all applicants before and after the training. It ends upon the officer's appointment to a permanent post. This vetting is conducted by the Police Ethics Commission established by Minister of Interior Decree No. 203/MS.CAB of 7 February 2007 on the organization, composition, powers and operation of the National Police Ethics Commission. Under Article 37 of Act No. 2001-479 of 9 August 2001 on the Staff Regulations for the National Police, the officer shall perform his duties with integrity.

• Confidentiality

342. Under Article 40 of the law, a police officer is bound by professional secrecy. He is bound even after his return to civilian life by the obligation of discretion and reserve for any matters relating to facts and information he came to know while performing his duties. He may only be relieved of this obligation after a court decision.

III - The National Gendarmerie

• Recruitment

343. The recruitment conditions in the national gendarmerie are those of the Ivorian armed forces (Article 25 of Act No. 61-210 of 12 June 1961 on the recruitment in the national armed forces).

• **Competence**

344. Any individual wishing to become a gendarme shall be a male, have at least the Junior Secondary School Certificate (BEPC) or equivalent, be aged between 18 and 25 and at least 1m 69 tall. After file analyzing and acceptance, candidates take a test. Then, they attend a two-year training, during which their moral standards are vetted. At the end of this training, they have the opportunity to join the police as NCOs or general officers.

• **Integrity**

345. 338. In the training of the gendarme cadet, a specific course is given on the « General Rules of Discipline. » Decree No. 68-440 of 17 September 1968 on the general rules of discipline in the armed forces amended in a few articles by Decree 96-574 of 31 July 1996 laying down the rules of service and general discipline in the armed forces lays emphasis on the integrity of the gendarme.

• **Confidentiality**

346. Decree No. 61-361 of 13 December 1961 on the internal service of the gendarmerie in Côte d'Ivoire stipulates in Articles 121 and 122 that « (...) *any member of the gendarmerie is bound by the obligation of professional secrecy regarding facts and information known to him in the exercise or performance of his duties »* and that « *the gendarmerie personnel shall demonstrate at all times the most perfect loyalty to the Government, institutions. He shall refrain from interfering in local political or religious strife (...).* »

IV –Customs Services

• Recruitment

347. The Ivorian customs officials are public servants. As such, they are recruited through competitive examination. They must have certain qualifications or titles, as provided for by Article 33 of Act No. 92-570 of 11 September 1992 on the general status of public service. Under Article 8 of Decree No 93-607 of 2 July 1993 laying down the common rules for the application of the general status of public service, any applicant to public employment shall produce a file containing several documents, including a certificate of court with less than three months' validity to check the person's high moral standards. Customs officials (administrators, inspectors and controllers), after their civilian training at the National School of Administration, also attend a military training. As for Customs NCOs, after their recruitment to the public service, they are trained at the Customs Academy.

• **Competence**

348. Article 18 of Decree No. 93-607 of 2 July 1993 laying down the common rules for the application of the general status of the public service stipulates that any probationer is appointed to a permanent post after a one-year training course. Otherwise, he is entitled to a

second training year. If the results are still inconclusive after the second year, his enlistment comes to an end. Besides, during their activities, customs officers benefit from a continuing training based on the specific needs.

• Integrity

349. Under Article 43 of Decree No. 93-607 of 2 July 1993 laying down the common rules for the application of the general status of the public service, the civil servant is subject to annual assessment. The identified rating criteria include civic-mindedness, integrity and morality. In addition to this provision, customs officers shall enforce and comply with the Declaration of Customs Cooperation Council on good governance and ethics in customs matters (Arusha Declaration).

• Confidentiality

350. Under Article 26 of Act No. 92-570 of 11 September 1992 on the general status of public service, the civil servant, therefore the customs officer, shall bound by professional secrecy under the rules established by the Penal Code. He is bound by the obligation of discretion. A civil servant shall comply with professional secrecy regarding the facts, information or documents that he has cognizance of in the course of or in connection with the exercise of his duties.

Appropriate training for relevant authorities' staffs (c.30.3)

I - The National Police

351. Article 6 of Act No. 2001-479 of 9 August 2001 on the Staff Regulations for the National Police provides for an initial training and continuing education, the programs of which reflect the requirements and specific tasks assigned to each corps staff and specialties. As part of this training, it shall be instituted a program on narcotics, intelligence and economic and financial investigations. The terms and conditions of such training courses are defined by Decree No. 401 MSI.DENP of 31 October 1999. In addition, police staffs shall be involved in AML/CFT advocacy and training organized by the relevant national technical bodies, notably the CNSA-GIABA and NFIPU.

Summary of AML/CFT training courses attended by Economic and Financial Police staffs

Dates	Themes
03-05/09/2009	• Seminar on national AML/CFT regime pre-evaluation
15-19/12/2008	• Training seminar on AML/CFT financial investigative techniques
15-17/07/2009	• Seminar on the definition of the collaboration framework between CENTIF and the public administration focal points
12-14/06/2008	• CENTIF Orientation Seminar
21-25/04/2008	• Support and training seminar for CNSA-GIABA and CENTIF members
15-	• National Workshop on the ratification and legislative incorporation of

Dates	Themes
17/05/2007	universal anti-terrorism instruments
16-18/04/2007	• Regional typology workshop on cash transactions and cash smugglers
April-June 2007	• Training programme assisted by UNODC on the fight against money laundering organized within the framework of the AD/RAF/I25 Project - Support to the fight against money laundering and financing of terrorism in West Africa.

Source: CNSA-GIABA

II - The National Gendarmerie

352. Articles 45 to 52 of Decree No. 61-361 of 13 December 1961 on the internal service of the police focuses on the purpose of the instruction, the division of instruction, military training, moral and civic education, general training, technical training, physical education and the general course of instruction. National gendarmerie office members participate in AML/CFT awareness and training organized by the relevant national technical bodies, notably the CNSA-GIABA and NFIPU.

353. As such, they participated in the activities listed below.

Dates	Themes
05-07/03/2012	• 2nd seminar on the pre-evaluation of the national AML/CFT regime
03-05/09/2009	• 1st seminar on the pre-evaluation of the national AML/CFT regime
15-19/12/2008	• Training seminar on AML/CFT financial investigation techniques
15-17/07/2009	• Seminar on the definition of the collaboration framework between the CENTIF and the public administration focal points
16-18/04/2007	• Regional typology workshop on cash transactions and cash smugglers
April-June 2007	• Training programme assisted by UNODC on combating money laundering organized within the framework of the AD/RAF/I25 Project - Support to the fight against money laundering and financing of terrorism in West Africa.

IV- Customs Services

354. Customs officers, especially those from the directorate of customs investigations, have attended AML/CFT training courses, including:

- The support and training seminar on AML/CFT organized by GIABA in Abidjan from 21 to 25 April 2008;
- The regional training workshop for financial investigators organized by GIABA and the U.S. Treasury in Abidjan from 15 to 19 December 2008;
- The regional training and awareness workshop for DNFBPs organized by GIABA in

Abidjan from 17 to 19 June 2009;
- The seminar on the national AML/CFT regime self-assessment organized by the Ministry of Economy and Finance in Grand-Bassam from 03 to 05 September 2009.

355. In addition, customs staffs participate in AML/CFT awareness and training events organized by the relevant national technical bodies (see below.).

Additional elements - Special training programs for Magistrates (c.30.4)

356. There is still no AML/CFT special training program for Magistrates.

Statistics held by investigating and prosecuting authorities (c.32.2)

357. Due to the post-election crisis experienced by Côte d'Ivoire in 2011, only fairly comprehensive statistics for the first quarter 2012 on the predicate offenses were provided to the mission by judicial authorities from the Abidjan Court of First Instance.

358. It should be noted, however, that despite objective difficulties, a reconstruction of some statistics on the main predicate offenses from January 2010 to April 2012 was made by the Abidjan Court of First Instance. Such information was subsequently submitted to the mission on 15 June 2012. Albeit incomplete, it helps to assess, in some ways, the scope of money laundering in Côte d'Ivoire through the predicate offenses.

Statistics on economic offences from Abidjan-Plateau Court of First Instance

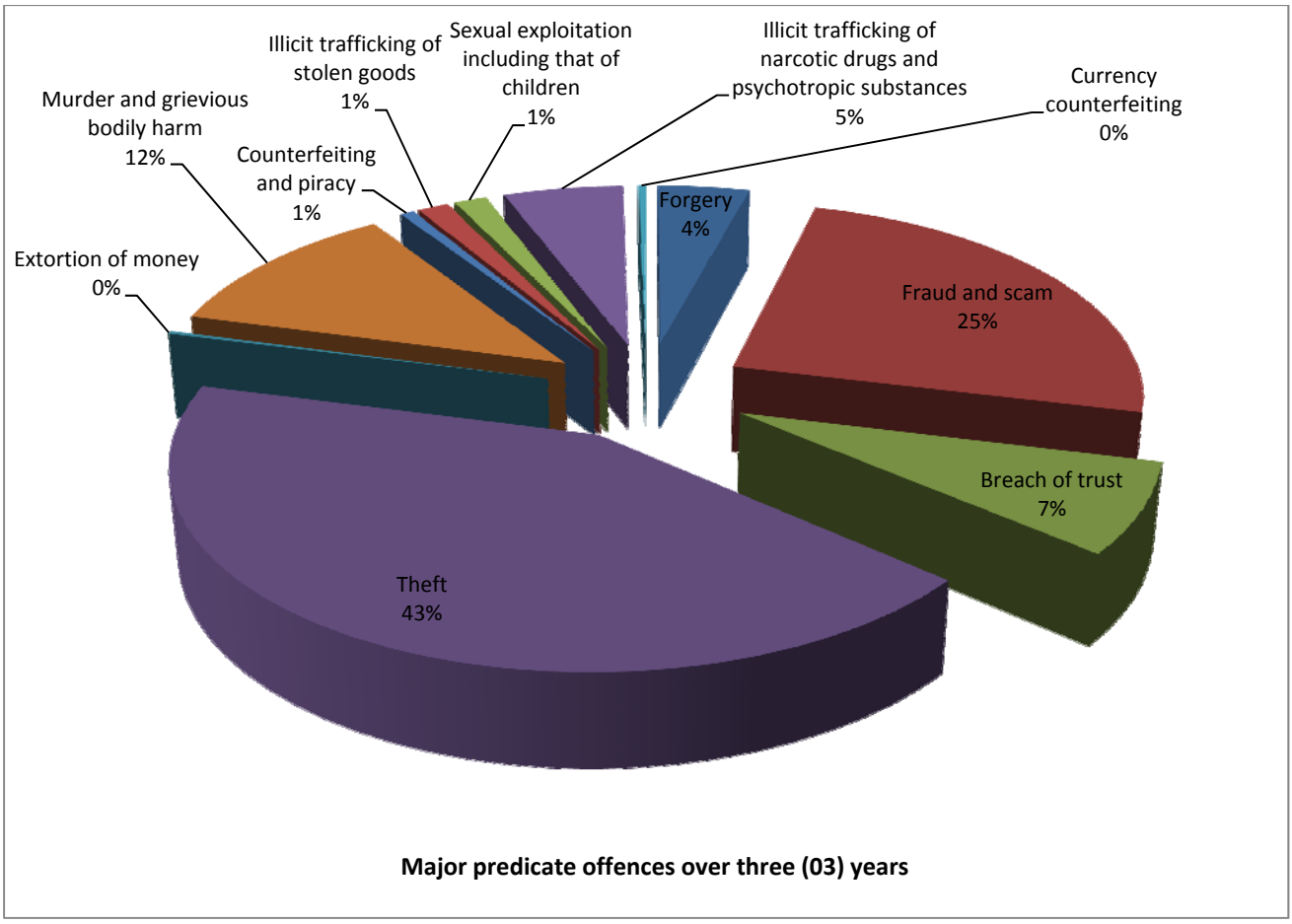
Nature of offences	Number of decisions pronounced			
	January 2012	**February 2012**	**March 2012**	**Total first quarter 2012**
Breach of trust	25	14	09	48
Bankruptcy	01	01		02
Misappropriation of public funds	01	01		02
Forgery	20	09	15	44
Breach of legislation or marketing of products	01	01	02	4
Possession of stolen goods	03	02	01	06
Fraud	40	27	18	85
Larceny	12	05	03	20
Aggravated theft	06	05	11	22
Unfair competition			04	04
Total	109	65	63	237

Source: Certified Statement from TPI-Abidjan (Plateau)

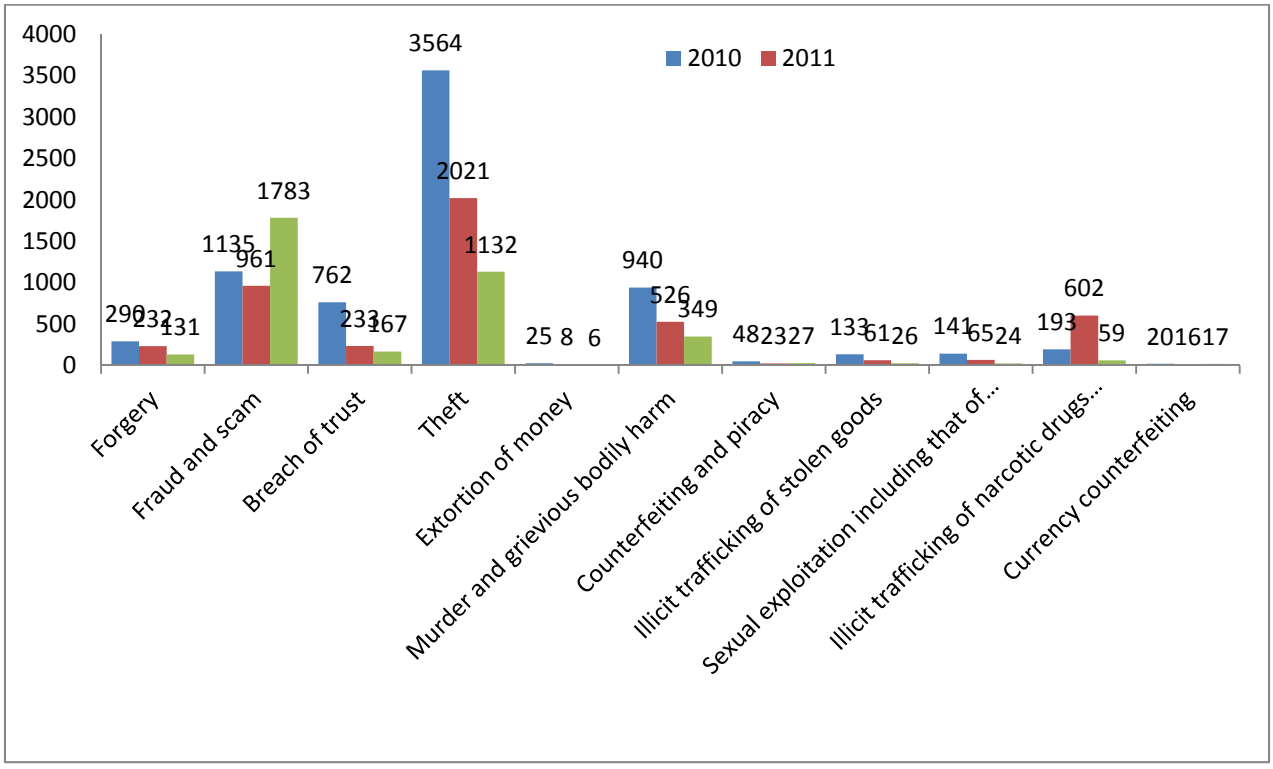
Reconstructed statistics on the major predicate offenses from January 2010 to April 2012

Predicate offences	Years			Total
	2010	2011	2012	
Forgery	290	232	131	653
Fraud	1135	961	1783	3879
Breach of trust	762	233	167	1162
Theft	3564	2021	1132	6717
Extortion of money	25	8	6	39
Murder and grievous bodily harm	940	526	349	1815
Counterfeiting and piracy	48	23	27	98
Illicit trafficking of stolen goods	133	61	26	220
Sexual exploitation, including that of children	141	65	24	230
Illicit trafficking of narcotic drugs and psychotropic substances	193	602	59	854
Currency counterfeiting	20	16	17	53
Involvement in organized criminal group and racketeering	0	0	0	0
Terrorism	0	0	0	0
Trade in human beings and smuggling of migrants	0	0	0	0
Arms dealing	0	0	0	0
Corruption	0	0	0	0
Environment crimes	0	0	0	0
Insider dealing and market manipulation	0	0	0	0
Total	7251	4748	3721	15720

Source: TPI-Abidjan (Plateau)



Major predicate offences over three (03) years



Compliance analysis

359. It should be noted that, although the existing legal framework allows requiring documents, searching and collecting evidence, the current state of implementation of the Ivorian AML/CFT legislation does not make it possible to assess its effectiveness and efficiency. The lack of comprehensive statistics on infringements, the nature of investigations conducted, the decisions rendered by the investigating and criminal prosecuting authorities are an obstacle to assessing the effectiveness of the anti-criminal policy. It should be noted also that no ruling has yet been made on any money laundering/terrorist financing case. Similarly, the special investigative techniques, such as undercover operations and controlled delivery, are not used by the investigating authorities, either in AML/CFT investigations or predicate offenses.

360. In addition, investigating and prosecuting authorities have not been adequately and properly trained in AML/CFT, particularly in investigation and detection. They do not seem to have the adequate resources to effectively fulfil their missions. In this case, magistrates and investigators are not adequately specialized in AML/CFT.

2.6.2 Comments and Recommendations

361. In view of the identified inadequacies, the following is recommended:

- Specialization of a judicial investigating Office for AML/CFT;
- Creation at the prosecution level of sections specializing in economic and financial crime;
- Formalization of the use of special techniques for investigating ML/FT and predicate offenses;
- Regular implementation of surveys to assess the ML and FT risk and identify areas of vulnerability to optimize the results of the investigating and prosecuting authorities;
- Training for investigating and prosecuting authorities;
- Establishment of an appropriate statistics keeping policy.

2.6.3 Compliance with Recommendations 27 and 28

Rec.	Rating	Summary of factors justifying compliance rating
R 27	**PC**	• Lack of AML/CFT specialization for the Prosecution (Prosecutor and Examining Magistrate); • Lack of effectiveness in the use of the following techniques: deferring the arrest of persons or the seizures, or not carrying out such arrests and seizures is possible for the judicial police; • No group is set up to search, seize, confiscate and freeze ML proceeds or proceeds for FT; • Lack of vulnerability, and ML and FT risk studies by the relevant authorities.

R 28	**LC**	• Critical criteria relating to this recommendation are complied with in Côte d'Ivoire, but there is an effectiveness problem because the investigating authorities have not yet actually carried out ML and FT investigations.

2.7 Declarations and Border Disclosure (SR.IX)

2.7.1 General description of laws or other measures, situation or background

Special Recommendation IX

362. Regulation No 09/2010/CM/UEMOA of 1 October 2010 on the UEMOA member states' external financial relations establishes a control on foreign exchange operations. The anti-money laundering law is no exception to this principle, in compliance with Article 5, under which *« foreign exchange operations, fund movements and regulations of any kind with a third state shall be carried out in accordance with the current foreign exchange regulations. »*

363. Pursuant to Chapter 4 of the abovementioned regulation, resident travelers going abroad (meaning UEMOA non-member countries) are required to declare and seek approval for the exchange value of more than FCFA2,000,000 in foreign currency (about €3,049). The manual transport of the CFA franc within the UEMOA, imports of CFA franc bills or means of payment in foreign currency by resident travelers is free. Non-resident travelers are required to declare in writing, when entering and leaving the national territory, all the means of payment they carry, when the amount exceeds the exchange value of FCFA1,000,000 (i.e. ± € 1,524). Regarding the financing of terrorism, Article 15 of the CFT Order provides for a system to fight against this practice, by targeting specifically money smugglers (cross-border physical transport of cash or bearer negotiable instruments).

Control system for cross-border physical transport of cash (c.IX.1)

364. The control of cross-border physical transport of cash is incumbent on the customs administration (Article 34 of the UEMOA Customs Code -). The Community regulation is an Appendix to the Customs Code, giving the customs officers the authority to control and punish breaches of foreign exchange control (Article 3 of Law No. 97-397 of 11 July 1997 on litigation on foreign exchange control offenses). Article 17 of Directive No. 04/2007/CM/UEMOA on the fight against financing of terrorism provides for the physical transfer of funds. Member states shall take measures to detect the cross-border physical transport of cash and bearer negotiable instruments, including the establishment of a declaration system or other disclosure obligation relating thereto. The control system put in place is a declaration system. It depends on the citizenship of the person carrying the funds (resident or non-resident) and his/her destination (within or outside the UEMOA).

The following table gives details of the amounts for each case.

	Import into UEMOA Zone	Export out of UEMOA Zone	Movements within UEMOA Zone
UEMOA Residents	- **FCFA** : free - **Foreign currencies**: free but obligation to transfer to an authorized intermediary within eight (08) days if the exchange value exceeds FCFA300,000.	- **FCFA**: prohibited - **Foreign currencies**: allowed if the exchange value does not exceed FCFA2 million (disclosure system). - **Other means of payment**: free	- free
UEMOA Non-residents	- **CFA and foreign currencies**: free but declaration on entry required if the exchange value exceeds FCFA1 million	- **Foreign currencies**: Allowed if the exchange value does not exceed FCAF500,000, except presentation of supporting documents (entry declaration or ticket purchase slip) at the exit customs office (declarative system). - **Other means of payment**: free but declaration required if the exchange value exceeds FCFA1 million.	Same conditions at entry or exit of national territory as entry or exit of UEMOA zone.

365. Besides, for physical entries and exits of cash or bearer negotiable instruments at the border and to detect the cross-border physical transport of cash or bearer negotiable instruments related to money laundering or financing of terrorism, Article 15 of the LFT order has provided for a declaration system. Under this provision, « *the cross-border transport of cash and bearer negotiable instruments of an amount equal to or higher than FCFA5,000,000 shall, at the entry and exit of the national territory, be declared in writing at the border posts by the carrier.* » The mission found that at the air border in Côte d'Ivoire, the money and value declaration system is far from meeting the recommendations and therefore ineffective. The situation is not expected to be better at land borders, as the customs covers only 80%, as some northern and eastern posts have not been occupied since the political crisis in Côte d'Ivoire.

Disclosure of additional information on the origin and use of cash (c.IX.2)

366. Upon discovery of a false declaration or disclosure of false information, Article 4 of Act 97-397 of 11 July 1997 on litigation of foreign exchange control offenses gives all powers to customs officers to require and collect from the carrier additional information on the origin of the cash or bearer negotiable instruments and their intended use.

367. In addition, pursuant to Article 15, paragraph 2, of the CFT Order, the relevant authorities shall identify the carrier of the cash and bearer negotiable instruments reaching the statutory amount and require from him/her, if necessary, additional information on the origin of the cash or bearer negotiable instruments. It should be noted, however, that no statistics can

ascertain that the customs or any other relevant authority has been able to require and get additional information after a false declaration in Côte d'Ivoire.

Confiscation of cash (c.IX.3)

368. Upon discovery of undeclared funds, the customs officers are empowered to seize such funds considered as *corpus delicti*. A seizure report is immediately drawn up. A request for confiscation is sent to the examining magistrate. Pending the order for confiscation, the customs becomes the custodian of the seized funds for a maximum of three months.

369. In addition, pursuant to Article 15, paragraph 3, of the CFT Order, the relevant authorities may, where appropriate, block or retain, for a period not exceeding seventy-two (72) hours, the cash or bearer negotiable instruments likely to be related to financing of terrorism or money laundering, or the subject of false declarations or disclosures.

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

370. The cash physical transport declaration books available at the airport provide information on the declared cash and the registrant's identity. These books are kept at the customs office, which may put them at the disposal of the requesting relevant authorities. However, the manual filing system cannot ensure fast and efficient provision of information to the other relevant authorities who request it.

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

371. Pursuant to Article 6 of the AML Act, the customs administration is authorized to disclose the information on financial relations with foreign countries to the Treasury Department and the BCEAO, which, through their activities, participate in public service missions, to which the customs administration contributes. In addition, Circular No. 3723 of 03 October 2011 on the disclosure of breaches of foreign exchange regulations to the NFIPU enjoins the tax authorities to inform the NFIPU on breaches of foreign exchange regulations.

372. It should be noted that so far, information collected from cash and value physical transport declarations are not systematically reported to CENTIF.

National cooperation between customs, immigration services and other relevant authorities (c.IX.6)

373. The customs administration states that it has good cooperation relations with immigration services and other relevant authorities, but it has to be admitted that such collaboration has not yet been translated into a synergy of action for better control of cross-border transport of cash and value. To prove it, the Economic Police and the Treasury, which used to be present at the airport to reinforce this control, have no longer been there since 2008.

International cooperation between relevant authorities (c.IX.7)

374. At the international level, the customs administration may use, in import or export without cash declaration, cooperation procedures for international mutual administrative assistance (information exchange system between the WCO member customs administrations through bilateral agreements).

375. Within the UEMOA, mutual assistance is organized by several texts, including the AML Act (Article 23) and the CFT Order (Article 50 et seq.) As regards relations with third countries, they are governed by agreements between relevant national authorities and their foreign counterparts. This is the case, for example, between CENTIF and Ghanaian and Nigerian FIUs. Its Egmont Group membership may increase its international cooperation relations. However, the Ivorian Customs has not yet implemented international best practices regarding Special Recommendation IX, particularly information exchange with the other countries' relevant authorities on reports on physical transport and seizures of cash or value.

Penalty for false declarations/disclosures under criteria 1-4 of R.17 (c.IX.8 and c.IX.9)

376. Under Article 16 of the UEMOA regulation on financial relations with foreign countries, offenses are reported, prosecuted, and punished in compliance with laws and regulations applicable in each UEMOA member state in relation to the litigation of breaches of exchange control. Thus, Article 3 of Law No. 97-397 of 11 July 1997 on the litigation of breaches of exchange control identifies the persons entitled to report such offenses. Such persons include customs officers, law enforcement officers, BCEAO officials, and the other Ministry of Economy and Finance officials, all of them being sworn. Article 18 of the same Law provides for one to five-year prison sentence, confiscation of the *corpus delicti*, confiscation of the means used to commit fraud and a fine equal to at least the amount and at most *five times* the amount or value to which the offense or attempted breach relates.

377. Under Article 38 of the CFTOrder, legal persons other than the state, on whose behalf or account a terrorist financing offence was committed by one of their organs or representatives, shall be punished with a fine equal to five times the amount of those incurred by persons, without prejudice to the sentencing of the latter or their accomplices for the same facts. This is criminal liability, for which the sanction is especially financial. There are, however, other sanctions against such entities as follows:

1. Exclusion from public procurement on a permanent basis or for a period not exceeding ten (10) years;
2. Forfeiture of the property that was used or destined to be used for the commission of the offence or the proceeds thereof;
3. Subjection to judicial supervision for a period not exceeding (5) five years;
4. Prohibition – on a permanent basis or for a period not exceeding ten (10) years – to directly or indirectly exercise one or more professional or social activities during which the offence was committed;
5. Closure - on a permanent basis or for a period not exceeding ten (10) years – of all or part of the establishments of the company used for the purpose of the committing the alleged offences;
6. Dissolution in the event that such entities were founded for the purpose of carrying out the offence(s);
7. The display or dissemination of the ruling in the written press or by any other means of audiovisual communication, at the expense of the sentenced entity.

378. In addition, (a) individuals convicted of a terrorist financing offence shall be punishable under Article 32 of the CFT Order, with imprisonment of 10 years and a fine of at least five times the value of the property or funds involved in the financing of terrorism. Attempt to commit terrorist financing is also liable for the same penalties. Similarly, (b) criminal liability for money laundering applies to legal persons. Indeed, under Article 42 of the AML Act, *« Legal persons other than the State, for the account and benefit of whom a money laundering offence or one of the offences set out in this act has been committed by one of the bodies or representatives, shall be punishable by a fine equal to five times that incurred by natural persons, without prejudice to the sentencing of the latter as perpetrators or accomplices of the same acts… »* . Associations, corporations and companies in the process of being set up, as well as non-trading companies yet to take the form of a corporation shall be treated as legal persons. Under Article 41 of the AML Act, those persons are also liable for optional additional penalties optional consisting in permanent or temporary prohibitions (from residence, exclusion from the country, civil rights, family rights, operating land, sea and air motor vehicles, practicing the occupation or activity on the occasion of which the offense was committed, issuing checks other than those allowing the withdrawal of funds by the drawer from the drawee or certified checks, using payment cards, holding or carrying an authorized weapon).

379. But the deterrent nature of this arsenal of penalties cannot be assessed for lack of sentences in terms of LBC/FT in Côte d'Ivoire.

3.1-3.6 (c.IX.10-11) Confiscation of BC/FT-related cash in enforcement of criteria 3.1-3.6 (c.IX.10-11)

380. Under Article 29 of the CFT Order, a judge may prescribe provisional measures, including the freezing of funds and property in connection with the offense of terrorist financing under investigation and all elements likely to help identify them. For lack of general provisions governing the freezing of funds, Article 30 of the CFT Order provides for the implementation of measures to freeze the funds or other assets owned or controlled wholly or jointly, directly or indirectly, by the persons referred to (terrorists, terrorism financers or terrorist organizations) and funds or other assets derived from/or generated by funds or other assets owned or controlled directly or indirectly by the persons referred to, terrorists, terrorism financers or terrorist organizations.

381. Article 30 of the CFT Order states that any freezing or release decision must be brought to the attention of the public, including its publication in the Official Gazette and in a legal notices newspaper. The same applies to the procedures to be followed by any natural or legal person on the list of persons, entities or agencies referred to, in order obtain the withdrawal of the inclusion and, where appropriate, the release of funds belonging to them.

382. It should be noted, however, that the fund freezing mechanism is not operational at all, in Côte d'Ivoire. Indeed, the lists drawn by the UN Security Council based on Resolution 1267 against Al Qaeda and the Taliban are not being published efficiently. Clear instructions are not, either, given to reporting entities which often ignore the approach to be followed in relation to such lists. Some reporting entities interviewed stated that where a natural or legal person is detected to be on the lists, they make a STR to CENTIF instead of immediately freezing the funds as required by the standards.

Declaration of unusual cross-border transport of precious metals or stones (c.IX.12)

383. In the context of mutual administrative assistance, the Customs administration may notify both to countries of origin and the country of destination any unusual cross-border transport of precious metals or stones (cf. agreements in this area). With regard to Community regulation, under Article 9 of Title 2 of Regulation R09/98/CM/UEMOA on external financial relations of the UEMOA Member States, the import and export of gold to and from abroad are subject to prior approval of the Ministry of Economy and Finance (MEF), except imports or exports of gold by the Treasury or the BCEAO, the import or export of items whose manufacture require a small amount of gold, namely items plated or lined with gold, woven with metal wire..., import or export, by travelers, of gold items not weighing more than five hundred (500) grams.

384. Côte d'Ivoire is a major exporter of gold due the richness of its subsoil. For example, in 2011, 13 tonnes of gold were exported from Côte d'Ivoire, a monthly average of more than one tonne. Nevertheless, no mechanism is implemented by customs in charge of controlling the outflow, especially to inform countries of transit, destination, and origin of unusual transport of gold.

Controlling cross-border transaction communication systems (c.IX.13)

385. Documents relating to cross-border transport of cash are kept in the customs database (Article 75 of Law No. 64-291 of 1 August 1964 creating the Customs Code and Article 15 of the CTF Order). These documents may be viewed or used by any service, especially by the structures in charge of AML/CFT.

Additional elements – Adequate measures for the appropriate use of reported or recorded information or data (c.IX.14)

386. The customs database is secure and information shall only be provided upon express permission of the authority. At this level, it should be noted that the reporting system is not computerized, although reports of the relevant facts regarding false customs declarations are computerized. Such deficiency makes it difficult to use the information and data contained in declarations of cash and securities whose books are manually archived, which is a problem in terms of record-keeping time.

Accessing a supranational system managing information on the physical transport of cash and tradable securities (c.IX.15)

387. Côte d'Ivoire is yet to implement the measures recommended in the document setting out the best international practices pertaining to RS.IX. The country plan, however, proceeds with that as part of the works of the AML/CFT Coordinating Committee for mutual evaluation and strategy development.

Best international practices and computerized databases on the physical transport of funds and tradable securities (c.IX.16 and c.IX.17)

388. No action is implemented by the competent authorities in relation to international best practices and computerized databases on the physical transportation of cash and tradable securities.

Keeping of statistics by the Customs Department (c.32.2.)

389. To date, Ivorian customs have submitted no STR to CENTIF, but in the aftermath of the 2001 post-election crisis, a strong awareness action toward customs stakeholders involved in AML/CFT was initiated. Furthermore, measures have been taken to enable Customs to now transmit to CENTIF all processed cases related to economic and financial crimes, including money laundering and terrorist financing. It is in this context that Circular No. 3723 of 3 October 2011 of the MEF was issued in Côte d'Ivoire, in relation to the disclosure of violations of foreign exchange regulations to the CENTIF.

390. In addition, statistical record- keeping by the customs is very tentative.

Analysis of Effectiveness

391. The information communication and management system relating to cross-border physical transportation of funds, tradable securities and assets is far from being efficient and meeting the criteria of the FATF Special Recommendation IX. Indeed physical transport of funds or securities is not systematically reported by customs at the airport, and random checks on passengers are below the appropriate rate to detect failure to report. There is no indication that a traveler is required to report the funds being transported. Also, as is true with police records for immigration control, the enforceable declaration form is unavailable.

392. Regarding the information management system, customs keep a record of fund declaration books, but they are yet to establish a system to disclose this information to the CENTIF across the board. Concerning cross-border transport of precious stones and metals, no system has been put in place to inform the countries of destination, transit and origin of unusual transport of gold, even though Côte d'Ivoire is a major gold producer.

393. Finally, the management of information regarding physical transport of funds and tradable securities at supranational level is inefficient, mainly because the system is not automated and not even computerized.

2.7.2 Comments and Recommendations

394. In view of the foregoing, it is essential to establish in Côte d'Ivoire:

- A reporting system for transport of funds or tradable securities to carriers at all borders, while making sure to provide the traveller with a declaration form, from the first line of customs check;
- A system for customs to systematically disclose - to CENTIF –information regarding transport of funds or securities and assets;
- A system for disclosing information on the transport of precious metals and stones to the country of transit and destination;
- An automated information management system for transport of funds, tradable securities and assets;

- Direct access to the WCO CEN network and the Interpol I-24/7 network for all customs services at land, sea and air borders.

2.7.3 Compliance with the Special Recommendation IX

Rec.	Rating	Summary of factors underlying rating
SR.IX	**NC**	• Ineffective fund and tradable securities reporting system, due to lack of information for travellers; • Failure to disclose information on the physical transport of funds and tradable securities to CENTIF across the board; • Failure to provide information on the physical transport of precious metals and stones to customs of transit and destination countries; • Lack of an automated system to manage information relating to physical transport of funds, tradable securities and assets; • Lack of a fund freezing mechanism based on UN Security Council Resolutions 1267 and 1373; • Lack of synergy between customs and other border control services in the context of the physical transport of funds and assets; • Inadequate awareness-building on AML/CFT to understand the value of effective control of cross-border physical transport of funds or securities.

3. PREVENTIVE MEASURES –FINANCIAL INSTITUTIONS

3.1 Description and Analysis

395. In May 2012, the banking sector in Côte d'Ivoire was the most developed in the UEMOA area (23 operating credit institutions, some of them with government shareholding[4] or subsidiaries of regional and international groups, and 59 microfinance institutions including 4 networks, 72 money changers, 3 electronic money institutions, 22 brokerage firms and AMCs, and 5 fund transfer companies, accounting for nearly 40% of the money in the area). Though territorial coverage is lower in provinces, especially in the North, entities of each component of the financial sector (excluding regional financial market actors, who are all based in Abidjan) is active in rural areas. Côte d'Ivoire also has 29 insurance companies whose products (primarily property and casualty insurance, life/credit insurance) are marketed by more than a hundred brokers and general staff. Banking rate in Côte d'Ivoire remains low compared to the size of the population - about 14% in late April 2012 - despite continuous support from government agencies to strengthen the financial sector (scriptural money, [5] plan to strengthen the financial sector components...), especially in rural areas, to provide better access to the financial products and services supply.

[4] A plan to privatise the most fragile banking institutions is under study in 2012.

[5] Instruction No. 01/2003/SP of 8 May 2003 (reference amount (CFAF 100,000 from which the use of scriptural money is recommended for a transaction between a private person and public person, the payment of salaries and other benefits, the payment of taxes) and Order No. 2009-384 of 1 December 2009 on measures to promote banking and cashless means of payment.

396. Both in relation to money laundering and terrorist financing risks and the relative weights of the various financial sector components, the evaluators paid particular attention to banking and insurance in their analyses (in particular, in terms of effectiveness). Beside these traditional sectors, the evaluators also found it useful to assess the implementation - by approved currency exchange and money transfer companies - of their AML/CFT obligations due to the predominance of cash in the economy and the low banking level.

Legal Framework

397. Ivorian authorities have not adopted any legislative or regulatory standard to supplement and clarify the legal framework to combat money laundering and the financing of terrorism as defined by the Community authorities in the UEMOA zone when such was authorized by laws. Very few guidelines, operational guides or other non-binding instruments have been developed by the competent authorities as part of the AML/CFT regulations in order to clarify community regulatory provisions and facilitate their ownership by reporting persons.

398. Therefore, the preventive legal framework applicable to the Ivorian financial sector[6] is composed of only community standards, UEMOA guidelines and regulations- and standards taken by community based regulation institutions namely:

✓ **For the banking sector**

- Law No. 90-589 of 25 July 1990, on banking regulation, hereinafter referred to as the "Banking Law"; repealed by decree n°2009-385 of December 1st 2009 establishing the banking regulations.
- Law No. 93-661 of 9 August 1993 on the banking sector, as amended by order No. 2000-241 of 28 March 2000 amending and supplementing Law No. 93-661 of 9 August 1993;
- Order No. 2009-69 of 16 March 2009 ratifying the Convention governing the UEMOA Banking Commission, hereinafter referred to as "Banking Commission";
- Circular No. 003-2011/cb/c on the organization of the internal control system of WAMU credit institutions;
- Circular No. 005-2011/cb/c on the governance of WAMU credit institutions;
- Law No. 2005-554 of 2 December 2005, domesticating Directive No. 07-02/CM/UEMOA of 19 September 2002 on the fight against money laundering in UEMOA Member States, hereinafter referred to as the "AML Act";[7]
- Instruction No. 01/2006/SP of 31 July 2006 relating to the issuance of electronic money and electronic money institutions; [8]
- Directive No. 01/2007/RB the BCEAO of 2 July 2007 on the fight against money laundering in financial institutions;

[6] In accordance with the methodology to evaluate compliance with the FATF AML/CFT, laws were considered as *"laws and regulations"*, and the BCEAO and the Ministry of Economy and Finance instructions as other legally binding instruments during the rating of compliance with the different recommendations.

[7] The provisions contained in the Appendix to the Act on the terms required to fulfill their obligations in terms of individual customer identification through a distance relationship entered into force on May 24, 2012.

[8] Due to clumsy drafting, the *"statute published for information"* mention was added to the body of text to the AML/CFT law Appendix and the instruction of electronic moneyduring its publication, unlike the other normative statutes which never bear such mention, suggesting and that the reporting persons may not comply to written obligations of these laws. In the same vein, for unexplained reasons, the law and its Appendix though being one legal instrument were released separately (with a gap of several years)on the Gazette of the Republic of Côte d'Ivoire. According to the judicial authority the fact of gazetting several times a single law would not affect the enforcement all provisions contained in the two documents.

- Order No. 2009-367 of 2 November 2009 on the fight against terrorist financing in the UEMOA Member States, domesticating Directive No. 04/2007/CM/UEMOA of 4 July 2007, hereinafter referred to as "CFT Order".
- Law n°2009-385 of December 2009 establishing the banking regulations.

✓ **For the insurance sector**

- Decree No. 93-663 of 9 August 1993 ratifying the CIMA Treaty;
- Regulation No. 0004/CIMA/PCE/SG/08 of 4 October 2008 defining the procedures applicable by insurance agencies in the Member States of the CIMA in the context of combating money laundering and terrorist financing , hereinafter referred to as "CIMA Regulation";
- Law No.62-232 of 29 June 1962 regulating insurance agencies;
- Law No.91-889 of 27 December 1991 regulating the profession of insurance broker;
- Regulation No. 0005/CIMA/PCMA/CE/ SG published in September 2009 supplementing the measures on the organization of internal control;
- Decree No. 92-114 of 16 March 1992 implementing Law No. 91-889 of 27 December 1991 regulating the profession of insurance broker.

✓ **For the financial market sector**

- Convention creating the CREPMF;
- Law No.89-814 of 1989 on the organization of the securities market;
- General CREPMF Regulation of 16 September 2005 on the organization, operation and control of the regional financial market;
- CREPMF Instruction No. 2/97 on the authorization of the BVRM;
- CREPMF Instruction No. 3/97 on the authorization of the Central Depository/Bank for International Settlements;
- CREPMF Instruction No. 4/97 on the authorization of management and brokerage firms;
- CREPMF Instruction No. 5/97 on the recognition of Portfolio Management Companies;
- CREPMF Instruction No. 35/2008 on AML among approved actors on the regional capital market, hereinafter referred to as "CREPMF Instruction."

✓ **For the sector of authorized manual exchange and cross-border cash transfers**

- Appendix Regulation No. 15/2002/CM/UEMOA of 19 September 2002 on payment systems in the UEMOA Member States;
- BCEAO Directive No. 01/2006/SP of 31 July 2006 on the issuance of electronic money and electronic money institutions taken under Regulation15/2002/CM/UEMOA of 19 September 2002 relating to payment systems in the UEMOA Member States;
- Regulation No. 09/2010/CM/UEMOA on external financial relations of UEMOA member states;
- Instruction on authorizations of manual exchange;
- Instruction No. 6.7.2011on terms of exercise of manual exchange;
- Instruction No. 01/99/RC on the enforcement of regulations on foreigners or non-residents;
- Law No.97-397 of 11 July 1997 on litigation relating to exchange control offenses.

✓ **For the microfinance sector**

- Law No.96-652 of 22 July 1996 regulating mutual institutions or savings and credit cooperatives;
- Decree No. 97-37 of 22 January 1997 enforcing Law No. 96-564 of 22 July 1996 regulating mutual institutions or savings and credit cooperatives;
- Order No. 2011-367 of 3 November 2011 regulating MFIs;
- Order No. 103/MEF/DGCPT of 26 June 2000 laying down the control procedures in exchange regulation and financial relations with foreign countries.

Other binding instruments and available documentation

399. FATF defines the term « other binding instruments » as guidelines, instructions, other documents or mechanisms putting in place other binding provisions which if not respected can lead to (efficient, proportionate and deterrent) sanctions and that are enacted by a competent authority or a self regulatory body. In practice, UEMOA institutions involved- namely control and supervisory authorities- have besides their sanction powers, a regulatory power. The latter is applicable, for each institution, to one or several segments of the financial institution- banking sector, insurance, capital markets…- and is used to prescribe more comprehensive obligations that community legal instruments used to use, such as « *community* » guideline or regulation.

400. It is in that framework that **BCEAO** (articles 17 and 34 of the West African Monetary Union treaty, article 44 of the law bearing banking regulation), the **banking commission** (provisions of articles 34 of the Appendix to the convention governing the banking commission and article 45 of the banking law[9],) **CREPMF** (article 22 of the convention governing CREPMF) and **CIMA** (articles 6 and 10 of the CIMA code) have their own regulatory powers. These authorities adopted and published binding regulatory acts. In fact, in case of non respect of prescriptions put in place by those acts, the very supervisory authorities can decide on administrative measures, or disciplinary measures or financial penalties(For **BCEAO** it involves articles 43 and 59 of its bylaws, for the **banking commission** articles 35 and other following articles of the AML law, articles 27 and 28 of the Appendix to the convention governing the banking commission and article 47 of the banking law, as for the **CREPMF**, from articles 30 to 32 of the convention governing the CREPMF, and for CIMA, of articles 15 of its bylaws and 17 of the CIMA code.

401. Consequently by applying the Methodology for Assessing Compliance with the FATF 40 recommendations and 9 special recommendations, laws were considered as *"laws and regulations"*, the CREPMF, the CIMA regulation and BCEAO instructions and the Banking Commission Circular as *"other binding means"* in the ratings of compliance with the different recommendations.

402. The authorities have not exempted any financial institution of any part of the AML/CFT obligations applicable on grounds that they consider ML or FT risk as low in such situations. The scope of preventive measures governing the financial sector covers all persons performing financial operations as defined by FATF.

[9] Where this article unquestionably confers regulatory power on the Banking Commission. The legal basis on which circulars are adopted however remains uncertain because it is unclear about the scope of application.

Equivalent issue in UEMOA

403. The scope of application of article 9 of the AML law, which stipulates that « financial institutions are not subject to the identification obligations put in place to the three previous paragraphs, when the customer is a financial institution » is not specific. The mission rather thinks it is to be enforced in relation to all UEMOA financial institutions. If a restric reading would lead to take only on board Ivorian financial institutions (the only financial institutions subjected to the provisions of the AML law), the spirit of the law would likely be not much in compliance with community provisions in the sense that (i) the provisions of the AML law were prepared and adopted at the UEMOA level, which can lead people to think that the targeted financial institutions are those subjected to the provisions of the uniform law, this exemption is just about distant operations concluded with legal persons, the identification of the latter is not required "when the counterparty is within the union." (point 6 a).

404. In fact, the provisions of the Appendix specifies that persons subjected to the AML law would be free from any identification diligence when the customer is a financial institution, and thus, financial institutions do not need to enquire about the identity of the person on account of which, their customer is working, when the latter is a financial institution subject to the AML law (refer to comments related to criteria 5-9)

405. These provisions therefore call for a general exemption of due diligence to financial institutions established in other West African Economic and Monetary Union to ensure fair treatment between financial institutions, which lies on the presumption drawn from community laws, that AML/CFT regimes lie on common and equivalent standards. If in some specific cases (for instance in relation to SR VII), FATF acknowledged the supranational dimension, generally, however, the financial action taskforce did not validate the hypothesis according to which UEMOA countries have equivalent regimes. Thus, in the framework of this report, in order to abide by a present jurisprudence of FATF in this field, the assessors estimated that systematic categorization of all UEMOA member states as adequately applying the FATF standards (without any other form of risk assessment) is neither adequate, nor in compliance with international standards. In practice, the fact that "adoption" procedures in the domestic law of each UEMOA member state of community guidelines are not completed in some UEMOA member states-absence of publication of Appendices related to ML and TF, even delays in the adoption of relevant TF provisions – show that it is not possible to think that legal systems of different member states are equivalent.

406. The CFT law provides for similar provisions to the AML law, but specifies that financial institutions, that are exempted from identification obligations that they set up (identification of the customer and the beneficial owner), in case the customer is also a financial institution established in a member state subject to an equivalent identification obligation (article 7).

Customer due diligence and record keeping

3.1 Risk of Money Laundering And Financing Of Terrorism

407. The legal framework in Côte d'Ivoire is a Community framework for all UEMOA Member States, based on the prevention of money laundering and terrorist financing risk and

an approach of the standard « *rule-based approach* » enforced in a uniform manner to all segments of the financial sector... Competent authorities did not choose the possibility of imposing money laundering prevention obligations reflecting a true risk analysis of money laundering and terrorist financing – the risk-based approach in the sense adopted by FATF. Côte d'Ivoire did not make use, in relation to the activity sectors, the opportunity given by FATF Recommendations (refer to the glossary of the FATF 40 Recommendations, the definition of financial institutions) to decide not to subject to all or part of anti money laundering measures some natural or legal persons who carry out financial activities occasionally or in a very limited manner (according to quantitative criteria and in case of absolute), because the risk of money laundering is considered very weak.

408. Besides, the AML Act and CFT Order do not provide for the possibility for financial institutions to apply reduced or simplified measures where risks are low, or strengthened measures where risks are high, although some additional due diligence (moreover very incomplete) applies to certain types of customer or transaction.

409. It appears from that situation that-–similar due diligence could be applied to all segments of the financial sector on the one hand, and stakeholders of the financial sector on the other, without such measures matching the level of risk assessed beforehand. This also applies to microfinance structures or insurance companies that are subjected to preventive measures which are not tailored to the risk of money laundering or terrorist financing, while the amount of savings collected or loans distributed by certain institutions are at very low levels for some segments of their customers

410. Moreover, this makes it difficult to allocate at best the limited human, technical or financial resources suited to supervisory and control authorities based on estimated potential risks and vulnerabilities. Only electronic money issuing institutions are exempted from prudential regulations, including those relating to AML/CFT, and Instruction No. 01/2006/SP of the BCEAO on electronic money issuance and electronic money institutions, in the event that their activities are limited.[10] However, such a provision does not result from an analysis of a low risk of ML/FT.

3.2 Customer Due Diligence, Including Enhanced or Reduced Identification Measures (R 5 À 8)

3.2.1 Description and Analysis

Legal Framework

[10] Article 3 of Directive No. 01/2006/SP provides that issuers of electronic money are not subject to the prudential provisions of this Instruction if: (i) all business activities of the institution referred to in Article 9 of this Instruction generate a total amount of financial commitments corresponding to circulating electronic money not exceeding FCFA 5 million, (ii) the electronic money issued by the institution is accepted as payment means only by subsidiaries of the said institution, which perform operational or ancillary functions in relation to the electronic money issued or distributed by the institution, the parent company thereof or any other subsidiaries of the parent company, (iii) the electronic money issued by the institution is accepted as payment means only by a limited number of companies distinguished both by being in the same premises or in another limited local area, and their close financial or business relationship with the issuer, for example when they have a common marketing or distribution scheme. In addition, contractual arrangements based on which the relevant electronic money institutions issue electronic money shall stipulate that the maximum capacity of the electronic media availed to carriers for payment purposes shall not exceed 100,000 FCFA. However, these institutions must provide a monthly report to the BCEAO on their activities, including the amount of total financial commitments corresponding to the electronic money.

411. Due diligence requirements are defined by Law No. 2005-554 of 2 December 2005 on combating money laundering and Order No. 2009-367 of 1 November 2009 on combating the financing of terrorism. Under Article 5 of the AML Act and Article 3 of the CFT Order, activities carried out by financial institutions[11] as defined in FATF may be exercised by:

- Financial institutions (FI) under the AML Act and CFT Order. These are named (see table below), but without reference to the laws governing them. The resulting uncertainty is illustrated by the case of fixed capital investment companies. No statute governing them could be identified and the mission is not aware of the existence of such companies in Côte d'Ivoire;
- BCEAO[12] and Treasury are designated by the AML Act and CFT Order as reporting entities, but they are not described as financial institution. The possibility for a national law to create provisions binding BCEAO, which has a status equivalent to an international financial institution,[13] appears to be uncertain. Furthermore, BCEAO[14] is unique in being both one of the authorities responsible for ensuring the proper operation of – and being subjected to - the AML/CFT mechanism within the UEMOA area;
- Electronic money institutions, issuing electronic money and distributing electronic money (see comments below);
- Value and fund transfer companies, as well as pension funds, although they are not explicitly designated by the AML Act and CFT Order. The mission considers that only the persons expressly named in this law shall be subject to such provisions. Indeed, there is no evidence as to a broad understanding of Article 5 of the AML Act and Article 3 of the CFT Order, defining the scope of these statutes. [15] Such understanding would be (i) unrealistic, since it would subject nearly all economic agents to the provisions of the aforementioned law and (ii) go against the mission's observation that many persons named in this statute misunderstand that they are subjected to the statute.

Financial institutions explicitly subjected to the AML/FT law (excluding electronic money)

Financial Institutions	AML	BCEAO Instruction n° 01/07/RB relating to AML	CFT
• Banks and Financial institutions (OF54)	X	X	X
• Financial departments of Post Offices (FI) before the transfer of their services to the Caisse	X	X	X

[11] In this report, unless otherwise stated, the term "financial institution" is used in accordance with the FATF definition.

[12] Article 4 of the BCEAO statutes adopted by the UEMOA Council of Ministers states that "in order to enable the Central Bank to fulfil its functions, the status, privileges and immunities of international financial institutions are granted the BCEAO on the territory of each Member State of the Union." .

[13] Article 4 of the BCEAO statutes adopted by the UEMOA Council of Ministers states that "in order to enable the Central Bank to execute its functions, the status, privileges and immunities of international financial institutions are granted the BCEAO on the territory of each Member State of the Union."

[14] Article 25 of Law No. 06-066 states that the role of the BCEAO is to foster cooperation among CENTIFs. In this capacity, the BCEAO is responsible for coordinating the actions of - and compiling information from reports prepared by - CENTIFs in combating money laundering. BCEAO participates with CENTIFs in meetings international bodies meetings dealing with issues related to combating money laundering.

[15] *Article 5 provides that "the provisions of Titles II and III of this Act shall apply to any person or entity which, within the framework of his profession, builds, control or advise on transactions resulting in deposits, exchanges, investments, conversions or other movements of capital or other property [...]. "*

d'épargne			
• Caisse des dépôts et consignation/ Deposit and Consignment Office (FI)	X	X	X
• Microfinance institutions (FI)	X	X	X
• Chartered manual exchangers (FI)	X	X	X
• Insurance and reinsurance companies (FI)	X		X
• Insurance and reinsurance brokers (FI)	X		X
• Regional stock exchange (FI)	X		X
• Central Depository of Holder Instruments /Bank of International Settlement (FI)	X		X
• Management and brokerage firms (FI)	X		X
• Assets management companies (FI)	X		X
• Undertakings for Collective Investment in Transferable Securities, UCITS (FI)	U		X
• Fixed Capital Investment companies (FI)	X		X
• Fixed Capital Investment companies (FI)	X		X
• BCEAO	X		X
• Treasury	X		X
• Fund or value transfer Services • Pension funds	X		X

Recommendation 5

Prohibition of the keeping of anonymous accounts or accounts under fictitious names (c.5.1)

412. Neither the banking law nor the AML Act nor Instruction No. 01/2007/RB prohibits anonymous accounts or accounts in fictitious names. In principle, compulsory identification put in place by the said law makes it impossible for financial institutions to open and keep anonymous accounts or accounts under a fictitious name. Indeed, Article 7 of the AML Act provides for a general obligation to identify *"financial institutions"* as defined in Article 1 of this law[16] to *"ensure[17]the identity and address of their customers"* prior to opening an account for them, pay particular attention to securities, stocks or bonds, assigning them a safe deposit box or establishing with them any other business relations. From that moment on, there cannot be statistics for anonymous accounts or those opened under fictitious names.

413. As regards effectiveness, consistent feedback provided to the evaluators by the representatives of financial institutions met during the site visit suggest that such institutions do keep in their books any anonymous accounts or accounts opened under a fictitious name to meet customer expectations, and that due diligence to identify account holders have been carried out. The financial institutions met also stated not to open accounts or numbered accounts.. However, in the absence of on-site controls by the competent authorities, there is no evidence to ascertain the exact situation prevailing in banking institutions in Côte d'Ivoire.

[16] "Banks and Financial Institutions, Financial Services of the Post Office, Insurance and reinsurance institutions, mutual funds or savings and credit cooperatives, regional stock exchange, central depository / settlement banks, asset management companies, brokerage firms, UCITS, fixed capital investment companies, chartered manual exchangers."

[17] Only the combined reading of the articles in the AML Act and the instruction lead to the consideration that *"be sure about the identity"* of the customer means "identifying" the customer.

414. Moreover, financial institutions have no obligation to manage these accounts in a way to fully comply with the aspects covered by the FATF recommendations, as no provision explicitly bars their opening.

415. The Ivorian system is therefore not compliant with the prohibition of anonymous accounts or accounts in fictitious names.

Framework for the implementation of customer due diligence (c.5.2)

416. The AML Act stipulates that the identification and verification of a customer's identity shall be carried out (i) prior to opening an account for them, taking into custody securities, stocks or bonds, assigning them a safe deposit box or establishing with them all other business relations (Article 7, paragraph 1), (ii) during the carrying out of occasional cash transactions exceeding five million FCFA francs, and in the event of repeated occasional transactions (Article 8, paragraph 1), or (iii) where it is uncertain that the funds have a lawful origin at the time of an occasional transaction (Article 8, paragraph 2). Under these provisions, the identification requirement applies only to the customer but does not involve the identification of the beneficial owner. Moreover, such requirement also entails the remarks below.

417. Regarding the prescribed obligation to identify occasional customers (paragraph 1 of Article 8), it is required for any operation "involving a cash amount equal to or greater than five million CFA" (about € 7623). It appears that the scope of this obligation is broader than the FATF international norms in the sense that it requires identifying occasional customers by adopting a lower identification threshold. However, the scope of application of this article is more restricted to the norms as it just takes on board cash transactions. Implementation modalities of this identification obligation are specified in article 4 of the instruction. The execution of due diligence measures in identification issues must take place " before getting in business relation to help the customer in the preparation or execution of a transaction" in accordance to the provisions of chapter II of the uniform law and its Appendix related to legal person customers identification modalities in the framework of a non face to face financial transaction. But given the fact that those provisions were just adopted in 2005 and 2012, made the mission think that they can be a bulk of non identified accounts, which cannot be underestimated given the number of accounts opened before the adoption of the AML law then its annexes.

418. Besides, no provision in the standards in force specifies the modalities to follow for the review of non identified accounts.[18] Nor imposes a deadline to implement account reviews based on risks or prescribes periodic review of identification data[19]. Whereas putting in place such procedures would enable o identify non identified accounts in case of occurrence, for instance, of listed events (execution of a transaction of a huge amount)

419. Besides, the identification obligation of the occasional customer must be enforced, in application of article 8, paragraph 2 of the AML law, « in case of repetition of different

[18] In the same vein, the legal AML/CFT regime does not provide for any specific obligation applicable to payment and repayment of anonymous capitalization bonds and contracts, particularly with regard to the identification of the beneficiary to whom the amount shall be reimbursed on maturity. There is no obligation either to record in a register the identification data of the subscribers and beneficiaries. While the banking institutions and insurance companies met by the evaluating team indicated that they were not marketing such instruments, no information was provided on the existence of bonds prior to the adoption of any anti-money laundering regime at community level

19 In par. 4 of Article 4 of the BCEAO Directive, it is clearly stipulated that « know your customer procedures « shall be applicable to existing customers, « those on whom doubts exist about the reliability of the information previously collected », but there is no obligation provided for in terms of identification.

transactions for *an individual amount inferior to 5 000 000 CFA or when the licit origin of the money is not verified.* This obligation, however, is too unclear to be easily implemented in the absence of any clarification on the timeframe for assuming the existence of a link between the different operations performed. In addition, there exist no mention, whatsoever, of the ceiling beyond which the identification obligation shall be carried out.

420. No provision states that institutions or reporting entities must identify their customer when they have doubts about the truth or accuracy of identification data about an existing customer, for any transaction, independently of the thresholds, as soon as there is a suspicion on money laundering or terrorism financing.

421. In addition to the obligations set out in the AML Act, Article 8 of Instruction No. 01/2007/RB states that financial institutions shall ascertain *"in accordance with Articles 7 and 8 of the AML Act, the identity of any occasional customer requesting to perform an operation involving an amount greater than or equal to FCFA 5,000,000."* While such obligation seems to better meet the requirements in this regard, it should be noted that the scope of the above instruction applies only to certain reporting persons or entities listed in Article 3, and amends the law (a statutes higher than the instruction) by extending the scope of the obligation to all transactions irrespective of their nature, thereby introducing doubts about the enforceability of the legal measure thus amended.

422. Then, under international standards, occasional customer identification obligations must be provided for in a statute enacted or authorized by a legislative body, and that imposes effective, proportionate and deterrent sanctions. While BCEAO, in compliance with article 27 of its statutes, is empowered to clarify certain points in the Community legislation, it lacks the legal capacity to enact "by proxy" an amending statute.

423. Article 9, paragraph 2 of the CFT Order also specifies the scope of the identification of occasional customers, as it requires "the identification of customers [...] for any transaction the amount of which equals or exceeds five million FCFA, regardless whether performed in one or more operations that appear to be linked," including when they do not involve cash. Paragraph 4 of the same Article requires customer identification where there is suspicion of FT even if the amount of the transaction lies within the abovementioned threshold.

424. In addition, other sectoral laws explain situations requiring that customer identification diligence be carried out, namely:

- For **electronic money institutions**, Instruction No. 01/2006/SP establishes an obligation to identify the unidentified customer recharging, or requesting reimbursement - against payment of cash - of electronic money exceeding 10,000 CFA (about 16 Euros), and to keep and make the data available to the monetary and control authority, as well as the CENTIF for a period of two years;
- For **insurance companies**, the CIMA regulation (Article 8) sets out the procedures to be followed for the fulfilment of the identification requirement which is defined as follows: *"Insurance institutions shall ensure the identity of the contractor[20] before entering a contractual relationship or assisting their customer in the planning or execution of a transaction."*

[20] The use of the term "contractor" seems inappropriate since the identification is mandatory before establishing any business relationship, which may bring doubt about the time of the audit, in the sense that this regulation does not preclude any situation where identification formalities are completed after the execution of an operation.

- Instruction No. 35/2008 of CREPMF (Art. 4) provides that *"**financial market participants** [...] shall ascertain the identity of the other party before entering into a contractual relationship or assisting their customer in planning or executing a transaction. To this end, they shall identify their customers in compliance with the provisions [...] of the Uniform law and Appendix thereto."*

425. No provision in the AML law states that financial institutions must apply customer due diligence measures when they carry out, occasionally, transactions such as online wires in circumstances targeted by the interpretative note of SR VII, or when there is a suspicion of money laundering, independently to all thresholds, applicable exemptions or once more when there are doubts on the truth or relevancy of data previously obtained for the customer identification.

426. It is clear from this analysis that the AML Act contains no express provision for satisfactory identification obligations for all reporting persons and entities,. The scope of due diligence in terms of identification under the CFT Order seems to be more compliant, but only relates to the CFT field (see below).

427. In terms of effectiveness, banking and insurance professionals met during the site visit indicated that given their information and management systems, they did not have appropriate technical means to monitor possible sequences of operations. They also noted that practically, the detection of such interrelated transactions was based almost exclusively on the due diligence exercised by their services and the memory of theirstaff in connection with customers.

Identification measures and sources of verification (c.5.3)

428. The AML Act (Article 7) Appendix requires the identification and identity verification based on a valid original official document with a photograph.[21] Indeed, Article 7 par. 1 of the AML Act provides that *"financial institutions [shall ensure] the identity and address of their customers prior to opening an account for them, taking into custody securities, stocks or bonds, assigning them a safe deposit box or establishing with them all other business relations."* Therefore the general obligation for identification from a reliable and independent source is not explicitly mentioned by the AML Act for natural or legal persons. However, paragraph 2 of Article 7 lays down detailed measures for identification from sources considered as reliable and independent by the authorities. It also states that (i) the identification and verification of the identity of a natural person may be *"carried out by the production of a national identity card or any valid original official document with a photograph"* and paragraph 3 stipulates that *(ii)* the identity of a legal person may be "*verified through the provision; on the one hand, of the original, duplicate or certified true copy of any deed or extract from the Trade and Personal Property Credit Register, attesting to its legal form and headquarters, and on the other, the powers of persons acting on its behalf*".

[21] Instruction No. 01/2007/RB, the CIMA Regulation (Article 8.1) and the CREPMF Instruction (Article 4 referring to the AML Act and Appendix with regard to customer identification

[24]For the CIMA Regulation, the evaluators believe that the requirement of an ID document as a proof may be considered equivalent to the requirement of a valid original identity card.

429. The official identity documents accepted in Côte d'Ivoire for carrying out these identification procedures are not listed by the authorities. As interpreted by the institutions interviewed during the site visit, they include the national identity card (NIC), passport, driving license and residence permit. This can be a source of concern, since (as admitted by the institutions met) the problem of authenticity of identity documents, most of which are not secure, especially the NIC, results in many false documents and unreliable identity documents being in circulation, especially in the wake of the disappearance of records and forgery of many provisional identity documents issued by the National Identity Office.

430. Regarding the identification of a legal person, it is carried out as mentioned on one hand through 1) proof of registration in the Trade and Personal Property Credit Registry by presenting the original, duplicate or certified true copy of any deed or extract from the Trade and Personal Property Credit Register, attesting to its legal form, headquarters and administrators, and, on the other hand 2) proof of the powers of those acting of behalf of the legal person or branch.

431. The drafting of obligations to verify the identity of legal persons in the AML Act therefore appears unclear, particularly regarding the nature of the document(s) to be provided. The mission understands that (i) the requirement is either to provide a deed or extract from the Trade and Personal Property Credit Registry, while the verification of foreign entities' identity is not supervised, (ii) or any act attesting to the legal form and registered office of the legal person is sufficient, regardless of the reliable and independent nature of information provided. Furthermore, there is no obligation to verify the identity of legal structures according to FATF, from reliable and independent data (even though services provided by lawyers for the incorporation, administration or management of trust funds are referred to in Article 5 (d) of the AML Act).

432. Concerning officials, employees and legal representatives acting on behalf of another person, reporting entities must verify their identity in the same conditions as for natural persons. In addition, officials, employees and legal representatives acting on behalf of another person must produce documents attesting, on the one hand, to the delegation of power of mandate given to them, and on the other, the identity and address of the economic beneficiary. To this end, the AML Act defines beneficial owner as *"the principal, that is to say the person on whose behalf the legal representative is acting for the account of whom the transaction is carried out."*

433. The verification of professional and residential address is effected by the presentation of any document that can prove the facts. If the customer is a natural person trader, the latter is under obligation to provide, in addition, any document testifying to his registration on the Trade and Personal Property Credit (RCCM).

434. Concerning the implementation of the abovementioned identification obligations, the mission observed during the site visit that the institutions met generally have imperfect knowledge of their obligations, even if they indicate that they actually put them into practice. In addition, at operational level, the reliability of information on the identification of individuals (reliability and accuracy of pieces of information contained on identity cards or other documents used to verify the identity of customers) listed in the Trade and Personal Property Credit Registry is questionable. In fact, certain information relating to the address of NIC holders are often entered inaccurate, with references like *"home address: Abidjan or*

Côte d'Ivoire "; with this difficulty being observed when the customer resides in peri-urban or rural areas where he can have only his extract from the registry of births.

Verifications relating to legal persons or legal structures (C.5.4)

435. With regard to legal persons, Article 7 of the AML Act provides that financial institutions: (i) should verify the powers of persons acting on behalf of a legal person (Article 7 paragraph 3) and (ii) the identity of natural persons acting on their own behalf in accordance with Article 7, paragraph 2). Article 7 further provides that financial institutions should produce documents attesting to the legal form and head office of the legal person (Article 7, paragraph 3).

436. The proxy acting for another person account must, besides, produce vouchers showing on the one hand, of the power delegation or the proxy that has been granted to them, and on the other, the identity as well as address of the beneficial owner. To that end, the AML law defines the beneficial owner as being " the one who gives the proxy, that is to say the person for whom the proxy is acting, or the account of the person for whom the transaction is made."

437. Concerning the legal arrangement and actual existence of the legal person, the official Registry extract issued by the Registry of the Commercial Court containing the name, legal form and address of the headquarters, the identity of associates and administrators should, in principle, suffice to justify that a commercial or artisanal company is duly registered with the Trade and Personal Estate Credit Registry (RCCM), and therefore exists. In fact, law professionals met by the mission team indicated that a legal person can be duly entered in the Registry without the Registry of the Commercial Court collecting or checking all required documents. Indeed, when dealing with incorporation formalities, lawyers are reported to omit to systematically transmit to registry services all the documents collected for the incorporation of a the legal entity. In addition, RCCMs kept by the registrar of Courts are not yet computerized and the central file provided for under the OHADA is yet to be created. Therefore it is currently impossible for financial institutions to ensure that the legal person data mentioned in an RCCM extract are complete and up-to-date.

438. With regard to the identification of *"legal arrangements"*, the AML Act contains no provision on identification procedures from reliable and independent data of the identity of legal entities according to FATF[22] even though services can be supplied by lawyers for the founding, management and operation of trust fund funds which are explicitly mentioned in Article 5 d) of the AML Act, and the instruction requires reporting persons to report transactions carried out on their behalf or on behalf of third parties with natural persons or legal entities, including their subsidiaries or establishments, acting in the form of or on behalf of trust fund funds or any other special purpose asset management instrument with unknown incorporators or beneficial owners.

Measures to identify and verify the beneficial owner *(C*.5.5)

439. Persons subject to the AML Act in Côte d'Ivoire are not required to identify - as required by FATF international standards - the beneficial owner and or *"take reasonable steps*

[22] The methodology for assessing compliance with the FATF recommendations states that "the term legal structure designates the express trusts and similar structures. Examples of similar structures (for the purpose of AML/CFT), include the trust, Treuhand or fiseicomiso".

to verify" their identity; beneficial owner. Therefore, reporting professionals have complete leeway on the depth of the procedures they must accomplish, which is based on their own practices and the cross-border nature of their activities. Incidentally, no provision in the law specifies how to identify the beneficial owner when the customer is a legal entity which is neither a company nor a collective investment undertaking, or when the customer intervenes within the framework of a trust fund or any other similar legal arrangement under a foreign law.

440. Article 9 of the AML Act only specifies that in *"if the customer is not acting on his own behalf the financial entity must verify, by all means, the identity of the person on whose behalf he is acting"* (Article 9, par. 1). There is therefore no requirement for financial institutions to take reasonable steps to: (i) understand the ownership and control structure of the customer, or (ii) identify the natural persons who ultimately own or control the customer (including identifying persons who ultimately exert effective control over a legal person or legal structure), and (iii) verify the identity of the beneficial owners using relevant information or data obtained from a reliable source so that the financial institution has adequate knowledge of the beneficial owner's identity.

441. In addition, the obligation to verify the "beneficial owner" cannot be considered as similar to the obligation to identify the "beneficial owner" who is, according to FATF, a "person or persons who ultimately own or control a customer and / or the person on whose behalf a transaction is made. This also includes persons who exert effective control over a legal person or legal structure. *"The beneficial owner of the customer is defined in Article 1 of the AML Act as "the constituent, that is to say the person on* whose behalf the representative *is acting or on behalf of whom the transaction is made."*

442. Instruction No. 01/2007/RB states in Articles 6 and 11 on the detection of suspicious transactions and reporting obligations states that liable financial institutions must be able, on the one hand, to provide specific information at any time, including on the identity of the "beneficial owner" and, on the other hand, to disclose to the CENTIF all transactions for which the identity of the *"beneficiary"* remains dubious, but these concepts are not defined.

443. It emerged from meetings with representatives of the financial sector that financial institutions and insurance companies did not know, or ignored their obligation to identify the beneficial owner or did not have a correct understanding of their obligation, at least, in the case of legal persons that are not subsidiaries of a foreign group. Thus, it has been confirmed to evaluators that in the presence of a legal person, the identification of its shareholders does not go beyond the major shareholders. The AML Act as well as practices described to the evaluators do not fully meet FATF requirements, especially with regard to customer capital control.

444. The AML / FT Act makes no provision on legal arrangements, but these are neither recognized, nor prohibited by Ivorian law, as the possibility of customers incorporated in this form being present in Côte d'Ivoire seems marginal and therefore does not affect the rating on recommendation 5.

445. Finally, the legislation in force authorizes bearer shares, but does not provide for a Registry to identify holders and *a fortiori* actual beneficial. The same applies for anonymous bonds as well as uncrossed and endorsable checks which can be cashed, in want of a formal

prohibition without any specific identification precaution and the tracking of the beneficiaries of the possible successive transferees.

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

446. Neither the AML Act nor the CFT Order requires reporting persons to provide information on the purpose and intended nature of any business relation.

447. However, the obligation to report suspicions under Article 26 of the AML Act or the obligation to effect special monitoring of certain transactions provided for in Article 10 in practice presupposes the exercise of continued vigilance (cf. comments on recommendations 11 and 13 below). Similarly, the *"continuous monitoring of their customers in any business relation the level of which depends on the customer's risk of being linked to terrorist financing", and which* financial institutions are required to carry out under Article 9, paragraph 7 of the CFT Order, presupposes the exercise of continued vigilance which should involve at least information collection on the contemplated object and nature of the business relation.

448. In this vein, Article 6 of Instruction No. 01/2007/RB requires (at most) from reporting persons to be able to provide information on *"the consistency of the economic justification of transactions"*, as part of implementing their internal AML program. Article 7 of this instruction requires financial institutions to implement *"a mechanism for analyzing transactions and customer profiles to track and monitor in particular all unusual financial movements and transactions"*, while international standards provide for an explicit obligation to collect information on the purpose and intended nature of any business relation.

449. With regard to other components of the financial sector, Instruction No. 35/2008 of CREPMF makes no explicit provision on the matter, even if it can be considered that a tacit obligation to collect information elements on the object and nature of the business relation s arises from the provisions of Article 7 on the detection and monitoring of *"unusual transactions"* which, by their nature, securities or amounts involved, are not transactions usually performed by the customer. This is the *"case of dormant securities accounts which become suddenly active, checks endorsed to multiple people, transfer of funds or securities to numbered accounts, or purchase or sales of large quantities of securities"* insofar detection of these transactions cannot be performed without prior collection of information on the purpose and intended nature of the business relation. Nevertheless, that the said obligation to collect information on the object or the nature does not meet FATF requirements.

450. Only Article 8.7 of the CIMA Regulation sets out a more explicit requirement for insurers to *"verify the customer's business activities and determine the objectives of the transaction*."

451. The financial sector stakeholders met by the evaluators say that when entering into a relationship, they require the intended nature of the business relation. This, however, is based on a commercial approach, and aims to determine the products to be made available to the customer. It does not give rise to an assessment of the AML / CFT risk represented by the customer. In additions, the lack of directives or operational guidelines issued by the authorities.

Constant due diligence in Business relations

452. The AML Act contains no express provision on the obligation for reporting persons to exert constant vigilance with regard to their business relations and conduct a careful review of transactions carried out for the duration of their business relations, to ensure that these transactions are consistent with the institutions' knowledge of their customers, business activities, risk profiles and, if necessary, source of funds, or to ensure the up-to-date nature and relevance of documents, data or information collected when performing customer due diligence through reviews of existing records, particularly for higher risk categories of customers or business relations.

453. However, one can point out that the fact of carrying out constant vigilance is necessary in order to be able to :

- To detect suspicious transactions;
- Centralize information about the identity of customers, constituents, representatives and beneficial owners;
- Track and monitor unusual transactions;

454. These include (i) requirements for reporting suspicious transactions under Article 26 or obligations to carry out a particular review laid down in Articles 8 and 10, which cannot be met in practice unless due diligence and vigilance are exercised (see comments on recommendations 11 and 13 below) and (ii) provisions of Article 7 of instruction No. 01/2007/RB requiring subjected financial institutions to put in place a mechanism for analyzing transactions and customer profiles in a bid to track and monitor especially *"unusual financial movements and operations."* Thus, Articles 8 and 10 of the AML Act,r, provide for the exercise of a special surveillance of certain transactions involving a unit amount exceeding a threshold and meeting cumulative criteria (unusual conditions of complexity and lack of economic justification or lawful purpose).

455. The implementation of these specific measures taken to detect certain transactions that meet the criteria is cannot be seen to be similar to constant due diligence that is to be carried out on all the transactions of a business relation as the targeted objectives are clearly too restrictive in terms of FATF International Standards.

456. But as for Article 9 of the CFT Order, which provides that financial institutions shall put in place a "continuous surveillance of their customers in any business relation the level of which depends on the degree of customers' risk of being linked to terrorist financing" without further precision in terms of ML.

457. For insurance institutions, the requirement of constant surveillance with respect to a business relation is not explicitly mentioned in the CIMA Regulation. However, Article 7.2 of the regulation requires the fulfillment of certain obligations that are indirectly related to enhanced due diligence by requiring insurance agencies to adopt a "mechanism for analyzing transactions and customer profiles to track and monitor unusual transactions" and "identify customers who performed" significant transactions. These provisions are supplemented by a series of indicators on the implementation of surveillance on the business relation that may be suspicious to the insurer.

458. Article 4.5 of the CIMA Regulation also urges insurance institutions to have an organization that "should allow to put in place tools for an automatic detection of certain

transactions that may be suspicious or dubious" and "identify customers who, in the course of the year, conducted payments or reimbursements for a total amount greater than the minimum set by the AML / CFT Act". However, this provision is not binding in nature - Article 4.5 uses the conditional verb form to formulate an imperative rule.

459. Article 4 of Instruction No. 35/2008 of CREPMF lays down the principle of exercising due diligence, and urges financial market stakeholders to know their customers without further clarifying the scope and nature of such obligation.

460. It is clear from the review of these various provisions that the monitoring mechanisms implemented by financial institutions are not primarily intended to ensure that all transactions are consistent with the knowledge of the customers, their business activities, risk profiles and, where appropriate, the source of their funds.

461. The interviews with professionals revealed that internal surveillance mechanisms are implemented only under instructions from the parent company and do not have the primary objective of making sure that all transactions are consistent with the knowledge of customers, theirs business activities, risk profiles and, where appropriate, source of their funds, to enable the detection of transactions to be subject to particular scrutiny or a declaration of suspicion. With regard to the obligation to update documents, data or information collected, all normative statutes such as sectoral instructions are silent.

462. While the existence of an implicit obligation of financial institutions to update their customer knowledge can be traced from regulatory provisions, this requirement is too imprecise (the scope and terms of the required update are not specified) and as a result, it affects the evaluations of the effectiveness of this obligation. Besides, financial institutions do not observe any of the vigilance measures to ensure the update and relevance of documents, data or information collected when performing due diligence over customers through reviewing existing documents, including higher risk categories of customers or business relations.

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

463. The AML Act does not require financial institutions to put in place enhanced diligence measures to combat money laundering using a risk-based approach. No mention is made of higher risk categories of customers (non-resident customers, private banking customers). Various situations requiring the exercise of due diligence are identified such as companies with capital being held by representatives or those issuing bearer shares, the revival of an account or an insurance contract, change in beneficiary, change in residence, collateral contract, buy-outs and advances.

464. The regulation does not provide for any additional vigilance measure such as the approval from senior management to continue the business relation when the customer’s risk profile changes during the business relation. As a result, enhanced due diligence, when implemented by a financial institution, depends on the latter’s own assessment of the level of risk and adequacy of its due diligence procedures. It is also worth mentioning that nothing in the regulation states that reporting financial institutions should justify to supervisory authorities that enhanced due diligence measures as implemented are adequate.

465. In contrast, the CFT Order and both Instructions provide for several situations in which specific due diligence obligations should be adopted by organizations subject to these obligations. Thus, Article 13 of the CFT provides the financial institutions shall apply "based on their assessment of risk, enhanced due diligence at the time of transactions or business relation with Politically Exposed Persons (PEP) residing in another Member State or in a third State, in particular, in order to prevent or detect transactions related to terrorist financing. To this effect, they take appropriate measures to establish the source of wealth and funds." Similarly, Article 9, paragraph 1, 5, 6 and 7 of the CFT Order requires implementing continuous monitoring of customers based on the risks involved "and the reporting, in a confidential Registry, of the main features of the transaction, as well as identifying the constituent and beneficiary in order to make reconciliations, if necessary.

466. Instruction No. 001/2007/RB contains some indirect enhanced due diligence provisions meant for financial organizations and urging them to:

- "*define the types of customers with whom they can enter into a relationship" (Article 4, paragraph 3);*
- *"Provide a mechanism to analyze transactions and the customer profile, in order to track and monitor unusual movements and financial transactions" (Article 7 paragraph 1) including "transactions carried out with counterparties established in countries or territories and/or jurisdiction declared by FATF as non-cooperative".*

467. This statute also stipulates the obligation for financial institutions to implement enhanced due diligence for unusual transactions (Article 7), occasional transactions (Article 8) and electronic transactions (Article 9). It also includes FATF non-cooperative countries and territories as well as the persons referred to for asset freezing measures (Article 10) without further explaining the measures to be implemented by financial institutions. Furthermore, Instruction No.01/2006 SP, which applies only to issuers and distributors of electronic money, provides that they must set up an "automated system to supervise unusual electronic transactions" using electronic money as a medium, without providing further details.

468. The CIMA Regulation also identifies certain situations requiring the exercise of enhanced due diligence in its Articles 9 and 10, which deal with changes in the insurance contract (change in beneficiary, change in residence, collateral contract, buy-out and advances ...), characteristics of payments made by contracting partners (frequency, amount, payment channel used ...), respectively. However, the CREPMF Instruction regulating the matter does not include any provision.

Reduced or simplified due diligence measures (c.5.9); due diligence measures reduced or simplified for foreign residents (c.5.10) unacceptability of simplified measures in case of ML / FT suspicion (c.5.11); Instructions from authorities concerning the risk-based approach (c.5.12)

469. Reduced measures are provided for where the customer is a financial institution subject to the AML Act. In this case, the financial institution concerned is not required to verify the person on whose behalf its customer is acting, when the latter is a financial institution subject to the AML law (article 9 of the AML law). Thus, a financial institution must not enquire about the identity of legal and moral persons as well as legal constructions on behalf of which another financial institution subject to the AML law (which is its customer).

470. It is a very broad exclusion leading to exemption of any identification requirement. When the customer is a financial institution subject that he lives in a UEMOA member state. This exemption lies on an assumption, deducted from community guidelines and regulations, that AMLCFT standards are based on common and equivalent standards. If in some very specific cases (for instance in relation to Recommendation SR VII), FATF acknowledges a supranational dimension to European countries, yet, the Financial Action Taskforce did not validate the assumption according to which, the member states of economic and monetary unions- including member states of the European Union- have equivalent AML/CFT regimes between themselves.

471. Still in the same vein with regard to this « *jurisprudence* » an FATF constant in the field, the assessors estimated that the systematic categorization of UEMOA member states as applying in an adequate manner the FATF standards (without any other form of risk evaluation and verification) is neither adequate nor in compliance with the method defined by FATF. Moreover, the failure to transpose into domestic law the "community guidelines" and or failure to gazette laws derived from the said guidelines by some UEMOA member states- whereas member states had a six month deadline to mainstream the guidelines in their domestic laws- make it impossible to think that all UEMOA member state regimes are equivalent.

472. The CFT Order has similar provisions and exempt financial institutions from the identification obligations provided for (customer and beneficial owner identification), where the customer is also a financial institution established in any member State subjected to an equivalent identification obligation (article 9).

473. Some reduced identification measures are also provided for in the Appendix[23] of the AML Act for remote relationships with natural persons (see description on the c. 8.2 below). Article 2 of the Appendix further states that these simplified provisions shall not apply if a financial institution, (i) believes that direct contact (face to face) is avoided in order to conceal the true identity of the customer and (ii) in case of suspected money laundering.

474. The Ivorian law includes no provision stating that (i) where financial institutions are authorized to apply simplified or reduced due diligence vis-à-vis their customers residing in another country, this option applies only to institutions whose country of origin has the assurance that they meet, and have actually implemented, FATF recommendations, and that (ii) simplified customer due diligence measures are not acceptable where there is suspicion of money laundering or terrorist financing, or in the event of specific higher risk circumstances (exception the case mentioned in the previous paragraph for remote relationships). There is no provision, either, stating that when financial institutions are authorized to determine the extent of CDD measures applicable to a customer according to the risks involved, such must be done in accordance with the instructions issued by the authorities.

475. There are no other cases where reduced or simplified due diligence measures can be implemented. This lack of reduced or simplified due diligence measures in all parts of the

[23] The scope of these provisions is ambiguous. If a strict reading leads to the consideration that only financial institutions (the only ones subject to the provisions of the AML Act) are exempted, then the text appears somewhat inconsistent with the fact that (i) the provisions of the Uniform Act have been prepared and adopted at the UEMOA level, which suggests that financial institutions referred to are those subject to the provisions of the Uniform Law as domesticated into the legal system of each country and (ii) the provisions of the Appendix to the Uniform Law explicitly provides (only for remote operations with individuals) that the identification of these is not required *"when the counterparty is located in the Union"* (III. 6 a).

financial sector, combined with the absence of an analysis of risk and vulnerabilities facing the financial sector by the Ivorian authorities, may prove to be more burdensome for some financial institutions as it is tantamount to treating a small micro-finance structure as bank. Indeed, this situation leads to obligations costlier than those normally required in a country facing real "capacity constraints." Supervision carried out to prevent money laundering and terrorist financing is also affected because surveillance missions and tasks performed by these authorities are - in these conditions - conducted without consideration of potential risks posed by the different components of the financial sector and may even be inappropriate.

Timing of verification - General Rule (C.5.13) Timing of verification - Special Circumstances (C.5.14)

476. Under the AML Act, Articles 7, paragraph 1 and 8, respectively, financial institutions are clearly required to identify their customers *"before opening an account for them, taking securities, warrants or bonds into safe custody, assigning them a safe-deposit box, establishing with them any other business relation"* or when performing certain transactions with occasional customers. These provisions provide, however, no details on when to intervene and when such verification must be performed. It is worth noting that the FATF stipulates that financial institutions may be allowed to complete customer and beneficial owner identity verification after establishing the business relation, provided that such procedures are conducted in the shortest possible time.

477. Moreover, the verification of the identity of the beneficial owner (whose definition does not match that of the beneficial owner) suffers several exceptions, notably regarding customers who are UEMOA financial institutions (see. above). In effect, reporting persons are not required to verify the identity of any customer and beneficial owner across the board before or when establishing a business relation or conducting transactions for occasional customers.

478. Article 9 of CFT Order complements or amends the above AML Act and instruction stating that financial institutions are required to "*identify their customers [...] when they open an account regardless of its nature, or offer property custody facilities"* and in the event of occasional transactions "*where the total amount is not known at the time the transaction is initiated [...] from the moment he is aware of it and observes that the threshold [of FCFA 5,000,000] is reached"* without any reference to the nature of the transaction that can therefore be in cash or not exceed FCFA 5,000,000 (Euro 7623). Under Instruction No. 35/2008 of CREPMF (Article 4), customer identification is required *"before entering into a contractual relationship or assisting the customer in planning or executing a transaction."*

479. The CIMA Regulation is more explicit on the time when the verification should take place, in that it states, in Article 8, that the identification must take place *"before entering any contractual relationship or assisting [the] customer in planning or executing a transaction"* and urges insurance institutions to be more vigilant in case of subsequent changes in the identity of the beneficial owner, for instance (Article 9). In addition, the article states that insurance institutions should check the accuracy of their customer's home address and consistency with tax residence.

480. None of these statutes provides for different situations based on the capacity of the person and/or nature of the proposed product where the identity of the customer or beneficial

owner, upon presentation of a proven written document, may be completed after establishing the business relation under the conditions set out by FATF.

481. For example, the law could usefully provide that where the identification of an insurance contract, the latter may not be the subscriber cannot be carried out prior to any business relation, the insurance company may complete such identification at the time when the beneficiary receives payment or when he intends to exert the rights conferred by the contract.

482. The reporting persons met by the evaluators indicated they considered the legal framework prevented them from starting business relations before the customer identification process has been fully completed, and that any account opened before all required documents have been produced was not operational given that necessary supplements were not provided. During this period, the account is inactive and receives no debit transaction. Insurance institutions informed the evaluator that in practice, they refused any payment of premiums in the absence of the subscriber.

Lack of compliance with due diligence before or after entering into a business relation (C.5.15, C.5.16)

483. Where a financial institution is not able to identify its customer, where appropriate, the beneficial owner, no provision in the absence of the completion of due diligence with regard to identification and verification hinders him from carrying out whatever transaction, whatever the modalities may be, but also to establish and continue the said business relation.

484. Moreover, in such a situation, when a financial institution already established a business relation and cannot fulfill its identification obligation, no provision is made requiring the financial institution to terminate the business relation and consider reporting a suspicious transaction to the CENTIF.

485. On the other hand,, instruction No. 01/2007/RB, Article 4, paragraph 3, stipulates that financial institutions to which it applies shall *"refrain from entering any relation"* before satisfactorily establishing the identity and address of their customers.

486. Save for the provisions of Article 9 of the AML Act and Article 8.4 of the CIMA Regulation, which require a declaration of suspicion where, after scrutiny, doubt persists about the identity of the beneficial owner (only), no other provision requires financial institutions to terminate the business relation and consider making a suspicious transaction report to the CENTIF where the identity of the constituent is incomplete or unclear despite the exercise of due diligence. Indeed, financial institutions are only recommended, pursuant to paragraph 3 of Article 4 of Instruction No. 01/2007/RB, to adopt a *"clear know your customer policy to avoid [... maintaining] relationships with persons of dubious identity"*. As for Article 8 of the CFT Order, it extends the same requirements of the AML Act to the prevention and detection of terrorist financing, and has therefore the same limits.

Applying due diligence measures to existing customers according to the risk involved (c.5.17)

487. The AML Act contains no provisions on the obligation to implement constant due diligence vis-à-vis existing customers, according to the risk involved. The same is valid for

the implementation of due diligence measures on existing relationships in due time, so that no mandatory review of identification data is performed. As a result, financial institutions update their data on a free will basis.

488. Article 4, paragraph 4 of Instruction No. 01/2007/RB requires financial institutions to apply "know your customer procedures" "not only to new relations, but also to existing customers." However, it remains unclear on the content of these "know your customer procedures", or the conditions under which they apply to new and existing customers and even on data to be updated. In addition, pursuant to Article 8 paragraph 2 of the instruction, financial institutions are required to implement their obligations of due diligence over occasional customers when the latter perform "any transaction involving a cash amount equal to or above CFAF 5,000,000 or the counter-value of which in CFAF is equivalent to or exceeds this amount".

489. Article 7 of Instruction No. 01/2006/SP provides that issuers or distributors of electronic money shall put in place an automated system to supervise unusual electronic transactions using electronic money as medium. Nevertheless, the internal mechanisms set up by reporting persons are yet to be audited and there is so far no information to consider that these institutions - only one of them was audited in Côte d'Ivoire - comply with such obligation.

Applying due diligence measures to existing customers to whom the criterion 5.1 (c.5.18) is applied

490. As mentioned above, financial institutions are not required to apply identification procedure to their existing customers. No provision is made on how to implement this obligation, or on a timetable for the clearance of the "stock" of existing customers before the entry into force of the AML Act. Besides, there is no provision prohibiting the holding of anonymous accounts or account under fictitious names.

491. Moreover, the lack of on-site control missions does not mean there is none, even though the supervisory authorities consider there is actually none or little.

Recommendation 6
Obligation to identify Politically Exposed Persons-PEPs-(c.6.1)

492. Neither the AML Act nor the CIMA Code provides obliges financial institutions to have appropriate risk management systems to determine whether a potential customer, an actual customer or beneficial owner is a politically exposed person (PEP), in addition to the application of the due diligence measures specified in Recommendation 5.

493. Only Article 13 of the CFT Order sets out the need for special vigilance with regard to PEPs. However, it neither introduces the notion of risk nor requires the implementation of enhanced due diligence in respect of Politically Exposed Persons as required from reporting professionals, in addition to the general obligations of vigilance, nor does it require the deployment of risk management systems to determine whether a customer is a PEP, or the building of a business relation with a PEP only where approval is granted by the senior management, or ensure enhanced ongoing surveillance of the business relation with PEPs. Similarly, the CFT Order does not provides for any obligation to conduct a systematic and periodic review of identification data, which, if interpreted in complement of Article 7 of the

AML Act, would lead to the assumption that if a customer turns out to be or becomes a PEP in the course of the business relation, obligations governing PEPs apply to such customer to pursue the business relation.

494. Finally, the provisions of the CFT Order do not refer to situations in which an beneficial owner is part of these categories of people, nor does it introduce an obligation to determine whether the beneficial owner of a customer is a PEP. Industry professionals met informed the mission team that certain banks had an automated system for tracking PEPs. Such mechanism is implemented based on a list regularly updated by the parent company, and which includes a locally defined list of national PEPs.

Authorization of business relationships with PEPs by senior management (c.6.2/6.2.1)

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

495. There is no obligation for financial institutions to obtain approval from senior management prior to: (i) establishing a business relationship with a PEP, (ii) continuing the business relationship when the customer has been approved and that ultimately the customer or the beneficial owner reveals to be a PEP or has become one. The CFTOrder contains no provision to that effect, but Article 13 states that financial institutions are required to take appropriate measures to establish the source of wealth and funds from these clients. Such obligations do not apply if the beneficial owner is a PEP. Moreover, its ambiguous wording[24] suggests that each Member State should take appropriate measures to establish the source of wealth and funds.

496. Banking institutions visited during the site visit showed some reluctance to enforce such provisions. Indeed, they seem to fear that the implementation of such reinforced due diligence will be detrimental to them due to the distortions of competition that the application of such obligations gives rise to, between institutions that are strictly compliant with the AML/CFT law and institutions that are aiming to win market share.

Enhanced ongoing monitoring of relationships with PEPs (C.6.4)

497. Persons subject to the regulations are required, throughout the course of transactions or business relationships with PEPs residing in another Member State or in a third State, to apply due diligence measures referred to in Article 13 of the CFT Order whose goal is to prevent or detect such transactions related to the financing of terrorism and reflecting the higher risk associated with PEPs; yet, no provision in this text prescribes an obligation directly applicable to financial institutions so that they implement ongoing reinforced due diligence for business relationships that they have with PEPs (see below C.6.3). In addition, chances are due diligence will not be reinforced if financial institutions do not deem it necessary ("*based on their risk assessment*") to do so. Moreover, it should be noted that combating money laundering is one of the main reasons accounting for the measures imposed on PEPs, pursuant to international norms.

[24] Article 15 states that : "*Each member state shall ensure that financial institutions, especially, apply on the basis on their risk assessment, reinforced due diligence during transactions or business relationships with PEPs located in another member state or a third country, mainly for the prevention or detection of operations related to FT. It shall, in this regard, take appropriate measures to establish the sources of the wealth or funds*".

498. Furthermore, Article 13 of the CFT Order (ii) has created confusion, for it seems to establish a link between the implementation of reinforced due diligence for PEPs and CFT ("*especially for the purposes of preventing or detecting operations related to FT* ").

499. Thus, institutions interviewed apply no due diligence on PEPs for lack of a clearly defined obligation. When revising Article 5, it would be desirable that explicit amendments reinforce existing obligations and further involve PEPs so that the provisions in the AML/CFT law are ensured to be compliant with Recommendation 6. Such obligations may indicate that, where the client is identified as a PEP in a business relationship, professionals subject to the regulation are required to apply supplementary Customer Due Diligence measures, which should be specified as well.

Additional elements -Applying Recommendation 6 to domestic PEPs (C.6.5)

500. In Côte d'Ivoire, there are no obligations applicable to foreign or domestic PEPs, which reflect the provisions of FATF Recommendation 6 in the AML Act. As for the order, its provisions apply only to PEPs residing in a different UEMOA Member State or in a third country (Article 13).

Transposition of the Merida Convention (C.6.6)

501. At the international level, Côte d'Ivoire signed on 27 February 2004 the African Union Convention on Preventing and Combating Corruption and on 10 December 2003 the United Nations Convention against Corruption. However, neither Convention has been ratified. The Ivorian side states that the said conventions were ratified on December 6, 2011 and the ratification elements are being transmitted to the depositories. The mission thinks that the ratification process should be entirely finished to give those instruments all their powers

502. At the national level, Côte d'Ivoire has also adopted various texts on preventing and combating corruption. The country also developed a national strategy against corruption when implementing the various state institutions dedicated to combating corruption, which include the National Public Procurement Regulatory Authority (ANRMP), the anti-corruption brigade under the authority of the Inspectorate-General for Finance (IGF), and the National Secretariat for Governance and Capacity Building, responsible for the management of this plan and coordinated by a Technical Committee composed of representatives of state departments, national audit institutions, and socio-economic actors.

Recommendation 7

Sufficient information on cross-border correspondent banking (C.7.1)

503. The AML Act provides for no specific obligation applicable in case of a correspondent banking relationship. It does not, by virtue of standard customer due diligence measures, provide for financial institutions to collect enough information on the correspondent bank in order to identify the nature of its activities and assess, on the basis of publicly available information, the reputation of the institution as well as the quality of its due diligence, especially the presence of controls conducted by the correspondent bank's relevant authorities. The Appendix to the AML Act merely mentions a partial and confused obligation on identifying a correspondent bank (cf. c. 8-2), and thus provides for the following provisions, which apply to financial institutions subject to the regulation in Côte d'Ivoire,

whether they are acting in their capacities as financial institutions carrying out the operation or simply facilitating it (intermediary).

504. If the counterparty to the financial organization is another institution acting on behalf of a customer:

- Located in UEMOA, the financial institution is not required to identify the customer, pursuant to Article 9 of the law. Although not specified, this provision is understood to mean that an institution acting on behalf of a customer is responsible for identifying the customer and that the financial organization carries out no due diligence;

- Located outside UEMOA, the financial organization is required to conduct customer due diligence by consulting a reliable financial directory. When in doubt, the financial institution asks the relevant country's supervisory authorities to confirm the institution's identity. The financial organization is also required to take "*reasonable measures*" to collect information about its counterparty's customer, considered by law as the "*beneficial owner*" of the operation. Where the country in which the beneficial owner is established applies equivalent due diligence obligations, such measures may be limited to requesting the customer's name and address, but where such obligations are not equivalent, it may be necessary to require that a confirmatory certificate that is properly verified and recorded identity be submitted.

505. Where the client is a financial institution located in UEMOA, no customer due diligence is required and if it is located outside UEMOA, only its identity is verified. Such provisions do not make it possible to identify the nature of the customer financial institution's activities, or to assess, on the basis of publicly available information, the institution's reputation institution and quality of due diligence, including to verify if the supervisory authority is investigating on or intervening in the institution for reasons of money laundering or financing of terrorism. Ivorian authorities justify the generalized customer due diligence exemption granted to financial institutions located in the UEMOA by the fact that the BCEAO approval granted to financial institutions within its jurisdiction is issued for the entire UEMOA zone (one single license). However, such due diligence exemption is not in compliance with the FATF rules and can reveal to be particularly problematic because all UEMOA countries do not apply equivalent provisions in terms of AM /CFT (see above).

506. The CFT Order contains no provision relating to correspondent banking relationships. In practice, banks exchange with their correspondents a questionnaire that makes it possible to identify them. That questionnaire provides information relating to members of the Board of Directors and officers, key activities, capital structure as well as rules and procedures. However, there is no overall formal due diligence based on publicly available information.

Evaluation of due diligence implemented by correspondent bank (C.7.2)

507. There is no obligation for financial institutions to assess due diligence implemented by customer institutions relatively to combating money laundering and financing terrorism, to ensure the relevance and effectiveness of such due diligence.

508. As noted above, in practice international banks share with their correspondents a questionnaire allowing for their identification[25] and which contains all reasonably useful information to asses established due diligence. However, there is not an overall formal verification based on publicly available information. The Mission was informed by banks that are members of groups established in several countries that the Group's management is responsible for diligence, establishes the list of correspondent banks, and is in contact with them. However, the mission has not been able to verify how the questionnaires have been used.

Executive Management's approval to establish correspondent banking relationship (c.7.3)

509. The AML Act or other binding texts contain no provision requiring that approval be obtained from senior management prior to establishing new correspondent banking relationships. Nonetheless, financial institutions are required to conduct due diligence in their relationship. Even where there are no express legal provisions, some banks declare that they resort to authorization from senior management prior to establishing a relationship with correspondent institutions.

Obligation to specify in writing the respective responsibilities of each institution (C.7.4)

510. The AML Act and CFT Order provide for no obligation to specify, in writing, what the responsibilities of financial institutions are. As stated above, a questionnaire is in practice exchanged with correspondent banks. As regards operations to be performed, the institutions met state that diligence related to anti-money laundering and the financing of terrorism is specified for each institution subject to the regulation when it comes to correspondent banking relationships.

Rules on payable through accounts (C.7.5)

511. Where transit accounts ("payable-through accounts") are likely to be used, procedures for establishing correspondent banking relationship are not specified in the AML Act and CFT Order. Thus, there is no obligation for financial institutions to ensure that: (i) the customer financial institution has applied all the usual due diligence measures provided for in Recommendation5 to those of its customers that have direct access to the correspondent financial institution's accounts, and (ii) that the other customer financial institution is able to provide relevant information on the identity of the customer when the correspondent financial institution requests it.

Recommendation 8

Preventing misuse of new technologies (C.8.1)

512. In Côte d'Ivoire, new technologies remain moderately spread (one of the banking services that several credit institutions currently offer consists in the possibility to check one's account balances from a distance), but they have been developing recently. New technologies make it possible to make up for deficiencies and weaknesses in the offer that actors in the financial sector make, especially in rural areas, in the context of an environment where cash is

[25] The lack of obligation in this regard may generate distortions of competition between cross-border financial institutions applying strict formal criteria and those applying no reinforced due diligence

the preferred payment method, including when performing operations involving significant amounts.

513. While the AML Act contains no provision for the use of new technologies or remote banking, many banks have informed the assessment mission about their plan to launch credit cards and their intention to expand their banking services. Several banks that already offer such services in other countries in the sub-region are considering banking services such as remote account-opening or Internet banking., have been for years now offering money transfer services using mobile phone technologies through their own network ofstaff and various banking networks, and also on the basis of a partnership with licensed banks, based on partnership with authorized banks. The traceability of their transactions is reported to BCEAO through partner banks. The overall monthly amounts generated by money transfers using this system have been growing steadily, yet no figures have been provided to the mission.

514. Article 9 of Instruction No. 1/2007/RB states that financial institutions offering services making it possible to "*carry out transactions via Internet or any other electronic means*" are required to have "*an appropriate system to monitor such transactions*". They are also required to "*centralize and analyze unusual transactions via Internet or any other electronic means*". Similarly, Article 7 of Instruction No. 01/2006/SP provides that "*issuing or electronic money institutions shall establish an automated system to monitor unusual transactions carried out on the basis of electronic money*".

515. Thus, AML/CFT mechanisms do not provide that financial institutions not covered by the above instructions adopt policies or take the necessary measures to prevent the misuse of new technologies.

Managing risks related to the physical absence of parties (C.8.2)

516. Article 7 of the AML Act provides that, when it comes to financial operations, regardless of the means used (by mail, telephone, internet ...), financial institutions should proceed to identifying natural persons, in compliance with the principles contained in the Appendix to the law.

517. No provision in this law is related to remote operations conducted with legal persons or legal arrangements. Moreover, as new technologies develop in Côte d'Ivoire and such services are more widely made available to customers, no alternative customer due diligence method for natural persons (introduction by a reputable third party, letter of standing by the usual banker, independent contact with the customer, first payment through an account opened in a financial institution applying equivalent procedures ...) will be imposed on financial institutions.

518. As for Instructions given in the Appendix to the AML Act, they contain numerous inaccuracies that make difficult for persons subject to the regulation to accurately interpret them, and for authorities to verify compliance with the provisions in the Law. Thus, the notion of remote operation is not defined and there seems to be a confusion between (i) establishing a remote relationship, (ii) performing a remote financial transactions after a business relationship has been established, and (iii) a remote financial operations carried out by persons who are not customers to the financial institution, but use its services thanks to contractual relationships established between such organization and another financial institution whose services such persons use (e.g. transfer received in Côte d'Ivoire received by

a customer, who may be occasional, from another financial institution that uses correspondent banking services that the Ivorian institution offers). No due diligence measure is provided for when it comes to carrying out financial operations after a business relationship has been established. In addition, the Appendix to the AML Act addresses the conditions that make it possible to identify natural persons, yet it does not specify the procedures for the implementation of such due diligence obligation, which may create ambiguity.

519. The Appendix to the AML Act stipulates that customer due diligence procedures implemented by financial institutions in their remote relations with natural persons (i) may be used as long as there is no genuine reason to think that direct contact (face to face) is avoided in order to conceal the true identity of the customer and that no money laundering is suspected (Article 2); (ii) they must not, either, be applied to operations involving the use of cash (Article 3). No details are given as to how financial institutions are required to respond in the instance where the above conditions are not fulfilled (for example, report of suspicious activity to come, refusal to establish a business relationship etc...). The Appendix to the AML Act also indicates that internal due diligence procedures used by financial institutions should take special account of remote operations (Article 4), with no further details.

520. Article 5 of the Appendix to the Law addresses the due diligence requirements during a remote operation "in a situation where the counterparty to the financial organization carrying out the operation (contracting financial institution) would be a customer". Two situations are considered. In the first case, identification is performed by direct contact with the customer through a branch or a representative office. In the second case, the customer is required to (i) provide a copy of an official proof of identity and (ii) a first payment is required to be made from an account open with a credit institution in UEMOA or in a third State applying equivalent anti-money laundering norms. The financial institution is required to (i) pay special attention to verifying the address on the identity document (if such statement is given) and (ii) carefully ensure that the identity of the account holder through whom the payment is made actually corresponds with the customer's (by contacting, if deemed necessary, the organization with which the account is opened). Such provisions seem to apply only when a remote relationship is established (account opening, for example) and not when remote operations are carried out after a business relationship has been established.

521. Despite the unclear wording, Article 6 of the Appendix to the uniform law seems to address the instance where an Ivorian financial institution carries out a transaction with another financial institution (Ivorian or not) acting on behalf of a customer. Two types of diligence are provided for, and they respectively speak to (i) the financial institution * (Ivorian or not) acting on behalf of a customer and (ii) such customer. They differ depending on whether or not the relevant financial institution*[26] is located in UEMOA.

522. When the relevant financial institution * "is located" in UEMOA, no diligence is required from the institution or the customer. In fact, Article 6 (a) states that " *customer due diligence is not required to the financial institution in compliance with Article 9, paragraph 4*" of the law when the financial institution carrying out a transaction on behalf of the customer is a financial institution in UEMOA. Such wording is especially contrary to the provisions in Special Recommendation VII on wire transfers.

[26] In order to avoid any confusion, such a financial institution is followed by a* in the text that follows.

523. When the relevant financial institution * "is located" outside UEMOA, the financial institution is required to verify the identity of the Financial organization * by consulting a "*reliable financial directory*" and, when in doubt, ask the third country's relevant supervisory authority to confirm identity (Article 6 b). Thus, in the context of a correspondent banking relationship with a financial institution that is not located in UEMOA, the obligations for an Ivorian financial institution is limited to verifying identity, usually from a financial directory only.

524. Moreover, that article states that the financial institution is required to take reasonable measures to verify the beneficial owner of the operation in both cases indicated below. (i) "where the counterpart country applies equivalent due diligence requirements," request the customer's name and address, and (ii), where the country of the counterparty does not apply equivalent due diligence, properly verify and record the customer identity confirmatory certificate issued by the relevant financial institution. The concepts of beneficial owner or equivalent due diligence requirements are not defined by law, nor are they in the Appendix to the AML Act.

525. In addition, article 9, paragraph 5 of the CFT Order requires financial institutions to adopt "all necessary dispositions to cope with increased risks existing in the financing of terrorism, when establishing business relationships or carrying out a transaction with a customer who is not physically present for identification purposes, as regards a remote operation in this case. Such provisions make it particularly possible to ensure that the customer's identity is established, especially through a request for Additional elements; supplementary measures to verify or ascertain the documents supplied, or requiring confirmatory certification by a financial institution, or requiring that the first payment of the operations be carried out through an account opened in the customer's name with a financial institution subject to an equivalent due diligence obligation.".

526. Finally, the BCEAO instruction commands all entities subject to its regulation to develop specific risk management mechanisms for certain transactions by utilizing new technologies, and it requires that know-your-customer procedures be applied, even to existing customers.

Analysis of the Effectiveness
Recommendation 5

527. As regards the implementation of customer due diligence obligations, the mission noted that financial institutions have, overall, a good understanding of their obligations and claim to fully implement them. In some parts of the financial sector, the implementation is incomplete or non-existent. While, in the banking sector, banks have developed procedures (at least on paper), the execution of due diligence related to the identification of legal persons (for example) remains tentative. Financial institutions simply verify the identity of the legal person's representative, or only check a copy of the legal person's articles.

528. The implementation of these provisions appears very disparate, if not embryonic in the micro-finance and licensed currency exchange sector, and remains incomplete among insurance companies. As for the money transfer sector, noteworthy weaknesses were identified in the implementation of preventive AML/CFT norms. Based on information collected by the mission, in terms of existing AML obligations supervisors or banks "sponsoring" entities and independentstaff conduct very little or no control over the

conditions in which the latter carry operations. Each actor appeared to utterly rely on diligence measures that other partner banking institutions or other authorities eventually apply whereas, regarding such operations, most banking institutions do not have adequate diligence procedures and actually rely almost exclusively on self-regulatory procedures and diligence that international fund transfer companies or telephone operators claim to apply.

Recommendation 6

529. In an environment marked by the narrowness of the market and the close relationships that institutions have developed with their customers, the effective implementation of this obligation appears hard to enforce, as admitted by institutions subject to the regulations that the mission met. Few professionals subject to the regulations met by the evaluation mission have established an operational mechanism, and have implemented an automated enhanced monitoring for customer portfolio which makes it possible to identify, for instance, possible PEPs and monitor the operation of their accounts.

Recommendation 7

530. Interviews conducted by the mission reveal that mechanisms for the monitoring and control of correspondent banking relationships, when implemented, only comply with instructions and norms from their head offices. No institution has reported its own due diligence to ensure controls implemented by the correspondents, which are often directly selected by the head office.

Recommendation 8

531. The applicable regulatory framework for the prevention of new technology misuse does not adequately supervise activities that might favour anonymity, and in particular the development of mobile phone banking, although they are currently limited to viewing account activities.

3.2.2 Recommendations and Comments

532. For lack of operational guide or circular edifying all professionals subject to the regulations on the essence of supervisor's expectations and on a more general level for lack of support from professional associations, the establishment and operation of anti-money laundering mechanisms do present certain challenges to professionals subject to the regulation, who are also faced with real human and technical constraints.

533. Therefore, Ivorian authorities should:

- publish procedure manuals or operational teaching guides, in consultation with relevant professional associations, to help all professionals subject to the regulation to fulfil: their due diligence with regards to PEPs for example as well as their identification obligations and identity verification obligations through means that are adequate and proportionate to money laundering risks, on the basis of reliable independent sources;
- also, specify the procedures for the identification of beneficial owners, which is one of the more difficult preventive measures to implement;
- mention the necessary information relating to the purpose and nature of the business relationship that persons subject to the regulation are required to collect and analyze in order to assess the risk, better yet the terms and scope of the

implementation, by professionals, of an enabling customer transaction due diligence procedure;

- act as a catalyst in the revision of Community legislation so that it may not only integrate the definition of the notion of politically exposed persons and the diligence measures governing it; the concept of beneficial ownership and the diligences governing it; but also to specify the diligences relative to legal persons;
- support the efforts of organizations that are most advanced in due diligence for PEPs and adopt a repressive policy for financial institutions that are reluctant to perform such obligation particularly for the purpose of allowing the development of breaches in competition rules governing different professionals subject to the regulation;
- consider prohibiting formally securities issuance as well as anonymous contracts in all parts of the financial sector, and establish an obligation for professionals subject to the regulation to implement a specific due diligence mechanism for anonymous accounts or whose owners are "insufficiently "identified;
- issue out an obligation to establish procedures and a timetable for the identification of existing customers;
- establish an obligation to identify the beneficial owners and issue out a circular specifying implementation procedures for such obligation;
- establish a due diligence obligation for business relationships and customer “profiling”, which could be specified through instructions or detailed guidelines;
- establish an obligation to identify the originator of wire transfers and store data;
- specify procedures for the implementation of reinforced due diligence for high risk categories of politically exposed persons and cross-border correspondent banking relationships, and other similar relationships with more explicit measures that financial institutions are required to implement ;
- introduce specific due diligence applicable to remote business relationships;
- strengthen obligations regarding business relationships which involve third parties or business providers, especially by specifying required structural procedures;
- introduce an express prohibition of account opening or establishment of business relationship where information is insufficient for customer due diligence and know-your-customer procedures;
- simultaneously revise sectoral "instructions and regulations" so as to incorporate the following elements: procedures for the identification of existing customers, procedures for the identification of beneficial owners, procedures for the implementation of due diligence, procedures for the identification of wire transfers, a system to monitor numbered accounts or accounts opened under false identity to ensure compliance with the anti-money laundering and financing of terrorism obligations and to ensure coherence in their provisions;
- revise norms applicable to the microfinance and foreign currency exchange sector to determine and specify all preventive measures, by adapting them to the specificities of these two components of the financial sector exposed (for small entities) to more limited risks;
- adopt, as soon as possible, a legal framework for money transfer activities;
- combat foreign currency exchange operators in the informal sector;
- ensure that existing obligations are effectively implemented in compliance with international norms.

3.2.3 Compliance with FATF Recommendations 5 to 8

Rec.	Rating	Summary of factors underlying rating
R.5	**NC**	• Absence of law banning holding anonymous accounts; • No provision of the law imposes customer due diligence when the latter carry out occasional transactions either as electronic wires in conditions set up by SR VII, when there is a suspicion of money laundering or terrorism financing, or when the financial institution has doubts on the truth of information previously obtained for the customer identification • No provision clearly imposes financial institutions to identify the customer and verify their identity with reliable source and independent documents ; • Lack of identification obligation of beneficial owners for all financial institutions. ; • No obligation requires financial institutions to verify the person who pretends to act on behalf of another customer if the latter is a legal or natural person. ; • Lack of requirement to inform on the object and nature of the relation Lack of enhanced due diligence for all the segments of the financial sector (existing customers, high risk categories); • Lack of obligation to ensure document update and relevancy, data or information gathered during the customer due diligence process, neither the minute scrutiny of transactions made during these relations, nor record keeping related to the update of CDD obligation through review of high risk customers • No requirement for financial institutions to deepen customer due diligence measures with the categories of customers, business relation or high risk. • Lack of specific indications on the moment when CDD must be implemented and if, it takes place after accounts opening , in which conditions is that possible. • No provision specifies to financial institutions what they are to do if they cannot comply with CDD measures. • No provision imposes to financial institutions to enforce CDD measures to existing customers.
R.6	**NC**	• No complete, clear, and understandable obligation for ongoing monitoring regarding politically exposed persons; • No obligation for monitoring regarding PPEs for insurance companies, money exchange and money transfer companies; • Imperfect implementation of the mechanism in components in the financial sector.
R.7	**PC**	• Lack of requirement to get approval from management before establishing relation with correspondent banking • Lack of requirement for financial institutions to exchange documents on their mutual accountability on AML/CFT issues • Shortcomings in implementation to few institutions
R.8	**NC**	• Lack of requirement to financial institutions to have policies or take necessary measures to prevent an abusive use of ICT in AML/CFT regimes

		• Incomplete and unclear Obligations; • Absence of a set of measures to implement when establishing remote business relations or carrying out clear and homogeneous non-face-to-face operations.

3.3 Third Parties and Business Introducers (R 9)

3.3.1 Description and Analysis

534. Applicable laws allow financial institutions to resort to intermediaries or third parties to establish remote relationships, under conditions that are difficult to interpret and not compliant with international norms, which are defined in the Appendix to the AML Act (see criteria 8-2 above).

535. In the insurance sector, the use of intermediaries is authorized by law (Agents and brokers), who are respectively representatives of insurance companies and policyholders. Mechanisms of introduction by third parties are to be applied in the context of the relationship between an insurance company and an insurance broker, natural or legal person authorized to carry out, on behalf of a customer, activities of insurance intermediation in exchange for payment. Subject, in a personal capacity, to AML and CFT-related diligence measures, the very broker is required to identify and verify the customer's identity and transmit to the insurance company the findings of audits completed under his/her own due diligence. Indeed, pursuant to Article 17 of the CIMA Regulation, "insurance brokers and reinsurance companies are financial institutions. As such, they are required to meet all obligations imposed on financial institutions for AML. Just because an insurance or reinsurance company meets its AML obligation, it does not mean that the broker is exempted and vice versa."

536. As regards general insurance staff who are authorized to act on behalf of insurance companies, their contractual relationships are not thus covered by Recommendation 9.

Collecting information from third party introducers for financial institutions (C.9.1)

537. The AML Act and CFT Order are silent on this point. No provision requires that information collected by the third party on the customer's identity, purpose and nature of the business relationship be promptly provided to the professional subject to the regulation.

Keeping copies of identification data and other relevant documents related to customer due diligence (C.9.2)

538. The texts are silent on practical arrangements for information and document transmission in the shortest possible time, as well as implemented controls and procedures. Persons subject to the provisions in the AML Act and CFT Order are only required to keep in their archives for at least ten years (10 years), a copy of any relevant document used for identification purposes or references to it by virtue of the provisions in Articles 10 (CFT Order) and 11 (AML Act). We can therefore consider that the implementation of this preservation obligation authorizes the professional subject to the regulation to recover

identification elements from the third party. However, this indirect obligation remains insufficient and too imprecise.

Country where third party or business contributor is established (C.9.3) Responsibility for identification and identity verification (C.9.4)

539. The AML Act and CFT order are silent on this point. The conditions under which a business relationship can be established with a recommended customer (obligation to have all the credentials, third parties or business providers subject to equivalent anti-money laundering and terrorist financing standards, internal know-your-customers standards that are at least equivalent to those of the institution subject to the regulations) are not specified.

540. On an operational level, Ivorian authorities have implemented no mechanisms to keep informed financial institutions from the list of countries that do not adequately FATF recommendations (notices and press releases).

Responsibility of the financial institution using third party business providers regarding identification and identity verification (C.9.5)

541. The AML Act and CFT Order do not explicitly mention that any institution subject to the regulation is ultimately responsible for the identification and identity verification in the instance where it does not, on its own, conduct customer due diligence. In addition, due to poor wording, unlike Article 7 of the AML Act, Article 9, 1st indent of CFT Order does not seem to explicitly prohibit account opening when all necessary credentials are not gathered, given that financial institutions are required to perform their customer due diligence "when" establishing business relationships or when opening an account, and not “prior to opening” an account.

Analysis of Effectiveness

542. Financial institutions met in the Côte d'Ivoire banking sector reported that they resort to third parties, on whom they rely for parts of their due diligence and AML/CFT monitoring, in the context of a sub-delegation contract, whereas such delegation is not clearly organized. This is true with foreign money transfers performed by Western Union / Money Gram or local money transfer services provided by telephone operators such as Orange Money/MTN Money Express.

543. For regional financial market, the various intermediaries including brokers and business providers are subject to the provisions of the AML Act in their capacities as persons subject to the regulations, pursuant to Article 3 of Instruction No 35 / 2008.

544. Insurance intermediaries are not subject to effective due diligence by insurance agencies or insurance management whose human resources and financial resources are clearly insufficient to enable them to perform all assigned tasks[27], including close monitoring of

[27] The Insurance Department permanent staff within the DGT consists of ten full-time staff including a director, a deputy director, and 6 "field" controllers.

intermediaries. In this context, no advocacy or due diligence has been conducted for such intermediaries. Therefore, even when there are no data, not one of such intermediaries is likely to comply with applicable regulations in Côte d'Ivoire.

3.3.2 Recommendations and Comments

545. Based on the above elements, it would be useful to:

- Specify the ultimate responsibility of financial institutions by revising the regulations;
- Supplement the provisions of the AML act and CFT Order, and recommend by way of guideline, guide or manual operating that insurance companies verify a number of credentials and adopt enabling measures to guarantee adequate monitoring of relationships with brokers;
- Clearly define the conditions under which resorting to intermediary third party for AML/CFT is allowed, and what the obligations are for each party;
- Require financial institutions resorting to a third party to immediately obtain from such third party information necessary for the implementation of customer due diligence measures (criteria 5.3 to 5.6);
- That financial institutions resorting to third parties be required to immediately collect from such third party necessary information regarding certain elements of the cdd measures (criteria 5.3 to5.6)
- • that financial institutions be required to take appropriate measures to ensure that the third party is able to provide, upon request and as soon as possible, copies of credentials and other relevant documents related to customer due diligence;
- That financial institutions be required to ensure that the third party is subject to a regulation and is monitored (according to recommendations 23, 24, and 29), and has taken measures to comply with customer due diligence measures specified in recommendation 5 and 10;• take into account available information regarding whether the country in which the third party is established, properly applies the faft recommendations;
- Revise the AML act and CFT Order to specify that an institution entering such scheme is ultimately responsible for the proper implementation of identification procedures and customer due diligence;
- Introduce conditions as well as a monitoring framework in the regulation governing operators in the capital markets, taking into account the specificities of the business, and money laundering risks relating thereto;
- Verify the implementation of introduction obligations by brokers insurance;
- That financial institutions ensure that the third party is subject to a regulation and is monitored (in accordance with recommendations 23, 24, and 29), and has taken measures to comply with customer due diligence measures in compliance with recommendations 5 and 10.

3.3.3 Compliance with FAFT Recommendation 9

Rec.	Rating	Summary of factors underlying rating
R.9	**NC**	• No legal arrangements governing the use of third parties and other intermediaries; • No provision specifying procedures for the transmission of

		information by third party business introducers; • Required due diligence not implemented.

3.4 Professional Secrecy or Confidentiality of Financial Institutions (R 4)

3.4.1 Description and Analysis

Professional Secrecy or Confidentiality applicable to Financial Institutions (c.4.1)

General obligation to protect professional secrecy

546. Protection of professional secrecy is established under Article 383 of the Penal Code which provides that "any depository, by status or profession or a temporary or permanent assignment, of secret entrusted to him who, except in cases where the law requires or authorizes to be in-custody informer, reveals this secret, shall be punished by imprisonment of one to six months and a fine of 50,000 to 500,000 francs. Is punishable by one to three months imprisonment and a fine of 10,000 to 100,000 francs he who, without authorization, reveals a secret by nature or said to be a secret by [...] the relevant authority, come to his knowledge during a judicial or administrative proceeding which he attended either as a party or as a witness, interpreter or representative of a party. "

547. With regard to banking, Article 1 of Law No. 93-661, as amended and supplemented by Order No. 2000-241, defines secrecy as "the discretion *that banks and financial institutions, their bodies and employees observe* regarding *operations entrusted to them in the exercise of their functions. Banks and financial institutions are required to keep secret on all facts which fall within the field of banking and* which *they learned while exercising their profession* [...]. "

548. In addition to these general provisions, Article 19 of the Banking Act compels "people who participate in the boards, administration, management, control or operation of credit institutions" to keep confidential information that they collect about their customers and their operations, while providing for the lifting thereof regarding certain entities listed in Article 42 of the very banking law. In fact, "professional secrecy shall apply neither to the Banking Commission nor the Central Bank nor the judicial authority acting in the course of criminal proceedings."

549. Violating such provisions exposes the offender to criminal sanctions under Article 52, namely, "*a fine of two million to twenty million CFA francs* (FCFA 2 million to 20 million - approx. 3060-30600 Euros) *for any bank or financial institution that has contravened any of the provisions contained in Articles 42 [...]. The same penalty may be imposed on officers found guilty of such infringement* [...] *who will have violated the provisions of Article 42* "and, if where applicable, apply different penalties for delay, depending on the time taken by the subject to transmit the information requested (Article 54 of the law).

National authorities to access information needed in carrying out AML / CFT tasks

550. The obligation of professional secrecy has limitations related to instances where supervisory authorities exercise their duties, particularly with regard to internal control mechanisms for the prevention of money laundering and, especially in compliance with identification and monitoring requirements. It also applies to judicial authorities and officials

responsible for detecting and punishing infringements relating to money laundering, acting under a warrant. Thus, this principle is enshrined in Article 12 of the AML Act, which provides for an extended obligation to transmit, for identification purposes, documents to competent authorities.

551. In addition, Article 34 of the AML Act and CFT Order 27 establish a general principle for secrecy lifting with respect to supervisory authorities and CENTIF, and provide that "*notwithstanding contrary statutory or regulatory provisions, professional secrecy may not be invoked [...] to refuse to provide information to the supervisory authorities and CENTIF or to disclose information as provided for in this law. The same is true with information required as regards an investigation on money laundering, ordered by a judge or performed, under his supervision, by State officials responsible for detecting and punishing infringements related to money laundering* [or the financing of terrorism]. "

552. Other laws governing authorities confirm the power given to such authorities to request and obtain information which would be useful to them. Thus, Article 22 of the Appendix to the Convention Governing the Banking Commission raises the general rule that "*secrecy may not be invoked before the Banking Commission.*" Similarly, the judicial authority is authorized for the lifting of bank secrecy, in compliance with Article 4 of Law No. 93-661 on banking secrecy which details out the situations in which «banks and financial institutions are required to disclose any document requested." This is applicable, particularly when the request comes from:

- A judge acting in the context of a criminal proceeding;
- Police officers acting on orders of a prosecutor or judge;
- An investigating judge on commission of inquiry, and if the bank or financial institution is subject to criminal prosecution.

553. As regards microfinance institutions, Article 58 of Order No. 2011-367 provides for the lifting of secrecy for the Minister of Finance, the Central Bank, the Banking Commission in the exercise of their supervisory functions of the financial system, and authority acting under judicial criminal proceedings. As for as credit institutions or unions, it is Article 68 of Law No. 96-562 that provides for the obligation to lift professional secrecy.

554. As regards insurance companies, similar provisions are laid down in Article 17 of Appendix I of the Treaty of CIMA, which stipulates that professional secrecy can not be invoked before the commission's control corps staff who, under the Staff Regulations, are themselves held to a professional secrecy obligation when exercising their duties (Article 66 of Appendix I of the Treaty of the CIMA). With regard to the regional financial market, Article 39 of the Appendix to the Convention establishing the CREPMF grants "*inspectors or any other person authorized by the Council to conduct investigations and inspections, the right to request any information and obtain a copy, regardless of the format* []. *Professional secrecy may not be invoked before persons duly authorized by the Regional Council* "who are bound by an obligation of absolute discretion on facts, acts, and information that they may have come to know in the course of their work or professional activity (Article 7 of the text above).

555. In addition, Article 24 of the AML Act organizes the exchange of information between CENTIF and financial intelligence counterparts in third countries. Under this article, CENTIF may, subject to reciprocity, exchange information with the financial information of third countries responsible for receiving and processing reports of suspicious activities and inform

its foreign counterparts on the basis of information and documents provided by professionals subject to the regulations, in the instance where intelligence services are subject to similar confidentiality obligations.

556. Procedures for the implementation of this international cooperation relating to exchange of information seem insufficiently detailed to enable their effective implementation in a secure legal framework. In fact, no provision in the AML Act or CFT Order expressly requires that information provided under the above-recalled provisions be disclosed to any other person by the competent foreign authorities, only with the express consent of Côte d'Ivoire FIU, and for the exclusive purpose for which the latter has agreed to maintain confidentiality on information shared with other FIU counterparts.

Exchange of information between financial institutions required by Recommendations 7 (border correspondent banking relationship) and 9 (third introduction) and the FATF Special Recommendation VII

557. The Banking Law and the CFT Order are silent on the sharing of information between financial institutions where required by Recommendations 7 and 9 or Special Recommendation VII. Similarly, the current legislation does not contain any provision on the exchange of information and documents among various institutions established in Côte d'Ivoire as part of a financial group or a mixed group or between a professional subject to regulations in Côte Ivory and other companies in the same group whose head offices are located in another state.

558. The lifting of professional secrecy in these situations, which is not governed by legally written norms compliant with FATF, could then be implemented without there being a provision protecting confidentiality on data and documents exchanged.

Analysis of Effectiveness

559. It should be noted that several financial institutions and professionals subject to the regulations expressed before evaluators their concern about compliance with the protection of data provided and the risks that could result from disclosure of identity to a “suspicious” customer due to the size of the market and unbanked population, as well as the close-knit relationship managers have with customers in their portfolio, which might constitute a real obstacle to good cooperation with competent authorities when a given AML / CFT survey is carried. CENTIF’s very active role, especially in managing and animating awareness raising activities coupled with ignorance of CENTIF’s governing obligations with regards to its missions contributes, to be sure, to the widespread feeling that data transmitted to CENTIF are not sufficiently protected.

3.4.2 Recommendations and Comments

560. Authorities should:

- Ensure that they communicate more on their missions and guarantee that registrants are granted in the legal arrangement while ensuring that such information is more widely spread among targeted professionals, and initiate a process of reflection on procedures to be implemented so as to address concerns expressed by professional subject to the regulations. This could lead some professionals, who have never disclosed any information, to unveil information they have so far failed to disclose;

- Define the legal framework so that professional secrecy provisions do not impede on the exchange of information among financial institutions, where required by recommendations 7 and 9 or special recommendation vii (cf. Correspondent banking relationships, introduction by third parties; etc.);
- Revise laws governing international cooperation in order to integrate provisions requiring recipients of the request for cooperation to commit to a set of principles which guarantee confidentiality on information provided;
- Raise awareness on the strict use of data covered by professional secrecy obligations for the purposes of missions assigned to requesting authorities.

3.4.3 Compliance with FATF Recommendation 4

Rec.	Rating	Summary of factors underlying rating
R.4	**LC**	• No provision guaranteeing that professional secrecy will not impede on the exchange of information among financial institutions, where required; • No provision guaranteeing that professional secrecy protecting certain data is lifted only in instances provided for by legal arrangements that are identical for all supervisory authorities ; • No provision guaranteeing that data transmitted may be exchanged only with other foreign authorities subject to the same obligations as are applicable in Côte d'Ivoire.

3.5 Record Keeping and Wire Transfer Rules (R 10 and SR VII)

3.5.1 General Description of laws or other measures, situation and background

Recommendation 10

Keeping essential documents relating to transaction and allowing for transactions to be backtracked (c.10.1 and c.10.1.1)

561. The AML Act in Article 11 prescribes that documents and records relating to transactions carried out by financial institutions be kept for a period of at least ten years (10 years) as of the closing of the account, termination of customer relationship or execution of the operation. As for the CFT Order, Article 10 states *"... transactions, documents and records, consisting of similar legally compelling original documents or copies under applicable legislative and regulatory texts, be kept for a period of ten years (10 years) as of the year in which operations were carried out without prejudice to the longer preservation periods prescribed by other laws or regulations.* "

562. For banks and financial institutions, additional details are also provided in Regulation 15/2002/CM/UEMOA on payment systems in Article 20 which requires the keeping of: (i) information contained in documents in electronic form, for 5 years *"in the form in which it was generated, sent or received, or in a form for which it is possible to demonstrate that no modification or alteration is likely to be made to its content and that the document transmitted and the one kept are identical "*and (ii*)" information that makes it possible to*

determine the origin and destination of the data message, as well as indications on date and time of sending or receiving [...]. "

563. In addition, the Banking Commission, pursuant to Article 31 of Circular No. 003-2011/CB/C on internal control systems, states that the existence of an audit trail should make it possible to:

i. Backtrack operations in a chronological order;
ii. Justify any information with an original document from which it must be possible to trace back, through an unswerving path, the summary document and vice versa;
iii. Explain the evolution of the balance from an order to another, by keeping track of movements affecting accounting items. Such audit trail elements are required to be kept for at least ten years (10 years). In addition, the internal control system should help to monitor the quality of accounting and financial information and shall ensure the existence of a set of procedures, called audit trail (article 30).

564. For insurance companies, the CIMA Regulation, in Article 13 requires stakeholders to keep, for a period of ten years (10 years), documents relating to identification and transactions, but also the comprehensive audit trail, which should help guarantee traceability for operations.

565. Some texts provide for the extension of the period during which documents are to be kept, on the basis of the authority requesting so. Such power is conferred onto judicial authorities by the provisions in the Code of Criminal Procedure. Thus, in the context of criminal proceedings, judicial authorities may request the extension of time documents are to be kept in order to safeguard evidence that may disappear and any other element that can help to reveal the truth (Articles 54, paragraph 2, and 75 of the CPC). To this end, they can conduct searches and seizures, including papers, documents or other items relating to prosecuted facts and in the possession of any person holding them.

566. Similarly, Article 33 of the AML Act provides that to "establish proof of the original infringement and evidence of infringements related to ML, a judge may order in compliance with law, for a fixed period[...] various actions " including seizure of deeds and documents. As a result, the financial institution in whose hands are the documents seized, in its capacity as custodian of the thing, may be entrusted with the responsibility to keep the documents and records for a period that may be extended.

567. However, Instruction No. 01/2006/SP in Article 5, 4th indent provides for a shorter period. Thus, when the redeeming of electronic money for an amount greater than ten thousand CFA francs (CFAF 10,000 - approx. € 15) in cash is subject to request "*by a person who is not identified by a client issuing institution, the institution carrying out the redeeming establishes the identity of such person and makes it available to the monetary and control authorities as well as CENTIF, for two years.*" In Article 6, third indent on the traceability of operations, it is stated that "*the issuing institution ensures traceability, for two years, of loads and receipts of electronic money and makes it available to the monetary and control authority*". In both situations, the time period provided for by the statement is shorter than five years, as required by the FATF. In addition, the instruction does not expressly provide, in the second case, that information related to the traceability of sending and receipt be made available to CENTIF.

568. When examining these two provisions, it appears that the scope prescribed for record keeping is overall wide enough, making it possible to backtrack operations carried out and customer due diligence. Although there is no clear definition as to what type of information to keep so that operations can be backtracked, it can be assumed that the obligation to keep documents and records includes book keeping and business correspondence.

569. However, in none of the abovementioned texts, are financial institutions explicitly required to ensure that they are able to provide competent authorities, in a timely manner, with information on what documents are kept. This does not ensure that arrangements implemented by persons subject to the regulation are actually operational.

Keeping essential documents relating to identification data, account files and business correspondence (C.10.2 *)

570. On a general level, for all persons subject to the regulation and established as companies, Article 24 of November 20th,2000 Uniform Act governing the organization and harmonization of business accounting states that " *books or documents serving as invoices, and supporting documents are to be kept for ten years.* "

571. Articles 11 and 12 of the AML Act read together specify that records and documents relating to customer due diligence and transaction identification performed by financial institutions are required to be kept so that they may be transmitted to CENTIF, supervisory authorities, judicial authorities, state officials responsible for detecting and punishing infringements relating to money laundering, acting under a warrant.

572. Article 10 of the CFT Order requires that exhibits and customer-related statistical data be kept, i.e. credentials, supporting documents, and records of transactions, for a period of at least ten years (10 years) as of termination date of the relationship with the customer or end of the year in which the transaction was carried out.

573. Financial institutions have, however, no obligation to keep records and documents relating to beneficiaries of operations performed (see above recommendation 5), although the scope of the obligation to keep documents seems wide enough to allow for individual transactions to be backtracked.

Information available to the competent authorities (C.10.3 *)

574. While conducting document-based and on-the-spot checks, the various supervisory authorities of the financial sector may request any information or documents necessary for the performance of their duties, failing financial institutions are subject to sanctions. Various provisions are provided for, to ensure that authorities are transmitted what they request:

- With regard to the Banking Commission, "*credit institutions are required to provide [the Banking Commission] [...]with all documents, information, clarification, and justification necessary for the performance of its assignment* " and as per its request, " *auditors [...] are required to transmit all reports, documents, and other elements, as well as to provide all information necessary for the performance of its assignment* " by virtue of Article 20 of the Appendix to the Convention Governing the Banking Commission.
- With regard to the investigating judge, Article 33 of the AML Act on investigative measures, states that "to produce evidence for the original offense and evidence for ML offenses [s/he] may order, in compliance with the law, for a fixed period [...] various

actions "including" transmission of deeds or private documents, banking, financial and commercial documents."

- With regard to monetary authorities, Instruction No. 01/2006/SP in Article 6, 2nd indent, states that the issuing institution provides [them] with available information relating to the identity of the customer carrying out operations of electronic money loading or reloading.
- With regard to CREPMF, it is endowed as part of its document-based checks, pursuant to Article 25, with the capacity to "stop accounting provisions applicable to regional financial market participants" and may require "the transmission of regular information for which it determines the content and transmission conditions."

575. Authorities failed to mention the presence of difficulties related to access to information kept, even if the provisions in these texts do not provide that financial institutions have to ensure that all documents relating to customers and transactions are made available in a timely manner, where required by national authorities.

Analysis of Effectiveness

576. Obligations to keep records referred to in Article 11 remain little known to most financial institutions.

577. In the area of microfinance, although no monitoring mission has yet been conducted on ML and FT, limited resources available to some structures raise concerns, as admitted by the very authorities, about possible difficulties to produce, in a timely manner, documents requested by prosecuting authorities or CENTIF.

578. The foreign exchange bureaus seem to completely disregard their obligations to keep records and do not always make a copy of identification documents.

579. Where supervisory authorities fail to verify that professionals subject to the regulations implement their obligations, even though the very standards are not well known, the mission considers that the implementation of the current legal system is not effective.

580. Information provided by credit institutions on their electronic transfer practices confirms that no diligence is implemented in this regard. In fact, banks interviewed indicated that they rely either on due diligence established by their head offices in the case of international groups, or on due diligence that can be performed by Swift (or equivalent) or even by money transfer companies.

581. Banks also indicated that wire transfer transactions came from / were destined mainly to the European Union, the United States, and the West African region. Owing to the standards applicable in those areas, they indicated that they ensure that information required on payers and recipients is listed on transfer operations to those areas. In the case of transfers received, they indicated that information was systematically included. But no bank indicated that it has implemented due diligence for information to go with wire transfers so as to ensure their compliance with international standards (e.g. regarding those received from or issued to countries not applying the provisions of SR VII).

3.5.2 Recommendations and Comments

Recommendation 10

582. Authorities should consider:

- The possibility to extend the period for which documents should be kept, as long as necessary for a competent authority (other than judicial) to perform its mission;
- The obligation to provide, in a timely manner, competent national authorities with all documents relating to customers and operations;
- The capacity for auditors to access, when performing their missions, the register provided for in article 10.

3.5.3 Compliance with Recommendation 10 of the FATF

Rec.	Rating	Summary of factors underlying rating
R.10	**LC**	• No clear definition regarding the nature and availability of information and documents to be kept ; • No obligation to ensure that information and documents are made available to competent national authorities in a timely manner; • Time period for which records are to be kept is non compliant with regard to information related to electronic money;

Special Recommendation VII

Collecting information on the wire transfer originator (c.VII.1)

583. Regulation 15/2002/CM/UEMOA on payment systems in UEMOA Member States defines the applicable provisions for wire transfers that can be carried out (despite ambiguities[28]) by banks, financial institutions, DFS, as well as any other legally authorized institution (articles 42, 131 and 132).

584. Instruction No. 01/2007/RB exempts financial institutions from performing their due diligence with regard to identifying occasional customers involved in all cash transactions inferior to five thousand CFA francs (5,000 CFA .000 - approx. 7623euros) except where such operation is repeatedly carried out for separate transactions whose amounts are below the ceiling and where there seems to be a link between such transactions or where there are doubts about the lawful origin of the capital. As a result, financial institutions are not required to perform customer due diligence on the originator of a transfer operation amounting to or higher than six hundred fifty five thousand and one hundred francs CFA (655100 F. CFA - env.1000 Euros), and incidentally, are exempt from collecting and keeping thorough information (name of payer, payer's address, number account of the payer), under current applicable regulations.

585. It should also be noted that the provisions of the Appendix to the AML Act limit even more considerably the scope of the customer due diligence obligation for other financial institutions acting on behalf of such clients (cf. c. 5 - 5 and 8-2).

[28] Article 42 on the scope of the regulation does not include financial institutions, which are, however, explicitly referred to in Article 132 of that Regulation. The provisions in Title II, which includes electronic transfers, apply pursuant to the general provisions specified in Article 131, to all institutions referred to in Article 42 and **SFD**s empowered to promote the use of modern instruments payment while pursuant to Article 132, the scope of Title II includes only banks and financial institutions.

586. Article 12 of the CFT Order states that "all electronic transfers are required to contain accurate information on the payer." The same requirement is made for domestic transfers. Such requirement exists regardless of the threshold set for the transfer and therefore applies to all transfers between financial institutions. However, there is no requirement for financial institutions to establish the address of the payer, or to keep the information collected.

Including such information in an international transfer (c.VII.2)

587. Provisions in Article 12 of the CFTOrder, indent1 indicate that "all cross-border electronic transfers [are] accompanied by accurate information on the payer. Such information includes his or her account number or, in the absence thereof, an exclusive reference number accompanying the transfer. "The word "including" suggests, however, that is possible not to collect certain customer information, which means that there is no strict obligation requiring the financial institution to collect and keep information on the payer (customer's name and address), and to mention the thorough information in the message or payment form accompanying the transfer.

Including such information in a national transfer (c.VII.3)

588. The CFT Order, article 12, paragraph 2, states that *"Member States shall ensure that all domestic wire transfers include the same data as in the case of cross-border transfers [i.e. the account number or, in the absence thereof, an exclusive reference number accompanying the transfer*], *unless it is possible to make all information on the* payer *available to the beneficiary financial institutions and competent authorities by other means."*

589. Like cross-border transfers, this article does not require financial institutions to collect and also keep information relating to the payer including at least the customer's name and address, or to mention thorough information on the payer in the message or payment form accompanying the transfer. Therefore, thorough information on the payer under the FATF may not be collected and will not be made available to the beneficiary financial institution or authorities within 3 working days as of receipt of a request. Similarly, prosecution authorities will not impose immediate disclosure of such information.

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

590. No provision regulates non-routine transactions or the prohibition to process them by batch where it can generate a risk of money laundering or financing of terrorism.

Keeping information on originators (**c.VII.5)**

591. No provision requires intermediary financial institutions in the payment chain to ensure that all required information on the customer are kept with the corresponding transfer.

Presence of effective measures to monitor the implementation of SR VII (c.VII.6)

592. There is no minimal threshold in Côte d'Ivoire, below which certain obligations relating to electronic transfers would be lifted.

593. No audit has been carried out in the absence of mandatory provision prescribed by the regulations. Therefore, no control was made by competent authorities.

Applying Criteria 17.1 to 17.4 – Requirement for efficient procedures by institutions on risk assessment basis (c.VII.7)

594. No provision in the texts is related to the obligation for financial institutions to adopt effective procedures based on risk assessment in order to identify and process wire transfers that are not accompanied by thorough information on the payer.

595. If the Central Bank or the Banking Commission has a legal basis to sanction financial institutions that do not meet their obligations to identify occasional customers, especially during a transfer operation, the lack of obligation specifying due diligence to be performed on transfer operations does not allow them to impose specific penalties in this regard.

Requirement for complete and accurate information on the payer for all transfers received from abroad (c.VII.8)

596. Neither in the case of domestic transfers, nor in the case of international transfers, does the legal framework specify the procedure for treatment to be followed when receiving "incoming" transfers that are not accompanied with required customer due diligence.

Requirement for complete and accurate information on the payer for all transfers sent from abroad (c.VII.9)

597. The provisions in Article 6 of the AML Act are reminiscent of the obligation for Licensed currency exchange entities[29] to comply with regulations, and incidentally, the provisions in the Appendix to the AML Act. This Appendix (see above) specifies due diligence to be performed by financial institutions when they perform on behalf of their client natural persons, remote operations, but it contains no requirement in terms of information on the payer. Since public authorities do not prescribe any standard or requirement for issuing institutions to include credentials in messages or make them available to receiving institutions or the recipient country's public authorities in a timely manner, no audit has been conducted to make sure it is so.

598. There is no obligation for each intermediary financial institution in the payment chain to keep along the corresponding transfer all necessary information on the customer.

Analysis of Effectiveness

599. For financial institutions, transfers are an important activity that is growing within as well as outside the WAEMU zone. In this context, the absence of measures incorporating into domestic laws the provisions of Recommendation VII constitutes a particularly noteworthy weakness. A regional framework for the development of such standards could have the benefit of imposing uniform due diligence requirements applicable to authorized financial companies involved in electronic transfer in all Member States and could avoid additional costs incurred by the multiplication of specificities.

3.5.4 Comments and Recommendations

[29] Licensed currency exchange entities include BCEAO, the Post Office, licensed brokers (banks...) or foreign exchange bureaus.

600. National authorities should consider adopting and implementing the following provisions:

- For cross border transfers, require the payer's financial institutions to include thorough information on the payer in the message or payment form accompanying the transfer;
- For domestic transfers, require the financial institution to only include the payer's account number, or in lack of an account number, an exclusive identification means in the message or payment form;
- Require financial institutions to ensure that non-routine transactions are not processed by batch where this can generate an increased risk of money laundering or terrorist financing;
- require each intermediary financial institution in the payment chain to keep along the corresponding transfer all necessary information on the payer;
- Require financial institutions to adopt effective procedures based on a risk assessment so as to identify and process wire transfers that are not accompanied by thorough information on the payer;
- Give instructions to go along the implementation of internal control measures to ensure the implementation of sr vii;
- Ensure that criteria 17.1 to 17.4 apply to SR VII.

3.5.5 Compliance with FAFT Special Recommendation VII

Rec.	Rating	Summary of factors underlying rating
SR.VII	**NC**	• Too limited a scope for information to be collected; • No obligation for the flow of information related to payer; • No control for the implementation of such measures.

3.6 Monitoring Transactions and Business Relationship (R 11 & 21)

3.6.1 General description of laws or other measures, situation or background

Recommendation 11

Obligation to pay special attention to any complex transactions involving abnormally high amounts or to all types of unusual transactions (c.11.1)

601. In Article 10, paragraph 1 of the AML Act prescribes financial institutions and all other persons subject to this text (including BCEAO and Treasury) the obligation to pay special attention to any transaction whose amount is equal to or superior to ten million francs CFA (CFAF 10 million, approx. 15,300 Euros), which appears in "unusual conditions of complexity and/or does not seem to have any economic justification or lawful purpose."

602. Implementing such requirement presupposes that financial institutions implement a general supervision over operations carried out by their customers, and monitors operations on customers' accounts so as to be able to detect them. It should be noted, however, that the criteria determining the implementation of the provisions in Article 10 (cumulative or not) are not equivalent to those in Recommendation 11. Indeed, monitoring established by Recommendation 11 provides that financial institutions pay special attention to all complex transactions whose amounts are unusually high or all transactions carried out in unusual

conditions, in instances where they are performed without economic justification or perceptible lawful purpose.

603. It should be noted that there is a discrepancy between the wording of article 12 of the instruction and Article 10 of the AML Act. Indeed, under the AML Act, due diligence obligation is applicable when the total amount or unit operation reaches or exceeds ten million CFA Francs. On the other hand, such obligation only applies, in the instruction, to significant transactions, which are not defined in the instruction, and whose amounts are definitely higher than the10-million FCFA threshold, in opposition to the law where the sum can be equal to such amount. Similarly, the criteria determining the implementation of the provisions in Article 12 of the instruction are definitely cumulative and are therefore not equivalent to those in Article 10 of the AML Act, or those mentioned in Recommendation 11.

604. The legal provisions do not provide for how financial institutions can pay special attention to their customers when the risk of money laundering or terrorist financing is low. Indeed, vis-à-vis their customers, point 6) of the Appendix to the AML exempts financial institutions from all forms of due diligence. Similarly, none of the institutions met has developed a computer-based mechanism or taken steps to ensure compliance with the aforementioned provisions. This finding leads to question whether financial institutions actually apply special due diligence on atypical transactions.

605. Like what is required for banks, Article 14 of the AML Act requires authorized foreign currency exchange companies to "pay special attention to transactions for which no regulatory limit is imposed and which could be carried out for the purpose of money laundering, in instances where the amount reaches five million (5,000,000 - approx. € 7,650) CFAF. "It should be noted, however, that while this article introduces an obligation for authorized currency exchange companies to perform general monitoring on operations performed by customers, it also introduces an additional criterion for suspicion of money laundering, which reduces considerably the scope of due diligence to be performed. And more generally, it appears that this criterion introduces confusion, for it seems to establish a link between the specific monitoring of certain transactions and disclosure procedures that are required to be implemented by bureaux de change when there is suspicion.

606. In addition, Article 7 of the Instruction No. 01/2007/RB requires that "financial institutions [have] a mechanism for analyzing transactions and customer profiles, which will make it possible to particularly backtrack and monitor atypical operations and financial transactions ". It can be observed that the operations referred to in this article supposed to specify the provisions of the law are not defined in the provisions contained in the AML Act. Under such conditions, it seems logical to consider that "any significant transaction involving sums whose unit or total amounts are higher than 10 million FCFA (as defined in Article 12 of the aforementioned Instruction No. 01/2007 / RB)" is "an atypical transaction."

607. In addition, Article 10, indent 2 of AML Act provides that financial institutions are required to apply customer due diligence when their clients carry out a cash or bearer security transaction in normal conditions, and in instances where the unit or total amount is equal or superior to fifty million CFA francs (50,000. CFAF 000 - approx. € 76,350). Considering the predominance of cash in the Ivorian economy, implementing such obligation presupposes that financial institutions monitor the operation of customer accounts and supervise a very large number of operations carried out by customers although the set criteria remain more restrictive than those in Recommendation 11. Indeed, under the provisions of this indent, the

scope of the obligation to make further review is expressly limited to cash- and bearer security transactions.

608. With regard to issuing institutions or electronic money institutions, Article 7 of Instruction No. 1/2006/SP provides that they "need to develop an automated monitoring system for unusual transactions based on electronic money ", which stands as a statement for a comprehensive due diligence obligation.

609. For insurance companies, Article 7.2 of the CIMA Regulation on customers and significant, noteworthy, or unusual contracts provides that "insurance companies are required to provide for a mechanism to analyze customer transactions and profiles in order to track and monitor atypical transactions." The requirement for insurance professionals to implement special monitoring is required under Article 10 of the CIMA Regulation, as laid down in Instruction No. 01/2007/RB, and draws attention on the same observations as made by the evaluation team. However, the aforementioned article adds that "it may be easier for companies to apply ad hoc rules to all significant transactions (whose unit or total amounts are superior to 10 million CFAF [...] regardless of other conditions, in the first stage)." Similarly, Article 15 of the Regulation provides that "a suspicious transaction report should be made with regards to so-called atypical operations, when a company has not collected any information ...", and requires, therefore, insurance companies to systematically report to CENTIF any cash transaction carried out under normal conditions as referred to by law. This lack of clarity is likely to create confusion in due diligence expected from insurance professionals in case of atypical and suspicious transactions.

610. With regard to regional financial market participants, Article 7 of CREPMF Directive provides that regional financial market participants "are required develop a mechanism to analyze customer transactions and profiles in order to particularly backtrack and monitor atypical operations and financial transactions ", including transactions not consistent with customer profile and expected operation of the account. However, it does not shed any more light on the concept of atypical financial transactions, nor does it require that findings from such reinforced review be put down in writing.

611. In addition to the aforementioned provisions, Article 8 of the CFT Order states that "obligations imposed on persons subject to the provisions in Title II of the Uniform Law on combating the financing of terrorism[…] apply as of right in CFT. "

Study of the background and purpose of transactions (C.11.2)

612. Pursuant to the provisions of Article 10 of the AML Act, for financial institutions, special monitoring translates into increased review of operations in order to collect from customers, information related to the origin and destination of the funds, the purpose of the transaction, the identity and address of the payer or beneficiary. In this respect, persons subject to the regulation "are required to collect from the customer, and/or by any other means, information related to the origin and destination of the sums of money involved, as well as the purpose of the transaction and identities of persons involved."

613. In addition, pursuant to Article 10, paragraph 3, "*the main features of the transaction, the identities of the payer and beneficiary, where applicable; those of actors in the transaction are recorded in a confidential register with the view to making comparisons when necessary.*"

614. While the Law lists the information that financial institutions and other persons subject to the regulation are required to put down in writing, such wording may foster the exclusion of information that could have been relevant to record. Such data include information that helped financial institutions or persons subject to the regulation to record a transaction or information that has served as a justification to why suspicious transactions have failed to be reported... As a result, measures prescribed to persons subject to the regulation are more restrictive than those advocated in international standards, which recommend "*putting down in writing the results of such review* ".

615. Article 12 of Instruction No. 01/2007/RB reproduces the wording of the law stating that financial institutions have an obligation to collect "*from customers, information on the origin and destination of such funds as well as on the purpose of the transaction and identities of beneficiaries, and record such information in a confidential register.*"

616. Article 10 of CIMA Regulation also requires insurance companies to "elucidate the purposes as well as minutiae of such operations and put down in writing information collected, including the source of funds, their destination, the identities of the beneficiaries, as well as all apparent and real information about the financial institution where the funds come from." They are required to also be able to justify, after completion of the strengthened review, "the absence of a suspicious transaction report" and provide evidence that such due diligence has been realized, for a period of at least 10 years.

Keeping findings available with competent authorities and auditors (c.11.3)

617. Article 12 of the AML Act provides that requested information be made available to CENTIF, judicial authorities, State investigative agents acting under a warrant, responsible for detecting and sanctioning offenses related to money laundering, or supervisory authorities, but it does not provide for the possibility to make data reports available to auditors. As for Article 10 of the CFT Order, it also imposes the obligation to keep records "so that they may serve as evidence in any investigation relating to the financing of terrorism."

618. Article 10 of CIMA Regulation on "atypical" operations supplements the provisions in Article 12 of the AML Act by providing that insurance companies are required to keep records collected during the review of so-called atypical operations in order to be able to justify, after completion of the strengthened review, "the absence of a suspicious transaction report " and "provide evidence of completion" of such due diligence, for a period of at least 10 years. A model for the review of unusual transactions is proposed in the Appendix of this regulation. However, no provision in CIMA regulations provides that information and documents kept after completion of the review be made available to auditors.

Recommendation 21

Special focus on countries that fail to or insufficiently apply FATF Recommendations (c.21.1)

619. As regards operations carried out with countries that do not or insufficiently apply the FATF Recommendations, the AML Act in Côte d'Ivoire imposes no special due diligence, nor does it provide for the possibility to take appropriate counter-measures in the instance where such countries are reluctant to adequately apply the FATF Recommendations. This aspect is

discussed only in an allusive way in the Appendix to the AML Act. Indeed, in point 6 (b), financial institutions are required to verify their counterparts' identities and take appropriate measures to collect information on their counterparts' customers, which varies depending on whether the country applies equivalent due diligence or not. (see above c.8-2). As for Instruction No. 01/2007/RB, it refers, in Article 10, to the obligation for financial institutions to "*pay special attention to transactions with countries, territories and/or jurisdictions reported by the FATF as non-cooperative [...].*" *It also requires that "the list of countries/territories, and jurisdictions be regularly updated and transmitted to staff spearheading the fight against money laundering within the financial institution.*" No details are, however, given about how to strengthen due diligence or regarding procedures to obtain a list of such countries and territories.

620. Moreover, Article 7 of the aforementioned Instruction requires financial institutions to develop a mechanism for analyzing transactions and customer profiles, which will make it possible "*to particularly backtrack and monitor atypical movements and financial transactions*". It should be noted that these include (Article 7, the seventh indent), "*transactions with [...] counterparts in countries, territories and/or jurisdictions reported by the FATF as non-cooperative [...].*" This provision appears to be more restrictive than Recommendation 21 whose scope covers countries that do not or insufficiently apply the FATF Recommendations.

621. Article 8.3 of CIMA Regulation provides that insurance companies are required to implement specific due diligence with respect to "*foreign legal persons*" (i.e. located outside the CIMA). It identifies a non-exhaustive list of situations where persons subject to the regulation are required to collect a certain number of additional information. As such, insurance companies are required to take into account the geographical origin of persons involved in a business relationship in the implementation of customer due diligence procedures, and make a suspicious transaction report in the instance where it is impossible to verify the beneficial owner's identity.

622. No provision has been adopted in the financial market sector so that the geographical origin of persons involved in a business relationship may not be taken into account when applying strengthened customer due diligence.

Implementing efficient measures (c.21.1.1)

623. There are no efficient measures to inform financial institutions about concerns raised by failures in other countries' AML/CFT mechanisms.

Reviewing transactions with no apparent economic or lawful purpose (c.21.2)

624. As a reminder (see recommendation 11 above), Article 10 of the AML Act and Article 12 of the Instruction No. 01/2007/RB provide, generally, that persons subject to the regulation are required to conduct strengthened review for any particularly complex operation or whose amount is unusually large and/or does not seem to have any economic justification or lawful purpose. In this case, they are required to collect from the customer, information about the origin of the funds, the destination of such funds, the purpose of the transaction, and the beneficiary's identity. Such information is required to be recorded on a register and kept, as per common law procedures law laid down in Article 11 of the AML Act, i.e. for at least 10 years. Making such information available to supervisory authorities, judicial authorities, and

CENTIF, pertains to the Common Law that has been previously detailed when analyzing compliance with FATF Recommendation 10.

625. However, there are insufficiencies in the aforementioned instruction that requires persons subject to the regulation (financial institutions) to pay special attention to transactions with counterparts in NCCTs. In fact, the instruction does not provide, in case such transactions have no apparent economic or lawful purpose, that persons subject to the regulation review the background and purpose of such transactions and record findings of such review, or make them available to competent authorities and auditors. According to the instruction's wording, institutions subject to the regulation are only required to be able to "*particularly backtrack and monitor atypical operations and transactions*" (Article 7 of the Instruction No. 01/2007/RB). Similarly, due diligence procedures applicable to transactions without apparent economic or lawful purpose, as provided in Article 10 of the AML Act, are not strengthened (particularly by requiring that findings from reviews be put down in writing) when such transactions are carried out with legal persons and financial institutions located in countries that do not or insufficiently apply the FATF Recommendations.

626. The abovementioned legal framework applies to insurance companies. As a reminder (see recommendation 11 above), Article 10 of the CIMA Regulation provides for the obligation for persons subject to the regulation to conduct strengthened review for any complex transactions whose amounts are unusually high or do not appear to have any economic justification or lawful purpose. Such information is required to be put down in paper on a register and kept according to common Law procedures laid down in Article 13 of the regulation, i.e. for at least 10 years. Making such information available to supervisory authorities, judicial authorities and CENTIF pertains to Common Law.

627. In that regard, no provision is specified in the CREPMF instruction or in Instruction No. 01/2006/SP.

Capacity to apply appropriate counter-measures to the countries reluctantly or inadequately applying the FATF Recommendations (C.21.3)

628. Côte d'Ivoire's legal arrangement does not provide for the possibility to apply appropriate counter-measures[30] to a country that is reluctant to adequately apply the FAFT Recommendations. In addition, there is no mechanism that makes it possible to disseminate information on third countries' failures as regards AML/CFT. Côte d'Ivoire is therefore not able to apply appropriate counter-measures[31]. However, related general provisions are laid down in the sectoral rules, in imprecise terms. Indeed, it appears that persons subject to the regulation are required to perform some due diligence on transactions carried out with

[30] For example, (i) apply strict customer due diligence norms and improvement of advisories, especially on financial issues specific to the jurisdiction, to financial institutions so as to identify beneficial owners prior to establishing business relationships with persons or entities in such countries, (ii) improve corresponding reporting mechanisms or systematic reporting of financial transactions considering that financial transactions with such countries are likely to be suspicious, (iii) take into account, when reviewing the institution's license application countries applying the counter measures implemented by subsidiaries or branches or representative offices of financial institutions, the fact that the financial institution is from a country that does not have a suitable AML/CFT mechanism (iv) warn non-financial companies about the risk of money laundering, which includes transactions with natural or legal persons in that country, or (v) limiting business relationships or financial transactions with countries or persons identified in this country.

[31] For example, improve corresponding reporting mechanisms or systematic reporting of financial transactions considering that financial transactions with such countries are likely to be suspicious, take into account, when reviewing the institution's license application countries applying the counter measures implemented by subsidiaries or branches or representative offices of financial institutions, the fact that the financial institution is from a country that does not have an equivalent AML/CFT level ...

NCCTs, hence the lack of effectiveness in the implementation by all professionals, of required procedures.

629. Thus, under Article 10 of Instruction No. 01/2007/RB or CREPMF instruction "financial institutions [or financial market participants] are required to pay special attention to transactions conducted with countries, territories, and/or jurisdictions reported by the FATF as non-cooperative [...]. In this regard, the list of countries/territories, and a jurisdiction, as well as persons subject to asset-freezing measures, is required to be regularly updated [...]. "Similarly, Article 8.3 of Regulation CIMA states that insurance companies are required to consider as "a priori suspicious," especially "subscriptions made by legal persons from certain foreign countries." However, no details are given on the definition of such countries, the criteria used to identify such countries, which may therefore include or not, NCCTs or countries applying insufficiently the FATF Recommendations. For affected customers, insurance companies require additional information for customer due diligence (especially when in the presence of a trust, foundation, and other instruments for the management of a special-purpose reserve).

630. In addition, due diligence established by the sectoral instructions does not cover all business relationships or transactions, pursuant to Recommendation 21. It does not either provide for the possibility to adopt counter-measures if such countries are reluctant to adequately apply the FATF Recommendations. For lack of a clear definition of the authorities' requirements, financial institutions are not given, either, any precise instruction likely to make their eventual system operational.

Analysis of Effectiveness

631. Overall, professional financial institutions met by the mission are not knowledgeable about their obligations relating to special review of certain categories of operations (complex operation whose amount is unusually large or appears to have no economic justification or lawful purpose ...). The fact that their due diligence obligations on transactions are too imprecise and difficult to understand as regards their very nature may account for such situation. However, banks met by the mission claim that they perform higher-level due diligence than the thresholds specified in Article 10 of the AML Act.

632. To avoid any distortion of competition between actors with regard to applying the CREPMF instruction, it could be useful to set one or more uniform regulatory thresholds. This could occur through consultation with regional and CREMPF Member States' national authorities. Similarly, a revision of the texts would be desirable for greater coherence among different sectoral regulations.

633. While, according to authorities, an arrangement has been established with the view to transmitting to financial institutions, in a regular and timely manner, the NCCT list, FAFT notices and announcements relating to other third countries arrangement failures or all notices and announcements by Ivorian authorities on countries other than those of the FATF, no evidence has been produced to explain how such arrangement functions. In any event, no operational action has been conducted to sensitize and inform, in a timely and systematic manner, financial institutions about failures in other countries' AML/CFT mechanisms. It appears as though such function is, by default, fulfilled by CENTIF through information published on its website, which remains largely unknown to professionals met. The site does not offer, either, any direct link to useful information "pages" on arrangements in the

aforementioned third countries. As for professional associations, they play no role in this regard and do not intend to implement any instrument capable of spreading or relaying required information.

634. In addition, deficiencies in the effective implementation of the arrangement in Côte d'Ivoire create distortions of competition among financial institutions. Indeed, more often than not, subsidiaries to international groups have an automated information instrument as well as computer-based tools to help detect and monitor operations. Conversely, smaller or nationally/regionally-funded institutions may find themselves incapable to implement operational differentiated due diligence, depending on their customers' origins and operations that they carry out, for lack of appropriate tools and mechanisms.

3.6.2 Recommendations and Comments

635. Authorities should:

- Ensure that all financial institutions are informed and aware of their specific due diligence obligations, especially with regard to compliance with provisions in relevant applicable legislation;
- Review community standards applicable to each component of the financial sector in order to incorporate an obligation to pay special attention, and elucidate the procedures for its implementation;
- Ensure, through an appropriate monitoring mechanism, that review reports on unusual transactions are actually available, relevant to the needs of authorities, and made available to auditors;
- Provide for legal provisions on adequate additional counter-measures in the instance where a country is reluctant to apply or applies insufficiently the faft recommendations;
- Implement effective measures to ensure that financial institutions are regularly informed about concerns raised by failures in other third countries' aml / cft mechanisms.

3.6.3 Compliance with Recommendations 11 and 21 of the FATF

Rec.	Rating	Summary of factors underlying rating
R.11	**PC**	• Insufficient clarity in requirements raised by the various texts, due to lack of harmonization of different requirements; • No obligation to make information and report containing information collected available to the auditors;
R.21	**NC**	• Lack of coherence between provisions in the law and the Sectoral Instruction applicable to financial institutions ; • Lack of regime informing reporting bodies of concerns brought about the shortcomings of the AML/CFT regime in other countries other than those identified by FATF ; • No specific obligation to strengthen due diligence for operations that do not have any economic justification or apparent lawful purpose, carried out with natural or legal persons residing in countries that do not or insufficiently apply the FAFT Recommendations. • No additional counter-measures for countries that do not or

		insufficiently apply the FAFT Recommendations

3.7 Suspicious Transaction Report and Other Reports (R.13-14, 19, 25 and SR IV)

3.7.1 General description of laws or other measures, situation or background

636. The legal framework for the suspicious transaction reporting obligation, by derogation from the principle of professional reappears in Chapter II of the AML Act (Articles 26 to 32) and Chapter II of the CFT Order (Articles 18 to 27). Persons subject to the obligation referred to in Article 5 of the AML Act, have an obligation to send a suspicious transaction report to Côte d'Ivoire CENTIF, in conditions laid down by CENTIF and in accordance with a reporting model set by order from the Minister of Finance. The model for reporting suspicions of money laundering annexed to Order No. 388/MEF/CENTIF May 16, 2008, states that beside the obligation to provide relevant information on the customer or prospect, persons subject to the obligation are required to describe indicators as to why a transaction is presumed to be suspicious, whether the suspicion is related to money laundering or terrorist financing, even though the reference to suspicions of terrorist financing is not expressly mentioned in the CFT Order No. 2009-367 that was adopted on November 12, 2009.

Obligation to report suspicious transactions (STRs) in case of suspicion of money laundering or terrorism (C.13.1 and C. IV.1)

637. Content of the report: Côte d'Ivoire's reporting system is not mixed for the majority of financial institutions that are subject thereto. It consists in an obligation to make suspicious transaction reports, open to subjective assessment by the reporter who relies on his or her expertise, experience, and analysis of transactions. This system does not include a requirement to make automatic suspicious transaction reports when objective criteria are met. Thus, when Article 26 of the AML Act and Article18 of the CFT Order are read together, financial institutions and other persons subject to the obligation are required to report to CENTIF:

- Amounts of money and other property in their possession, in the instance where there would be a possibility that they came from money laundering or terrorist financing;
- Transactions that involve goods, in the instance where there would be a possibility that they were part of a money laundering or terrorist financing process;
- Amounts of money and other property in their possession that are suspected to be destined to terrorist financing, appear to come from transactions related to money laundering[32].

638. It should be noted that since the scope of predicate offenses of money laundering and financing of terrorism is not in full compliance with the requirements of Recommendation 1 and the FATF Special Recommendation II, the STR obligation related thereto cannot be complied with.

639. Article 9 of the AML Act also establishes an obligation to report suspicious transactions to financial institutions in the instance where doubt exists as to the identity of the

[32] The different types of operations that are required to be declared as suspicious are not sufficiently differentiated and appear to be redundant: the concept of "money that [...] could come from BC or FT" appears to encompass the concept of "money [...] seem to come from the completion of transactions related to BC." The lack of supervisory actions did not, in practice, help clarify the confusion created by those different terminologies.

beneficial owner, notwithstanding the checks they have implemented. As for Instruction No. 01/2007/RB, its Article 11 also contains provisions relating to STR obligation extended to predicate offenses for financial institutions, namely:

- Amounts recorded in their books that may come from drug trafficking or organized crime;
- Transactions that involve amounts of money, in the instance where they could come from drug trafficking or organized crime.

640. In addition, there is also a systematic reporting regime based solely on objective criteria for certain operations considered, in Article 11 of the above instruction, to be particularly sensitive, including:

- Any transaction where the identity of the payer or beneficiaries remains doubtful, notwithstanding the execution of due diligence compliant with the provisions in Articles 7 and 9 of the Uniform Law[33];
- Transactions by financial institutions for their own account or on behalf of third parties with natural or legal persons, including their subsidiaries or establishments, acting as or on behalf of trust funds or any other instrument for the management of special-purpose reserve, in instances where the identity of the settling institutions or beneficiaries is not known.

641. In the current situation, the reporting obligation for all financial institutions, when properly performed, should be the natural conclusion to a deep analysis as well as thorough and effective study, as required by Article 26 of the AML Act and Article18 of the CFT Order. In this respect, CIMA Regulation (Article 15) recalls that insurance companies are required to conduct their analyses on the basis of all information they posses or, which they can reasonably collect (identity of the beneficial owner, purpose of relevant transactions, operation of accounts ...) and which can lead them to come across and account for suspicion. It follows, as a prerequisite, that any suspicious transaction report is required to explicitly mention the facts that led to suspicion, accounted for the alert, as well as information detailed in Article 15.1 (information on the reporter, his/her direct contact, identification of the natural or legal person targeted by the report, information on the nature and type of operation suspected, place where the operation has been detected, and deadline for the execution of the operation ...).

642. In contrast, insurance companies are required to refrain from making reports based only on contextual elements. The following do not meet the requirements, as laid down in CIMA Regulation (i) a *suspicious transaction report whose sole purpose is to justify one's position or function* at the Senior Management level of a company, (ii) a cover-up report to conceal carelessness. In addition, the suspicious transaction report mechanism for insurance companies also includes an automatic reporting system triggered by the presence of preset criteria that are considered as particularly sensitive. Such instances are provided for in the CIMA regulation (Article 14), which has listed a non-exhaustive list of thirty situations that may account for an automatic suspicious transaction report.

643. CIMA Regulation excludes the possibility of a verbal report, but allows for the possibility of a report "using any written means, including by letter, fax or mail", while not

[33] It should be noted that Article 8.3 of the CIMA Regulation lays down an obligation to report suspicious transactions to the FIU when, as it conducts customer due diligence in order to know the identity of the beneficial owner, an insurance company in the CIMA zone is denied by another company located in jurisdictions considered as tax havens (Jersey, Bermuda, Cayman Islands, etc.)..

requiring – as opposed to the provisions in the AML Act and CFT Order -that reports made using an "electronic means" be systematically acknowledged in writing. CREPMF instruction (Article 11) states that financial actors "*are required to conduct suspicious transaction reports in compliance with the provisions in Chapter 2 of Cap. III of the Uniform Law*" , and inventories a non-exhaustive list of situations that may account for an automatic suspicious transaction report, including:

- Operations for which the identity of the payer or recipient remains doubtful, notwithstanding the execution of customer due diligence;
- Transactions carried out on behalf of trust funds or any other instrument for the management of special-purpose reserve, in instances where the identity of the settlor or beneficiaries is not known.

644. It should be noted that the latter situation was not covered by the provisions in the AML Act, but rather in the Sectoral Instruction applicable solely to financial institutions. Similarly, CREPMF instruction does not mention cases of suspicious transaction report provided for in the CFT Order.

645. Article 7 of Instruction No. 1/2006/SP provides for an obligation for electronic money issuing institutions or distributors to develop "*an automated monitoring system for unusual transactions.*" It establishes an obligation to report suspicious transactions that have been detected "*considering each institution's know-your-customer procedures*" and are likely "*be of interest with regard to preventing money laundering*." Thus, "*anomalies*" identified by electronic money institutions are required to be reported to CENTIF. Such concept of anomaly is not defined, and seems to cover the concept of suspicious transactions. However, the legal basis from which BCEAO subjects, by instruction, a category of institutions to modified reporting obligations is not clear-cut.

646. The report may relate on already-executed transactions in the instance where it was impossible to suspend their execution or where it appeared, after the completion of the transaction, that the money could come from drug trafficking or be part of a money laundering process. Any information likely to reinforce or overturn the suspicion is required to be immediately reported to CENTIF, pursuant to the AML Act (Article 26) and the CFT Order (Article 18), CIMA Regulation (Article 15). Regulation CREPMF is, however, silent on the issue.

Obligation to report suspicious transactions applicable to financial intermediaries in cases of suspected money laundering or terrorist financing (C.13.2, c.RS.IV.1)

647. The reporting system provided for in Article 18 of the CFT Order provides an obligation to report to CENTIF all funds and other assets (and incidentally the flow of funds) for which professionals subject to the regulation have grounds to suspect a link with terrorist financing. The same is true when they are aware of a fact that might be an indication of terrorist financing and, with the same features and procedures as a suspicious transaction report for money laundering.

648. Article 26 of the AML Act also imposes an obligation to report to CENTIF sums of money and other property in their possession, suspected to be destined to the financing of terrorism, or appearing to come from transactions relating to money laundering.

Obligations to report attempts at money laundering or terrorist financing (C.13.3,

c.RS.IV.1)

649. Pursuant to the provisions in Article 26 of the AML Act and Article 18 of the CFT Order, suspicious transactions are required to be reported regardless of the amount involved. In addition, the declaration of suspicion may cover already-executed operations when "it was impossible to suspend their execution or when it appeared, after completion of the transaction, that it involved sums of money and other property whose origin is suspicious."

650. No specific provisions related to the obligation to report attempted money laundering or terrorist financing is explicitly mentioned by the AML Act or CFT Order, whether the person subject to the regulation has carried out the transaction or not. Such situation prevails even if the organization has secured suspicious information, except when the term operation is interpreted in a broad sense including the beginning of the execution of the operation, which still lacks in clarity.

651. It should be noted, however, that the obligation to report attempted suspicious transactions is indirectly mentioned through preparatory acts, mentioned in Article 3 of AML Act and Article 5 of the CFT Order, which in similar terms provide that "*constitutes an (M /FT) offense as well, an agreement or participation in an association with the view to committing an act constituting (ML / FT) [...]*." As for the CIMA Regulation (Article 15), it states more explicitly the principle for reporting any attempt at money laundering or terrorist financing. " *"Suspicious transaction reporting is required to be performed, even if the company has refused to carry out the operation because of suspected information that it"* and requires to this effect, insurance companies "*to collect all possible credentials from potential customers even if they were ultimately rejected.* " However, the regulation of CREPMF is silent on this point.

Obligation to report suspicious transactions related to tax issues (C.13.4 * - RS.IV.2)

652. The phrase "crimes or misdemeanours" makes it possible to cover a very broad scope for predicate offenses, including tax evasion that the Penal Code and specific criminal laws criminalize and punish. It is explicitly included in the scope of offenses that would trigger a suspicion transaction report, pursuant to the provisions in Article 2 of the AML Act. In fact, those provisions indicate that money laundering can be defined as the offense of one or more actions relating to assets and for which "the perpetrator is aware that they come from a crime or offense, or participation in the crime or offense, with the view to concealing or disguising the illicit origin of the assets, or helping any person involved in committing the crime or offense to escape from the legal consequences of his/her actions."

653. Moreover, no provision prohibits or limits the reporting obligation on the ground that the facts could emerge from the tax system.

654. Article 14 of the CIMA Regulation explicitly provides that insurance companies are required to conduct a suspicious transaction report when "*funds or transactions are suspected to originate from Fraud affecting the economic and financial interests of States or from corruption.*" This concept covers tax evasion, according to a commonly accepted definition of "*economic and financial interests*" of States.

Additional elements – STR Obligation for funds suspected to be the proceeds of an predicate offense under the Money Laundering (c.13.5)

655. Suspicious transaction reporting relates not only to suspicion of money laundering or financing of terrorism, but also on suspicion that predicate offenses are committed.

656. The provisions in Article 26 of the AML Act allows financial institutions to make a report to CENTIF when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts constituting an predicate offense.

657. Article 11 of Instruction No. 01/2007/RB supplements this by extending the scope of the reporting obligation to sums of money that may have come from drug trafficking or organized criminal activities and transactions relating to money in the instance where such sums could come from drug trafficking or organized crime.

658. Article 14 of the CIMA Regulation also provides that insurance companies are required to make a suspicious transaction report in the instance where it is possible that the origin of the operations is illicit (especially when it is possible that come from drug trafficking, organized crime, fraud against the economic and financial interests of states or from corruption).

Recommendation 14

Protection in case of STR (C.14.1)

659. Article 30 of the AML Act and Article 23 of the CFT Order address, in similar terms, the principle of liability exemption for suspicious transaction reports made in good faith. They provide, in fact, that professionals subject to the regulation, their managers, and employees are protected against any action based on a breach of professional secrecy, in particular against civil, criminal, or professional liability actions, provide that they acted in good faith. It follows that the legal protection applies even if the evidence of the unlawful nature of the facts, that the institutions and persons reporting revealed, is not provided or if these facts were amnestied or resulted in a non-suit, discharge or acquittal decision, or if the facts do not ultimately result in a conviction. Similarly, no civil action or criminal proceedings may be brought against persons because of the aforementioned material or moral damage that could result from blocking a transaction initiated by CENTIF.

660. For insurance companies, it is Article 15 of the Regulation, which provides for similar provisions. However, the CREPMF instruction is silent on the principle of liability exemption for financial market professionals.

Prohibition to inform a customer about an STR

661. Pursuant to paragraph 4 of Article 26 of the AML Act and Article18 of the CFT Order, persons or managers and employees of the persons referred to in Article 5 of the AML Act are prohibited to notify the owner of funds or operations, when information regarding them is being reported to CENTIF as part of a suspicious transaction report. Any violation of such provisions may result in administrative, disciplinary and, criminal sanctions.

662. With regard to the implementation of administrative and disciplinary sanctions against legal persons, Article 35 of the AML Act and Article 28 of the CFT Order, in similar terms, provide that a financial institution and other person subject to the regulation who makes a

disclosure out of serious carelessness or deficiency in the organization of its internal control procedures, may incur an administrative and disciplinary penalty by the control authority who holds a disciplinary power to take formal action , and then notify the prosecutor.

663. As regards the implementation of criminal sanctions applicable to natural persons, Article 40 of the AML Act and Article 35 of the CFT Order, set the scale of penalties that can be incurred when persons or managers and employees of financial institutions and other persons subject to the regulation covered by these texts have intentionally:

- Disclosed to the owner of the funds or initiator of the operations [related to BC or FT] the reports that they are required to make or actions to be taken;
- Informed by any means the person or persons subject to investigations regarding [ML or FT] offenses, which they have come across owing to their profession or duties;
- Released information or documents to persons other than judicial authorities, supervisory authorities, CENTIF, and state officials acting under a warrant and responsible for detecting and sanctioning [BC or FT] offenses.

664. Pursuant to these articles, the aforementioned persons may be punished by a prison sentence of six months to two years and/or a fine of 100,000 to 1,500,000 CFA francs (approx. 15 and 2,300 Euros) when the breach of confidentiality is related to acts of money laundering. The prison sentence and maximum amount for the penalty incurred are multiplied by two.

665. It should be noted that no penalty is provided in case of unintentional disclosure of information (out of carelessness or negligence) relating to the report, actions to be taken or investigation…or even information traced back to the reporter, but which has given rise to a suspicious transaction report being made.

666. In addition, the last paragraph of Article 22 of the CFT Order requires persons subject to the order, as well as their managers and employees not to "disclose to a person concerned or to third persons that information has been transmitted to competent authorities [responsible for CFT, upon the initiative of persons subject to the regulation or upon CENTIF's request] or an investigation on FT is underway." However, no penalty is provided for in such case.

667. Non-disclosure of information also applies to FIU members and staff. In fact, pursuant to Article 9 of Decree No. 2006-261 of 9 August 2006 establishing the organization and operation of CENTIF, members and staff may not disclose, "as they carry out their duties and after their functions come to term", information received outside legal situations provided for in the AML Act. The aforementioned legal situations should be further specified or the legal provisions referred to should be mentioned.

668. CIMA Regulation (Article 15.3) specifies the scope of non-disclosure regarding "*the slightest information on the existence of a suspicious transaction report or actions to be taken*" or *"on suspicion"* and applies to both the reporter and any other person connected with the company (manager, employee, agent, and principal). Such is the case even if the information has not resulted in the transmission of an actual suspicious transaction report.

Additional elements - Existence of laws, regulations or other measures to enable CENTIF to maintain confidentiality on names and personal data of financial institutions' staff preparing STRs (C.14.3)

669. Data collected by CENTIF, with the exception of the very STRs, may be transmitted to the Public Prosecutor, pursuant to Article 29 of the AML Act and Article 21 of the CFT Order in the instance where "operations show for facts that could constitute a money laundering "or" financing of terrorism " offense.

670. The principle of credentials confidentiality relating to financial institutions' staff members, who have formulated a suspicious transaction report, is guaranteed in the aforementioned Articles, which prohibit that CENTIF disclose the identity of the author of the STR, in the report submitted to the prosecutor.

671. Neither the AML Act nor the CFT Order include, however, specific measures to protect the confidentiality of data exchanged when, in the course of its investigations, the FIU requires the transmission of information or documents to other persons than the natural or legal persons subject to the regulation, namely *"any public and control authority "* (Article 28 of the AML Act and CFT Order). in fact, no provision provides that sanctions may be applied to, for example, the police in case they would inform the customer of a reporting person subject to the regulation , about the existence of a report made to CENTIF or would disclose information about actions to be taken as part of the suspicious transaction report.

672. Article 15 of the CIMA Regulation specifies that confidentiality, for which violation is punishable by law, "should also apply to suspicions listed to a reporter by any person connected with the company (officer, employee, agent, principal), even if such suspicion does not result in an actual suspicious transaction report." In addition, the CIMA Regulation, in Article 17, makes it clear to insurance and reinsurance brokers that if they are "representatives or policyholders, [they are nonetheless] required not to inform their constituents, or they risk facing sanctions provided for by AML/CFT regulations", when making a suspicious transaction report.

673. The scope of the CIMA Regulation seems limited and does not fully meet the FATF Recommendations. Indeed, non-disclosure does not include information that could be provided to CENTIF for the realization of its mission. In addition, the aforementioned provisions apply solely in relation with money laundering and not in the area of financing of terrorism.

674. No provision related thereto is provided for by the CREPMF Regulations.

Recommendation 19

Study of a system for reporting cash transactions (c.19.1) computerized preservation of statements (c.19.2) Rules for the use of statements (c.19.3)

675. Although cash plays a role in the Ivorian economy, authorities have not yet fully committed to a policy of prevention and fight against offenses to legal and regulatory arrangements requiring the use of non-cash means (check, credit card , bank transfer ...) depending on the nature of operations and from certain transaction amounts. As unanimously admitted by representatives of financial institutions met, cash is used for any transactions, even when significant amounts are involved (e.g. building construction, purchases of great-value movable goods, import -export activities, payment of taxes...). Despite such context, there has been no evaluation for the feasibility and usefulness of a system whereby financial institutions, in particular, could systematically report all cash transactions above a certain

amount to a national central agency, which would keep a computerized database accessible to competent AML / CFT authorities.

Recommendation 25

Reporting guidelines (c.25.1)

676. Article 13 The AML Act allows supervisors "in their respective areas of competence" to develop provisions for the application of AML regulations. However, BCEAO issued, in 2007, an instruction on the provisions in the AML Act, which provides further details for implementation by persons subject to the regulation. Nonetheless, those provisions remain too limited.

677. In 2008, CIMA adopted a regulation defining procedures to be applied by insurance companies with regard to AML/CFT, which is largely similar to a set of instructions and guidelines, as explained above. It is also quite complete in that regard has also a binding feature and gives many examples of transactions that may reveal to be suspicious in the insurance industry. In 2009, CREPMF also adopted an AML instruction which is incomplete in some aspects regarding the applicable regulation. It does not go any further than recalling the existence of obligations relating to anti-money laundering, without specifying how, in practice, such obligations should be implemented by the financial market.

Feedback on suspicious transaction reports (c.25.2)

678. Articles 28 and 29 of the AML Act provide that CENTIF shall acknowledge receipt of STRs and "*shall notify, in a timely manner, persons subject to suspicious transaction reports, of the findings of its investigations*." Articles 20 and 21 paragraphs 2 of the CFT Order contain the same provisions for the Financing of Terrorism. In addition to these provisions, feedback is established in Article 15.4 of the CIMA Regulation, which stipulates that when CENTIF refers the matter to the public prosecutor, it shall inform the insurance company, in a timely manner.

679. Note that CENTIF, whose operational activity started no sooner than 2008, has not operated any appropriate systematic feedback on actions to be taken for reports that were made by institutions subject to the regulation, except for very basic information disseminated in annual reports. In fact, while annual reports are widely spread among persons subject to the regulation, it appears from the review of those reports and interviews that information disseminated should be improved in amount and depth, for it is rather laconic.

680. In addition, annual reports do not, as of yet, encompass enough typologies allowing persons subject to the regulation to be informed about AM /CFT techniques, methods, and trends. Similarly, they do not contain enough examples extracted from actual AML/CFT cases.

681. FATF guidelines on "best practices for feedback to financial institutions and other reporting persons" are not taken into account. Yet CIMA Regulation provides for such an obligation for CENTIF, but it has no legal basis as regards CENTIF. This requirement is likely to generate unjustified waiting periods among insurance companies or, if applicable, to create a biased treatment among the various categories of persons subject to the regulation.

Keeping statistics (c.32.2)

682. A mechanism has been put in place to collect relevant statistics, in addition to globalizing the number of STRs that have been transmitted to CENTIF since 2008. Out of the total number of reports received by CENTIF (from credit institutions and other persons subject to the regulation), some had been sent by persons subject to BCEAO which redirected them to CENTIF. Such a practice, which apparently did not prosper beyond 2009, can only lead to confusion about the nature of suspicious transaction reporting and is likely to distort the trend analysis for CENTIF's activity, but also for reporting institutions.

The following figure is a breakdown of the number reports by year and type of reporting entity between 2008 and 2011

	Number of institutions	2008 24	2009 81	2010 56	2011 37	STRs 198
BCEAO Banking Institutions Financial Institutions Total share in %	1 23 1	5 17 92%	69 82%	56 100%	36 100%	5178 1 93%
Microfinance Institutions	59		2			2
Companies	29	1				1
Insurance Intermediaries	337		2			
Money transfer Companies	5			2		2
Authorized foreign exchange dealers	72					0
Regional financial market institutions	48				1	1
Electronic Money Company	1	1	8			9

- **Breakdown of analyzed and transmitted STRs**

	2008	2009	2010	2011	DOS
Number of referrals	2	5	4	0	11
Number of closed files	9	22	6	0	37

- **international wire transfers**

	2008	2009	2010	2011	Stars
Number of STRs related to international wire transfers	7	20	0	0	27

- **Breakdown of STRS by grounds for suspicion**

Grounds for STRS	**Occurrence**	**%**
• Significant operations unrelated to customer profile	13	25,5
• Doubts about the economic purpose of several transfers	12	23,5

abroad		
• reception and deposit of funds followed by immediate withdrawal or transfer	3	5,9
• Request for information	3	5,9
• Operation corresponding with Internet fraud profile	3	5,9
• Atypical Operations related to a « tax haven »	2	3,9
• Fraudulent items deposit	2	3,9
• Bank card scam	2	3,9
• No information on the actual payer or owner of funds	2	3,9
• Undocumented repetitious transfers from rapid money transfer companies	2	3,9
• Atypical foreign exchange transactions	2	3,9
• Provision of fake identity documents or plurality of identities	2	3,9
• Sudden significant operations on dormant accounts	1	2,0
• Using money transfer company's account for other activities	1	2,0
• Financial package involving FVCs or shell companies	1	2,0

683. It appears from the examination of these statistics that STRs received by CENTIF emanated almost entirely from a few entities in the banking sector, which actually were subsidiaries to international groups, and represented as a whole 92% of the total number of STRs received over a period of 4 years. Their STRs were grounded solely on suspicions of money laundering, owing to their atypical nature with regard to the customer profile. No STR was related to suspicion of financing terrorism. No STR was transmitted by authorized foreign exchange bureaus, and only one or two STRs in 4 years for insurance companies, regional financial market participants, fund transfer companies, and microfinance institutions even though such entities' exposure to money laundering these entities cannot be considered as insignificant. This observation underpins the urgent need for further awareness-raising efforts and training for those persons subject to the regulation so as to get them to effectively implement their STR obligations.

684. As regards suspicious transaction reports, information confidentiality is of paramount importance in the trusting relationship between persons subject to the regulation and CENTIF, for it constitutes the basis for any AM /CFT mechanism at country level. However, during the site visit several interviewees reported their concerns about the secrecy and confidentiality of transmitted data. Authorities should consider initiating a communication on the role and guarantees that the legal system grants reporters.

Analysis of Effectiveness

685. Except for banks, several financial institutions interviewed by the evaluation mission were not knowledgeable about the form and procedure for suspicious transaction reporting, which can be explained by the fact that CENTIF resumed its operational activities in 2011. On a more general level, this situation is justified by disorganization and socio-political difficulties that have affected Côte d'Ivoire in recent years. Considering such environment, the number of STRs received by CENTIF between 2008 and 2011 can be regarded as satisfactory, overall. However, the very wide disparities noticed among the different categories of reporting financial institutions in terms of their contribution to the detection of suspicious

transactions display a general lack of effectiveness of the reporting obligation. Similarly, the mission noticed a real lack of acuity as regards risks of money laundering and financing of terrorism, which remain fuzzy, virtual, and theoretical for a significant number of participants in the components of the financial Sector and DNFBPs.

686. Moreover, it has been noted that the number of reports originating from a fund transfer operation or money remittance is relatively low, for lack of clarification on the status of certain economic operators (money transfer companies, telephone operators, Post office). Authorities should resolve the long-standing question of the regulation of these operators by a competent supervisory authority formally designated by law.

3.7.2 Recommendations and Comments

687. Through their representations to UEMOA authorities and within their own areas of competence, Ivorian authorities should take great care that there exists greater harmonization of standards in order to eliminate those differences in the wording of the sectoral instructions (BCEAO instruction, CREPMF instruction, ELMIs instruction, CIMA Regulation) which do not favour a uniform and consistent application of the mechanism established by the AML Act and CFT Order. In addition, efforts should be made to improve the interconnection among the various texts, in compliance with the hierarchy of norms, so that sectoral instructions, interpretative-type norms, do not modify certain provisions contained in texts that are superior to them. In addition, authorities should:

- Expressly integrate attempted transaction, especially in all sectoral laws, within the scope of suspicious transaction report regarding money laundering and terrorist financing;
- Accelerate the implementation of the reporting mechanism, especially by ensuring that reporting entities are compliant with reporting requirements;
- Provide for regulatory measures authorizing, under certain conditions, the exchange of information on the existence and content of suspicious transaction report among financial institutions belonging to the same group so as to enable the implementation of a coordinated or even centralized effective AML/CFT policy.
- Take great care that that financial institutions that are required to report suspicious transactions, are provided with relevant and appropriate feedback taking into account the FATF guidelines;
- Ensure consistency between the provisions of the various legal norms and those of other sectoral regulations regarding especially feedback to reporting entities about cases transferred to Court;
- Implement a proportionate and dissuasive sanction policy for violations of reporting obligations;
- Adopt or even support the formalization by professional associations, of explanatory sectoral guides or guidelines for all professions covered;
- explicitly expand the scope of confidentiality for data exchanged with natural or legal persons other than those subject to the currently applicable texts;
- explore the feasibility and usefulness of a system whereby financial institutions would be able to report all cash transactions above a certain amount to a national central agency, which would keep a computerized database;

- develop explanatory guides or guidelines suitable for the various professionals subject to AML/CFT (financial institutions and designated non-financial institutions).

3.7.3 Compliance with Recommendations 13, 14, 19 , and25 (criteria 1 and 2), and Special Recommendation IV

Rec.	Rating	Summary of factors underlying rating
R.13	**PC**	• Unclear definition of the scope of the obligation to report attempts at money laundering and funds coming from the list of predicate offences as specified in the Recommendation; • All financial institutions are not subject to the suspicious transaction report obligation; • No mechanism for the evaluation of the system –or measures- geared toward improving the rate of suspicious transaction reports coming from reporting entities other than banks ;
SR.IV	**PC**	• No obligation to report attempts at FT operations; • No effectiveness: CENTIF has not yet received any STR on FT, and general lack of understanding of reporting requirements on CFT issues
R.14	**LC**	• Scope of the protection of confidentiality as regards data exchanged by FIU with other persons.
R.19	**NC**	• No evaluation of the feasibility and relevance of a system whereby all financial institutions would report cash operation for a certain amount, to a national agency which would have a computerized database accessible to competent authorities.
R.25	**NC**	• No explanatory guide, instruction or guideline, except for CIMA general rules and regulations whose articulation of some provisions with those of the AML law remains uncertain • Insufficient specific feedback or a case-by-case basis, to reporting entities

INTERNAL CONTROL AND OTHER MEASURES

3.8 Internal Control, Compliance, Audit and Foreign Branches (R.15 And R.22)

3.8.1 Brief Description of laws and other measures, situation or background

Recommendation 15

Implementing procedures, policies, and internal control measures for the prevention of ML/FT within financial Institutions

688. Article 13 of the AML Act requires financial institutions to develop "harmonized programs to prevent money laundering", which include especially:

- Centralizing information about the identities of customers, contractors, staff, beneficial owners;
- processing suspicious transactions;

- Appointing in-house staff responsible for the implementation of money laundering programs;
- Ongoing training for staff, and
- Implementing an internal control system for the application and efficiency of measures taken, as part of this law.

689. Article 8 of the CFT Order imposes similar AML obligations on financial institutions.

690. The last indent of Article 13 of the AML Act states that "supervisory authorities may, in their respective fields, if necessary, specify the content and procedures for the implementation of money laundering prevention programs ". In this regard, Instruction No. 01/2007/RB specifies the obligations laid down in Articles 13, 15, and 16 of the AML Act, i.e.: establishing an anti-money laundering cell responsible for the implementation of a supervisory and monitoring system controlling the proper functioning of set procedures; developing an internal program including procedures and rules for the prevention and detection of money laundering; monitoring the anti-money laundering program. In addition, Article 17 of the abovementioned instruction also requires that financial institutions send, within two months as of the end of the year, to BCEAO and the Banking Commission, a report on the implementation of the entire internal anti-money laundering system applicable in the UEMOA Member States. Such report shall contain much information that makes it possible to assess the quality and depth of the controls implemented in each institution, namely:

- Describe the organization and resources used by the institution to prevent and fight money laundering;
- Inventory controls to ensure that procedures are properly implemented and compliant with customer due diligence, record keeping, detection and reporting of suspicious transactions;
- Underline the findings of the investigations, particularly with regard to weaknesses in procedures and compliance, as well as statistics relating to the implementation of the suspicious transaction reporting;
- Map out the most common suspicious activity, by possibly indicating the nature and form of the mutations observed in the area of money laundering.

691. In addition, Article 1 of Circular No. 003-2011/CB/C recalls the obligation for credit institutions "to establish an efficient internal control system, adapted to their organization, to the nature and volume of their activities, as well as to the risks they face." Such system should include ongoing monitoring responsible "for compliance with procedures and limits set for risks" by all "employees responsible for their self-regulation and control units, accountable for the quality of their internal control entity" (Article 9). An internal audit structure should make it possible to "assess the functioning" and "efficiency of the internal control and risk management system" (Article 10). In addition, credit institutions pursuant to Article 34 of this circular, are required to prepare annually, for the Banking Commission:

- A description of the organization and operation of internal control;
- An inventory of controls carried out by the internal audit, with the main findings and corrective actions performed.

692. Order No. 2011-367 also specified certain provisions of the AML Act for Decentralized Financial Systems. Pursuant to the provisions in Chapter 3, DFSs are required to establish internal control systems. Its objectives defined in Article 37 of the aforementioned Order consist in verifying if the organization and functioning of these institutions are compliant with laws and regulations, and statutes. Articles 39 and 40 require that internal audit or inspection reports be written and transmitted to the Minister of Finance, the Central Bank, or the Banking Commission. This would help these authorities, after completion of their review, to request the implementation of corrective measures. However, monitoring the AML/CFT system does not seem to be regarded as one of the priority tasks among the tasks of internal control within SFDs, pursuant to the wording of Article 41 where the controller is required to check for anomalies which " *are construed as non-compliant with legal, regulatory, and statutory requirements, especially with regard to the organization and functioning of SFDs* [while specifying that anomalies may relate to] *accounting rules, management rules and norms, and safety.* "

693. CIMA Regulation No 0004/CIMA/PCMA/PCE/SGD/08 prescribes insurance companies with provisions similar to those contained in Article 4.1of the AML Act, which describes components of an ongoing internal control and functions to be fulfilled by the person responsible for implementing internal anti-money laundering programs. In this regard, s/he is required to produce an annual report on controls (Section 4.1) and on the achievements of AML programs (Section 4.7). This Regulation establishes the following obligations:

- Centralizing in a database, information collected about customers and their contracts (Article 10);
- Establishing monitoring mechanisms for compliance and appropriate procedures for the hiring of employees in order to ensure that it is done on the basis of strict criteria - respectability and responsibility - (Article 4.6).

694. It also imposes (Article 4.1) on insurance companies the obligation to ensure that those responsible for internal control "*have easy access to all relevant information.*" Such precision is not provided by the texts concerning other categories of financial institutions.

695. CREPMEF Instruction No. 35/2008 requires regional financial market (Article 13) to implement an anti-money laundering mechanism, which "must be explicitly assigned to the internal controller", "responsible for the implementation of a system for monitoring and controlling the proper functioning of established procedures "to ensure compliance with the rules applicable to them. Articles 15 and 16 of the instruction require financial market participants to develop "internal procedures and rules" in order to meet anti- money laundering requirements, and to transmit a description of the mechanism to CREME prior to its application.

Designation of a compliance officer (c.15.1.1)

696. Article 13 of the AML Act prescribes an obligation on financial institutions to establish an internal control system and appoint an in-house officer "responsible for the implementation of anti-money laundering programs" instead of mentioning the appointment of an internal control officer responsible for monitoring the implementation of AML programs. Articles 13 and 16 of Instruction No. 01/2007/RB do not guarantee, either, the separation of functions and tasks incompatible with those of control, which in essence, are assigned to an internal controller, as opposed to operational tasks for carrying out and

recording operations, which are assigned to **managers**. These provisions entertain confusion about authorities' expectations regarding the organization of internal control. Indeed, it is stated that the management process for "anti-money laundering mechanism should be explicitly assigned to an ad hoc structure, which may be the control or internal audit structure " pursuant to Article 13, while Article 16 requires that "the internal AML program [be] subject to the jurisdiction and investigation of a structure or body independent from the one responsible for its implementation."

697. In the insurance sector, Article 4.1 of the CIMA Regulation requires the designation, among insurance companies' staff members, of "officers responsible for the implementation of anti-money laundering programs", while specifying that they must have sufficient authority as well as access to all relevant information in order to answer requests from regulatory authorities, CENTIF, and disseminate procedures to persons involved and receive acknowledgments for STRs. It is stated that "such responsibility may be assigned to the person responsible for audit or control management", who "is required to make the necessary STRs to the CENTIF" (Article 15).

698. Regarding capital markets, in accordance with Article 13 of CREPMEF Instruction No. 35/2008, every market participant (SI, SFP ...) but also business introducers and brokers are required to designate among them an internal auditor responsible for the implementation of a system designed to monitor and control the proper functioning of implemented procedures. It might be worthwhile mentioning that the aforementioned provisions in the CREPMEF instruction contradict those of the general CREPMEF regulations rather than elucidate them. Indeed, pursuant to Article 55 of the Regulation, the mission of the internal auditor is to ensure that the staff members of the management and intermediation company are compliant with all the rules and practices. This implies that control functions are to be clearly separated from implementation functions.

699. No legal or regulatory provision addresses compliance checks regarding internal controls, or explicitly directs MFIs to appoint an officer responsible for monitoring the implementation of their anti-money laundering mechanisms. Section 3 of Order No. 2011-367 on SFD describes in general terms the objectives of a mechanism, including the production of internal audit or inspection reports to the Minister of Finance, the Central Bank or the Banking Commission. Article 30 sets out the principle that "*the functions of management and control are exercised by separate bodies.*" Article 41 states that "the functions of inspector, internal controller or internal auditor shall be incompatible with any activity or act likely to impair their independence and any auditing activity for financial statements in the same period within the same institution."

Right to access information (c.15.1.2)

700. In compliance with the aforementioned texts, the AML control officer and other relevant staff members should have timely access to customer identification data and other information relating to CDD measures, documents relating transactions, and other relevant information. In fact, dispositions in Article 13 of Instruction No. 01/2007/RB require financial institutions' executive body to provide the internal auditor with adequate and sufficient (human and material resources) and to guarantee him or her operational independence to carry out the mission. This requirement is reiterated in Article 35 of Circular No. 003-2011/CB/C on internal control in credit institutions. Similarly, Order No. 2011-367 applicable to MFIs (Article 37) states that the bodies and structures responsible for monitoring and controlling are

entitled, as part of this mission, to transmission upon request, of all documents and information necessary for the performance of their duties.

701. As for CIMA Regulation (Article 4.1), it states that insurance companies are required to ensure that their in-house officers responsible for the implementation of anti-money laundering programs have "sufficient authority and easy access to all relevant information", without requiring that the provision of information be timely. However, CREPMF Instruction No. 35/2008 is silent on this point.

Maintaining an independent and properly resourced internal control system (C.15.2)

702. The operational independence of internal control in financial institutions, subject to sufficient human and material resources necessary for the accomplishment of its mission, is provided for in Article 16 of Instruction No. 01/2007/RB. The instruction does not expressly provide, however, that the head of internal audit should have adequate status to perform his/her duties in full independence and ensure the effectiveness of internal control.

703. For the insurance sector, there is no provision on the need to provide the internal control with sufficient resources, and technical means suitable for the activities, size, and locations of each institution so that control activities can be carried out with the shorted possible delays. NO provision specify either that internal control: should benefit from extensive prerogatives with regard to the scope of its interventions (i) with regard to the disclosure by other structures of the institution, of data and information (ii), should have an organization which guarantees independence of operation.

704. For the regional financial market, CREPMF Instruction No. 35/2008 in terms identical to the instruction for banks stipulates in Article 13 that internal control should have operational independence and benefit from extensive prerogatives with regard to the scope of its interventions. Moreover, Article 55 of the general regulation adds, regarding management and intermediation companies, that their leaders "are required to provide their internal controllers with all human and material resources necessary to carry their missions."

705. Article 13 of the AML Act provides that staff should undergo ongoing training as part of internal anti-money laundering programs. In addition, Instruction No. 01/2007/RB (Article 14) states that financial institutions are required to implement "a specific information and training policy for all employees responsible for operations that may be used in fighting against money laundering." Such policy includes all categories of employees in contact with customers. "As regards information, financial institutions are required to inform their staff concerned, about provisions in the laws and regulations [and] in terms of training, operational structures involved in AML should [...] be trained on a regular basis so that they may master procedure manuals and be sensitized about the various typologies [...] found in money laundering."

706. Similar provisions are laid down in Article 14 of CREPMF Instruction No. 35/2008 applicable to financial market participants. Regarding insurance companies, CIMA Regulation (Article 4.2) requires training customer relations officers and new employees, as well as conducting ongoing training activities involving the dissemination of updated procedures and new training programs. Article 4.7 of the Regulation also requires that some insurance company employees' AML / CFT-related competencies and knowledge be verified. Such employees include staff members considered to perform key functions within the

preventive mechanism, insofar as "commercial inspectors or in-house officer responsible for the enforcement of fight anti-money laundering programs [are required] to test sales staff's competencies " without further specification.

Implementing appropriate procedures when hiring employees (C.15.4)

707. Law No. 90-589 (Article 17) on banking regulations prohibits enrolling within an institution, any person convicted. In this regard, it provides that anyone who has been convicted of one of the offenses listed in Article 15, paragraphs 1 and 2 of this law, shall not be hired in any capacity whatsoever, by a credit institution. Such offenses include any conviction for " *a common law crime*[34]*, forgery or falsification of records, theft, fraud, offenses punishable by sentences of fraud, breach of trust, bankruptcy, embezzlement of public funds, pilfering committed by public depositary, extortion of financial resources or other goods, corruption ... or any offense deemed by law to be one of those listed*[35] "or for attempt at or complicity in committing the aforementioned offenses.

708. In case of violation, the law provides that the interested individual may be sentenced to a term of imprisonment of one (01) to five (05) years and a fine of ten million CFA francs (10,000. CFAF 000 - env.15.300 Euros) to twenty-five million CFA francs (CFAF 25 million - env.38.200 Euros). As for the employer, s/he may be sentenced to pay a fine of twenty-five to fifty million CFA (FCFA 50 million - env.73.400 Euros).

709. For the insurance sector, Article 4.6 of the CIMA Regulation relating to the monitoring of sensitive employments requires insurance companies to develop "*compliance control mechanisms and appropriate procedures when hiring employees to ensure that the enrollment occurs in compliance with strict criteria*" that meet respectability and responsibility criteria set for anti-money laundering. However, the CIMA regulation does not specify the conditions under which respectability for the criteria can be can considered as fully met, nor does it specify that respectability will be assessed on the basis of the applicant's criminal record. Similarly, the wording of the second criterion i.e. "*the employment contract must refer to the liability*[36] *in terms of laundering*" seems difficult to implement unless further specification is brought to the Regulation with regard to the meaning of this requirement.

710. In conclusion, the texts do not expressly require all financial institutions to develop a compliance and procedure mechanism to ensure that their future employees meet criteria as well as a suitable level of requirements as regards respectability. Nonetheless, the general provisions in the applicable Banking Law should be sufficient to ensure that any person convicted of a money laundering offense would not qualify for employment in a financial institution. Moreover, in practice, financial institutions interviewed claim that they require that a copy of the criminal record to be submitted, prior to any employment.

Additional elements - Independence for the AML/CFT-compliance Officer (C.15.5)

711. No provision in the sectoral regulations explicitly mentions the principle of Independence for the AML/CFT-compliance Officer, or his or her ability to report directly to

[34] Pursuant to Article 3 of the Penal Code, the offense is called "Crime" if it is punishable of either a life sentence or a sentence of imprisonment for life or more than 10 years.

[35] Although the list of offenses in Article 17 does not mention again all offenses constituting predicate money laundering offenses, the words "any offense deemed by law to one of those listed" allow for an extensive reading of this list. Therefore, the mission believes that law prohibits any person convicted of an offense related to predicate money laundering or terrorist financing to be hired, to manage or administer a financial institution.

[36] Due to poor writing, liability for laundering instead is talked about instead of liability for prevention and fight against money laundering.

senior management or the Board of Directors, without a supervisor. Only operational independence for the internal auditor is provided for by the provisions in Article 13 of instructions No.01/2007/RB and No. 35/2008, which lay down the principle that "*the executive body should [...] guarantee operational independence for the officer so that s/he may carry out the mission.*"

712. In an elliptical way, circular No. 003-2011/CB/C (Article 5) refers to independence for the structure responsible for internal audit by stating that it encompasses "*the authority to conduct investigations in every structure of the institution "and that the executive body id required to "take great care to provide information necessary to carry out the internal audit. The executive body implements the internal control policy [...] by providing adequate human, material, and technical resources.*"

713. In the Financial institutions met in the banking and insurance sectors, relevant officers have reported that have the capacity to act independently and report directly to senior management.

Recommendation 22

Applying AML/CFT measures to branches and overseas subsidiaries (C.22.1)

714. No legal provision sets an obligation for financial institutions to ensure that their subsidiaries and overseas branches are compliant with their AML/CFT obligations. The same is true with the obligation to report to CENTIF in Côte d'Ivoire, when Community or Ivorian texts hinder the implementation of their obligations. However, points (a) and (b) of the sixth indent of the Appendix to the AML Act indirectly address this situation by setting customer due diligence relating to the AML Act when the counterparty is located "*in*" or "*outside the Union* (UEMOA)." However, when the counterparty to the contracting organization is another institution located in the Union, the contracting financial institution is not required to conduct customer due diligence. In contrast, when the counterparty to the contracting organization is located outside the Union, "the financial institution is required to conduct identity checks by consulting a reliable financial directory. When in doubt, the financial institution is required to request confirmation for the counterparty's identity to supervisory authorities in the third country concerned. The financial institution is also required to take reasonable measures to collect information about the counterparty's customer credentials." Such measures can be limited, *"when the country where the counterparty is location applies equivalent identification obligations, to requesting the customer's name and address, but it may be necessary when these obligations are not equivalent to require that the counterparty provide a certificate confirming that the customer's identity has been properly verified and recorded."* These provisions do not explicitly express that financial institutions are required to ensure that their subsidiaries in countries which do not or insufficiently apply the FATF Recommendations apply the AML mechanism.

715. Although Article 4.7 of the CIMA Regulation on periodic monitoring and procedure implementation requires insurance companies to ensure that "*an internal or external audit [is] regularly carried out both in insurance companies and their subsidiaries*" and "*to periodically review the AML principles and procedures to ensure that they are actual efficient, including in subsidiaries*", doubts remain about the nature and scope of the so-set requirements. Indeed, Article 4.3 of that very regulation prescribes obligations that are little compliant with norms, as it requires insurance companies to "*report to CENTIF, subsidiaries*

or overseas branches hindered by local regulations from carrying out reviews for atypical operations." Therefore, it might be useful to note that the scope of that obligation is reduced to *"[only] reviewing atypical transactions",* and that this obligation does not require that local norms, which would prevent an Ivorian company to comply with the regulations applicable in Côte d'Ivoire, be reported to CENTIF. Also note that this reporting obligation in the CIMA Regulation was not known to CENTIF. Also, the objective assigned to this mission seems to definitely deviate from the objectives of the aforementioned criterion 22.1.

716. Moreover, the CREPMF instruction contains no provision regarding this aspect.

Applying the highest standards (c.22.1.2)

717. No specific provision in the AML Act prescribes that, when minimal AML/CFT norms differ from a host country to a home country, branches and subsidiaries in host countries should be required to apply the tougher norm, insofar as the host country's legal and regulatory texts allow so. Moreover, financial institutions are required to conduct (Article 10 of Instruction No. 01/2007 / / RB) "special" due diligence with respect to operations carried out with "countries, territories and/or jurisdictions reported by the FATF as non-cooperative"; compliance with these provisions remains ineffective, in practice. Similarly, the obligation to implement special attention (different from the application of enhanced due diligence) does not imply the obligation for branches and subsidiaries to comply with the tougher norm.

Informing the supervisor where a foreign branch or subsidiary cannot comply with AML / CFT measures (c.22.2)

718. In general, no legal or regulatory provision requires financial institutions to inform their supervisory authorities when an overseas branch or subsidiary is unable to comply with adequate AML/CFT measures. Indeed, only the CIMA Regulation provides for such a situation in a rather poor wording. However, given the way that the banking or insurance sector is growing, there is good enough ground to apply this criterion.

719. It should, however, be noted that banks and financial institutions are required, pursuant to under Article 17 of Instruction No. 35/2008, "*to send [annually] to BCEAO and the Banking Commission, a report on the implementation of the entire AML mechanism applicable in UEMOA Member States.*" This implies that, as part of such report, relevant entities are likely to disclose information about the status of a branch or a subsidiary that would be unable to comply with AML/CFT measures.

720. For lack of accurate information provided to the evaluation mission, it was not possible to determine the number of institutions likely to be affected by this situation and to assess how important it is.

Additional elements - Consistency in CDD measures at group level (c.22.3)

721. No provision in the legislation applicable in Côte d'Ivoire establishes an obligation for financial institutions to ensure a consistent application of due diligence measures within their groups. However, many financial institutions, subsidiaries of international and regional financial institutions ensure compliance with instructions and orders given by their head offices as regards standards applicable in the home country where the head offices' headquarters is located.

722. The steady growth of operating anti-money laundering mechanisms coupled with a progressive alienation of relevant entities vis-à-vis Ivorian legal arrangement should result in the gradual disappearance of this situation.

Analysis of the Effectiveness

723. In the banking sector, the majority of stakeholders stated that they have an internal control system including manuals, written AML / CFT procedures, but the oral and descriptive presentation of their contents revealed considerable heterogeneity that circular No. 003-2011/CB/C is supposed to correct by specifying what the expectations of the supervisor are. In general, where there was compliance, it was sometimes added to the duties of the AML/CFT officer or the internal auditor, without any modification to the organization of the entity.

724. Insurance professionals met claim that they have implemented an internal control system whose missions cover compliance with AML/CFT control obligations. Oral presentation by institutions revealed that there was more progress achieved here than in other sectors due (probably) to the fact the supervisor's expectations are more detailed out in the CIMA Regulation. However, for lack of information on the adequacy of resources, it is impossible how efficient the established mechanisms are.

725. In the area of micro-finance, the monitoring mechanism for the implementation of the AML is imperfect in the main structures visited, and at times non-existent in smaller structures that have not yet been made aware of their obligations regarding this issue. The same observation can be made regarding regional the financial market participants who are supposed to submit an annual report to the Minister of Finance, the Central Bank and / or the Banking Commission pursuant to the provisions of Instruction No. 35 / 2008 CREPMF. The mission was not able to obtain any information on those reports.

726. The mission was not informed about the existence of any hindrance regarding timely access to information by compliance officers.

727. Regarding the training of staff, in practice, banks and insurance companies, as well as authorized money exchange entities interviewed told the mission that their staff members in contact with customers had been trained money laundering control. The same seems to be true with money transfer companies. For the most part, such actions do not appear to involve but a small part of the staff, but for lack of information on statistics relating to the number of trainees per year, it is not possible to assess the actual percentage. Similarly, the evaluation mission was unable to obtain from interviewees further information on the contents of such training modules, their duration, frequency, and targeted persons.

728. Similarly, the BCEAO national agency of, despite its capacity as supervisor and entity subject to the AML Act, does not appear to have implemented training programs on AML/CFT for its entire staff.

729. In practice, no institution met by the evaluation mission during the visit has implemented a thorough and suitable AML/CFT control training program for its staff members. In addition, no institution met had developed an operational internal control system covering all of the institution's AML/CFT activities and no on-the-spot audit mission to check

the organization and operation of internal control systems had been conducted by the various authorities at national or Community level, which makes it difficult to assess effectiveness.

730. Similarly, no analysis, no processing of data collected from the annual reports submitted by internal control bodies appear to have been conducted by the relevant supervisory authorities (BCEAO Banking Commission ...), so much so that it was impossible to provide the evaluation mission with information on the difficulties that financial institutions possibly encountered in implementing and monitoring their internal AML / CFT mechanisms. No element could be communicated on the monitoring of the identified weaknesses during the verification and which could call for follow up letters.

3.8.2 Recommendations and Comments

731. The competent authorities should:

- Adopt sectoral regulations on internal control for reporting entities not subject to CIMA, to be consistent with common law prudential regulation, and specify their expectations, especially with regard to fund transfer companies, MFIs, and approved currency exchange entities(little or no control);
- Promote the establishment of an adequate, independent, and properly resourced internal control, within each bank, insurance company, MFI transfer company funds and authorized currency exchange entity;
- Specify that the second-level system or internal audit, one of whose functions is to verify the regularity and compliance of operations as well as the effectiveness of the first level, should be organized around an internal auditor who intervenes alongside an audit committee for financial institutions, and that it should rely on a Board of Directors, linked to an audit committee or an internal audit department;
- Prescribe the implementation of a formalized internal control system in microfinance institutions, adapted to the specificities of the weaker structures (often less provided with human, technical, and financial resources);
- Require financial institutions to provide specific compliance review procedures, especially a systematic prior approval procedure, including written notice by a compliance officer or a person duly authorized by him or her for this purpose, for new products or significant changes made to existing products or for the provision of fund transfer services, and for the organization of the AML/CFT compliance;
- Prescribe the formalization of obligations regarding hiring processes, applicable to the different components of the financial sector;
- Plan on-site inspection missions in different parts of the financial sector to ensure that reporting entities are compliant with their AML/CFT obligations by establishing a formalized coordination (BCEAO, CB, MEF ...);
- Establish an obligation for relevant financial institutions to ensure that their branches and overseas subsidiaries apply AML/CFT norms, and inform in case of obstacles or difficulties, their respective supervisors.

3.8.3 Compliance with FATF Recommendations 15 and 22

Rec.	Rating	Summary of factors underlying rating
R.15	**NC**	• No obligation, except for the banking system, to develop a harmonized ML control program; • Lack of provision granting the compliance officer and other staff members involved to get access when they want it to customers' identification data and other elements related to customer due diligence and other relevant information, outside of insurance issues.;No initial and ongoing training program for employees, as part of ML control. • Absence of general requirement to put in place adequate processes when hiring employees in all segments of the financial sector.
R.22	**NC**	• No legal provisions for all financial institutions to ensure that their branches and overseas subsidiaries are compliant with AML/CFT measures; • No obligation to inform supervisor about difficulties encountered in each component of the financial sector ; • No controls carried out by the different supervisors to ensure that the implementation of obligations is effective.

3.9 Shell banks (R 18)

Recommendation 18

3.9.1 General Description of laws or other measures, situation or background

Prohibition of shell banks (c.18.1)

732. No provisions expressly prohibit shell banks to establish or carry out their activities on the territory. However, compliance with the accreditation process for banks or withdrawal of approval seems to prohibit the establishment of shell banks and the development of their activities in Côte d'Ivoire. Indeed, Article 7 of Law No. 90-589 on banking regulation provides: "No person shall, without first being approved and recorded on the list of banks, carry out [bank or financial institution] activity, or be entitled to act in a capacity as bank or banker, or create the appearance of such capacity, namely through the use of terms [referring to one of these activities] in his or her name or corporate name, trade name, advertisement or in any way in his or activity."

733. At an operational level, pursuant to Article 8 of the Banking Law, any application for approval shall be sent to the Minister of Finance and filed with BCEAO which appraises it. The Central Bank verifies whether the natural or legal persons comply with the conditions laid down in Articles 14 (Ivorian nationality or that of a UEMOA member), 15 (without criminal conviction), and 18 of the Banking law (submission and update of the list of persons holding positions as managers, administrators or bank managers). It assesses the ability of the applicant company to achieve its development objectives in a manner consistent with the proper functioning of the banking system and that such conditions guarantee adequate security for customers. It examines in particular the activity program of such company and the

technical and financial resources it intends to implement, as well as the quality of capital providers and, where applicable, their guarantors.

734. Article 20 of the Banking Law stipulates that it is mandatory for banks to be established as companies. However, pursuant the provisions of the Uniform Act relating to commercial companies and economic interest groups, a corporation is required to be registered with RCCM to acquire legal personality. Among the supporting conditions for a registration application, there is the street address of the head office. In addition, pursuant to Article 29 of the Banking law, *"any transfer of the registered office abroad, any transaction [...] to create a new company*" is subject to prior authorization from the Minister of Finance. Article 32 of the law provides that any opening, closing, alteration, assignment or management of bank counters or branches, or financial institution must be notified to the Minister of Finance and the Central Bank.

735. In case of creation of a new company, the applicant company located abroad is required, pursuant to the provisions in the aforementioned Article 29, to inform the Banking Commission and obtain authorization from Minister of Finance. However, no provision in the Banking Act expressly requires the applicant company to obtain a favorable opinion of the banking supervisory authority of the country where the head office's headquarters is located and provide such certificate to prove that it meets the conditions to be authorized in its home country.

736. Finally, authorization withdrawal is pronounced as of right, especially when the activity has not been carried out for at least 12 months, in compliance with Article 15 of the Appendix to the Convention Governing the UEMOA Banking Commission of. Similarly, the decision to liquidate a commercial company carrying out activities requiring a license is a decision of the Banking Commission, the only jurisdiction competent therein, pursuant to Article 32 of the Appendix to the aforementioned Convention.

Prohibition of correspondent banking relationships with shell banks (c.18.2)

737. No provision in the Banking Law requires credit institutions, prior to establishing a business relationship or carry out a transaction, to ensure when identifying a legal person that it was legally established and has a real existence. Similarly, no provision prohibits banking institutions to establish or carry out a correspondent banking relationship with correspondent banks registered in a jurisdiction where they are not physically present.

738. In terms of effectiveness, institutions met by the evaluation team reported that the established correspondent banking relationships were subject to approval by their head office and only involved institutions that already had a relationship with it. In fact, no particular due diligence seems to be implemented by Ivorian credit institutions.

Obligation to verify that the correspondent foreign financial institutions prohibit shell banks to use their accounts (c.18.3)

739. No legal norm contains specific provisions requiring financial institutions to ensure that financial institutions that are part of their customers abroad do not allow shell banks to use their accounts.

Analysis of the Effectiveness

740. No mechanism or system is intended to alert the public about the risks incurred as regards products and services offered by possible unauthorized or shell companies, and to conduct a more efficient fight against activities carried out by fictitious financial institutions.

741. In addition, pursuant to the provisions in Article 9 of the Banking Law, lists of banks and financial institutions, established and updated by the Banking Commission shall be published in the Official Journal. It should be noted that these lists are posted only on the Central Bank's website, thus the mission considers that the populations in UEMOA Member States do not have easy access to such information.

742. Authorities consider that no fictitious bank has ever carried out activities on Ivorian territory, including via a website. For lack of information on the actions and measures taken to combat informal sector activities, and for lack of a mechanism fostering information exchanges between ministries involved in the fight against the informal sector and competent authorities, it cannot be established with certainty that no person has ever been swindled by fictitious and "ephemeral" structures acting in province or on the Internet.

3.9.2 Recommendations and Comments

743. The competent authorities should:

- Adopt provisions relating to the prohibition of shell banks in Côte d'Ivoire;
- Prescribe in the legislation, the obligation for financial institutions to ensure that financial institutions that are part of their customers abroad do not allow shell banks to use their accounts;
- Formalize and implement a well defined policy on combating illegal banking activities, based on a coordination of means of control at Community level and at the level of each Member State.

3.9.3 Compliance with FATF Recommendation 18

Rec.	Rating	Summary of factors underlying rating
R.18	**NC**	• No formal prohibition for the establishment of shell banks or performance of their activities in Côte d'Ivoire. Moreover, the lack of a plan to fight against illegal banking activities, consequently, absence of initiation of legal procedures; • No provisions on the use of shell banks by correspondent banks; • No obligation for financial institutions to ensure that their client financial institutions abroad do not allow shell banks to use their accounts ;

REGULATION, SUPERVISION, MONITORING, AND SANCTIONS

3.10 The Supervision and Monitoring System– Competent Authorities and Self-Regulatory Bodies - Role, Functions, Obligations and Powers (including sanctions) - R.17, 23, 29, and 30

3.10.1 Description and analysis

744. The regulatory and supervision architecture, as is the case in other economic or financial areas, is of regional inspiration for all UEMOA Member States. Therefore, to understand the organization of regulatory authorities and AML/CFT supervision and monitoring mechanism in Côte d'Ivoire, it is necessary to describe the regional context. This is the result of total or partial transfer of capacities to regional authorities in the financial sector. Côte d'Ivoire, represented in each of the governing bodies of these authorities, retains the right to propose amendments. It is therefore able to influence at the level of policies and general guidelines, supranational supervisors' action.

- **Banking Sector**

745. Credit and financial institutions are governed by the provisions in law No. 90-589 on banking regulation. Pursuant to this framework law, other laws and regulations have been adopted, among which can be especially mentioned the Convention on the creation of the Banking Commission and prudential AML/CFT mechanisms applicable to banks and financial institutions in UEMOA. With specific regard to supervision, the law determines how capacities are split among the banking activity regulatory and supervision bodies and institutions (Council of Ministers, Finance Ministers, Central Bank, and Banking Commission), as well as conditions under which they intervene. Thus, the Council of Ministers of the UEMOA (COM) is authorized to make any provision for prudential regulation (art. 44 of the Banking Act). Thus fall within its jurisdiction the instruments and rules of the credit policy as well as management norms (liquidity, solvency, division of their risks, and balance of their financial structure) applicable to banks, and those relating the AML/CFT. In Côte d'Ivoire as in every UEMOA country, the Minister of Finance's competences cover mainly authorization (Article 29, cf. C.23.3 infra), appointment of a temporary administrator (Article 61) or liquidator (Article 62), suspension of all or part of the operations of all banks and financial institutions (Article 60).

746. In terms of control (excluding microfinance networks), the Central Bank shares both its document-based and on-the-spot check powers with the Banking Commission. However, control prerogatives within financial institutions in the eight (08) states composing the UEMOA zone were transferred mainly to the Banking Commission, which is chaired by the Governor of BCEAO. In exercising these powers, the Banking Commission gives assent to the authorization of a bank or other financial institution. It conducts or gives instructions for document-based and on-the-spot checks to be conducted at the level institutions subject to its jurisdiction. It may extend, where applicable, its controls to related companies. BCEAO37 has the power to make autonomous missions in banks and financial institutions, after notifying the Banking Commission (Article 46 of the Banking law and 17 of the Appendix to the Convention Governing the Banking Commission), which is, moreover, informed about the results of the investigation.

- **Microfinance sector**

[37] Paradoxically, the Central Bank is prohibited to use all of the information it collects through its activities to establish its on-site investigations program for a financial institution after completing an appropriate risk analysis. Indeed, pursuant to Article 2 of Appendix III to Regulation No 09/2010/CM/UEMOA "information collected [on transactions with other countries] cannot be used for any other purpose including control [...] it is forbidden for public officials or agencies involved in the collection of such information to disclose it to any other person or any other organization."

747. A law regulating savings and credit institutions or cooperatives was adopted by UEMOA Council of ministers in 1993. It organizes the prerogatives of each authority with regard to regulating and supervising actors in the sector. Pursuant to this organization, approved microfinance institutions are under the custody of the Ministry of finance and are required to report aggregate information as well as to be subject to the control and prudential rules of authorities (Articles 56, 57 of Order No. 2011-367). The Department of microfinance and the Banking commission are thus responsible for the examination of approval packages, and document-based and on-site audits of decentralized financial systems (DFSs - article 4). The Minister, and for more important structures, the Banking commission or the Central bank share the sanctioning power (Article 71 of the aforementioned text).

- **Insurance company sector**

748. The regulation and supervision system of insurance companies is common to the fourteen countries of the franc zone that initiated the Inter African Conference of Insurance Markets (CIMA) through the Yaoundé treaty of July 10, 1992. This treaty establishes a legal framework for the exercise of the profession and the regulatory and sanctioning powers vested to the authorities. The regulations and other norms that it sets are intended to be applicable to UEMOA and CEMAC States.

749. Corporate control, general supervision, and organization of national insurance markets are provided at the regional level by the Regional Commission for Insurance Control (CRCA-Article 16 of the Treaty establishing an integrated organization of the insurance sector in the African States). CRCA is however relayed by the Department of insurance in Côte d'Ivoire, which is in charge of supervising insurance brokers.

- **The regional financial market sector**

750. Pursuant to Article 1 of the Convention of July 3, 1996 and Article 22 of the Appendix to the Convention, CREPMF is responsible for organizing and controlling public offerings, authorizing, monitoring, and sanctioning the regional financial market participants. It also sets the regional stock market regulations, specified by its general instructions. The scope of its power of control and inquiry is most extended (Article 24 of the Appendix referred to).

- **Foreign exchange sector**

751. The supervisory authority of the licensed foreign exchange companies is the Ministry of Economy and Finance, which holds monitoring power and ensures compliance with regulatory dispositions and prudential norms. BCEAO may also impose a penalty in case of infringement of the Foreign Exchange General Regulation.

AML/CFT Regulation and Monitoring (c.23.1)

752. Articles 5 of the AML Act and 3 of the CFT Order determine the list of professionals subject to the AML/CFT obligations, wherein appear financial institutions. In addition to banks and financial institutions, persons subject to the AML/CFT mechanism are :

- BCEAO,
- The public treasury,
- The financial services of the post,

- The *caisse des dépôts et consignations* (CDC),
- Microfinance institutions (MFIS),
- Insurance and reinsurance companies, and their brokers,
- Regional financial market participants (regional stock market (BRVM), central security depository/settlement bank, brokerage companies, wealth management companies and their business providers),
- OPCVM investment companies with fixed capital and,
- Licensed foreign exchange companies.

Designation of competent authorities (c.23.2)

753. Articles 35 of the AML Act and 28 of the CFT Order provide: "when, owing either to seriously weak due diligence or inadequacy in the organization of its internal control procedures, a report entity has ignored [its obligations], the authority of control having disciplinary power can act as of right under conditions provided for by the applicable specific legislative and statutory texts."

754. The competent authorities designated by sector are indicated below.

- **Banking sector**

755. Banks and other financial institutions are subject to the supervision of the Banking commission, under article 17 of the Convention of April 3, 2007. BCEAO also has a power of autonomous supervision, for it can also carry out controls of its own initiative after informing the Banking commission which, besides, is informed about the findings of the investigation (see. c.29.1).

756. The competence of the Minister of Finance mainly covers approval, withdrawal of approval (see below c.23.3), appointment of a temporary administrator or a liquidator, and suspension of operations and activities. But the Banking commission in the exercise of its power gives its assent for the approval of a bank or a financial institution.

757. The particularity of the statute of the Office of Posts and Telecommunications deserves to be recalled in this section. Indeed, the financial products and services proposed by *La Poste* were dissociated and confined in the activity portfolio of a credit institution created ex nihilo, i.e. the National Savings Fund (CNCE)], now known as the Savings bank. However, in practice, banking services such as carrying out fund transfer and currency exchange transactions still take place in the postal network without being subject to any supervision by the Banking Commission or BCEAO, pursuant to Article 2 of the Banking Law. The abovementioned network is indeed under the direct authority of the Minister of Posts and Telecommunications even though it offers banking services (money transmission services and currency changing transactions) without license, and without being subject to any control as regards applicable regulatory provisions.

- **Insurance sector**

758. The insurance and reinsurance companies are subject to the supervision of the CRCA, a body under the Authority of the Council of Ministers at Community level and, the Minister of finance at the national level, pursuant to Article 16 of Appendix 1 to the CIMA Treaty. In Côte d'Ivoire, the Department of Insurance completes the aforementioned functions and

serves as a relay to the action of the Commission in the exercise of its supervision by ensuring compliance with the enforcement of the regulation (Appendix 2 of the Treaty). As for insurance brokers, they are directly subject to the prudential control of the Department of insurance (Article 534-1 of the Code of insurance).

- **Microfinance sector**

759. Decentralized financial systems are under the supervision of the Minister of finance pursuant to Article 7 of the order regulating DFSs. As such, the Department of microfinance (by the order No.I.062/MEF/DGTCP/DEMO) is responsible for examining applications for a license to carry out activities, and for performing prudential supervision of DFSs. It can propose sanctions, penalties, even a placement under temporary administration. The Banking Commission and the Central Bank can also carry out any control of DFSs under Article 26 of the Appendix to the Convention governing the UEMOA Banking Commission, the modalities of which are fixed by BCEAO.

- **Financial market sector**

760. The financial market participants are subject to the supervision of the Regional Council for Public Savings and Capital markets. Under Article 23 of the APPENDIX to the general regulation, CREPMF "*controls the activity of all participants, in particular management structures for the market and licensed commercial participants. As such, it can, where applicable, carry out investigations on their shareholders, head offices, and subsidiaries or any natural or legal person who has a link of direct or indirect interest with such stakeholders* ". It can also delegate to the Company Administrator of the Market or to the Central Securities Depository, the control of the activity and carried-out transactions which have publicly traded securities at the regional stock exchange, as well as those carried out by Brokerage Companies (MICs) and other licensed brokers (Article 178 of the General Regulation).

- **Foreign exchange Sector**

761. Pursuant to Article 14 of the BCEAO instruction No. 06/07/2011 relating to conditions under which foreign exchange activities may be performed, periodic controls are carried out by BCEAO and/or the Ministry of Finance (Department of Treasury) to ensure compliance, by approved structures, of provisions governing the performance of foreign exchange activities. The Department of Treasury ensured the exclusive control of exchange and financial transactions with foreign countries under Article 1 of Decree No. 103/MEF/DGCPT of June 26, 2000 establishing the procedures for exchange regulations and financial relations with foreign countries. This control covers reports, records, and documents used as part of external financial relations. It also addresses compliance with reporting or currency repatriation obligations.

Market entry– R.23

Preventing the presence of criminals (c.23.3)

- **Access to and practice of the banking profession**

762. Provisions were established to prevent criminals or their accomplices from taking over financial institutions; being beneficial owners and acquiring controlling interests or significant influence, or occupying a position of leadership, including on administrative or supervisory boards, in the areas of banks and financial institutions, insurance companies, financial and microfinance markets. Indeed, the profession of banker is subject to a regulation which restricts the exercise of the profession to persons fulfilling conditions of nationality[38] and presenting guarantees of morality. In practice, applications for approval are sent to the Minister of finance and submitted to the Central Bank which reviews them. Thus, Article 8 of the banking law entrust BCEAO with the task to ensure that the applicant company is the capacity to achieve its development objectives, in conditions compatible with a proper functioning of the banking system and sufficient security for customers. It takes great care to collect "*all information on the capacities of the persons who have brought in the capital and, where applicant, on that of their guarantors, as well as on the reputation and experience of the persons expected to lead, administer or manage the bank or the financial institution and its subsidiaries"*. Article 15 excludes from the banking profession any person who has been convicted for common law crimes and offenses[39] or similar offenses.

763. Shareholding is subject to a particular attention at the time of application for approval, but also in the advent of any significant change in the share capital or voting rights. The monitoring of the reputation and experience of banking and financial institution mangers is implemented in compliance with Article 18 of the banking law. Thus, *"any bank or financial institution is required to keep up to date and submit to the Banking Commission and the registrar responsible for keeping the commercial register, the list of persons holding executive, administrative or management functions […] any intent to change the list shall require prior notification to the Banking Commission"*.

764. In addition to these provisions, Circular No. 002-2011/CB states that compliance with these provisions is in particular subject to document-based audit and that amending entries must be communicated to the Banking Commission and to the National Directorate of BCEAO. But as for the monitoring of the origin of funds, no particular procedure was determined by BCEAO.

765. Besides, the mission has not received any information suggesting that approval authorities systematically back track the beneficial owner, when an application for authorization is submitted to them. No information was communicated either on the depth of these audits (thresholds for capital ownership and other possible criteria fixed to determine who are the associates or shareholders whose reputation and competence will be subject to evaluation) as part of the approval process.

766. Note also that the provisions relating to applications for approval are implemented only when the institution is being established for the first time in the UEMOA zone. Thus, for

[38] No one can lead, administer or manage a bank or financial institution, or their subsidiaries, if they do not have the nationality () or that of a member State of the West African Monetary Union.

[39] Bans as of rights prohibition to direct, administer or manage a bank or financial institution or any of its subsidiaries any convictions for common law crimes, forgery or falsification of public or private documents, of trade or bank, for theft, for fraud or punishable offenses sentenced for fraud, for breach of trust, bankruptcy, embezzlement of public funds, subtraction by public depositary, extortion of funds or securities, issuance of checks, violation of foreign exchange legislation, violating the state credit or handling stolen goods obtained through any of these offenses or offenses deemed by law to one of those listed above (Article 15 of the Banking Law).

other banks that are already active on the territory of a Member State of the Union it is the single license rule that applies[40].

- **Access to and practice of the insurance profession**

767. Applications for license are assessed, as part of a "pre-review", by the branch of approvals and monitoring of the Department of Insurance (DA) and then transmitted to CRCA which gives an opinion (Title II, Chapter 1, section 1 of the Insurance Code). In Côte d'Ivoire, such assent conditions the issuance of the authorization by the Minister of Finance. During this procedure, the distribution of the capital and the reputation of the company leaders (Article 328-5 paragraph 2) are particularly examined, so as to ensure that the governing bodies are free from any criminal conviction.

768. The minimum capital required to establish an insurance company varies depending on the type of company. It is XOF one billion (XOF 1,000,000,000 billion) for limited companies and XOF eight hundred million (XOF 800,000,000 million) for Mutual Insurance Companies.

769. Shareholding is subject to a particular attention at the time of application for license, but also in the advent of any significant change in the share capital or voting rights. Thus, Article 329-7 of the Insurance Code provides that any operation intended to confer equity greater than 20% or the majority of voting rights should be subject to approval by the Minister of Finance, after assent from the CRCA. Moreover, Article 6 of Circular No. 002-2011/CB/C on conditions to exercise the functions of administrator and leader in credit institutions prescribe the biannual submission of the complete and updated list of leaders to the registrar responsible for the Commercial Register (RCCM), as well as its transmission to the Banking Commission and to the National Directorate of BCEAO. However, no specific procedures designed to ensure that the capital does not come from punishable or criminal activity was formalized and implemented in the insurance sector.

770. The CRCA can reject an application for license, in particular when the project leader does not present all the guarantees required to administer, lead, and manage an insurance company. Similarly, due diligence is conducted by the Department of insurance to ensure the respectability of assurance brokers. Persons "*criminally convicted as perpetrators, co-authors, accomplices or receivers as a result of common law crime or offences* « may not be authorized to act as general agents or insurance brokers, (Article 5 of Act No.91-889 of December 27, 1991 regulating the profession of insurance broker). This requirement also applies to persons acting in their capacities as representatives, managers or leader of a broker activity, when such activity is carried out by a legal person (Article 7 of the aforementioned Act).

771. However, it should be noted that no provision requires reporting entities to immediately inform the DA of any relevant information on any change affecting leaders, administrators or shareholders of a brokerage company and, where applicable, to the persons under whose effective control are placed the legal persons present in their capital. Therefore,

[40]Under the decision of the Council of Ministers of UEMOA in its meeting of July 3, 1997 adopting the principle of the single license and the decision of the Council of Ministers of UEMOA in its meeting of September 25, 1998 adopting modalities of implementation of the single license, single license gives a bank or financial institution, duly constituted, the right to exercise a banking or financial activity in a UEMOA Member State and to establish itself or have the freedom to provide services of the same nature throughout the Union without having to apply for new licenses.

besides verifying the good reputation of leaders and administrators on the basis of their criminal record document and in relation with professional ethics, laws, and regulations, in a personal capacity or in their capacities as managers or company agents when submitting an application for license, no further due diligence is conducted.

- **Access to the microfinance profession**

772. The conditions of access to the profession of microfinance are governed by the order 2011-367 regulating DFSs and by the Act No.092-562 of July 22, 1996 regulating savings and credit institutions or cooperatives. Since 2008, the license has been the only authorization to exercise the profession. Indeed, article 8 of the aforementioned text states that decisions regarding for DFSs' licenses are made by the Minister of finance, after completion of a review by the services of the Department of microfinance, and with assent by the Central Bank. This process[41] varies in the case of an application submitted by a conglomerate gathering conglomerates from several UEMOA countries or by a financial institution.[42]

773. A decree issued by the competent authorities is expected to specify the terms and conditions of the license (Article 9 of the aforementioned order), the implementation and functioning regulating savings and credit institutions or cooperatives, their mechanisms and procedures for monitoring and supervision (Article 87). However, such decree had not been issued at the time the evaluation team was conducting the on-site visit.

774. Reviewing an application for license covers in particular the respectability and expertise of leaders. In addition to the obligation to submit their statutes to the Registrar Office, DFSs must transmit, as well, the list of names and resumes of the members of the administration, management, and controlling bodies, in compliance with Article 27 of Order No. 2011-367. Article 18 of decree 97-37 of January 22, 1997 governing the enforcement of the law regulating savings and credit institutions or cooperatives requires concurrently the criminal records of members of the administration and management or controlling bodies when putting together application file for license. This article requires that members of the bodies of a microfinance institution have good morals and have never been sentenced to prison as a result of an offence relating to a crime against property or murder. No specific provision in the order or decree includes a similar requirement in case of subsequent amendment of the statutes or list of leaders.

775. Like the banking institutions, in addition to competence and nationality conditions, Article 30 of the aforementioned Order excludes from the profession any person who has been convicted of common law crimes and offenses[43] or similar offenses. But with regard to monitoring the source of funds, no specific procedure was determined.

- **Access to the stock market**

[41] It is the most important DFSs, representing 90% of transactions and the amount outstanding of which is greater than XOF 300 million. Only one would meet these criteria in Côte d'Ivoire.

[42] In the case of a financial organ (structure created by a network, having the statute of a bank or financial institution the purpose of which is centralizing and managing the surplus resources of network members), approval is granted after assent by the Banking Commission (Article 111 of Order No. 2011-367. In the case of a confederacy regrouping Federations of more than one UEMOA country approval is issued the Minister of the Member State where it has its headquarters.

[43] Automatically entails prohibition to lead, administer or manage a bank or financial institution or any of its agencies any convictions for common law crimes, forgery or use of a false title, forgery or falsification of private business or banking documents, for theft, for fraud or offenses punishable of sentences of fraud, breach of trust, bankruptcy, embezzlement of public funds, public depositary subtraction, extortion of funds or securities, issuance of NSF checks, violation of the legislation on the exchange, harming the reputation of the State, or concealing things obtained using these offenses (art. 15 of the Banking Act)

776. Capital markets are regulated at the regional level by CREPMF, a UEMOA regulatory body. On the one hand, it is responsible for organizing and controlling public offerings and on the other hand, for empowering and controlling the regional financial market participants. As such, CREPMF regulates the functioning of the market, in particular by enacting specific regulations in the stock market. It also has disciplinary and criminal investigation powers (see below c. 29.4 for more details).

777. While certain conditions for license are common to the financial market participants (Article 16 of the General Regulations of CREPMF), others are specific. It is then necessary to distinguish the types of regional financial market, namely: a) market structures represented by BRVM and the Central Depository/Settlement Bank, and b) commercial actors (MICs, SGPs, Stock exchange Investment Advisors, Business providers and brokers).

778. Regarding the structures of the market, a company established for the purposes of carrying out BRVM activities at UEMOA level is required to submit an application for license to CREPMF. Under Instruction No. 2/97, the application must include: (i) the statutes of the applicant company, (ii) the distribution of its shares and the identities of shareholders, (iii) the list of corporate executives and their criminal records, (iv) and in particular the General Regulations applicable to stock exchange operators, (v) the identities and criminal records of persons designated to perform the functions of head of market supervision, and any other information that Regional Council deems necessary. Similar provisions are contained in Instruction No. 3/97 for companies established for the purposes of carrying out Central Depository/Settlement Bank activities.

779. Regarding MICs and SGPs, under instruction No. 4/97 and 5/97 and the provisions of Article 27 of the General Regulations, procedures for license appear more stringent. Thus, Article 27 of the abovementioned General Rules states that "*for the consideration of their applications for license, applicant companies are required to provide sufficient guarantees, especially with regard to the composition and the amount of their capital, their organization, their human, technical, and financial resources, the reputation and experience of their leaders, as well as adequate provisions to ensure security for customer transactions*."Article 32 of the same regulation adds that ‘‘cannot be shareholders, corporate executives or managers of a company applying as MIC, natural persons who has incurred in any country, one or more convictions for a common law crime or offense, attempt, complicity or concealment for:

i. Falsification or forgery ;
ii. fraud, breach of trust, embezzlement, extortion of funds or securities and acts of currency counterfeiting ;
iii. violation of banking laws and foreign exchange ;
iv. or, generally, any convictions for crimes or offenses equivalent to any of those listed above’’

780. Services reviewing applications also require the criminal records of executives. On the basis of information collected by the mission, the hearing of an applicant company is possible, but not systematic.

781. In addition, SGPs must justify the reputation and experience of their leaders, employees and agents who are in direct contact with the customers (Article 67 of the General Regulation). Similarly, OPCVMs are required to provide sufficient guarantees regarding their

organization, technical and financial resources, and the reputation and experience of their leaders. They are required to make provisions to ensure security and transparency for operations (Article 78).

782. Finally, Article 103 of the same regulation associates the issuance of all professional cards with the production of a criminal record, in addition to other conditions. These can be renewed, annually. As for business providers, investment advisory and brokers, Instruction No. 6/97 requires, for the issuance of the authorization, that an application be submitted. Such application contains as regards legal persons, the statutes, balance sheets and certified accounts, statement of guarantees offered and criminal records of leaders, and as regards natural persons: a criminal record, a resume, and the statement of guarantees provided.

783. While banks and MICs can create OPCVM, a CREPMF authorization will, nonetheless, be required and the reputation of leaders will be verified. The minimum capital required for MICs, fixed at XOF one hundred fifty million (XOF 150,000,000 million), must be entirely paid, while the amount of capital required for SGPs is XOF forty million (XOF 40,000,000 million). However, there are no procedures to ensure the lawful origin of capital provided.

784. A minimum capital is required for legal persons applying for authorization in a capacity as business providers, investment advisors, and brokers.

785. It should be noted that no provision imposes on reporting entities the obligation to immediately inform CREPMF of any relevant information on any change affecting leaders, administrators or shareholders and, where applicable, the persons under whose effective control are placed the present legal persons in their capital.

Eligibility criteria and reputation (c.23.3.1)

786. The eligibility and reputation criteria are reviewed by competent authorities with regard to managers of banks, insurance companies, and the regional financial market trade participants.

787. The BCEAO Instruction No. 06/07/2011, in its Article 2, relating to conditions for license provides that a criminal record be submitted. No supervision is conducted regarding the compliance with such condition after the authorization is issued and activities are launched. However, under Article 18 of the Banking Law, the ongoing monitoring performed by the Banking Commission allows for the assessment of the capacities and respectability of leaders of banks and financial institutions whenever there is a change of leader or administrator. In any event, this change must be notified to the BCEAO within a month (see above).

788. Circular No. 002-2011/CB/C on the conditions under which leaders and administrators of banks and financial institutions can carry out their activities, provides for conditions of reputation and capacities for their administrators and leaders. These conditions are particularly verified when resumes are submitted to the Central Bank as part of the authorization procedure (Article 8). Such document is required to include work experience acquired in banking and finance.

789. For foreign leaders and administrators, the provisions applicable to the banking sector do not require persons holding the aforementioned functions to relinquish their functions/professions within a reasonable period of time, as of the date their conviction for one of the aforementioned offenses clearly established, and to inform the competent authorities. They do not require either foreign leaders or administrators to produce a certificate from the bank supervisory authority of the country of origin indicating that they meet the conditions to be approved in their home countries.

790. In the insurance sector, the assessment of the competences and capacities of insurance company managers, general agents, and other insurance brokers is conducted by CRCA, which carries out a document-based audit and ensures the professional skills required to hold executive or broker functions in an insurance company (reputation and professional skills, degree requirements, and professional experience). CRCA relies on the management of insurance companies, in compliance with Articles 506, 508, 509, 514 of Appendix 1 to the CIMA Treaty. Moreover, it is an obligation for insurance company managers to ensure that persons in their jurisdiction comply with the conditions of professional skills at any time.

791. Article 7 of the order regulating DFSs requires the collection of all information relating to the quality of promoters as well as the reputation of persons likely to lead, administer or manage DFSs and their subsidiaries. Neither the review of the capacity criterion (skills, professional experience, training, etc...) nor its modalities are explicitly stated.

792. On the regional financial market, CREPMF carries out the evaluation of leaders in compliance with instructions relating to SGPs' authorization (No. 5/97) and MICs (4/97), which provide for the condition of good reputation as regards corporate executives. However, they do not require the production of a resume likely to allow CREPMF to assess the experience and skills of leaders. Furthermore, SGPs are required to immediately inform CREPMF of changes on key features regarding their situations. Similarly, under the instructions No. 2/97 and 3/97 on authorization for BVRM and the Central Depository/Bank settlement, the reputation of a leader is subject to verification. However, the two aforementioned norms do not provide that any changes on key features regarding their situations be reported to CREPMF. They do not include requirements relating to the submission of a resume.

793. In addition, Articles 41 and 42 of the AML Act also relate to financial institutions. They provide, respectively, for definite banning or for a period of three to six years from carrying out a public function on the one hand, and the definite banning or for a period of five years at the most, from carrying out directly or indirectly one or more social or professional activities for which the offense was committed, on the other hand.

Application of AML/CFT prudential regulation (c.23.4)

794. Article 1 of Circular No. 003-2011/CB/C of the Banking Commission stipulates that UEMOA banks and financial institutions must "establish an effective internal control system, adapted to their organization, the nature and volume of their activities, and the risks they face."

795. The principles described above in that circular especially provide for a complete formalization of procedures, transaction processing and recording procedures, a clear delegation of authority and responsibility, and a strict separation of implementation and

control functions. The established system put should implement, at each operational level, a first level control mechanism similar to an authorization or a validation. The second level of internal control must be provided by a dedicated and independent audit function. It belongs to the deliberative body to define the internal control policy, to ensure the establishment of an adequate mechanism and to monitor its activities and results, at least once a year. It "is required to be kept regularly informed of all risks to which the institution is exposed" (Article 4). The deliberative body may establish an audit committee to assist it in the accomplishment of its mission (article 6), and in particular to conduct an assessment of the organization and functioning of the control system.

796. The executive body implements the internal control policy. It "constantly ensures the consistency and effectiveness of the internal control system and is responsible for the implementation of the recommendations of the internal audit" (Article 5). To ensure proper application of the prudential regulation, "credit institutions are required to establish a permanent compliance function likely to guide the executive body in managing the risk of non-compliance" (Article 27) and whose function in particular is to monitor AML/CFT (Article 28).

797. In addition, circular No. 05-20112/CB/C on the governance of the Banking Commission states that "*credit institutions are required to have the necessary management tools for good governance*" (Article 7). As such, they ‘‘are required to establish :

1) An AML/CFT mechanism in compliance with the legal and regulatory provisions allowing, in particular, for a rigorous identification of customers, increased due diligence for certain operations and ongoing training for personnel;
2) An efficient internal control, which makes it possible to assess separately the conditions under which compliance is conducted in compliance with the provisions in the circular’’;
3) Finally, Article 13 of the AML Act requires financial institutions to develop internal AML/CFT programs.
4) In the insurance sector, Article 328-3 of the Appendix to the CIMA Treaty indicates that, in the instance of application for license, the evaluation of technical and financial resources, proportionate to the activity program is a parameter by which an authorization can be granted or denied. Among such resources, authorities are brought to assess those mobilized for the implementation of an internal control system.
5) These general provisions relating to risk control are relevant to the fight against money laundering.

License for fund transfer and foreign exchange services (c.23.5)

- **Accessing to and carrying out licensed foreign exchange activity**[44].

[44] Bans as of rights prohibition to direct, administer or manage a bank or financial institution or any of its subsidiaries any convictions for common law crimes, forgery or falsification of public or private documents, of trade or bank, for theft, for fraud or punishable offenses sentenced for fraud, for breach of trust, bankruptcy, embezzlement of public funds, subtraction by public depositary, extortion of funds or securities, issuance of checks, violation of foreign exchange legislation, violating the state credit or handling stolen goods obtained through any of these offenses or offenses deemed by law to one of those listed above (Article 15 of the Banking Law).

798. Natural or legal persons providing foreign exchange services are subject to prior authorization in compliance with Articles 11 and 12 of Appendix 1 to Regulation No. 2010 09/2010/CM/ UEMOA of October 1st on external financial relations of UEMOA States. The license is issued by order of the Ministry of Economy and Finance, after assent by BCEAO. According to the BCEAO Instruction No. 06/07/2011, the validity of licenses issued is subject to actual start of the recipient's activities within a maximum period of one year as of the date of notification of the aforementioned decree. Applications are reviewed by BCEAO, which exercises control over the license applicant's (or Corporate Executive's) criminal record for approval (Article 2 of Title II).

799. In addition, agents authorized to provide currency exchange services are required to submit to BCEAO reports on the volume of their transactions, currencies traded, etc., given that the issuance of remittance in foreign currency to resident travelers is governed by the provisions in Regulation No. 09/2010/CM/UEMOA on external financial relationships of the Member States of the Union. Indeed, Article 23 of Appendix II of the aforementioned text states that "*travelers to non UEMOA member states are allowed to carry per person, up to a maximum of the full value of XOF 2 million in notes other than [CFA Franc] notes. Amounts exceeding this limit can be transported in the form of traveler's checks, certified checks or other payment methods*."

800. Pursuant to the applicable regulation, money or value transfer activities, defined as movement of capital, can be developed by BCEAO, the postal administration[45], approved brokers (banking institutions), and licensed foreign currency exchange companies. In practice, it is licensed brokers epitomized by banks, who file for authorizations necessary for money or value transfer activities. They operate under the responsibility of banks which are subject to control by competent authorities, in particular the Banking Commission and the Treasury (Article 3 of Decree No. 060/MEF/DGTCP/DEMO of February 27, 2012 organizing the Treasury Department and setting its powers).

801. The mission received no statistical data: on the activities of the international fund transfer companies (i) on fund transfer activities performed by mobile operators (ii) on AML/CFT control carried out by national and regional authorities (iii). Indeed, monitoring of activities developed by these companies that are legal entities separate from banking institutions with which they develop their activities in partnership is entirely "delegated" to banking institutions.

802. This situation is unsatisfactory in many respects, especially as no banking institution met has yet carried out document-based audit operations performed by its commercial partner, or has performed a single on-site audit mission covering in particular reliability, thoroughness ... information available in the information systems of these fund transfer companies over which banking institutions have no control as to reliability, thoroughness, and record keeping.

Monitoring and supervision of money transfer and currency exchange services (c.23.6)

[45] Authorized foreign exchange dealers may carry out transfer transactions (transfer issuance, funds reception), which, under Article 2 of Regulation No.09/2010/CM/UEMOA of 1st October 2010, falls within the ambit of the BCEAO, Post Office, authorized brokers (credit institutions) or authorized foreign exchange dealers, as part of their respective functions. Under Article 11 of the CFT Order, physical or moral persons, other than banks, who wish to provide any funds or value transfer services, as a major or minor activity, or act as representative where necessary, should obtain the prior approval of the Ministry of Finance, as required by the specific regulation in force. Such persons shall be accountable to the anti-organized crime regime in force.

803. Controls are conducted on data transmitted to BCEAO and to DGT by banking institutions but they are limited to verifying compliance with provisions relating to the foreign exchange regulations. Moreover, the evaluation mission found that no statistics monitoring – or AML/CFT due diligence – of money transfer and currency exchange operations performed by the Post Office had been established (see below).

804. As regards carrying out foreign exchange activities, certified agents are required to hold a license from the monetary authorities and be subject to reporting requirements and regular transmission of their records to the competent authorities of operation. Thus, in Côte d'Ivoire, such records are required to provide information on transactions carried out, customer identity, their purposes, objects, and amounts. Similarly, Article 5 of instruction No.11/05/RC on authorizations for foreign exchange activities, periodic checks are carried out by BCEAO and/or the Ministry of Finance to ensure compliance with provisions governing that matter.

805. However, the mission found that verifications carried out by the Ministry of Finance concerning stockbrokers' activities are in limited number and never include an AML/CFT component.

Prior authorization or registration, regulation and supervision of other financial institutions (c.23.7)

806. Beside banks (DFSs for instance), other financial institutions are also subject to prior authorization and supervision. Supervision conditions applicable to AML/CFT are insufficient, even non-existent in the case of microfinance funds. Indeed, the regulation requires DFSs to obtain an authorization issued by the MEF before the actual launch of their activities. When granting an authorization, the services of the Department of microfinance undertake a thorough review, but the lack of human and material resources limits the depth of such controls. This weakness (especially the lack of means relating to information & technology and transportation) is an obstacle to the establishment of a regular on-site control of all microfinance institutions, given the very large number of authorization entities and their geographic dispersion. Risk also arises from the weakness of the umbrella structures which are entrusted with the task of general supervision of the network, and the conducting of at least one annual control mission in their affiliated institutions (Articles 105, 106, 108 of Order No. 2011-367). Note in this regard, that no training and information action on the fight against money laundering has been provided to staff in charge of this supervision.

807. Moreover, it should be noted that the decree implementing the order that should specify "any provision likely to facilitate the creation, implementation, and operation of MFIs, [indicating] their mechanisms and control and supervision procedures [...] "was not communicated to the mission. Therefore, no assessment can be made on the effectiveness of provisions that the decree is meant to complement.

Guidelines for financial institutions (c.25.1)

808. On the on-site visit day, a good practice guide on identification and due diligence requirements to be implemented was developed by the Professional Association of Financial Institutions in Côte d'Ivoire. However, consultation of this document was not authorized. No analysis can thus be given on the relevance and compliance of instructions contained in this guideline meant for credit institutions to comply with the applicable system in Côte d'Ivoire.

Yet, this document has not been subject to any distribution to reporting entities and members of the association, thus it will not be reflected in the rating of this criterion.

809. At the regional level, BCEAO issued Instruction No. 01/2007/RB on the fight against money laundering in financial institutions on July 2, 2007. This instruction is applicable to banks and financial institutions and to postal financial services, savings and credit institutions and cooperatives (micro-credit), as well as structures or organizations non-incorporated as credit institutions or cooperatives and whose purpose is collect savings and/or grant credit, and to licensed foreign exchange dealers. However, it does not provide the specification needed in several areas. Regarding customer identification, instruction only refers to customer natural persons. It provides no information on due diligence for procedures for customer natural persons. Similarly, it does not specify how reporting entities must ensure the identity of the beneficial owner in the instance where a customer is not acting for his/her own account. It does not specify, either, the type of identification document accepted in the region, nor does it indicate reinforced due diligence with respect to certain categories of customers (non-resident foreign clients for example). Relating to the implementation of AML norms within financial institutions, the instruction indicates that they are required to implement internal AML programs. It also does not specify how such programs are to comply with laws and regulations applicable in UEMOA Member States. Moreover, it provides no indication on the requirement for the collect of information regarding the intended purpose and nature of the business relationship, or on the necessity to regularly update customer records ...

810. Moreover, the instruction contains provisions likely to induce some confusion among reporting entities. Thus, in its Article 4, it emphasizes that customer identification should be based, mainly, on “accurate *rules of conduct*.” Besides, since these ethical rules are not specified by the instruction, they also do not correspond to the FATF norms. By the same token, the instruction states that financial institutions "*are required to define the types of customers they cannot accept*" without any further specification; thus, this provision has no practical scope.

811. With the exception of Circular No. 05-2011/CB/C which provides some useful information and guidance to institutions on the expectations of the supervisor regarding the organization of their internal control and compliance, the Banking Commission issued no AML/CFT guideline or operational guide. Even if the "regulatory power" belongs to BCEAO, and the performance of monitoring and control missions is mainly assigned to CB, it has the option to specify certain aspects of the applicable regulation by means of circulars. This option has not been used for AML/CFT.

812. CREPMF Instructions usefully complement the applicable standards, but are too succinct to serve as operational guides to their recipients when opposed to the very limited number of points covered in terms of AML/CFT. As for the CIMA regulation, it does not quite correspond to guidelines. It is, however, necessary to mention it because it very similar to a corpus of instructions and guidelines. In fact, it is quite comprehensive in many respects and gives many examples of transactions that may reveal to be suspicious in the insurance sector.

813. Out the aforementioned considerations, the mission concludes that documents are not sufficient to effectively help financial institutions implement and comply with all their AML obligations. It incidentally notes that Ivorian authorities do not use their powers to complete or propose instruction projects. At times, the applicable legal procedure in the region seems to

be an obstacle to the adaptation and fast implementation of texts at the national level. This situation is particularly detrimental when it comes to texts relating to money laundering or terrorist financing, which require diligent implementation of operational structures.

Recommendation 29

Powers of supervisory authorities (c.29.1) Powers to carry out inspections (c.29.2)

- **UEMOA Banking Commission.**

814. The Banking Commission, with powers which are conferred upon it by the Appendix to the Convention Governing the Banking Commission, is responsible for the supervision of banks and financial institutions. In this context, it:

a) Controls institutions subject to the regulation or initiates document-based or on-site monitoring actions to be carried out, especially by the Central Bank. To this end, it may require any documents, information, clarifications, and justifications deemed necessary to exercise its powers (section 42 of the Banking Act). Banks and financial institutions cannot refuse controls by the Banking Commission pursuant Article 46 of that Law;

b) Issues administrative measures (warning or injunction to the financial institution for the purpose of taking the necessary corrective measures or any protective measures);

c) Pronounces disciplinary sanctions (warning, reprimand, suspension or prohibition of some or all operations, other limitations on the exercise of the profession, suspension or compulsory resignation from office of managers responsible, withdrawal of approval) in case of serious offenses;

d) Gives simple or consistent opinion for the implementation of certain provisions in the regulations;

e) Lays down circulars to clarify the procedures for the implementation of the legislation governing the activities of the profession.

815. Document-based audits are performed on all documents sent to the General Secretariat of the Banking Commission, particularly on the periodic accounting statements as well as year-end accounting documents (balance sheets, income statements, profit and loss accounts, general information). As for on-site controls, they help ensure the accuracy of the information transmitted to the General Secretariat of the Banking Commission and observance of regulations. These controls are also an opportunity for the Banking Commission to make a general assessment on the credit institution, both in its organization and management, as well as its financial situation. They can be extended to subsidiaries, legal persons with de jure or de facto responsibility for these subsidiaries.

816. Upon request by the Banking Commission, any bank or financial institution auditor is required to submit all documents and other reports, as well as to provide all information necessary for the Commission to carry out its functions.

817. The annual program of investigation is developed taking into account the analysis of any deficiencies identified in the documents submitted, which would result in monitoring and sending letters requesting for the systematic implementation of corrective actions. Monitoring

the implementation of such corrective actions rarely gives rise to a new on-site audit mission. As for the average frequency of on-site verification of a credit institution, it is 4 to 5 years. Similarly, Order No. 2011-367 of 3 November 2011 on the regulation of decentralized financial systems expanded the scope of inspections carried out by the Banking Commission to financial agencies and all companies controlled by these bodies (Articles 43 and 44 of the order mentioned above).

818. No thematic mission relating to ML and FT has so far been made, but some aspects of AM /CFT have been addressed in the context of general tasks of verification. Institutions met by the mission did not mention any close monitoring missions by the Banking Commission to ensure the implementation of recommended corrective actions.

819. On an operational level, the resources devoted to supervision missions and on-site inspections are clearly insufficient compared to the tasks assigned to the Community authorities, the number of institutions subject to supervision and control and their geographical area of competence. It follows that no authority has so far committed a single AML / CFT thematic control mission or including a component of money laundering in Côte d'Ivoire.

- **Central Bank of West African States**.

820. Under Article 13 of the Appendix to the Convention Governing the Banking Commission, BCEAO may at the request of the Banking Commission, carry out document-based or on-site monitoring actions in banks and financial institutions. The aim is to ensure compliance with the provisions applicable to them. BCEAO also has the capacity to perform such checks on its own initiative after notifying the Banking Commission.

821. Under Article 24 of its Statute, BCEAO has the right to require credit institutions to disclose all necessary documents for the performance of its duties. Professional secrecy cannot be opposed to the Bank, pursuant to under Article 42 of the banking law. Similarly, banks and financial institutions cannot oppose its checks pursuant to Article 46 of the same Law.

822. Order No. 2011-367 of 3 November 2011 on the regulation of decentralized financial systems provides that BCEAO may, on its own initiative or at the request of the Minister of Finance, carry out checks of their financial agencies and all companies that these bodies control (Articles 43 and 44). In this context, it may request disclosure of all documents, statistical reports, reports and all other documents, in short, all information necessary for its functions (Article 56). So, confidentiality cannot be invoked before the Banks (Article 57) as it carries out its supervisory missions over decentralized financial systems (Article 58)

- **Ministry of Economy and Finance**

a) Department of Treasury

823. Pursuant to Article 3 of Decree No. 060/MEF/DGTCP/DEMO of 27 February 2012 on the organization of the Treasury Department (TD) and determining its responsibilities, the sub- directorate of the fight against financial crime is responsible for the "implementation by persons subject to the regulation of the AML/CFT regulation." As for the sub-directorate of

external finance, it is responsible for monitoring and supervising the activities of exchange offices.

824. Pursuant Law No. 97-397 of 11 July 1997 relating to litigations regarding currency exchange offenses, the TD can conduct monitoring operations on financial institutions' compliance with exchange regulations, as provided in Article 6 of the AML Act. As part of such monitoring and supervision of microfinance institutions and licensed currency exchange companies, the relevant units within the TD are authorized to require that any documents, statistical reports, reports and information necessary for the exercise of their missions be transmitted to them.

825. In performing this task and in accordance with Decree No. 103/MEF/DGTCP of 26 June 2000 laying down the monitoring procedures for the regulation of currency exchange and financial relationships with foreign countries, the competent directorates carry out document-based and on-site controls and unexpected checks (Article 3). With regard to on-site control, the controller is authorized to review the books and documents of financial institutions, i.e. banks and financial institutions as well as authorized foreign currency exchange companies. (Article 5).

b) Department of Insurance

826. Under Article 17 of Decree No. 2011-222 of 7 September 2011 relating to the organization of the MEF, the Department of Insurance is responsible for designing the applicable regulations in terms of insurance and for compliance therewith, in conjunction with CIMA (Inter-African Conference on Insurance Markets). In addition, this department conducts, on behalf of the CRCA, the required control missions. Thus, it transmits to CRCA the findings from its missions, in compliance to Article 17 of the CIMA Treaty. Pursuant to Articles 18 and following of the Treaty, such controls include a review of policies, procedures, books, and records.

c) Management of Microfinance

827. Order No. 2011-367 of November 3rd 2011 on the regulation of decentralized financial systems Article 43 provides that the Minister of Finance "*conducts or orders the control of decentralized financial systems*." In practice, this function is performed by the MEF microfinance Department. In this sense, Order No. 062/MEF/DGTCP/DEMO of February 27th 2012 on the organization of the management of microfinance which sets its powers, established within the sub-directorate of management supervision, the monitoring service, responsible for document-based or on-site control of microfinance institutions (Article 3).

828. The Minister of Finance is authorized to require any documents, statistical reports, reports and all other documents, information necessary for its functions (Article 56). Confidentiality cannot be invoked before the Ministry (Article 57) as it conducts its supervisory mission on decentralized financial systems (Article 58)

829. We can note that, in practice, no control relating to AML/CFT has been implemented yet.

- **Regional Council for Public Savings and Capital Markets**

830. Article 23 of the Appendix on CREPMF's composition, organization, functioning, and powers gives it authority to monitor the activities of all capital market participants, especially market management institutions and authorized commercial participants. It also verifies compliance, by issuers of securities, with obligations to which they are subject in the area of public offerings for savings. As such, it may, where applicable, conduct surveys with participants, their shareholders, parent companies and subsidiaries or any natural or legal person with a direct or indirect interest connection with such participants.

831. In addition, pursuant to Article 56 of the General Regulation on the organization, operation and control of the regional financial market, CREPMF conducts document-based or on-site investigations or controls on Management and Intermediation Companies or companies applying for such capacity. As part of such document-based control, the Regional Council is authorized to require that regular information be transmitted, and it determines the content and conditions for transmission (Article 25). It can also summon and question any person likely to provide information. The hearings are not public. In the course of investigations, searches and seizures may be carried out by CREPMF controllers under the authority of the President of the competent court of the country concerned. The Council may also require from the judicial authority, the consignment of money or the sequestration of funds, values, securities or rights belonging to the persons concerned (Article 46).

832. Inspectors or any person authorized by the Council are entitled, for the conduct of their investigations and inspections, to have access to any information or documents, and obtain a copy, regardless of the medium. Confidentiality is not opposable to persons duly authorized by the Council (Article 39).

833. We can note, however, that no control relating to AML/CFT has been implemented yet.

- **Regional Commission for Insurance Supervision**

834. CRCA's powers (Regional Commission for Insurance Control) are provided for in the Treaty establishing CIMA. As part of the supervision of insurance companies' activities, the Commission conducts document-based or on-site controls on insurance and reinsurance companies operating on the Member States' territories. On-site controls can be extended to parent companies and subsidiaries and any intermediary or expert involved in the insurance business. To carry out its on-site inspections, CRCA is availed with the control body established within the General Secretariat, which is CIMA's executive body. Findings that can be useful to controls carried out by the national insurance administration through their own missions are made available to CRCA (Article 17 of the Treaty CIMA).

835. The Commission may request that companies communicate auditors' reports and, broadly speaking, all accounting documents for which it may, whenever necessary, require certification. In addition, companies are required to provide the Commission with all documents, as well as qualified staff to provide the information deemed necessary.

836. In fact, no control relating to AML/CFT has been implemented yet.

Powers to access necessary documents (c.29.3)

- **UEMOA Banking Commission**

837. While carrying out its supervisory competence, the Banking Commission is endowed with powers which are conferred by the Appendix to the Convention governing the UEMOA Banking Commission of April 24th 1990. Banks and financial institutions are required to provide, at the request of the Banking Commission, and through required channels, documents, information, clarifications, and justifications necessary for the exercise of its powers (Article 16). Similarly, Article 46 of the Banking Law provides that banks and financial institutions cannot refuse controls carried out by the Banking Commission. Thus, at its request, any bank or financial institution's auditor is required to submit all reports, documents, and other records, as well as to provide all information necessary for the exercise of its functions (Article 17 of the Appendix to the Convention).

838. The powers of the Commission cover all banking documents or information without exception. These include financial statements or other business relationships or transactions, including any analyses carried out by the financial institution to detect suspicious or unusual transactions. The obstruction offense is punishable under Article 52 of the Banking law by a fine of XOF two to twenty million (XOF 2 million to 20 million) and financial penalties depending on the delay in transmitting documents and information referred to in Article 53 of the law.

- **Central Bank of West African States**

839. Article 42 of the Banking law provides that banks and financial institutions are required to provide, at the request of the Central Bank, information, clarifications, explanations and documents necessary for the review of their situation and evaluation of the risks incurred, the lists of checks and unpaid bills of exchange and other payment incidents. Similarly, pursuant to Article 46, banks and financial institutions cannot oppose controls carried out by BCEAO. Confidentiality is not opposable. The obstruction offense is punishable under article 52 of the Banking law by a fine of XOF two to twenty million (XOF 2 million to XOF 20 million) and financial penalties depending on the delay in transmitting documents and information referred to in Article 53 of the same law.

- **Ministry of Economy and Finance**

840. MEF's powers to be provided with any document by financial institutions are especially carried out by Treasury and insurance administrations. Regarding the Treasury Department, Article 5 of Decree No. 103/MEF/DGCPT of 26 June 2000 laying down the procedures for control of currency exchange and financial relations with foreign countries, establishes the procedure relating to on-site controls. It involves the prior sending of a notice of passage for inspection, which shall specify the year and items subject to control. These elements necessarily include documents and other records essential for controls, as indicated in the respective audit reports. As for the DA (Department of Insurance), the right of communication comes from Article 310 of the CIMA Treaty, which requires insurance companies to provide CRCA with all documents and qualified staff to provide the information deemed necessary. Since DA carries out the powers of the CRCA at national level, it also enjoys the same prerogatives.

- **Regional Council for Public Savings and Financial Markets**

841. Pursuant to Articles 126 and 127 of the General Regulations on the organization, operation, and control of the UEMOA regional financial market, companies whose securities are listed on the BRVM are required to provide information to CREPMF. Some of the information relating to the activities and results of the companies are required within 3 months after the end of each year. Other information relating to financial statements are required within 45 days of their approval by the Annual General Meeting.

- **Regional Commission for Insurance Supervision**

842. The FCP may apply to insurance companies, pursuant to Article 310 of Appendix 1 to the CIMA Treaty, disclosure of all records and reports of the auditors. These companies are required to provide all documents, as well as qualified staff to provide the information deemed necessary. This provision can be understood as a right for CRCA, to request all the information it needs to perform its supervisory duties, but CRCA's right to access all insurance companies' documents and files should be registered more explicitly in the regulations. The obstruction offense is punishable under Article 333-14 of Appendix 1 of the CIMA Treaty.

Power not contingent upon a court decision (c.29.3.1)

843. The power of the various aforementioned authorities, in the production of documents and access to documents for the supervision purposes, is not subject to obtaining any court decision. To the extent that such power is general, it covers the transmission to supervisory authorities of all information and documents relating to the implementation of due diligence obligations relating to AML/CFT.

Enforcement and sanctioning powers (c.29.4)

- **UEMOA Banking Commission**

844. The disciplinary powers of the Banking Commission are explicitly provided for in Article 22 of the Appendix to the Convention Governing the Banking Commission. They entail issuing a caveat, either an injunction for the special purpose of taking, with a set time period, remedial measures, or any measures that the Commission deems appropriate, or to direct an external audit. Such actions result from the realization that a bank or financial institution has breached the professional rules of conduct on the territory of a Member State, or no longer meet the requirements for accreditation. A bank or financial institution that has not complied with this order shall be deemed to have violated banking regulations.

845. The Banking Commission has extensive and proportionate powers to prevent or require the regulation violations be corrected. For banks facing difficulties, it may in particular suspend or dismiss officers responsible, partially or completely revoke the license and appoint a liquidator (section 23).

- **Central Bank of West African States**

846. The sanctioning powers that BCEAO holds with regards banks and financial institutions are carried out by the Banking Commission. With regard to decentralized financial systems, BCEAO has its sanctioning powers concurrently with the MEF. In this context, it

imposes disciplinary sanctions ranging from a warning to a suspension or removal of officers responsible, through reprimand, suspension or denial of all or part of operations.

- **Ministry of Finance**

847. In addition to the sanctions for decentralized financial systems that do not comply with prescribed norms, the MEF is also empowered to take disciplinary and administrative sanctions in case of non-compliance with exchange regulations. These are laid down in Article 16 of Regulation 09/2010/CM/UEMOA of 1 October 2010 on external financial relationships of the Member States of the UEMOA and relating to license withdrawal.

- **Regional Council for Public Savings and Capital Markets**

848. Pursuant to Articles 30, 31, and 32 of July 3rd 1996 Appendix, CREPMF may impose penalties, administrative and disciplinary action against the perpetrator of any act, omission, or manoeuvre that would prove to be against the general interest of the financial market and its functioning. The amount of penalties depends on the seriousness of the misconduct and related benefits or profits from these actions. Administrative sanctions include a warning, the injunction for the purpose of taking, within a specified period, the necessary remedial measures. Disciplinary sanctions are: warning, reprimand, temporary or permanent ban of all or part of the activities, suspension or removal from office of leaders found guilty, temporary or permanent withdrawal of license or granted visa, or deletion from the professional list held by CREPMF.

- **Regional Commission for Insurance Control (CRCA)**

849. In the advent of non-compliance with insurance regulations, CRCA may urge the concerned company to take all corrective measures deemed necessary (section 311). Similarly, when CRCA notices any violation to insurance regulations among companies under its supervision, it imposes disciplinary penalties (Article 312 of the CIMA Treaty). These entail: warning, reprimand, limitation or prohibition of all or a part of operations, any other limitation in the carrying out the profession, suspension or compulsory resignation of managers found guilty, retrieval of license.

850. In addition, CRCA may impose fines and direct the compulsory transfer of the portfolio of contracts. In contrast, the regulation does not provide for any financial penalty in the event of non-compliance with prudential norms. Thus, an insurance company that would commit serious violation of their due diligence obligations, may be subject to no other coercive measure than a disciplinary one. Furthermore, prior to carrying out disciplinary powers, it may issue injunctions to insurance companies, particularly to restore or improve their financial situation or their control units.

Recommendation 17

Actual existence, proportionate and dissuasive sanctions (c.17.1)

- **The Banking Commission**

851. In the event of breach of banking regulations, the Banking Commission generally has proportionate and dissuasive disciplinary powers that it can flexibly use. Article 35 of the

AML Act gives it the opportunity to take corrective measures or impose a disciplinary sanction in case of breach of money laundering control and suspicious transaction reporting obligations. Prior to using these powers, it may send a warning or an injunction to credit institutions (section 27 of the Convention), particularly to restore or improve their financial situation or their control units. A Bank or Financial Institution that does not comply with such injunction is deemed to have violated banking regulation. Therefore, after having been heard or duly summoned or invited to submit its written observations, the Banking Commission can impose a disciplinary sanction, without prejudice of penal or other sanctions that competent courts might impose (art. 47 banking law and article 28 of the Convention, article 40 of the AML). Such measures include: warning, reprimand, suspension of all or a part of operations, limitations in performing the profession, suspension of leaders and withdrawal of license in the most serious cases (section 28 of the Convention).

852. In view of the above, the disciplinary powers of the Banking Commission seem utterly proportionate and dissuasive, but for lack of effective implementation, it is impossible to assess their efficiency. In effect, even though it is systematically the addressee of internal control reports, the Banking Commission does not permanently monitor entities in order to ensure that their mechanisms are compliant with norms. In using its general power for sanction, BCEAO may also sanction any MFI that has not set up a permanent internal control policy adapted to the nature, volume and size of business, as well as the risks involved. Such mechanism is required to include in particular the drafting of an internal procedure manual and a documentation specifying means to ensure proper functioning of internal control from the adoption of Circular No.02/M/10 relating to the May 4th, 2010 internal control. However, the absence of full exercise of the bank's disciplinary powers raises serious doubts about their effectiveness.

853. The application of disciplinary sanctions to fund transfer companies and other components of the financial sector should result in the proposition of sanctions that particularly take into account the seriousness and recurrence of the offence. If appropriate, it should lead BCEAO to use its faculty to inform the public prosecutor when, owing to a lack of due diligence or a shortcoming in the organization of its internal control procedures, a financial organization fails to report its suspicions.

- **Ministry of Economy and Finance**

854. Any violation of the provisions in laws and regulations applicable to MFI is subject to disciplinary, financial, and criminal sanctions, depending on the case (section 70 of order No. 2011-367). In fact, the Minister of finance, in the case of decentralized financial systems referred to in Article 44, and the Central Bank or the Banking Commission are empowered to impose disciplinary sanctions on the MFI. The sanctions it may impose depend on the nature and seriousness of the offenses committed, ranging from warning to suspension or compulsory resignation of concerned managers or to withdrawal, reprimand, suspension or prohibition of all or a part of operations or any other limitations in performing the profession. Sanctions must be motivated. No disciplinary penalty can be imposed by the Minister of Finance unless the party involved or its representative, eventually assisted by an advisor of their own choice, are heard or duly summoned or invited to submit their written observations. Similarly, articles 76 through 78 of the aforementioned order provides for criminal penalties.

- **Central Bank of West African States**

855. In the event of breach of regulations relating to UEMOA member states' foreign financial relationships, BCEAO might urge trespassing banks and financial institutions to make a non-interest-bearing deposit with them, according to the Banking Regulation Act. In case of delay in the constitution of this deposit or transfer of their currency holdings to BCEAO when they are required to, banks and financial institutions concerned will be liable to BCEAO for a default interest with a rate not to exceed 1% per day of delay. So, except for breaching cases relating to the external position of the above-mentioned banks and institutions, violations of this regulation will be identified, prosecuted, and punished in compliance with laws and regulations applicable in each UEMOA member state, as regards litigations on exchange control offenses. Without prejudice to sanctions provided for in the preceding paragraph, infractions to the aforementioned regulation that are committed by an authorized intermediary or an authorized foreign currency exchange operator can lead to withdrawal of their license. Similarly, proportionate and dissuasive criminal penalties are provided for in article 40 of the AML Act. However, according to information gathered by the mission working with the National Department of BCEAO in Côte d'Ivoire, no sanction has been imposed by BCEAO under the AML legislation since the enforcement AML/CFT legislation.

- **Regional Commission for Insurance Control (CRCA)**

856. The 1992 Treaty endows CIMA with a disciplinary power that it may implement when an institution violates the insurance regulation. Sanctions range from warning, withdrawal of the license, to temporary suspension or compulsory resignation of managers found guilty. They also include the possibility of financial measures and compulsory transfer of the portfolio of contracts. Prior to the application of such measures, the Commission may issue injunctions to insurance companies in particular to restore or improve their financial situation or their control systems. The lack of implementation of corrective measures within the prescribed time is punishable by penalties listed in article 312 of the CIMA Code.

857. Injunctions and penalties imposed by the Commission take the form of decisions taken after an adversarial procedure during which the Directors will have been in a position to submit comments.

858. The adoption of the September 28, 2009 CIMA regulation No.0005/PCMA/CE/SG modifying the insurance Code of CIMA member states gives supplementary powers to CRCA, which may also sanction any insurance company that has not established a permanent internal control system suited to the nature, importance, and complexity of its activities, including particularly the drafting of a manual of internal procedures (section 331-15).

859. Also note that decisions by the control commission are notified to companies concerned and to the Minister in charge of the insurance sector in the concerned Member State. The decisions shall be enforceable upon notification. However, the CRCA made limited use of its power of sanction, or even never as regards AML/CFT matters.

- **Regional Council for Public Savings and Capital Marrkets**

860. CREMPF has a general power of sanction against any person under its authority and control, specified by the provisions in the Appendix to the Convention and those of CREMPF general Regulation (section 30). So, pursuant to article 34 of the Appendix to the Convention

on administrative penalties, CREMPF may order the perpetrator of a practice contrary to the regulation to stop, or issue out a warning. If the injunctions are not complied with, CREMPF records the offense to the regulation and imposes one more financial penalties, the amounts of which are specified in article 31 (article 35 of the Appendix to the Convention). Financial penalties are imposed « depending on the seriousness of faults committed, omissions and offenses and in relation with benefits and profits gained from such acts ».

861. In other word, article 32 of the Appendix indicates that a financial penalty will be imposed by CREMPF against any person who, acting alone or together with other persons, has gained any advantage, particularly defined as a material profit or a loss avoided. The amount of financial penalties « will be determined by the general Regulation » (article 33 of the aforementioned Appendix). However, the regulation did not specify conditions under which the amount for financial penalties is set. So, for lack of a legal base, CREMPF is not in position to impose financial penalties.

862. According to article 35 of the Appendix, CREPMF also has power to impose disciplinary sanctions without prejudice to criminal or other incurred penalties when an offence to the regulation is found. Then, it may impose financial penalties in addition to incurred criminal and disciplinary penalties. Such penalties range from warning to temporary or definitive withdrawal of license or any delivered certificate. Powers of disciplinary and financial penalties are also recognized to both BVRM and DC/BR (articles 21, 31, and 33 of the general regulation).

863. CREMPF is required to also ensure that management and intermediation companies (article 54 of the general regulation) have established an internal control and designated a manager in order to ensure compliance with the rules applicable to them. However, specific penalties are not provided for in case of breach of this obligation.

864. In practice, no penalty has been imposed by CREPMF under the AML/CFT regulation.

Designation of an authority empowered to impose penalties (c.17.2)

865. Authorities empowered to impose penalties differ, depending on the criminal, administrative or disciplinary nature of the penalties. In fact, criminal penalties are exclusively imposed by judicial authorities. As for administrative and disciplinary penalties, they are imposed by :

866. Self-regulatory bodies, including DNFBPs (Disciplinary Board of the Council of the Bar Association, Chamber of Notaries, the Council of the Order of Chartered Accountants and Chartered Accountants);

867. Supervisory and monitoring authorities, in particular for financial institutions (BCEAO and the UEMOA Banking Commission for banks and financial institutions, CRCA and DA for insurance companies, CREPMF for financial market participants, MEF for FMI).

Applying sanctions to managers (c.17.3)

868. Penalties that apply to the banking and financial sector also apply to Corporate entities and for some of them, to natural persons acting on their behalf. In fact, legal persons on whose behalf or for whose benefit one of the offenses provided for by the AML legislation has been committed, are subject to a fine with a rate five times the amount of those incurred by natural persons without prejudice of conviction of the latter as perpetrators or accomplices of the same actions. That penalty is also without prejudice of other sanctions for a term of ten years at most, display of the decision imposed or dissemination in written press or by any audiovisual communication means (articles 42 of the AML Act and 38 of the CFT Order).

869. Articles 40 of the AML Act and 35 of the CFT Order provide for criminal penalties for a number of acts, intentionally committed, and for which persons and leaders or employees of natural and legal persons provided for by the FATF recommendations, are found to be guilty. Therefore, financial penalties range from XOF 100,000 to XOF 3,000,000 and prison terms from six months to four years.

870. Finally, under articles 42 of the AML Act and 38 of the CFT Order, legal persons other than Government – The Post Office for instance - on whose behalf or for whose benefit an organ or representative has committed an offense of money laundering or financing of terrorism, are subject to a fine with a rate five times the amount of those incurred by natural persons without prejudice of conviction, as perpetrators or accomplices of the same actions.

Broad and proportionate range of penalties (c.17.4)

- **The Banking Sector**

871. Article 47 of the banking Law and Article 28 of the Convention governing the Banking Commission provide for a broad range of penalties : written warnings, withdrawal of license, reprimand, suspension or prohibition of all or a part of operations, suspension or compulsory resignation of involved managers, replacement of managers and any other limitations performing the profession.

872. Articles 49 to 52 banking law provide for criminal penalties in the form of fine amounted between XOF 1,000,000 and XOF 50,000,000 and custodial sentences with a term of one month to five years. Article 54 of the law provides for a financial penalty consisting in periodic penalty payments for failure to submit documents and information to the Banking Commission and to the Central Bank. The amount of the periodic payment ranges from XOF 10,000 within the 15 first days to XOF 20,000 within the next 15 days and XOF 50,000 beyond this period.

873. Article 18 of the July 11th, 1997 Law No.97-397 relating to litigations on exchange control offenses provides for: an imprisonment term of one (01) to five (05) years, confiscation of the corpus delicti, confiscation of instruments used for the fraud and a fine not lower than the sum and not higher than five times the sum or value concerned by the offense or the attempted offense.

- **In the sector of insurance companies, Insurance Agents, brokers and other capitalization intermediaries**

874. CRCA imposes administrative police measures and disciplinary sanctions ranging from warning to withdrawal of approval, reprimand, suspension or prohibition of all or a part of operations, any other limitations in performing the profession, suspension or compulsory

resignation of managers involved (articles 16.c, 310, 311, and 312 of the CIMA Treaty). CRCA may, in addition, impose a fine and compulsory transfer of the portfolio of contracts. Articles 333-1 to 333-14 the CIMA Treaty also provide for criminal penalties, such as a fine of XOF 18,000 to XOF 7,200,000 and a prison term of eight days to five years. Similarly, a fine of XOF 180,000 to XOF 360,000 penalizes failure to transmit documents to supervisory authorities (under sections 333-12 and 333-14 of the Treaty).

875. As for insurance brokers, administrative and criminal penalties are provided for against them in articles 535 and 545 of Book V of the CIMA Treaty. The administrative penalty consists of withdrawal of license for obsolescence (Article 535). The criminal penalty consists of a fine of XOF 500,000 to XOF 5,000,000 and a prison term of six months to three years.

- **Sector of capital market participants**

876. Under administrative penalties, article 34 of the Appendix on the composition, organization, functioning, and powers of CREMPF provides for reprimand, injunction for the purposes of taking, within a specified period, the necessary remedial measures or any appropriate protective measure. Any participant who has failed to comply with this injunction is deemed to have violated the regulation. Disciplinary sanctions are also provided for in article 35 of the Appendix. They entail: warning, blame, temporary or definite prohibition of all or a part of the activities, suspension or compulsory resignation of managers found guilty, temporary or definite withdrawal of approval or any other delivered certificate or retrieval from professional lists held by CREPMF.

877. Financial penalties are also possible in compliance with compliance 31 of the Appendix, which provides that the CREPMF may impose financial penalties of an amount depending of the seriousness of offenses committed, omissions, and violations and in relation with the advantages and benefits gained from these actions.

Resources (Supervisory Authorities)

Recommendation 30

Adequacy of supervisory authorities' resources (c.30.1)

878. Overall, it results from the mission's interviews that regional supervisory bodies (CB, BCEAO, CREPMF, and CRCA) have a real functional autonomy in the execution of their supervisory mission. However, two observations must be made :

a) The number of supervisors is very low compared to challenges, their missions, the number of entities to supervise, and the geographical area of their jurisdiction. Beside the small number of prudential supervision annually conducted and the quasi absence of AML/CFT supervision, this lack of resources, human resources in particular, for effective execution of missions, can lead to questioning the reality of the autonomy ;

b) Nearly 10 years after the adoption first AML and CFT community legislations, none of the community authorities has conducted one thematic mission in this area, so much so that both competent and supervisory authorities suffer from a real lack of visibility on the effective implementation of AML/CFT mechanisms, by reporting entities.

- **UEMOA Banking Commission**

879. According to the Banking Commission's 2010 annual report, the staff was composed of 89staff (+6staff/2009), among whom 54 executives, all departments combined (total of 6 departments), 20 Inspectors for physical and on-site supervision of a population of 114 credit institutions and 30 micro-finance institutions in the region. Note that in 2008, the directorate of the inspection of credit and microfinance institutions (DIECM the Supervision had a staff composed of twenty two executives (- 4staff/2007) dispatched in five teams under the responsibility of a Chief of Mission, to carry out on-site controls while physical control was provided by a total staff of twenty five staff (+ 6 staff/2007) mainly composed of executives. This remark led to the increase of staff of the inspection which was about forty high officials by the end of November. Despite the increase in human capacity allocated to the banking commission announced after the onsite visit, the number of staff looked during the onsite visit very low knowing that no element regarding the evolution of the staff could be gotten. After the transfer of the banking Commission, the accountability of supervising the greatest decentralized financial system (DFS) networks. (about thirty for the zone, having more than 2 billions of assets-deposits or loans-in the minimum after two consecutive terms [46], But just one network is involved in Côte d'Ivoire), no significant increase of staff has likely taken place whereas they were far under staff given the size of financial institutions to supervise and « turnover » relatively high affecting its staff.

880. Moreover, the banking commission indicated that all control missions have an anti money laundering segment since 2002 and the main gaps would be monitored, however, it is clear that no thematic survey was carried out by the banking commission on AML/CFT issues. Likewise any of the credit institutions met received a follow up letter referring to gaps in their AML/CFT regime that need to be rectified.

881. In terms of instruments, the Banking Commission services do not yet have a computer-based instrument or a methodological guide allowing them to assess reporting entities' level of compliance with AML/CFT standards. Such situation is likely to affect early detection of money laundering and terrorist financing risks. In addition, the level of specialization of the Banking Commission staff members in the AML/CFT area might be unsuited as opposed to risks, given the small number of training sessions on this subject since AML/CFT laws were adopted (a training in 2012 on techniques of investigation and another one on AML/CFT supervision in 2010). It is appropriate to particularly underline that raising awareness among staff as part of AML/CFT meetings and seminars is not likely to provide them with precise knowledge and a sufficient level of practice. Several seminars attended by staff corresponded more to awareness-raising actions than actual adequate training. No statistics have been provided to give a clear idea on the number of staff who have benefited from those training sessions.

- **Central Bank of West African States**

882. The functions of the supervisory direction at the BCEAO headquarters include monitoring credit and microfinance institutions whose supervision is also incumbent to the Treasury Department at the Ministry of Economy and Finance. However, the mission was enabled to collect data on human and financial resources, computer-based and methodological instruments that BCEAO has on its disposal to accomplish its function as a monitoring entity (for banks, financial institutions, micro-finance institutions and foreign exchange companies).

46 BCEAO DirectiveN°007-06-2010 of 14 June, 2010.

- **Ministry of Economy and Finance**

a. Department of Treasury

883. The Department of Treasury is organized into five sub-departments handling respectively external finance, capital markets, monetary and banking affaires, treasury and financial affairs and the fight against financial criminality. The latter, recently created, is not operational (no director has been appointed yet).

884. Staff members dedicated to the DT includes some sixty staff, among whom close to thirty executives. The general obligations of state functionaries and staff, particularly those relating to respect of professional secrecy are applicable to this staff. This staff is also subject to a code of conduct whose enforcement is incumbent to its institution.

b. Department of Insurance

885. The DI comprises about ten staff members distributed into three sub-departments, in charge of monitoring insurance brokers, approvals, studies and statistics and supervision of insurance companies, respectively. Its material resources seem to be insufficient compared to the size of the population of entities under its authority and their geographic dispersion. The mission noted that the program for the controlling of 16 brokers in 2012 and 23 others in 2013 should eventually include an AML/CFT component.

c. Department of Microfinance

886. In 2011, the DM comprised 30 staff members as against 33 in 2009, among whom nearly 10 inspectors. The DM comprises three sub-departments in charge of approvals, monitoring of management, evaluation and reporting writing, respectively. The mission noted that only one staff was trained in AML/CFT in 2011.

887. In the DT (FINEX department, the microfinance Department and the exchange activities control office -), the mission was unable to collect any specific information on the number of staff dedicated to supervisions. But, based on the information provided, the lack of human resources, mainly in terms of on-site inspection, is obvious. Similarly, it is stated that some staff participated in some training and awareness-raising seminars on AML/CFT, on the initiative of CENTIF and CNSA – GIABA between 2007 and 2009.

- **Regional Council for Public Savings and Capital Markets**

888. The inspection staff consists of two staff assigned to the supervision of the market and a total of 5 inspectors, which seems appropriate compared to the market activity in the area and given the supervising role of BRVM. Similarly, one or two staff would have participated in AML/CFT training sessions. Therefore, CREMPF monitoring missions might be affected in the absence of those staff.

- **Regional Commission for Insurance Control (CRCA)**

889. For its missions, CRCA has a board of Commissioners. Expenses related to monitoring activities for insurance companies will be covered by resources that member States provide to CIMA for its general mission. It might worth noting that its financial resources are overall limited. In fact, budget constraints have led it to reduce the frequency

and intensity of its on-site inspections (2 insurance companies controlled in Côte d'Ivoire in 2011). Furthermore, the monitoring of the insurance sector remains weakened by the unclear delimitation of responsibilities between CRCA and the Insurance Department in collecting required documents and information for the implementation of an effective document-based supervision.

Integrity of Staff of monitoring authorities (c.30.2)

- **UEMOA Banking Commission**

890. Members of the Commission cannot engage in any activity in any credit institution. Moreover, they and persons participating in the functioning of the Commission are bound by professional secrecy and shall not be subject to any civil or criminal proceedings for actions performed as part of their duties. In this regard, the Banking Commission staff is subject to the same statutory rules as BCEAO staff, in particular on integrity and conflict of interest.

- **Central Bank of West African States**

891. According to BCEAO Staff statutes (articles 3 to 12),staff are bound by professional secrecy and shall exercise restraint and the greatest discretion on all matters related to the Bank's activities. The cessation of their activities, in any way, shall not relieve them from these obligations. These staff are recruited through competitive examinations, tests, selection based on application and/or interviews with a jury. They are required to enjoy full rights as citizens and be of good character.

- **Ministry of Economy and Finance**

892. The MEF staff members working in the various departments with AML/CFT responsibilities are subject to general civil service regulations. They are recruited through competitive examinations or on contract. All types of recruitments are made on the basis of submission of an application containing documents proving the moral integrity and competence of the candidate (criminal records, degrees, etc). When entering the administration, staff are bound to high professional norms, including observance of professional secrecy. Those working at the General Directorate of the Treasury and Public Accountancy are also subject to a Code of Ethics. The evaluation mission was not in a position to access it.

- **Regional Council for Public Savings and CAPITAL Markets**

893. CREPMF staff cannot exercise any paid or unpaid function in any institution directly or indirectly implicated in the functioning of the market. Moreover, they are subject to strict professional obligations, including the obligation of total discretion and professional secrecy. The ethical principles also require diligence, loyalty, neutrality, and impartiality in the performance of all activities undertaken by the market structures and commercial participants, directly or through their subsidiaries.

- **Regional Commission for Insurance Control (CRCA)**

894. In the course of their official duties, CRCA members neither seek nor take instructions from any government or any other body. Moreover, as members with voting rights, they are required to refrain from any act incompatible with the duty of integrity and discretion related to the exercise of their functions. Members, other than the Executive Director of CICA-RE,

shall not be remunerated by an insurance company during and two years after the expiration of their office term.

895. Members of the commission and other persons with no voting rights are bound to professional secrecy. The staff of the commission is subject to strict professional obligations.

896. While members of such authorities are subject to obligations of confidentiality, integrity, and to processes of assessment of their competence and performance on basis of orally transmitted reports, no document has been disclosed to the evaluation mission on this subject (rule of procedures, code of ethics …).

Supervisory authorities' staff training (c.30.3)

- **UEMOA Banking Commission**

897. At the regional level, members of the Banking Commission have participated in several seminaries related to AML/CFT issues. However, they attended only one training session specific to investigation techniques relating to AML/CFT in April 2012.

898. At international level, the Banking Commission staff participated in seminars by international financial institutions, such as the International Monetary Fund (IMF), the World Bank and the African Development Bank (AfDB). These seminars were about a variety of issues, including those relating to AML/CFT. However, no figures have been communicated to the evaluation mission.

- **Central Bank of West African States**

899. In terms of training on AML/CFT, the situation of the staff is identical to the Banking Commission's (see above). Since the adoption of the AML Act in Côte d'Ivoire, the staffs of the National Directorate of BCEAO have taken part in the various training sessions organized by entities involved in AML/CFT (GIABA, CNSA-GIABA, CENTIF…).

900. The latest training sessions entail financial investigation techniques on anti-money laundering and the seminar for the reinforcement and training of CNSA-GIABA members. It seems that no continuous training mechanism has been provided to ensure that all staff involved has updated knowledge about AML/CFT (BCEAO itself being bound to comply with the provisions of the AML/CFT Act).

- **Ministry of Economy and Finance**

a) Department of Treasury

901. The DT staff members have taken part in AML/CFT related training seminaries organized by competent national entities such as CNSA-GIABA and CENTIF. Furthermore, no information has been released on the implementation of a continuing training system.

902. Employees in charge of supervision (on documents or on site) of foreign exchange bureaus did not receive specific training relating to control of compliance with AML/CFT obligations. Training on the subject would be included in the activity programs of different authorities for the year 2012, but no information was given to mission. Therefore, it seems difficult to assess the adequacy and sufficiency of the training effort (for example the percentage trained/to be trained staff, the number of staff involved in the AML/CFT system) necessary for an efficient implementation of an effective supervision.

Existence of statistics (c.32.2)

903. Statistical data on the activity of supervision relating to anti-money laundering on the part of the national authorities met (BCEAO, Microfinance Management, Treasury and Insurance Management) is limited and should be enhanced. With the exception of data from the Management of microfinance relating to prudential regulations applicable to entities concerned, authorities have been unable to communicate any information on their actions in terms of: the monitoring and follow-up of recommendations, initial and continuous training etc.

Statistics from microfinance management

Year	Number of Microfinance institutions	Number of checks	Sanctions applied	
			Nature	Number
2008	105	42	Financial	52
			Disciplinary	18
			Provisional administration	4
			Withdrawal of authorization	7
2009	78	34		
2010	84	30		
2011	73	06		

Source: Management of microfinance

Analysis of Effectiveness

904. The disciplinary powers of these authorities are generally extensive, but in practice they are rarely implemented[47], when a decision is taken it is never published 48 which deletes the learning lessons related to the jurisprudence which enables to reporting entities to take on board the threat of sanction powers49 and grasp how provisions must be implemented.50. Moreover, The very limited number of sanctions imposed for violations of prudential regulation can be explained by the implementation of a phased and pedagogical approach to their disciplinary power. The mission considers, however, that the evolution of the ML/FT prevention mechanism, after the current period of awareness-raising and acculturation of those who are subject to legal provisions, should result in the imposition of disciplinary sanctions.

905. It should be noted that the repressive mechanism in Côte d'Ivoire, as in other UEMOA Member States, allows for the coexistence of two legal systems, the supranational legislature[51] for the determination of the offense on the one hand and on the other, each State Party for the determination of the criminal sanctions incurred. This situation is not satisfactory because it allows for a particular asymmetric treatment of the same criminal offenses and the risk of legal dumping resulting in a "forum shopping" behavior on the part of the financial

[47] No statistics on prudential sanctions taken against the reporting entities were communicated to the mission during its visit, with the exception of those imposed on microfinance structures. The most "recent" sanctions imposed by CREPMF date from 2002 (website).

[48] No administrative procedure seems to be governing the rules once administrative policy measures have been published or disciplinary measures meted out by the Banking Commission.

[51] Article 5 paragraph 2 of the Treaty on the Harmonization of Business Law in Africa (OHADA Treaty) provides that the uniform acts may include provisions for criminalization, while stating in the last paragraph that State parties shall ''determine criminal penalties.

institutions and investors in the regional market. The concern of investor protection on the regional financial market of the Union requires the adoption of a body of specific criminal laws which are common to the eight UEMOA countries and can penalize behavior that may disrupt the normal functioning and development of the regional financial market. Implementation of the regulatory mechanism for monitoring and enforcement in the various components of the financial sector is not satisfactory, because it is still too limited.

906. Supervision of financial institutions is in an embryonic state in the area of AML/CFT and non-existent in the areas of microfinance and insurance. The repressive regime is also not implemented. No corrective action or sanction for serious breach of AML/CFT norms has been applied in the financial sector.

907. In general, the number - clearly insufficient- of financial supervisors should be increased to cope with the additional load due to the integration of the fight against money laundering in their missions and the development of activities. In addition, a significant effort in training is also necessary for the acquisition of the required knowledge and skills in the area of AML/CFT for the implementation of consistent and well-targeted activities of document-based and on-site verification.

908. Finally, the mission notes that actors in the financial sector expect a greater involvement from the supervising public authorities, especially in the form of the dissemination of explanatory guides or guidelines.

3.10.2 Recommendations and Comments

909. In view of the aforementioned findings, it is recommended to:

- Reinforce the staff for supervisory authorities considering their missions, the number of financial institutions to supervise, the geographical area of their jurisdiction;
- Adopt specific provisions relating the fight against money laundering and financing of terrorism for the supervision of money transfer companies, especially by providing for clearly defined alert thresholds that will trigger the implementation of reinforced due diligence and possible thresholds beyond which professionals subject to the regulation would have to make suspicious transaction reports to the FIU;
- Consolidate government action geared toward bureaux de change, insurance brokers by providing the relevant services of the treasury department with human and technical resources necessary for the performance of the power of control and supervision, the scope of which will encompass all actors carrying out money transfer transactions;
- Implement all of the facets of disciplinary power, which will result in the imposition of disciplinary sanctions for serious breaches revealed by the performance of prudential supervision in the area of money laundering and terrorist financing;
- Determine the quantum of penalties for each category of regulatory offenses in connection with the operation of the regional financial market;

- Strengthen public policy geared toward licence currency exchange entities, especially in the field of supervision, by ensuring that the comparative advantages of actors involved in informal currency exchange are not increased, otherwise their activity could be strengthened;
- Provide non-financial professionals with guidelines in order to help them acquire better knowledge about the AML/CFT regime.

3.10.3 Compliance with FATF Recommendations 17, 23, 29, and 30

Rec.	Rating	Summary of factors underlying rating
R.17	**PC**	• No penalty imposed on financial institutions for non-application of provisions relating to AML/CFT, which makes it difficult to assess the deterrent effect of the proportionality of sanctions. • Lack of financial specific sanctions by a normative law for offenses related to the regulation of the financial market
R.23	**NC**	• Lack of effective surveillance at the microfinance level, insurance companies, and money remittance companies; • Absence of specific procedures regarding the control of the licit origin of capitals brought in during the establishment of a bank or financial institution, as well as process to verify beneficial owners. Similar situation for other reporting entities. • Circumvention measures related to all request for approval implemented by money remittance companies or foreign exchange bureaus not monitored by supervision and sanction authorities. • Absence of provision subjecting legal and natural persons of money remittance service providers or foreign exchange bureau to monitoring and control systems of their requirements on AML/CFT issues. and
R 25	**NC**	• Lack of guidelines or explanatory guide for each reporting entity. • Lack of adequate feedback information of competent authorities and the FIU to financial institutions on the best practices to follow.
R.29	**NC**	• Implementation of an inadequate prudential supervision; • NO AML/CFT monitoring, which should be conducted by the Banking Commission, the European Central Bank, the CRCA, and CREPMF?

3.11 Money or Value Transfer Services (MVT) (RS.VI)

3.11.1 Description and Analysis

Registration or approval (c.VI.1)

910. According to the regulations in force, in Côte d'Ivoire, money and value transfer operations can only be carried out by licensed and/or authorized intermediaries (banking and financial services of the Post Office, delegated money transfer companies). In fact, Fund transfer is considered a banking operation when Articles 2 and 7 of the Banking law are read together. In effect, *"are considered as credit institutions, legal persons who perform, as a usual occupation, banking operations. Are considered banking operations [...] the management of the means of payment and when those means of payment are put at the disposal of the customer [...]. " And "shall be regarded as means of payment, all instruments, regardless of the medium or the technical process used, that may enable any person to transfer funds; it is especially [...] transfers or direct debits, electronic transfers of funds."*

911. The performance of fund transfer operations is therefore caught within the banking monopoly pursuant to Article 13 of the Banking Law which states*: "No person shall, without first being approved and registered on the list of banks or financial institutions of a banking nature, carry out the activity defined in Article 2."*

912. From the foregoing, it follows that all providers (legal persons) of remittance services are subject, according to the law, to due diligence obligations relating to AML/CFT. In practice, money transfer companies[52] in Côte d'Ivoire perform de facto their activities without being licensed. Their activities are based on a partnership with banks and have, as such, their approval.

913. The answers obtained are not satisfactory with regard to the relationship between the provisions applicable to any company conducting money transfer operations and the present situation in Côte d'Ivoire. In this regard, it should be noted that fund transfer companies or phone companies offer this type of banking services on their premises using their own human resources and information/management systems, without a license or having taken any step toward acquiring a license[53]. They are, in fact, in violation of the regulation, in particular Article 2 of Regulation No 09/2010/CM/UEMOA relating to the external financial relations of the Member States of the UEMOA. According to this article: "[...] the movement of capital (issuance of transfers and / or receipt of funds) [...] in UEMOA between a resident and a non-resident, can be performed only through [...] an authorized intermediary [...]." The Capacity as approved intermediary, namely banks, is conferred by a decree of the Minister of Finance (Article 2 of the Regulation).

914. Meanwhile, approval and control authorities have not taken any steps to invite such operators to undertake the necessary actions to obtain approval and/or authorization to perform. They have not taken any action either to raise awareness with regard to their compliance with the AML/CFT regulation or to punish them if necessary.

915. Serious doubts arise after interviews by the evaluation mission as to the willingness of competent authorities to conduct any supervision over fund transfer operations. Indeed, the

[52] The money transfer companies operating in Côte d'Ivoire are mainly Orange Money and MTN mobile money, and at the international level, Western Union, Money Gram, Ria Envia and Money Express. Their activities can be practiced within the banks, the Post or on other premises by staff using technical means pertaining to those money transfer companies, or still within pre-existing businesses (dry-cleaning, cafeterias, travel agencies...).

[53] Those other legal persons who are bank staff, undertake activities that are in the framework of the activities of reporting entities and should be subject to duty of care.

mission was not aware of the existence of document-based and on-site controls carried out by competent authorities (BCEAO or the Banking Commission), or even by banking partner institutions, or by money transfer companies themselves.

916. In addition, the high concentration of the supply of financial services in Abidjan and in important urban centres have encouraged the establishment of instantaneous fund transfer service providers from the "informal sector" in some areas of the country where banking service offer is less developed. However, the number and volumes passing through these operators are not well known to authorities. The development of these activities by these operators is sometimes encouraged by banks looking for new clients. They seem to encourage the establishment of sub-agents across the country, especially where they do not have their own branches.

917. In this respect, the situation of the Post Office illustrates the situation in Côte d'Ivoire regarding money transfer. This institution offers money transfer services, without holding any banking license. It is not, either, subject to supervision by any designated competent authority with regard to the anti-money laundering and combating the financing of terrorism (AML/CFT).

918. No updated list of names, addresses of authorized MVT (money and value transfer) services was provided to the mission by the competent authorities.

919. In addition, the mission remains unconvinced of efforts by public authorities to promote the shift of operators from the informal sector to the formal sector. The same is true with measures against this phenomenon, which underscores the need for the authorities to immediately start considering legally-based norms relating to the management of these new risks, which would be appropriate to integrate[54] into the legal system.

Implementation of recommendations 4-11, 13-15 and 21-23 (c.VI.2)

920. No legal entity offering money transfer services, apart from credit institutions, or any person has been authorized by the Minister of Finance to operate MVT activities under Article 11 of the CTF ruling. Therefore, no mechanism has been established by entities receiving a sub-delegation, so that they may meet the general and specific obligations that apply to financial institutions in the prevention and detection of operations related to money laundering and terrorist financing (see below and above).

921. As such, the gaps identified in this section in conjunction with the FATF recommendations mentioned above are applicable. The two following remarks make it possible to put into perspective the indicated exposure to ML and FT of these unsupervised activities. Indeed, in some cases, credit institutions extend their internal procedures to fund

[54] In case of serious breaches to the rules relating to the fight against money laundering and the financing of terrorism (AML/CFT), civil, administrative, disciplinary, financial and / or criminal penalties may be imposed (Appendix of Art.28 of the Convention governing the UEMOA Banking Commission). Also, it seems useful to consider the possibility for representatives of a financial institution in Côte d'Ivoire to limit their criminal responsibility in an area under the ultimate responsibility of the leaders of a financial institution, what is more, by not reporting the evidence or the existence or contents of this delegation of authority insofar as the provisions of Article 15 of Regulation No. 09/2010/CM/UEMOAI on external financial relations of UEMOA States expressly provide otherwise "authorized intermediaries are responsible for ensuring compliance with the requirements laid down in this Regulation in respect of transactions through them or under their control."
Moreover, in cases of serious breaches, the legal mechanism could recall that the ultimate responsibility for operations performed as part of a delegation lies in the hands of the delegators.

transfer activities. However, the staff of these credit institutions responsible for supervision and monitoring is not in direct contact with customers using money transfer services that are performed at different locations, with transactions recorded in information and management systems of individual money transfer companies or telephone operators. So, they cannot ensure the proper execution of procedures required for anti-money laundering and combating the financing of terrorism (AML/CFT). Similarly, this finding is exacerbated by the fact that access to data and information about customers and money transfer transactions is limited in time and depth of information (no data centralization by customer, only by agency ...) available to those remittance companies or telephone operators. Therefore, any rigorous control over a period of more than two months is hardly feasible.

922. In other cases, money transfer activity would be "isolated" from the internal procedures of the credit institution and only the procedures for money transfer companies would be implemented. This does not, however, mean that the internal arrangements applied by these companies (especially in the detection of suspicious transactions) are sufficient and of good quality. The same applies as regards the rigor observed in the implementation of the required due diligence in the case of the money transfer operations they perform.

923. The mission concluded that no effective supervision is exercised over money transfer activities, either by BCEAO [the Central Banks of West African States], banks, or money transfer institutions themselves.

Control of persons or entities that provide services MVT (C.VI.3)

924. The banking supervisor has not conducted any monitoring operation over this line of activity. The national agency of BCEAO also believes that money transfer is carried out under the full responsibility of banks, which are the only institutions or entities authorized by law to exercise this activity. However, supervisory authorities of banks and financial institutions (BCEAO, the Banking Commission and the Ministry of Economy and Finance) declare that they take great care that the regulations are complied with, during monitoring missions in banks and financial institutions under whose responsibility most MVT services operate. Similarly, monitoring by BCEAO and the Banking Commission regarding money transfer activities would be performed by the ML/FT prevention programs developed by banks and financial institutions. These programs include monitoring operations for transfer funds and the review of annual reports of internal control over the execution of such programs (Article 17 of Instruction No. 01/2007/RB). These reports are actually expected to: describe the organization and resources of the institution in terms of prevention and AML/CFT; describe the training and information operations conducted during the past year; inventory monitoring missions completed to ensure proper implementation and compliance with procedures for customer identification; record keeping, detection and reporting of suspicious transactions; underscore the findings from investigations, etc.. However, no instructions or details have been given by competent authorities about the precise elements expected from the reporting of credit institutions or foreign exchange offices, about the expected information relating to the supervision of the activity of money transfer.

925. Finally, no bank has been able to communicate to the mission, information on the instructions and internal procedure manuals that money transfer companies would have. Similarly, these banks are knowledgeable about how to secure data entered into the information and management systems used by these money transfer companies.

Obligation to keep an updated list of MVT agents to be made available to the competent authority (c.VI.4)

926. Given the lack of effective implementation of an authorization/approval mechanism and the absence of effective monitoring exerted on the MVT service providers, no names of staff are entered on a list by the competent authorities. The same obtains with credit institutions and money transfer companies, the number of delegated or under delegated officers, their locations etc. In contrast, approved banks (with the exception of the Post Office which is not a bank) have an obligation to report operations performed, to the Administration for External Finance of the MEF and BCEAO (Article 14 of Regulation No 09/2010/CM/UEMOA / UEMOA relating to external financial relations of the Member States of the UEMOA / UEMOA). This suggests that information is transmitted as regards transactions carried out by their sub-agents and the latter.

Penalties applicable to persons or entities that provide services MVT (C.17.1-17.4 and c.VI.5)

927. In this context, monitoring and supervision authorities have never imposed sanctions pursuant to Article 16[55] of the aforementioned Regulation, to MVT service providers, which they still consider as being indirectly part of their jurisdiction, through the prism of banking institutions. For lack of any document-based monitoring mission in one of these institutions, sanctions cannot be imposed. Also, no penalty under the law relating to litigation of infringements of the rules of external financial relations has been taken.

928. Authorized intermediaries (delegating or licensed manual exchange banks) have also never been sanctioned for breaches of supervising obligations concerning the activities and operations of their related MVT under banking regulation (Articles 35, 40 and 42 of the AML Act, 28 and 38 of the CFT Order).

929. No statutory or regulatory provision confers a power of sanction to delegating authorized intermediaries vis-à-vis MVT service providers delegates. Under these conditions, it appears that the delegated service providers (money transfer companies and telephone operators) are completely outside the monitoring and supervision mechanisms which are a fundamental element of the AML/CFT mechanism.

Additional elements - Implementing the Best Practices (c.VI.6)

930. The Best International Practices for SR VI are not implemented in Côte d'Ivoire.

Analysis of the Effectiveness

931. There is no implementation of legal/regulatory controls and sanctions against those involved in this component of the financial sector. And yet, the volume of unit and overall cash that passes through these entities at the international level, but also within Côte d'Ivoire, thus overcoming the low rate of banking in some areas, is not negligible. Nevertheless, public

[55]"Violations of the provisions [...] are sanctioned by the BCEAO and the UEMOA Banking Commission under relevant provisions of the law on banking regulations in force in each Member State"

authorities have so far taken no control over these money transfer companies or telephone operators in Côte d'Ivoire.

3.11.2 Recommendations and Comments

932. Ivorian authorities should:

- Review the mechanism applicable to money and values transfer activities so as to make it more explicit:
- Submit to direct approval, the performance of this MVT activity for all stakeholders;
- Specify the responsibilities of the various actors with regard to money and value transfer so as to ensure a uniform implementation of the AML/CFT mechanism in the UEMOA zone;
- Adopt a more proactive approach vis-à-vis money transfer service providers from the "formal sector" to comply with the obligations of sr vi and, in this respect, engage their census, invite listed structures to get their situation sorted out or cease their activities lest they should be exposed to sanctions provided for by law, and finally ensure the effectiveness of the control exercised by authorized intermediaries on the activities they delegate;
- Give the general management of the treasury the responsibility for keeping a register listing MVT providers, and formalize actions to prevent the uncontrolled development of these activities in provinces by dealers with no training or expertise with regard to AML/CFT.

3.11.3 Compliance with FATF Special Recommendation VI

Rec.	Rating	Summary of factors underlying rating
SR VI	**NC**	• No approval issued by the central bank authorizing the performance of MVT service and tight against the development of an informal sector of money transfer service providers. • Lack at the level of competent authorities of a regime of supervising of the activity of the service providers of MVT and compliance; • No updated list of staff at the level of competent authorities.

4. PREVENTIVE MEASURES – DESIGNATED BUSINESSES AND NON FINANCIAL PROFESSIONS

4.1 Customer Due Diligence and Record Keeping Obligation (R.12) Under R.5, 6, 8-11 and 17 (Only Items Relating To Sanctions)

General description of laws and other measures, situation or background

Scope of application

933. Measures to combat money laundering and the financing of terrorism are essentially established by law No. 2005-554 of July 2nd 2005 relating to the fight against money laundering and order No. 2009-367 of December 12th 2009 relating to the fight against terrorism financing in Côte d'Ivoire. The provisions of the two aforementioned texts apply to " natural or legal persons who, as part of their profession, perform, monitor, or give advice on transactions involving deposits, trade, investments, conversions, or any other movement of capitals or any other asset" (Article 5 of the AML Act and art. 3 of the CFT Act). This legal provision subjects Non-Designated Businesses and Professions including:

a) Members of independent legal professions, when they represent or assist clients out of any legal procedure, particularly in the following activities:
   - Purchase and sale of assets, businesses or trade funds;
   - Handling of money, securities or other assets belonging to the client;
   - Opening or management of bank, savings or securities accounts;
   - Setting up, management or running of companies, trusts or similar structures and performing of other financial transactions.

b) Other reporting entities, including:
   - business contributors to financial institutions;
   - auditors;
   - estate agents;
   - dealers in high-value items, such as works of art (paintings, namely masks), gems and precious metals;
   - cash transporters;
   - owners, directors and managers of casinos and gambling establishments, including the National Lottery;
   - travel agencies;
   - Non-Governmental Organizations.

934. Although the list of reporting entities does not seem exhaustive, it is noted that the law does not fully cover Non-Financial Designated Businesses and Professions by the FATF (Financial Action Task Force). In fact, chartered accountants are not expressly subject; only auditors are designated. Apparently chartered accountants are subject to the anti-money laundering requirements only in their activities as auditors, which are marginal. Besides, persons operating as free-lance accountants (apparently the case of chartered accountants) are not expressly subject. Similarly, service providers in companies and trusts are not subject. As of now, Côte d'Ivoire does not recognize the possibility to create trusts or other legal constructions of the kind.

935. Finally, the mission met with representatives of DNFBPs as well as their supervisors and regulators. However, as far as high-value merchants are concerned, such as artwork (paintings, namely masks), dealers in gems and precious metals and business contributors to financial institutions, the mission could only meet the authorities in charge of their supervision and control. This is justified by the absence (at least formally) of such professions in the economic structure of Côte d'Ivoire.

Identification requirements of customers applicable to Designated Non Financial Businesses and Professions (c.12.1)

936. The provisions in Caps II and III of the AML Act relating to preventive measures in financial institutions, within reasonable proportions, apply to DNFBPs. More specifically, the DNFBPs as legally defined are expressly subject to the following requirements:

- Compliance with exchange regulations (art. 6);
- Special monitoring of certain operations (art. 10);
- Disclosure of documents (art.12);
- Reporting of suspicious transactions (art. 26).

937. The requirements relating to the customer due diligence are provided for in article 7, indents 2 and 3 of the AML Act. Pursuant to indent 2, "the verification of the identity of a natural person is conducted on the basis of the presentation of a valid national identity card or any valid original official document in lieu thereof, with a photograph, and a copy of it. The verification of the person's business and home address is conducted on the basis of the presentation of any document that can give evidence for it. If the person in question is a trader, s/he is required to provide any supplementary document certifying registration in the Trade Register and Personal Property Credit." Indent 3, which deals with legal persons, states that "the identification of any legal person or any branch is conducted on the basis of the presentation, on the one hand, of the original document or exemplified or certified copy of any act or extract from the Trade Register and Personal Property Credit, particularly certifying its legal establishment and its registered office and, on the other hand, the responsibilities of individuals acting on its behalf."

938. A prior report of the mission consists in emphasizing that the AML Act and CFT Order are generally unknown in the sector of DNFBPs in Côte d'Ivoire. None of the DNFBPs met seems to adequately implement the required provisions. There has been no effective awareness-raising for them. Similarly, no communication on the subject has been made by the authorities responsible for the supervision and control of the professions listed by the law.

- **Casinos and gambling establishments**

939. The mission visited the only registered casino by public authorities in Côte d'Ivoire. It is formally subject to AML regulations in force. In fact, article 5 of Law No. 2005-554 of December 02, 2005 relating to AML includes in its area of application, "any legal or natural person, who in the framework of their profession, makes, controls or provides advice in transactions leading to deposits, exchanges, change or any other capital movements". However, detailed provisions of the said article target more specifically owners, directors, and managers of casinos. Moreover, Article 15 of the AML Act imposes requirements to managers, directors and owners of casino, which is different from the natural person. In fact in case of lack of respect to the AML requirements, the sanctions provided for cannot be applied to natural persons. Besides, online casinos are not covered. Similarly, no law or regulation in Côte d'Ivoire regulates their case. On the other hand, gambling establishments, including national lotteries, are concerned with the indicated provisions.

940. Thus, in addition to the general requirements for customer identification, article 15 of the AML Act provides for specific requirements at the expense of managers, directors, and owners of casinos, consisting in:

a) Justifying to the public authority, as of the date of the application for opening, the legal origin of the funds required for set up the establishment;
b) Making sure of the identity, on the basis of the presentation of a valid national identity card or any valid original official document in lieu thereof, with a photograph, and a copy of it, of stakeholders who purchase or exchange gambling counters or chips amounting to XOF 1,000,000 or more and whose exchange value is equal or superior to such sum;
c) Recording in a special register, in chronological order, all transactions referred to in the abovementioned indent, their nature and amount, indicating the stakeholders' full names as well as the number on the identity document presented, and keeping such register for ten (10) years after the last transaction is recorded.

941. In the instance where a casino or gambling establishment is controlled by a legal person who owns several subsidiaries, gambling counters are required to identify the subsidiary through which they are issued. And in no case, can gambling counters issued by a subsidiary be reimbursed by another subsidiary, whether the latter is located within the national territory, in another Member State of the Union or in a third State. Similarly, the customer identification threshold of a casino set by the AML Act amounting to One Million (XOF 1,000,000) is lower than the norm required by the FATF (USD/EUR 3,000). It therefore appears more restrictive in Côte d'Ivoire.

942. The provisions in Decree No. 98-371 of June 30, 1998 relating to the regulation of gambling establishments, as amended by Decree 2009-29 of February 12, 2009, make provisions similar to those in the AML Act, namely that « admittance into the gaming rooms is subject to presentation of an identity document». Articles 14 and 16 of the text provide that games can only be practiced in legal tender. The amounts are represented by:

- XOF currency banknotes and coins or foreign currencies expressly authorized by the Minister of Economy and Finance;
- Counters or chips provided by the Establishment;
- Any stake based on the gambler's word is strictly forbidden.

943. Gambling establishment staff is also forbidden to take part in it, either directly or through an intermediary. This applies to managers, shareholders, and creditors of the gambling establishment. Gambling establishment staff is also forbidden to lend money to gamblers.

944. The mission has noticed that the manager of the only officially recorded casino registered as such by public authorities had full knowledge of prevention and detection measures as recommended by the Law relating to the fight against money laundering. However, because it did not receive statistical data and other requested documents, the mission has no element to assess the implementation of due diligence measures relating to recommendation 5.

- **Estate agents**

945. The real estate profession is regulated by the provisions in Decree No. 79-718 of October 02, 1979. The framing of this text does not quite meet the requirements of the fight

against money laundering and terrorist financing. It only targets professionals working in the area of real estate, including estate agents who are required to be in compliance with a number of due diligence measures set by the provisions in Law No. 2005-554 of December 02, 2005 and order No. 2009-367 of November 12, 2009. However, the required due diligence does not prevail in real estate business relating to exchange, lease or sublease.

946. In addition, the activities in the real estate area are subject to compliance with exchange regulations in the context of exchange transactions, capital movements, and regulations of any kind with a third State. Moreover, article 10 of Law No. 2005-554 recommends special monitoring for certain transactions relating to cash or bearer securities payments and any transaction amounting to ten million (XOF 10,000,000) or more conducted in unusual conditions.

947. The mission has noted a lack of sensitization among estatestaff and ignorance of their due diligence obligations. Similarly, the provisions do not impose on estatestaff the obligation to identify the economic eligible party. In addition, land management by local authorities, including the issuance of village certificates are really exposed to the risk of money laundering in the real estate sector. However, the mission points out that a draft revision of the land code is being carried out, in order to improve the management and supervision of the real estate sector.

- **Dealers in gems or precious metals**

948. The dealer is defined as a natural person who purchases gems in mines for resale to syndicates approved for that purpose. The profession of dealers is not recognized in Côte d'Ivoire, nor is it regulated. No activity in this sector requires prior authorization for the exercise of the function. However, the potentialities do exist as Côte d'Ivoire is a producer of precious metals (see SR.IX). Artisanal mining is practiced, thus making the control difficult.

949. Persons generally involved in the trade of or organizing the sale of gems and precious metals are subject to the requirements of the fight against money laundering and terrorist financing, as are applicable to DNFBPs. The implementation is lacking, owing to the lack of sensitization of the actors in the sector on their relevant obligations. Meanwhile, it is important to note that decree n ° 96-634 of August 09, 1996 fixing the implementing rules of law n ° 95-553 of July 18, 1995 concerning Mining Code, relating to the import and export of rough diamonds with a view to implementing the Kimberley Process more or less frames the mining sector.

950. Moreover, it is important to note that the FATF norms require due diligence on the part of dealers of gems and precious metals, when they engage in cash transactions amounting to 15,000 Euros or more with a customer. Yet, neither the AML/CFT Act nor the CFT Order specifies a threshold where due diligence requirements for the profession are triggered.

- **Lawyers, solicitors, other independent legal professionals and accountants**

951. In compliance with article 5 of the AML Act and article 3 of Order No. 2009-367 of November 12, 2009, members of independent legal professions are subject to due diligence measures when they represent or assist clients outside any legal procedure, particularly in the following activities:

    - Purchase and sale of assets, businesses or trade funds;

- Handling of money, securities or other assets belonging to the client;
- Opening or management of bank, savings or securities accounts;
- Setting up, management or running of companies, trusts or similar structures and performing other similar operations.

952. The FATF requires DNFBPs to specifically comply with customer due diligence measures set out in criteria 5.3 to 5.7, but they may determine the extent of such measures depending on the level of risk associated with the type of customer, business relationship or transaction. It must be recognized that within the independent legal and accounting professionals, ownership of such a mechanism is yet to be effective. Some professionals seem to challenge the very principle of their reporting obligations, on the grounds that it would be contrary to their professional ethics based on observance of professional secrecy (Lawyers).

953. There are between 500 and 600 lawyers in Cote d'Ivoire. The profession is exercised individually or through the establishment of law firms or associations. It is governed by Law No. 81-558 of 27 July 1988. Some professionals met by the mission, in particular representatives of the Bar Council, were more or less aware of the AML/CFT system following seminars organized by CENTIF/CNSA-GIABA. However, the Bar itself has recognized the need for awareness-raising and training on AML / CFT of a larger number. The Bar further thinks it is appropriate to conduct a study to strike a balance between the AML/CFT requirements and the protection of professional secrecy which is the responsibility of the lawyer.

954. The overall picture that emerges from the interviews of the mission rather indicates that lawyers and independent legal professions in Cote d'Ivoire are yet to take action to implement their AML/CFT obligations (including measures covering the identification and verification of customers' identity). In addition, since the profession does not have a code of ethics, a project is under way to remedy this shortcoming.

955. With regard to **Notaries**, the Chamber of Notaries of Côte d'Ivoire has approximately 200 members with a greater concentration in Abidjan. The legal profession is governed by Law 69-372 of 12 August 1969 on the status of notaries, as amended and supplemented by Law No. 97-513 of 4 September 1997.

956. Notaries are public officers appointed to record all documents and contracts onto which the parties wish to bestow the authenticity linked to documents issued by public authorities and to guarantee the date, to file and issue executor copies.

957. In accordance with Article 24 of the law on the status of notaries, the name, status and domicile of the parties must be known by notaries who, failing that, shall carry out under their responsibility any necessary verification in order to ensure their identification. In the latter case, reference should be made in the audits performed. According to the provisions of Article 25 of Law 69-372, all acts must state the full name, position and residence of the parties and their witnesses when their presence becomes necessary.

958. The Notaries met with recognized the importance of their profession in the fight against money laundering and terrorist financing. Therefore, they were not reluctant to comply with the system. However, they state they are yet to implement the required

obligations. It seems that only two notaries have attended awareness-raising/training sessions organized by the CENTIF and CNSA-GIABA.

959. As a result, although aware of the challenges, notaries are yet to integrate due diligence for AML/CFT into their internal procedures in the performance of their duties (preparation of deeds, declarative clauses on the source of funds ...). According to information provided to the mission, only a small percentage of real estate transactions involving registered buildings/lots are handled by notaries. In general, payment of purchase/sale expenses shall be made under private document through simplified formalities.

960. Moreover, it should also be noted that non-compliance with the requirement to use non-cash means of payment in the notary offices, beyond a certain amount, increases the risk of money laundering in the profession.

961. Regarding **accounting professions,** the provisions apply only to auditors. The certified public accountants are excluded from the scope of the AML/CFT. However, the professionals met with showed no hostility to comply with the requirements. Similarly, the conditions governing admission to the profession of chartered accountant are governed in Côte d'Ivoire by Law n° 92-568 of 11 September 1992 establishing an association of chartered accountants and organizing these professions. The implementing decree n° 95-904 of 3 November 1995 specifies the procedures for the implementation of Law No. 92-568 of 11 September 1992.

962. Certified public accountants are authorized to attest to the truthfulness and conformity of the accounts for businesses that have entrusted such responsibilities to them, whether contractually or pursuant to legal and regulatory provisions. Certified public accountants may also analyze the position and operation of businesses from economic, legal and financial perspectives. It should be noted that at the time of the evaluation mission, there are 110 members in the Association of chartered accountants and registered accountants.

963. The Accountants met by the mission expressed a lack of awareness and training on AML/CFT in the profession. Lack of awareness of their AML/CFT obligations will result in non-implementation of requirements. There is no risk-based approach in the course of their daily activities. The professionals the mission met indicate that their firms work mostly with known and usual customers, on the one hand, and to the extent that the transactions go through banks, the risk would be minimized, on the other hand. They also argue that the certified public accountants do not have a code of ethics. However, discussions are under way on how to provide the profession with a code of ethics.

Implementation of Recommendations 6 and 8 to 11 in Designated Non-Financial Businesses and Professions (c.12.2)

964. For Recommendations 6, 8, 10, 11, obligations provided for financial institutions should also apply to DNFBPs. However, the provisions of Law No. 2005-554 of 2 December 2005 and Order No. 2009-367 of 12 November 2009 do not require DNFBPs to exercise ongoing due diligence with regard to their business relationships with politically exposed persons. Similarly, laws and regulations do not contain specific provisions requiring DNFBPs to implement appropriate risk management measures which long-distance business relationships are likely to present.

965. As regards the criteria of Recommendation 9, DNFBPs met by the mission said they do not use third party introducers. Therefore, there is no requirement for compliance with the customer due diligence measures. As for the record keeping requirements provided as part of AML/CFT, they specifically apply to financial institutions. However, professionals met reported to the mission that the professional standards of their respective professions require them to keep all records relating to customer identification and transactions made.

966. In addition, Article 12 of the AML Act provides that records and documents relating to the identification requirements provided for in Articles 7, 8, 9, 10 and 15 and whose retention is mentioned in Article 11, are communicated at their request, by the persons referred to in Article 5, to judicial authorities, government officials responsible for detecting and suppressing offences related to money laundering, acting under a court order, supervisory authorities, as well as the FIU.

967. With regard to casinos and gambling establishments, under Article 15 of Law No. 2005-554, they must:

- Record in a special register, in chronological order, all operations in an amount equal to or greater than one million FCFA, or whose exchange value is greater than or equal to this amount, their nature and amount, indicating the full name of the gamblers, and the number of the identity document presented and retain such register for ten (10) years after the last recorded transaction;
- Record in chronological order, all transfers of funds made between casinos and gaming establishments in a special register and retain such records for ten (10) years after the last recorded transaction.

968. Deficiencies identified under the analysis of compliance with the recommendations 6, 8, 10, 11 in Section 3 also apply to Designated Non-Financial Businesses and Professions. In addition, a general lack of awareness, and a lack of implementation of their AML/CFT obligations for all DNFBPs have been noted.

Analysis of Effectiveness

969. The mission noted that the professions of DNFBPs are generally regulated in Côte d'Ivoire. Likewise, access to the concerned sectors is subject to authorization by the competent authorities. The fact remains that significant efforts are still needed to sensitize professionals on their AML/CFT obligations (including professionals who do not have a professional organization likely to guide and support them in their efforts in this regard).

970. Only a few professionals in the DNFBP sector have been made aware of the AML/CFT, particularly within the framework of the activities of the FIU/CNSA-GIABA aimed at preparing the mutual evaluation of Cote d'Ivoire: notaries, real estate agencies, cash-in-transit companies, casino manager, public accountants and lawyers. However, no feedback has been made within their respective professions.

971. In general, the mission noted some difficulties in implementing their customer due diligence in the DNFBPs. The reasons given are: lack of guidelines for each category of DNFBP, absence of a risk-based assessment at the national level; difficulty determining whether a customer is a PEP; absence of analysis of specific risk associated with remote customer. As regards this last point, the interlocutors of CIT companies informed the mission that their transactions are made only within Côte d'Ivoire.

972. As regards record keeping, the professionals with whom the mission met note that documents relating to transactions with their customers, are kept for ten (10) years, in accordance with the enactment of laws governing these activities. There is no guidance on what should be kept as part of the implementation of due diligence measures for AML/CFT.

973. It emerges from interviews that lawyers, notaries and public accountants pay special attention to all complex operations involving abnormally large amount, or to transactions which have no apparent economic or lawful purpose. In this case, the activities would be restricted either to the refusal to perform the operation, or to a more thorough discussion to dissuade the client to continue the operation in the initial conditions.

4.1.2 Comments and Recommendations

974. Ivorian authorities should:

- Complete the list of DNFBPs subject to the AML/CFT requirements, incorporating accountants and chartered accountants;
- Strengthen the content of the AML/CFT obligations applicable to DNFBPs;
- Ensure a better knowledge and understanding of those obligations by DNFBPs and further stimulate their motivation to implement them effectively;
- Assist DNFBPs to have processes for identifying, assessing, monitoring, managing and mitigation AML / CFT risks.

4.1.3 Compliance with FATF Recommendation 12

Rec.	Rating	Summary of factors underlying rating
R12	**NC**	• Failure by accountants and chartered accountants to comply with AML/CTF obligations; • Lack of liability to all stakeholders operating establishments with games similar to those of the casino • Lack of formal obligations concerning the implementation of Recommendations 5, 6, 8 to 11 to the DNFBPs; • Absence of a risk-based assessment at the national level with respect to the DNFPB sector; • Lack of specific requirements on diligence with regard to politically exposed persons; • Lack of provision for the use of new technologies for AML/CTF; • Lack of obligation for casinos to identify the beneficial owner and take reasonable steps to verify the identity of the beneficial owner; • Lack of general awareness of the AML/CTF obligations and lack of effectiveness; • Lack of statistics to assess the implementation of registration measures concerning identification and transactions; • Deficiencies identified in the analysis of compliance with

		Recommendations 5, 6 and 8 to 11 in Section 3 relating to financial institutions apply to DNFBPs.

4.2 Suspicious Transaction Reports under Recommendation 13 to 15 and 21 (R.16)

4.2.1 Description and Analysis

975. DNFBPs are required to report transactions or attempted suspicious transactions from money laundering activities or participation in the financing of terrorism, as provided for in recommendation 13. Indeed, this obligation is provided for under Article 26 of Law No. 2005-554 of 2 December 2006 on AML and Article 18 of 2009-367Order of 12 November 2009 on CFT.

Application of the Suspicious Transaction Reporting Obligation (16.1)

976. Article 5 of the AML Act imposes obligations of prevention and detection of money laundering (Titles II and III of the Act) on DNFBPs. This applies to all occupations listed under the analysis of compliance with FATF Recommendation 12, except chartered accountants and registered accountants. Thus, under articles 26 of the AML Act and 18 of the CTF Order, DNFBPs are required to make suspicious transaction reports to the FIU, as part of their activities. This reporting is subject to the conditions set by the law and according to a reporting model set by decree issued by the Minister of Economy and Finance concerning:

- sums of money and other assets in their possession that might result from money-laundering and terrorist financing;
- asset-related transactions that might form part of a money-laundering process;
- sums of money and other assets in their possession suspected of being intended to finance terrorism and appearing to result from money-laundering operations.

977. This reporting obligation is based on subjective suspicion criteria. It also covers attempted suspicious operations when DNFBPs perform a transaction on behalf of a client without any judicial procedure.

Role of self-regulatory organizations (c.16.2)

978. The provisions of the AML Act and CFT Order do not explicitly specify the role of self-regulatory bodies in the implementation of reporting obligations. However, Article 26 of the AML Act provides that no report made to an authority in compliance with a text other than this law, shall have the effect of releasing the persons referred to in Article 5 from their reporting obligation under this article.

979. In practice, if no suspicious transaction report has been made by the concerned professionals, it is not possible to measure the involvement and role of self-regulatory bodies despite the clarification of the law in this matter.

Implementation of Recommendations 14, 15 and 21 (c.16.3)

Protection and prohibition of disclosure of suspicious transaction reports (c.14.1 and 14.2)

980. Articles 30 of the AML Act and 23 of the CFT Order protect reporting institutions which, in good faith, have provided information or made any report in accordance with the provisions of this law, shall be exempt from any penalty for breach of professional secrecy. Similarly, STOs are confidential and may not be disclosed to the owner of the sums or to the original of the transactions (art. 26 of the AML Act). And any person who intentionally discloses to the owner of the sums or to the originator of the operations referred to in Article 5, the reporting of suspicious transactions or the follow-up measures taken, shall be punishable by imprisonment of between six months to two years and a fine ranging from 100,000 FCFA to 1,500,000 FCFA.

981. In addition, CENTIF members and correspondents shall take an oath before assuming duties. They shall be required to respect the confidentiality of the information collected, which may not be used for any purposes other than those prescribed by law (Article 20 of the AML Act).

Internal control to prevent ML/FT (c.15.1 to 15.4)

982. Legislative provisions for implementation of internal control to prevent AML/CFT explicitly target financial institutions and do not strictly apply to DNFBPs. However, the AML Act indicates that Titles I and III apply to both the financial institutions and DNFBPs.

983. Regarding supervisory authorities, they are required by the provisions of law to specy in their respective fields of competence, where required, the content and rules for implementing programs for prevention of money laundering and financing of terrorism. They are also required to carry out, if necessary, on-site investigations to check that these programmes are properly implemented. In addition, these provisions explicitly apply only to financial institutions. In practice, DNFBPs have no internal control system. In this respect, Article 12 of the AML Act requires DNFBPs to communicate documents and material relating to the identification requirements and whose retention is mentioned in Article 11, at their request, to judicial authorities, State officials responsible for detecting and suppressing offences related to money-laundering, acting under a court order, to the supervisory authorities, as well as to the FIU. Similar provisions also exist in the context of the fight against the financing of terrorism.

984. Moreover, DNFBPs are not specifically required to provide an ongoing training for their employees and receive clear explanations of all aspects related to AML/CFT laws and obligations.

Special attention imposed on DNFBPs with regard to non-cooperative countries and territories (c.21.1 to 21.3)

985. No law or regulation requires DNFBPs to give special attention to business relationships and transactions with persons or institutions from countries which do not or insufficiently apply the FATF Recommendations.

Additional elements (c.16.4 and c.16.5)

986. Accountants are authorized to attest to the truthfulness and conformity of the accounts for businesses that have entrusted such responsibilities to them, whether contractually or

pursuant to legal and regulatory provisions. They may also analyze the position and operation of businesses from economic, legal and financial perspectives.

987. Accountants are not expressly covered; only the auditors are covered by the AML/CFT laws. Accountants would be subject to the AML/CFT obligations only in their auditors' activities, which are often marginal. Likewise, people who practise as public accountants in a self-employed capacity (which would be the case of chartered accountants), are not expressly covered.

Analysis of Effectiveness

988. The effectiveness of the AML/CFT system for DNFBPs sector is virtually nonexistent, in the absence of a general lack of awareness of their obligations in the matter. It could also be a lack of awareness of their vulnerability to ML/FT. In this regard, it should be noted that representatives of lawyers and notaries have clearly expressed their reluctance to report suspicious transactions to the FIU for fear of lack of confidentiality (with respect to the violation of their professional secrecy).

989. Furthermore, no DNFBP has made a STR to the FIU. This is partly due to the obligation of accountants to disclose to the prosecutor any offence noted in the performance of their duties, thus reducing their involvement in STRs to the FIU. Similarly, the respective self-regulatory bodies of DNFBPs make no effort to raise awareness and promote AML/CFT rules to the attention of stakeholders in their respective sectors.

990. It should also be noted that the implementation of recommendations 15 and 21 is not effective, as no legal or regulatory obligation is clearly specified in this matter for DNFBPs.

4.2.2 Comments and Recommendations

991. Ivorian authorities should ensure that DNFBPs:

- Have clear and operational guidelines from their self-regulatory bodies for the purposes of ownership and implementation of their AML/CFT obligations;
- Are sensitized enough to implement their STR obligations;
- Establish a mechanism for internal control and ongoing training in line with FATF Recommendation 15;
- Establish a mechanism to observe special attention to NCCT or countries which do not sufficiently apply FATF Recommendations in accordance with Recommendation 21.

4.2.3 Compliance with FATF Recommendation 16

Rec.	Rating	Summary of stakeholders justifying rating
R16	**NC**	• The obligation to make a suspicious transaction report applies to funds that are the proceeds of certain predicate offences, but not all offences as defined under Recommendation 1; • The obligation to report suspicious transactions does not expressly incorporate attempted transactions;

		• The degree of knowledge and ownership of AML/CFT obligations by DNFBPs is not satisfactory; • In the absence of STR, effectiveness cannot be measured. • Deficiencies identified under the analysis of compliance with recommendations 13, 14, 15 and 21 in Section 3 relating to financial institutions, also apply to DNFBPs.

4.3 Regulation, Supervision and Monitoring (R.24 & R.25)

4.3.1 Description and Analysis

992. . The table below lists for each DNFBP, the authorities in charge of its regulation, its control and monitoring as well as the legal basis of their powers, given that they are also subject to AML/CFT obligations under 2005 AML Act and 2009 CFT Order.

DNFBP	General legal framework	Regulatory/Supervisory Authorities	Scope of AML/CFT Laws
Lawyers	• Law No. 81-588 of 27 July 1988 governing the legal profession;; • Internal Regulation of the Bar; • Decree No. 68-399 of 3 September 1968 related to the Certificate of Aptitude for the Legal Profession(CAPA); • Decree No. 89-216 related to insurance, financial regulations, accounting and uniforms for lawyers (CARPA).	• Public Prosecution at the Court of Appeal; • Chairman of the Bar Association and Bar Council.	Yes
Notaries	• Law No. 69-372 of 12 August 1969 amended and supplemented by Law No. 97-513 of 4 September 1997 on the status of legal profession; • Decree No. 2002-356 of 24 July 2002 laying down the modalities for the enactment of 69-372 Law as amended and supplemented; • Internal Regulation of procedure of the Chamber of	• Senior Minister, Minister of Justice; • Public Prosecutor at the Court of Appeal; • Chamber of Notaries (Disciplinary Board of the Chamber).	Yes

DNFBP	General legal framework	Regulatory/Supervisory Authorities	Scope of AML/CFT Laws
	Notaries; • Orders of 11 January 2008.		
Chartered Accountants and Registered Accountants	• Law No. 92-568 of 11 September 1992 establishing an Association of Chartered Accountants and organizing these professions; • Decree 95-904 of 3 November 1995 setting the modalities for the application of Law No. 92-568 of 11 September 1992; • SYSCOHADA Uniform Act; • Internal Rule.	• Ministry of Economy and Finance; • Board of the Association of chartered accountants (Diligence and Ethics Commission, National Disciplinary Chamber).	No
Real estate Agents and Developers	• Law No. 99-478 of 2 August 1999 organizing the sale of building and real estate development; • Decree No. 79-718 of 2 October 1979 governing the profession of real estate agent, property manager and sales representative or business rental; • Decree No. 79-718 of 2 October 1979 governing the profession of real estate agent, property manager and sales representative or business rental; • Law No. 75-352 of 23 May 1975 related to business agents	• Minister of Housing Development;	Yes
Travel Agencies	• Decree No. 77-604 of 24 August 1977 governing the profession of travel agency;	• Minister of Tourism	Yes

DNFBP	General legal framework	Regulatory/Supervisory Authorities	Scope of AML/CFT Laws
	• Order No. 19/MT of 30 September 1977 setting the conditions for issuance and withdrawal of the professional authorization and licenses for travel agencies;		
NGOs	• Law No. 60-315 of 21 September 1960 related to associations; • Decree No. 2011-388 of 16 November 2011 organizing the Ministry of State, Ministry of Interior; • Decree No. 2011-387 of 16 November organizing the Ministry of State, Ministry of Foreign Affairs.	• Senior Minister, Minister of Internal Affairs; • Minister of State, Minister of Foreign Affairs	Yes
Dealers in precious metals or stones	• Decree No. 96-634 of 9 August 1996 setting the modalities for the application of Law No. 95-553 of 18 July 1995 on the mining code • Law 97-397 of 11 July 1997 related to disputes of exchange control offences	• Minister of Mines, Petroleum and Energy (General Department of Mines and Geology)	Yes
Cash couriers	• Decree No. 2005-73 of 3 February 2005 governing the private activities of cash security and transport	• Senior Minister of State, Minister of Interior	Yes

Casino supervision in the context of the fight against money-laundering and the financing of terrorism (c.24.1)

993. The opening and operation of casinos and other gaming establishments are subject to inter-ministerial authorization from the Minister of Economy and Finance and the Minister of the Interior and Security. The conditions under which casinos should be established are set in Decree No. 98-371 of 30 June 1998 governing gambling establishments.

994. Casino managers are required to obtain authorization prior to their engagement in any activity. Article 2 of Decree 98-371 of 30 June 1998 regulation gambling, as amended by Decree 2009-29 of 12 February 2009, stipulates that the request for authorization made by the licensee is addressed to the Minister of the Interior who submits it to review by a small committee comprising representatives from the Ministries of the Interior and Security, Economy and Finance, and Tourism. The authorization is granted for a maximum period of ten (10) years, by decree issued by the Council of Ministers upon joint report of the above-mentioned three ministers. Specifications are appended to the authorization decree. The authorization may be renewed for a period of up to three (03) years. It shall be considered in accordance with the same procedure as the initial request for authorization.

995. With regard to the procedure required for obtaining the approval of the competent authorities, this involves primarily submitting an application with supporting documents (birth certificate, criminal record not older than 3 months, certificate of nationality/certified copy of foreign passport, CV, passport photographs ...). An investigation of morality and financial security shall be also performed on the directors and staff prior to taking office. Shareholders are not covered.

996. Moreover, no provision mentions further steps to be taken to ensure that there is no link with a criminal organization, to assess the seriousness of the project financing and to verify the source and the reality of the funds likely to be used for the project, if necessary, to know the beneficial owner.

997. According to Article 23 of Decree No. 98-371 of 30 June 1998, regulating gambling establishments, the mission of supervision and control over gambling establishments is carried out by:

- Prefects and sub-prefects;
- Officials from the ministry of the interior and security specifically assigned to this task;
- Tax inspectors assigned to gambling supervision;
- The paymaster;
- The paymaster general and the treasury accounts;
- All other officials designated by special decision of the minister of the interior and security.

998. The persons so designated as such have free access to the premises of the institution to ensure strict compliance with the provisions of the authorization decree, specifications and all laws and regulations applicable thereto. Operators of gambling establishments are then required to submit to their control and investigation.

999. Article 25 of the Decree stipulates that the officials of the Ministry of the Interior and Security have an oversight duty over the premises in particular as regards the conditions for entry into the gaming rooms, opening and closing times, recruitment of staff, more specifically, their regularity and safety. As for officials of the Ministry of Economy and Finance, they are mainly responsible for:

- Monitoring commercial accounting, gaming-related accounting and the reporting made by the establishment in relation to the amount of the gaming revenue;

- Levying, by the most appropriate means, for the benefit of the public treasury..

1000. There is no supervisory regime intended to guarantee that casinos are effectively implementing the provisions relating to the AML Act and CFT Order. The audit engagement of the entire management of the establishment and operation does not exactly serve this purpose, although it contributes to it.

1001. Article 6 of Decree No. 98-371 of 30 June 1998 provides that in case of infringement of the provisions of the authorization decree, regulation or disturbance of public order, the Minister of the Interior may consider temporary suspension against the offending establishment. Similarly, in accordance with Article 35 of the AML Act, when, owing to a serious lack of vigilance or a shortcoming in the organization of his internal control procedures, a person referred to in Article 5 has disregarded his obligations under the prevention and detection of money laundering, the supervisory authority having disciplinary powers may act ex officio as provided by specific laws and regulations in force.

1002. During the interview with the operator of the lone casino officially opened and reported in Côte d'Ivoire, the mission was informed that three tax audits (unrelated to AML/CFT) were performed in five years. No inspection report was provided to the mission and the audits were obviously unrelated to AML/CFT. Therefore, in the absence of AML/CFT specific controls, the effectiveness of existing measures cannot be assessed.

Monitoring systems and control of compliance with the AML/CFT obligations applicable to other categories of Designated Non-Financial Businesses and Professions (c.24.2)

1003. The legal framework for AML/CFT in Côte d'Ivoire does not expressly provide for systems of monitoring and control of compliance with obligations by DNFBPs. Article 13 of the AML Act in its last paragraph, stipulates that "*the supervisory authorities may, in their respective field of expertise, if necessary, specify the content and modalities for the implementation of anti-money laundering programs. Where appropriate, they shall carry out on-site investigations to ensure that these programmes are properly implemented"*. However, this provision expressly refers only to financial institutions and not DNFBPs. However, one might consider that a monitoring and control mechanism can be defined for each DNFBP, based on the specific laws governing their professional activities (ethics) and requesting verification of their accounts (transparency). Likewise, for each DNFBP, texts governing its profession specify the authorities empowered to enforce sanctions in case of breach of AML/CFT obligations. However, these texts do not designate supervisory and monitoring authority empowered to identify and punish such violations.

1004. Moreover, since no control has been made, either in connection with the exercise of professions or in connection with the AML / CFT, the mission is not able to assess the effectiveness of the necessary powers of supervisory and monitoring authorities to fulfil their missions. Similarly, interviews with the professionals with whom the mission met have revealed an inadequacy of resources allocated to monitoring and control in general.

- **Lawyers**

1005. The Bar Council has powers to deal with any matter relating to the exercise of the profession and to ensure compliance with the duties of lawyers, and the protection of their rights. It is empowered, among other things, to exercise the profession under the conditions

provided for in Articles 90 et seq. of Law No. 81-588 of 27 July 1988 governing the profession of lawyer in Côte d'Ivoire.

1006. The Bar Council, sitting as a disciplinary board, punishes the offences and misconduct by a lawyer or former lawyer since at the time the acts were committed, he was registered with the bar association on the list of trainees or on the list of honorary lawyers. Thus, any violation of law, any breach of professional rules, any breach of integrity, honour and delicacy, even pertaining to extra-professional facts, exposes the lawyer who is the author to disciplinary sanctions listed in Article 101 of the aforementioned law (warning, reprimand, suspension (not exceeding three years, removal from the Bar or from the list of trainees or withdrawal of honorary title).

1007. In addition to the disciplinary procedure indicated above, the Chairman and the Bar Council have routine duties with regard to lawyers who allow them to check their bookkeeping (Article 13.9 of Law No. 81-588 of 27 July 1981 governing the legal profession). They are also required to submit their accounts upon request by the chairman of the bar (Article 21 of Decree No. 89-216 of 22 February 1989 related to insurance, financial regulations, accounting and uniforms for lawyers).

- **Notaries**

1008. The profession of notary is organized by Decree No. 2002 - 356 of 24 July 2002 setting the modalities for the implementation of Law No. 69-372 of 12 August 1969 on the status of notaries, as amended and supplemented by Law 97 -513 of 4 September 1997. Pursuant to Article 24 of the Decree, notaries are required to perform their duty with the most scrupulous honesty and utmost diligence.

1009. The Prosecutor and the Chamber of Notaries are responsible for checking the records of notaries. The Minister of Justice, the Prosecutor and the Chamber of Notaries provide supervision and general discipline of notaries. Thus, any violation of the laws and decrees, any breach of professional rules, any act contrary to honesty, honor or delicacy committed by a notary may give rise to disciplinary sanctions, without prejudice to any damages which may be allocated to the injured party, if applicable.

1010. Sanctions range from warning to dismissal, reprimand, temporary suspension and permanent ban. The warning and reprimand are issued by the Chamber of Notaries, seized by the Prosecutor. The temporary ban on professional practice is issued by the Prosecutor. As for the suspension for a period not exceeding six months or removal, it comes within the remit of the Minister of Justice.

- **Legal advisers**

1011. The supervisory authority of legal advisers is the Minister of Justice. Their self-regulatory body is the National Chamber of Legal Advisers which has disciplinary authority. It may take sanctions against its members and advises on all professional matters. Legal advisers are governed by Law No. 96-672 of 29 August 1996 governing the profession of legal advice. According to Article 11 of this law, the CNLA may warn and reprimand its members. Suspension and dismissal are within the authority of the Minister of Justice following a reasoned opinion from NCLA.

- **Chartered Accountants and Registered Public Accountants**

1012. The chartered accountants and registered public accountants are governed by Law No. 92-568 of 11 September 1992 establishing an Association of Registered Public Accountants and organizing these professions. On this basis, the association ensures ethical conduct and defends the moral and material interests of the professions they represent. It is made up of nine members whose role is to oversee the practice of the accounting profession.

1013. Under the auspices of the association, a National Chamber of Discipline shall be set up to prosecute and punish violations and misconduct committed by members of the association. Similarly, penal provisions are also laid down in Articles 69 et esq. of the Penal Code in case of illegal practice of the profession.

- **Real estate agencies**

1014. Decree 79-718 of 2 October 1979 governs the profession of real estate agent, property manager and sales representative or business rental. Activities performed by real estate agents are subject to the provisions of Law No. 75-352 of 23 May 1975 on business agents and the provisions of Decree 79-718 of 2 October 1979. They can only be performed by persons or entities authorized by order of the minister of Construction and Urban Development and holder of a business card.

1015. In case of violation of the regulations in force and the provisions of the decree referred to above, the withdrawal of authorization to practice the profession of real estate agent and sales representative shall be decided by order of the Minister of Construction and Urban Development.

- **People who usually embark on-trade or organize the sale of gems or precious metals**

1016. The implementing decree No. 2003 - 143 of 20 May 2003, of Law No. 95-553 of 18 July 1995 on mining code in Côte d'Ivoire, sets the conditions for import and export of diamonds, on the implementation of the Kimberley Process. Similarly, Article 92 of the Law on Mining Code requires holders of mining titles or beneficiaries of an authorization under the mining code, to comply with exchange regulations.

1017. The provisions of Title X of the Act, relating to offences and penalties, specify that engineers and sworn officers of the mining administration are responsible for the application of the mining code, under the aegis of the Minister of Mining. Their jurisdiction covers all research, mining operations and their dependencies. They are officers of the judicial police responsible for investigating and recording infringements of the mining code. This research may include body search.

1018. Moreover, Article 103 of the mining code provides that, whoever engages in unauthorized trading of precious metals and stones, shall be punished by a fine of 100,000 to 500,000 FCFA. Shall be liable to a fine of 2,500,000 to 5,000,000 FCFA and prison sentences ranging from two to five years, whoever engages or attempts to unlawfully engage in prospecting, exploring and exploiting precious stones and metals [under Article 65] (art. 106 of the Mining Code).

1019. The exploitation of mineral resources is a source of conflict of all kinds. This is also a sector where fraud and smuggling are organized, as well as corruption. It is important that the authorities put in place an effective system to control dealers in precious stones and metals.

Recommendation 25 (Guidelines for Designated Non-Financial Businesses and Professions other than those linked with STRs)

Guidelines for DNFBPs (c.25.1)

1020. It should be noted that no guideline has been laid down by the regulatory/supervisory or self-regulatory authorities of DNFBPs to specify the modalities for the implementation of due diligence and STRs for AML/CFT.

Feedback from the FIU and competent authorities (c.25.2)

1021. No STR was made by DNFBPs since the FIU has been established, hence the lack of opportunity to provide feedback.

Analysis of Effectiveness

1022. Notaries, lawyers and accountants are structured professions, with disciplinary and ethical rules. They should now integrate the AML/CFT dimension in the powers and skills vested in their regulatory and supervisory bodies. However, regarding casinos, real estate agents, dealers in precious metals and stones, are less organized and have difficulty in applying the AML/CFT rules which they are unaware of.

1023. At DNFBPs in general, no penalty system has been tested. Therefore, there is no tangible evidence that the authorities impose effective, proportionate and dissuasive sanctions when necessary. Consequently, the issue of monitoring and control of DNFBPs and implementation of sanctions is a challenge for the Ivorian authorities.

1024. Moreover, no guideline/operational guide have been issued by the competent authorities as part of the monitoring and control of DNFBPs.

4.3.2 Comments and Recommendations

1025. Ivorian authorities should ensure that:

- Casinos (including internet casinos) are subject to a comprehensive regulatory and monitoring regime to make sure that they are effectively implementing the AML/CFT measures as required by the FATF Recommendation The fight against non registered stakeholders should be organized;
- A competent authority responsible for the AML/CFT regulation and supervision framework is designated for each DNFBP. DNFBP controls should be implemented quickly and efficiently, and sanctions applied effectively, as appropriate;
- Guidelines are established to help DNFBPs to implement and comply with their AML/CFT obligations. These guidelines should in particular provide a description of ML/FT techniques and methods and identify possible additional measures that the

DNFBPs could take to ensure that their actions are effective;

- Outreach efforts continue for each DNFBP with regard to the existence of risk and vulnerability in their activity area.

4.3.3 Compliance with FATF Recommendations 24 and 25

Rec.	Rating	Summary of factors underlying rating
R.24	**NC**	• Complete absence of control by DNFBPs for AML/CFT; • Lack of general awareness of AML/CFT system for the regulation and supervision of DNFBP; • Non-implementation of sanctioning powers by competent authorities;
R.25	**NC**	• Lack of guidelines on AML/CFT; • No feedback from the competent authorities, for lack of STR by DNFBPs.

4.4 Other Non-Financial Businesses and Professions –Modern and Secure Funds Management Techniques (R.20)

4.4.1 Description and Analysis

1026. In the light of the risks and vulnerabilities facing certain sectors, the scope of the AML Act obligations (Article 5) and the CFT Order (art. 3) has been extended to other non-financial businesses and professions, other than those designated by the FATF. These include:

- Dealers in high-value goods such as precious stones (in particular paintings, masks);
- Cash couriers;
- Gaming establishments (other than casinos) and the national lottery;
- Auctioneers;
- Travel agencies.

Implementation of Recommendations 5, 6, 8-11, 13-15, 17 and 21 and other Non-Financial Businesses and Professions presenting AML/CFT risks

1027. It should be noted that the mission was able to meet only one cash-in-transit company and NGOs among these Non-Financial Businesses and Professions. With regard to associations and NGOs, their case will be addressed (see below) as part of the analysis of compliance with the FATF Special Recommendation VIII.

1028. According to AML Act, the AML/CFT legal obligations under the FATF recommendations listed above are applicable to other non-financial businesses and professions. These include due diligence (Articles 7, 8 and 9), the obligation to report suspicious transactions to the CENTIF (Article 26), the obligation to set up an AML internal program (Article 13). In implementing their obligation to report suspicious transactions, the law exempts reporting entities from any liability which may be incurred as a result of such statements when they were made in good faith (Article 30 et seq.) These non-financial

businesses and professions (other than DNFBPs) are subject to control and supervision from their authority.

- **Cash couriers**

1029. Private security services and transport of cash are regulated by Decree No. 2005-73 of 3 February 2005. Article 2, paragraph 2 of the Decree, defines the cash-in-transit company as any company that performs activity consisting of conveying and transporting funds and valuables.

1030. Under Article 4 of the above-mentioned decree, the transportation of funds and valuables shall be subject to prior authorization to be issued by order of the Minister of Internal Security. This authorization shall be issued upon recommendation by the Advisory Committee for the licensing of private security and in-cash-transit services. This Committee is presided over by the Director General of the National Police and comprises a representative of the senior commander of gendarmerie, a representative of the Director General of the Treasury and Public Accounting, the representative of the Director-General of Territorial Administration, the Director of Economic and Financial Police and two representatives of the employers of private security and cash-in-transit services.

1031. Article 38 of the aforementioned Decree requires cash-in-transit companies to provide a report to the supervisory authority, no later than 30 April of each year. This report must include a complete list of active employees, list of clients and the term of their contract, the year-end annual accounts, a copy of the tax return, a certificate of non fee indicating the amount of dues paid, issued by the National Social Security Fund (CNPS), a receipt for payment of an annual fee determined by joint order by the Minister of Internal Security and the Minister of Economy and Finance. Companies are also required to provide a quarterly activity report to the supervisory authority.

1032. Offences committed in respect of non-compliance with operating rules relating to Title III of the decree, shall be punished by the provisions of Title V. The supervisory authority may impose the penalties provided for in Article 50.

- **Travel agencies**

1033. According to Article 1 of Decree No. 19 MT of 30 September 1977 setting the conditions for issuance and withdrawal of professional accreditation and licensing for travel agencies, any natural or legal person wishing to open a travel agency must obtain prior approval from the Minister of Tourism. Decree No. 77-604 of 24 August 1977, governing travel agencies in Article 12, provides that the license or authorization may be suspended or revoked by the Minister of Tourism if one or more of the conditions provided for its issuance are no longer fulfilled, if the holder commits a serious offence, if the activity has not started within the six-month period after the issuance of the license and after notice from the Minister Tourism in the event of the cessation of company's business for more than a year.

- **Gaming houses (See above – R.16 concerning gambling establishments for complement)**

1034. Gambling houses fall within the sphere of the Ministry of the Interior which has supervisory and monitoring authority over gambling houses. They may face sanctions ranging from temporary suspension to withdrawal of approval.

- **Auctioneers**

1035. Auctioneers are governed by Law No. 97-515 of 4 September 1997 amending and supplementing Law No. 83-787 of 2 August 1983 on the status of auctioneers, and Decree No. 94-455 of 25 August 1994 supplementing Decree No. 83-1307 of 18 November 1983 laying down the modalities for the application of Law No. 83-787 of 2 August 1983 on the status of auctioneers. Under these acts, the National Chamber of auctioneers has been established exercising disciplinary authority over the corporation in conjunction with the Minister of Justice. Penalties applicable to auctioneers for non-compliance with their duties include warning and reprimand which can be issued both by the National Chamber of auctioneers and the Prosecutor and suspension and removal, which falls within the exclusive competence of the Minister of Justice.

Development of modern and secure techniques of money management (c.20.2)

1036. Directive No. 08/2002/CM/WAEMU on measures to promote banking and the use of non-cash payment made provisions aimed at encouraging the development and use of modern and secure techniques for conducting financial transactions. Indeed, Article 3 of the above-mentioned Directive stipulates that "all financial transactions involving amounts of money greater than or equal to the reference amount defined by reference BCEAO, between on the one hand, the individuals, companies and other private individuals and on the other, public and parasatals including the State, administrations, and businesses, are made by check or by transfer to an account opened at the financial services of the Post Office or a bank, unless there is another appropriate non-cash means of payment for the amount less than the reference one.

1037. Article 5 of the BCEAO Instruction 01/2003/SP of 8 May 2003 on the promotion of non-cash means of payment and determination of interest payable in case of default, sets the reference amount to 100,000 FCFA.

1038. In addition, Article 8 of Regulation 15/2002/CM/UEMOA on payment systems in the Union Member States provides that any natural or legal person established in a Member State with a regular income whose concept is governed by a directive of the Central Bank has the right to open a bank account, as defined by Article 3 of the Law on banking regulation (defining the bank), or with postal financial services.

1039. In the event of account opening refusal by three institutions successively, BCEAO may appoint a bank that will be required to open an account entitling minimum banking service.

Analysis of Effectiveness

1040. In light of the above, remarks should be made. First, the mission noted that no ML/FT risk assessment has determined the liability of the concerned professions. Then, these other NFBPs are neither sensitized nor guided (guidelines) to comply with legal obligations. Similarly, their supervisory authorities do not have the necessary resources to carry out their mission. And finally, since the compliance analysis presented deficiencies with respect to the

above-mentioned FATF recommendations for the financial sector as well as for DNFBPs, it seems logical that these deficiencies also apply to other NFBPs.

1041. Moreover, despite fairly consistent community rules with regard to efforts to develop modern and secure techniques of money management, it should be noted that the implementation of the measures provided for this remains problematic in Côte d'Ivoire, like other countries in the region.

4.4.2 Comments and Recommendations

1042. Ivorian authorities should:

- In general: consider the application to NFBPs of all recommendations made for measures in respect of due diligence, control and supervision for financial institutions and DNFBPs;
- Specifically: conduct a risk assessment in the sector of NFBPs, provide information and training sessions on AML/CFT; develop guidelines/operational guide to implement AML/CFT obligations; strengthen the policy for banking and use of non-cash means of payment.

4.4.3 Compliance with Recommendation 20

Rec.	Rating	Summary of factors underlying rating
R.20	**NC**	• Lack of general awareness and non-implementation of AML/CFT obligations; • Non-application of measures to promote banking and use of non-cash means of payment; • Lack of guidelines for better implementation of AML/CFT obligations by NFBPs.

5. Legal Persons, Legal Structures & Non-Profit Organizations

5.1 Legal Persons – Access to Beneficial Ownership and Control Information (R.33)

5.1.1 General description of laws and other measures, situation or background

1043. There are two main types of legal persons in Ivorian law: corporations and associations.

- **Corporations**

1044. The legal regime of legal persons, in particular that of commercial businesses in Côte d'Ivoire is set by the Uniform Acts of the Organization for the Harmonization of Business Law in Africa (OHADA), adopted on 15 December 2010, including those relating to General Commercial Law (AUDCG) and the Law of Commercial Companies and Economic Interest Groups (AUDSC- GIE). Under the OHADA Treaty, Uniform Acts are directly applicable in Côte d'Ivoire, notwithstanding any contrary internal provision.

1045. With regard to commercial companies, the following distinction should be made regarding capital companies and partnerships.

1046. ***Joint-stock companies or corporations*** are formed in consideration for capital contributions. The shares of associates called shares are negotiable and can be freely transferred *inter vivos* and *mortis causa*. Shareholders' liability shall not exceed the amount of their initial investment. Companies in this category include the public limited company (SA) and the limited liability company (LLC). In fact, a public limited company shall be a company in which the liability of shareholders is limited to the amount of shares they have taken and their rights are represented by shares. A public limited company may have only a single shareholder. A private limited company shall be a company in which the partners are liable for the company's debts up to the limit of their contributions and their rights are represented by company shares. It may be established by a natural or legal person, or between two or more individuals or entities.

1047. **Commercial or business partnerships** shall be established on an *"intuiti personae"* basis, i.e. taking into account the status of associates. The share of each partner called interest is normally an individual partner and is not transferable *inter vivos* or only under certain conditions. For these companies, there is the collective partnership and the limited partnership. Indeed, the ***collective partnership*** is the partnership in which all partners are traders and have unlimited joint and several liability for the company's debts. The share capital is divided into shares of the same nominal value. The shares may be transferred only with the unanimous consent of the partners. Any clause to the contrary shall be deemed to be unwritten. In the absence of unanimity, the transfer cannot take place, but the articles may provide a buy-in procedure to allow removal of the assigning partner. The limited partnership is a partnership in which one or more partners coexist and are jointly and severally liable for their own debts called "general partners", with one or more partners liable for social debts up to the limit of their contributions called "general partners" or "other partners", and whose capital is divided into shares.

1048. The OHADA law applicable in Côte d'Ivoire also provides two other types of corporations, namely the ***joint venture and the economic interest group***. The joint venture is a company in which the partners freely agree on the purpose, duration, operating conditions, shareholder rights, the end of the company, subject to there being no derogation from the mandatory rules common to companies, except those relating to legal personality. It is bound neither by the obligation to register in the Trade and Personal Property Credit, nor advertising. As the Economic Interest Group (EIG), its exclusive purpose is to implement, for a specified period, all necessary means to facilitate or develop the economic activities of its members, and to improve or increase the earnings from that activity. Its activities must be mainly related to the economic activity of its members and may not be only ancillary thereto. The EIG shall not by itself give rise to the realization or sharing of profits. It can be formed without capital. Like other forms of commercial companies, the EIG enjoys a legal personality and full legal capacity as from its registration in RCCM. Two or more natural or legal persons may constitute an EIG, including persons exercising a profession subject to a legislative or regulatory statute or whose title is protected. Members' rights cannot be represented by negotiable securities.

1049. It is worth mentioning another category of companies: the ***cooperative company***. Governed by the Uniform Act of OHADA related to cooperative companies, the cooperative company is an autonomous association of individuals voluntarily joined together in order to fulfill their common cultural, social and economic needs and aspirations, through co-ownership. Ownership and management are collective and power is exercised democratically

and according to cooperative principles. In addition to its co-operators who are the main users, the cooperative company can deal with non-cooperative users in the limits set by the statutes.

1050. A Cooperative Company is made up of co-operators who, united by the common bond on the basis of which the company has been founded, actually participate on a cooperative basis, in the activities of the company and receive shares in representation of their contributions. The purpose of the cooperative company determines its civil or commercial nature.

- **Associations**

1051. They are governed by Law No. 60-315 of 21st September 1960 relating to associations. In addition, the association is defined by this law as "a convention by which two or more persons put in common in a permanent way their knowledge or their activities with an aim other than that of sharing profits." To this end, two types of associations are provided for by the 1960 Act, namely declared associations and associations of public interest. Associations of people can be freely set up without prior authorization (for more details, refer to 5.4).

Action to prevent the unlawful use of legal persons (c.33.1)

Registration and advertising requirements

- **For companies**

1052. Under Articles 44 et seq of the AUDCG, legal persons subject by the legal provisions to apply for registration shall request, through the form provided, their registration within the month of their formation, from the Registry of the competent court within whose area of jurisdiction its registered office or principal place of business is situated. A registration number is assigned to them.

1053. This application must include:

- The name or designation as appropriate;
- Where appropriate, the acronym or sign;
- The activity or activities carried out;
- The form of the legal person;
- Where appropriate, the amount of the capital with an indication of the amount of contributions in cash and the valuation of contributions in kind;
- The address of the head office and, where applicable, that of the principal place of business and each of the other institutions;
- The duration of the corporation or entity as determined by its statutes or founding document, the names and personal domicile of partners having an unlimited liability vis-à-vis the company's debts including their date and place of birth, their nationality, if any, date and place of marriage, the matrimonial regime adopted and clauses demurral to third parties restricting the free disposal of property of the spouses or the absence of such clauses, as well as

actions for the separation of property;

- The names, first names, date and place of birth, home address of managers, directors;
- Board directors and partners with the general power to engage the legal person or group;
- The names, date of birth, domicile of statutory auditors when their appointment is provided for by the Uniform Act on the right of commercial companies and economic interest groups;
- or any other indication provided by a specific legal provision.

1054. The following supporting documents must be attached regardless of their form or support:

- A certified true copy of the Articles of Association or the Incorporation act;
- The declaration of regularity and compliance or notarized declaration of subscription and payment;
- The certified list of managers, directors, officers or partners having unlimited personal liability or having the power to bind the company or the legal person;
- A sworn statement signed by the applicant and attesting that he is not subject to any prohibitions laid down by Article 10 of the AUDCG. This statement is completed within 75 days from the date of registration by a criminal record or by the document in lieu thereof
- Where appropriate, prior authorization to exercise the activity of the applicant.

1055. Any natural or legal person not subject to registration in the Trade and Personal Property Credit Register because of the place of practice of his activity or registered office shall, within one month of the establishment of a branch as defined by the Uniform Act relating to commercial companies and economic interest group, or an establishment in the territory of one of the States Parties, request registration. This request made with the form provided for in Article 39 of the AUDCG is filed in the Registry of the court or competent body in the State Party in whose jurisdiction this branch is established. It should include:

- Where appropriate, its trade name, acronym or sign;
- The name of the branch or institution;
- The activity or activities carried out;
- The name of the foreign company owner of this branch or institution; its trade name, acronym or sign, the activities carried out, the form of the company or legal person, its nationality;
- The address of its head office; where appropriate, the name and personal domicile of partners with an unlimited liability vis-à-vis the company’s debts.

1056. Any legal person subject to registration in the RCCM who has not requested it in a timely manner, can not avail themselves of the legal personality until his registration. However, he may not invoke his absence of registration in the Trade and Personal Property Credit to evade the liabilities and obligations inherent in that status.

1057. Regarding checks and controls to be carried out, Article 66 provides that the clerk in charge of the Trade and Personal Property Credit Register shall have the responsibility of ensuring that applications and statements are complete and ascertaining the conformity of the information they provide to the supporting documents attached thereto. The Registrar shall exercise control over the formal validity of the request and the statement submitted to it. Where he notices inaccurate information or experiences difficulties in the accomplishment of his task, he may summon the applicant or registrant to collect all additional explanations and documentation.

1058. The RCCM shall be kept by the Registry of the court of competent jurisdiction, under the supervision of the President or a Judge delegated for this purpose. Its mission is to:

- Ensure that reporting entities and third parties have access to the information kept by the Trade and Personal Property Credit Register;
- Receive applications for a supplementary or secondary change as well as requests for deletion of the information entered.

1059. In addition, AUDCG requires, on the one hand, the keeping of a national register called National File, which centralizes all the information existing in the records of the registries of the courts, be kept and, on the other, a regional register by the clerk of the Joint Court of Justice and Arbitration (CCJA) of OHADA, located exactly in Abidjan. The mission noted that none of these two registers was kept.

1060. Finally, the Uniform Act concerning Trading Companies and the GIE (AUSCGIE) requires that the articles of association be established by notary's deed or by any deed offering guarantees of authenticity.

1061. The commercial courts were established by Decision No.01/PR of 11th January 2012 of the President of the Republic. As autonomous first degree jurisdictions, made of professional and non professional judges (consular judges, these courts are particularly empowered to deal with disputes among traders. They also have powers, with their local branches of the Trade and Personal Property Registry (RCCM). Until the Commercial are effectively established, the common law courts shall maintain their jurisdiction in trade matters.

1062. For the time being, only the Abidjan Commercial Court, established by Decree No. 2012-628 of 6th July 2012 shall be in operation.

- **For Associations**

1063. For the purposes of its incorporation, any association is subject to an obligation to report to the prefecture or the administrative district in which it is situated. The reporting shall make known the title and purpose of the association, the head office of its establishments and the names, occupations and addresses of those who, in any capacity whatsoever, are responsible for its administration or management. Two copies of the articles are attached to the declaration. Following this statement, the competent authorities carry out an investigation of morality and verification of information provided on the main leaders of the association before the recognition.

1064. Any registered association that wishes to get legal capacity shall publish in the Official Journal (OJ) an excerpt indicating its title, its purpose and its head office. Associations are

approved and registered with the Ministry of the Interior. Information relating to associations is publicly available at the prefecture or the administrative district where they are located.

1065. In addition, the CFT Order provides for specific due diligence requirements for Non-profit Organizations, which, by nature, take the legal form of association. These requirements include their registration, declaration of donations received, financial transactions and opening a bank account.

Access to the beneficial ownership information (c.33.2)

1066. As indicated above, some information on legal persons is publicly available through the RCCM. In any event, the competent authorities are empowered to access information, beyond those listed in the RCCM.

1067. According to the Ivorian party, the competent authorities have no difficulty in obtaining adequate, relevant and timely information on the beneficial ownership and on the control of legal persons. However, this assertion is not corroborated by the facts for the following reasons:

- Record keeping does not seem to be guaranteed throughout the national territory;
- Records are kept manually and the information contained therein are not subject to special audits;
- The requirements to maintain basic registers and documents have not been met;
- There is no national registry for centralizing information contained in local registers;
- The quality of information recorded and the absence of their regular update do not guarantee knowledge of beneficial ownership of legal persons, especially when the ownership structure is somewhat complex.

1068. The Ministry of Justice provided to the mission the following statistics on registrations, amendments and cancellations of commercial legal persons registered with the Registry of the Court of First Instance of Abidjan over the 2005-2012 period.

Period	Registrations	Amendments	Cancellations	Comments
2005	1103	NC	NC	NC : Not provided
2006	1403	NC	NC	
2007	1779	NC	NC	
2008	1926	NC	NC	
2009	1749	NC	NC	
2010	1919	855	3560	
2011	5559	778	28	
2012 (January-April)	1069	398	O5	

1069. The figures in this table give only a partial view of commercial companies actually active in Côte d'Ivoire. In any event, they cannot distinguish between types of most commonly used companies

Prevention of misuse of bearer shares (c.33.3)

1070. The General Regulation on the organization, operation and monitoring of the UEMOA regional financial market defines the securities. Indeed, Article 111 states: "Are considered securities for the purposes of this General Regulation, the securities issued by public or private entities, transferable by registration or delivery, which confer similar rights per category and provide direct or indirect access to a percentage of the capital of the issuing person or to a general claim on its property. As from the application of this General Regulation, all new issues and securities listed on Regional Stock Exchange to be dematerialized and held in the Central Depository / Settlement Bank". A directive was issued by the Regional Council to specify the time required for the dematerialization of all other outstanding securities.

1071. Moreover, according to articles 744 et seq. of the AUSCGIE, public limited companies may issue securities, stocks and bonds, in the form of "bearer or registered securities". For companies not making a public offer, the transfer of bearer shares can be done by simple delivery; the security holder is deemed to be the owner (article 764, paragraph I). In the case of companies making a public offer, the AUSCGIE provides that besides the simple delivery, bearer shares "may be represented by an entry in an account opened in the name of their owner and held either by the issuing company or by a financial intermediary authorized by the Ministry in charge of the Economy and Finance; the transfer may be carried out from account to account".

1072. The provisions of the OHADA text do not ensure that bearer shares issued by public limited companies are not misused. Similarly, the evaluation mission did not obtain any statistics to estimate the number of entities that have issued bearer shares, the number of bearer shares still in circulation and their current value in Côte d'Ivoire.

Additional elements – Access to beneficial ownership information of legal entities by financial institutions (33.4)

1073. As indicated earlier and in section 3 of this report, serious obstacles hinder access to information on beneficial owner by financial institutions, particularly:

- The often exhaustive or reliable nature of information maintained at the RCCM;
- Difficulties in carrying out audits due to lack of computerization of the RCCM and centralization of non operational data at the national Registry;
- The widespread use of fake documents.

Analysis of Effectiveness

1074. The legislation in force includes broader provisions defining categories of legal persons as well as their identification and registration requirements. However, the provisions are not properly implemented (also see section 3 of this report, particularly criteria 5.3,5.4 and 5.5). Indeed, record keeping within the registry of the Abidjan High Court, which the Mission visited, is manual. Besides, there is no national registry for centralizing information and their transfer to the regional registry done at the registry of the Common Court of Justice and Arbitration (CCJA) with headquarters in Abidjan. Because of this, the Mission could not certify the maintenance of the RCCM within the registry of all the designated jurisdictions.

1075. Furthermore, the information contained in the RCCM is rarely audited to ensure the exhaustiveness and compliance of documents to be produced. This information is not regularly updated, thereby compromising their reliability, aggravated by a criminal environment characterized by widespread use of fake documents (see statistics on supra predicate offences). In addition, recorded data are not always exhaustive. All these constitute bottlenecks to in-depth knowledge of beneficiaries or beneficial owners. According to available information, Commercial courts were established by Decision No.01/PR of 11th January 2012 of the President of the Republic. The registries of theses courts, which were not yet operational during the Mission's visit, are empowered to manage thee RCCMs.

1076. As regards associations, except when they are set up, the information available during their existence does not establish if they are controlled by persons for the purpose of money laundering or terrorist financing.

5.1.2 Comments and Recommendations

- National authorities are urged to implement all the OHADA texts, by ensuring:
  - Record keeping at the Registry of jurisdictions across the country;
  - Update of the data in the RCCM by the reporting entities;
  - Centralisation of information in the national registry to make it operational;
  - Recording of relevant information to determine the beneficial owners and the people who actually control the corporations;
  - Establishment of a mechanism for monitoring the implementation of their obligations by those subject to the RCCM.
- In addition, associations should be required to update information on their members, their operations and assets.

5.1.3 Compliance with Recommendation 33

Rec.	Rating	Summary of factors underlying rating
R.33	**NC**	• Limited verification of information collected at the Court Registry; • Exhaustiveness and reliability of records required not guaranteed; • Manual recording of RCCM and lack of national register for the centralization of information contained in the local registers; • Difficulty in tracing the beneficial owners of moral persons; • No mechanism for monitoring the implementation of their obligations by those subject to the RCCM ; • Difficulty in ensuring that bearer shares by public liability companies and not being misused; • Lack of statistics to estimate the number of moral persons that have issued bearer shares, the number of bearer shares in circulation and their current value; • Information on associations not regularly updated.

5.2 Legal Arrangements – Access to Beneficial Ownership and Control Information (R.34)

5.2.1 General description of laws and other measures, situation or background

Measures to prevent the unlawful use of trusts and other documents require adequate transparency concerning the beneficial ownership and control of trusts and other legal structures (c.34.1). Access to beneficial ownership information (c.34.2)

Additional elements - Access to beneficial ownership information of legal entities by financial institutions (c.34.3)

1077. The AML Act in Article 5 refers to "the creation, operation or management of [...] trusts or similar structures [...]" as part of the operations carried out by members of the legal professions subject to the measures for the prevention and detection of money laundering. This reference in the law might suggest that it is possible to form trusts in Côte d'Ivoire, but the authorities encountered told the mission that such mechanisms do not exist. No legal provision is planned to manage their establishment. The same applies to trusts.

5.2.2 Comments and Recommendations

1078. In Côte d'Ivoire, there are no legal structures such as trusts or trust funds. The professionals with whom the mission met confirmed this. Recommendation 34 is not applicable in Côte d'Ivoire.

5.2.3 Compliance with FATF Recommendation 34

Rec.	Rating	Summary of factors underlying rating
R.34	**NA**	• The Ivorian Law does not recognize legal structures such as trust funds and similar legal structures such as trusts and so their existence in Cote d'Ivoire remains uncertain according to some of the reporting entities. • The reporting entities have no record of any mechanism or structure belonging to this category in the exercise of their professional activities.

5.3 Non-Profit Organizations (SR.VIII)

5.3.1 General description of laws and other measures, situation or background

1079. The NPO sector in Côte d'Ivoire consists of associations governed by Law No. 60-315 of 21 September 1960 relating to associations. As mentioned earlier, the association is defined by the 1960 Act as "the convention by which two or more persons permanently pool their knowledge or their activities for a purpose other than share their profit". This law establishes two categories of associations in Ivorian law: declared associations, associations of public benefit. It states that members responsible for the administration or management of an

association should enjoy the citizenship rights of Côte d'Ivoire and not have been convicted resulting in the loss of civic rights or given a criminal sentence or penalty.

1080. The mission was unable to obtain figures on the exact number of associations operating in Côte d'Ivoire, their areas of intervention and financial resources available to them. However, figures provided by the Ministry of Foreign Affairs indicate that there are 118 NGOs in Côte d'Ivoire that have signed an establishment agreement with the State of Côte d'Ivoire. Foundations that have the legal status of an association are among these NGOs. The mission was unable to obtain specific information on foundations.

1081. Control over associations is carried out at the setting-up and during their operation.

- **Monitoring during constitution**

1082. For the purpose of its constitution, any association is subject to the prior declaration requirement to the prefecture or the administrative district in which it is situated. The declaration shall make known the title and purpose of the association, the seat of its establishments and the names, occupations and addresses of those who, in any capacity whatsoever, are responsible for its administration or management. Two copies of the articles are attached to the declaration. Following this declaration, the competent authorities shall carry out an investigation of morality and verification of information provided on the main leaders of the association before the recognition.

1083. Any registered association that wishes to get legal capacity shall publish in the Official Journal an excerpt indicating its title, purpose and headquarters. In addition, associations are licensed and registered with the Ministry of the Interior.

- **Monitoring during operation**

1084. During their operation, registered associations are required to report within the month any changes that have occurred in their administration or management, as well as any changes in their status. These amendments and changes are recorded in a special register to be submitted to the administrative or judicial authorities whenever they so request.

1085. In addition, Article 14 of the CFT Order imposes obligations of due diligence against NPOs in the fight against the financing of terrorism.

Review of the adequacy of laws and regulations relating to NPOs (c.VIII.1)

1086. The mission noted that no special review has been made by the Ivorian authorities in order to assess the adequacy of laws and regulations relating to NPOs.

Assistance to the NPO sector to protect against misuse for terrorist financing purposes (C.VIII.2)

1087. Ivorian authorities have not provided assistance to NPOs in order to: protect them against the risk of their use for terrorist financing purposes (i) promote transparency and foster public confidence in their administration and management (ii). Indeed, no risk analysis has been made in the sector or information awareness-raising campaign with all stakeholders of the NPO sector. Similarly, the CFT Order has not been disseminated within NPOs.

1088. Federations or unions of associations which play the role of self-regulatory bodies do not benefit from government support in the form of guidelines or training to understand and enforce the CFT Order obligations. Consequently, they are not able to provide AML/CFT support to their members and simply monitor compliance with the obligations imposed by the 1960 law on associations.

Supervision and monitoring NPOs because of the quantum of resources or international activities (c.VIII.3)

1089. The CFT Order provides regulation of NPOs, which ensures that the funds or other property collected or transferred through non-profit organizations are not diverted to support the activities of terrorists or terrorist organizations. Indeed, according to this text, any non-profit organization that wishes to collect, receive or order transfer of funds, must fulfill two main conditions. On the one hand, it should be entered in a register established for this purpose by the competent authority. The initial application for registration on the register includes the names, addresses and telephone numbers of any person responsible for the operation of the body, including President, Vice President, Secretary, Board Members and Treasurer as appropriate. On the other hand, it should communicate to the authority responsible for record keeping any change in the composition of the previously designated individuals (Article 14 of the CFT Act).

1090. Any cash donation to a non-profit organization, of an amount equal to or greater than one million (1,000,000) francs CFA shall be reported to the CENTIF by the record keeping authority. Any donation to a non-profit organization, whatever the amount, should also be reported to the CENTIF by the competent authority, when funds are likely to refer to a terrorist undertaking or terrorist financing.

1091. NPOs must comply with the obligation relating to record keeping in accordance with standards and submit their annual financial statements to the supervisory authority, within the six months following the closing date of their fiscal year. They deposit into a bank account opened in the books of an approved bank all sums of money handed over to them as gifts or as part of the transactions they are required to carry out.

1092. Without prejudice to any proceedings that may be initiated against them, the competent authority may order the temporary suspension or dissolution of non-profit organizations that knowingly encourage, instigate, organize or commit a terrorist financing offence.

1093. Preventive measures aimed at detecting terrorist financing activities are set out in section 16 of the CFT Order. Under this provision, the measures taken to detect money laundering shall automatically apply with regard to the financing of terrorism. To this end, a number of professions are bound by various obligations. These professions stem from the financial, legal and accounting circles and other sectors whose activities lead them to conduct, monitor or provide advice about transactions involving deposits, exchanges, investments, conversions or any other movements of capital or any other property. Members of these professions are subject to obligations of due diligence, record keeping, and setting-up an internal programme to fight against the financing of terrorism and STRs. Non-compliance with these obligations is punished by their supervisory authorities.

1094. It should be noted that, in practice, no mechanism is actually put in place in Côte d'Ivoire for the implementation of the obligations described above with regard to the control and supervision of NPOs.

Information held by NPOs and public access (c.VIII.3.1)

1095. As indicated above, the 1960 Act requires that information relating to the object and purpose of the activity and identity of leaders be contained in the reporting prior to the constitution of the association, then in subsequent amendment declarations. The prior declaration shall indicate the title and purpose of the association, the seat of its establishments and the names, professions, domiciles and nationalities of those who, in any capacity whatsoever, are responsible for its administration or management. To access the legal capacity, the association is subject to a disclosure requirement (publication in the official gazette of an excerpt from the declaration).

1096. Additional obligations are imposed on organizations that wish to enjoy the status of an association of public utility such as NGOs and that should apply to the Ministry of the Interior. After the authorization or recognition of public utility, the association must sign a settlement agreement with the State (Minister of Finance). It may contract, sue and receive gifts. NGOs must also sign a framework agreement with the Ministry of Foreign Affairs, which agreement determines the scope and modalities of their interventions and some special obligations they are supposed to carry out.

1097. With regard to foreign associations, the exercise of their activities on the Ivorian territory is subject to prior authorization from the Ministry of the Interior. Applications for authorization must include names, professions, domiciles and nationalities of senior members. They are prohibited from engaging in political activity and receiving donations from a foreign country.

1098. In terms of monitoring and control, the 1960 Act contains no provision requiring associations to draw up an account of revenues and expenditures or the financial account and the inventory status of their movable and immovable assets. Those requesting for the non-profit association status are asked to attach the “accounts for the last financial year” and a “status of the movable and immovable assets and liabilities” to the application. In a bid to produce the required elements (application together with the excerpt published in the official journal, statutes, list of members, financial accounts), this status can be granted after review of the application, by decree issued in Council of Ministers, based on a report by the Minister of the Interior.

1099. All of the information produced throughout the process is available to the public at the prefecture or the administrative district where the association is headquartered.

Introduction of penalties for violation of supervisory rules by NPOs (c.VIII.3.2)

1100. The 1960 Act prohibits any association based on an unlawful cause or purpose, contrary to law, accepted standards of behavior, or which seeks to undermine the integrity of the national territory and the republican form of government. The same applies to associations likely to endanger public safety, cause hatred between ethnic groups, bring about political unrest, discredit political institutions and their functioning, encourage citizens to violate laws, and undermine the interests of the country.

1101. This Act provides for penalties for breach of control rules by associations or persons acting on their behalf (Articles 34 and 35). Penalties include payment of a fine ranging from 36,000 to 3,000,000 FCFA and a prison sentence ranging from 6 months to 5 years, depending on the nature and seriousness of the violation of the system. Offenders may also face travel ban for a maximum period of five years.

1102. In addition, Article 14 of the CFT Order provides that the competent authority may, without prejudice to any proceedings that may be initiated against him, order the temporary suspension or dissolution of NPOs that knowingly encourage, instigate, organize or commit a terrorist financing offence.

Accreditation or registration of NPOs and availability of such information (c.VIII.3.3)

1103. Associations are approved and registered with the Ministry of the Interior, in accordance with Article 7 of the 1960 Act. Regarding NGOs, they must receive approval from the Ministry of Foreign Affairs which signs establishment agreements with them, whereby certain benefits and privileges are granted to them.

1104. In addition, the CFT Order contains in its article 14 provisions imposing special due diligence measures on non-profit organizations. Indeed, this article requires any non-profit organization that wishes to collect, receive or direct transfer of funds to fulfill two main conditions: firstly, to enter in register established by the competent authority for this purpose. The initial application for registration includes the names, addresses and telephone numbers of any person responsible for the operation of the concerned body, including the President, Vice President, Secretary, Board Members and Treasurer, as appropriate. And secondly, to communicate to the record keeping authority any change in the composition of the previously designated individuals. This register must be kept by the competent authority for a minimum of 10 years.

1105. The mission was unable to obtain evidence of the effective implementation of the register so required.

Keeping of records of their national and international transactions (c.VIII.3.4)

1106. Article 14 of the CFT Order provides that any donation made to a non-profit organization shall be recorded in the register provided for this effect and include full details of the donor, the date, nature and amount of the donation. This register is kept by the competent authority for a 10-year period. Within the framework of their powers, the competent authorities may have access to this register, whether it is the CENTIF or any authority responsible for NPO control and as required by the law enforcement officers responsible for criminal investigation.

1107. As indicated above, record keeping does not seem to be effective and the mission was unable to obtain any evidence about it.

1108. The same article requires NPOs to comply with the requirements relating to record keeping in accordance with standards and submit their annual financial statements to the supervisory authority within the six months after the end of their financial year. NPOs must also deposit into a bank account opened in the books of an approved bank all the amounts of

money handed to them as donation or as part of the transactions they are brought to perform. This provision allows for the traceability of funds and financial resources that NPOs are required to receive or use.

1109. Apart from NGOs that have an interest, because of the potentially negative consequences on their relationships with donors, other types of associations encountered do not seem to fulfill these accounting and financial obligations on a regular basis.

1110. Moreover, it should be noted that no text provides the nature of the documents or records to be kept outside the registry. This situation makes it difficult to control the exhaustive nature of documents to register that may allow verifying that funds are used in accordance with the object and purpose of the NPO.

Cooperation, coordination and exchange of information at national level (c.VIII.4.1) Access to information relating to the administration and management of a NPO as part of an investigation (c.VIII.4.2) Exchange of information, preventive measures and investigative skills and ability to examine those NPOs that are suspected of being used for terrorist financing purposes (c.VIII.4.3)

1111. The Ministry of Interior, through the General Intelligence Directorate, shall exercise control over the activities of NPOs, including NPO with a foreign association status. In addition, the monitoring of the activities of NGOs is under their specifications but not in terms of compliance with the CFT requirements

Responses to international information requests concerning NPOs (c.VIII.5)

1112. The entire legal framework for international cooperation, both at the FIU, police or justice should be fully applicable to NPOs. Thus, exchanges of information on terrorist financing should be possible. However, in the specific case of NPOs, no formal procedure seems to exist in order to respond in a timely manner to international information requests about them.

Analysis of Effectiveness

1113. Ivorian authorities failed to conduct specific studies to assess the status of non-profit organizations in the light of terrorist financing risks. Similarly, the mission did not obtain information on the exact number of associations operating in Côte d'Ivoire and to distinguish between NPOs (to know entities set up for charitable, religious, educational, and social or solidarity purposes, or to conduct other types of charitable actions). Moreover, it has also not been possible to assess the outstanding of existing or used funds in the NPO sector.

1114. The mission also noted that some NPOs engaged in money transfer transactions in their capacity as known sub-delegated of operators such as Western Union or Money Gram, which increases the risks to the sector, to the extent that NPOs are not sufficiently guided and supervised.

1115. The register of NPOs required by the CFT Order has not been kept. Similarly, NPOs do not have internal procedures allowing them to provide to the competent authorities all the information required by the legislation in force regardless of the medium.

1116. In addition, the mission met with officials from two civil society associations involved in the fight against the predicate offences(bribery and embezzlement of public funds) and not on the autonomous money laundering offence. They demonstrated a good knowledge of current legislation on AML/CFT because of their professional experience, but did not disseminate the culture of AML/CFT within their respective association.

1117. The mission also met with the Union of NGOs of Côte d'Ivoire bringing together approximately 585 NGOs, including an international NGO. This federal structure has an internal font designed to monitor compliance by its members with the obligations imposed by the 1960 act on associations. It receives no government support for education and training in relation to AML/CFT. Consequently, it is unable to provide advocacy and training activities to its members. Thus, it emerges that NPOs are not cognizant of the laws in force in Côte d'Ivoire on the fight against ML and FT and the specific risks faced by their industry. Moreover, they are not controlled in terms of compliance with standards relating to AML / CFT. Similarly, the existing regulatory and supervisory authorities do not have the necessary means to carry out their duties because of the high number of existing associations.

1118. It should also be noted that there has been no conviction of NPOs for terrorist financing offence in Côte d'Ivoire.

5.3.2 Comments and Recommendations

1119. Ivorian authorities should:

- Assess specific risks inherent in the NPO sector and put in place a mechanism that would effectively safeguard this sector against misuse for ML/FT purposes, mainly because of the high number of active NPOs, the high use of cash, the proximity to the informal sector and existing hotbeds in the sub-region;
- Organize awareness and training workshops so as to prevent the risk of misuse of NPOs to increase ML/FT activities. Such campaigns should focus on raising awareness within associations to the risks they are exposed to in their sector, available measures to get protection against such risks and their role in the overall AML/ CFT mechanism;
- Activate the ongoing review of the 1960 law to adapt it to the new threats in the NPO sector;
- Ensure the keeping of the NPO register as required by the CFT order;
- Specify the type of records to be kept by NPOs;
- Create mechanisms for following-up and supervising associations and NGOs and strengthen supervisory structures;
- Apply, if necessary, the criminal sanctions regime.

5.3.3 Compliance with Special Recommendation VIII

Rec.	Rating	Summary of factors underlying rating

SR VIII	**NC**	• No assessment of risks inherent in NPOs; • Lack of general knowledge on AML/CFT obligations incumbent upon NPOs; • Lack of awareness, training and government support to NPOs in terms of AML/CFT in order to avoid their abusive use for illicit operations; • Failure to keep records of NPOs as required by CFT Order; • Lack of monitoring and control of NPOs; • Weak capacity of control and supervisory bodies; • Lack of implementation of sanctions regime; • Lack of tools for assessing the effectiveness of the regulations.

6. Cooperation at National and International level

6.1 National Cooperation and Coordination (R.31)

6.1.1 General description of laws and other measures, situation or background

1120. In addition to the designated institutional correspondents serving as CENTIF focal points in various services in order to facilitate access to information and the proper exercise of its mission, an "Inter-ministerial committee"[56] (CNSA-GIABA) dedicated to national cooperation and coordination was established by Decree No. 09/MDPMEF/DGTCP/DIF of 13 February 2006 on the establishment, powers and composition of the CNSA-GIABA.

Effective mechanisms for cooperation, coordination of AML/CFT actions (c.31.1)

1121. In practice, there are no particular difficulties in cooperation between the various national stakeholders involved in the AML/CFT. To ensure cooperation and coordination of actions at national level regarding the development and implementation of AML/CFT policies and activities, Côte d'Ivoire has two structures responsible for the political and operational aspect of this cooperation.

1122. Indeed, ***political cooperation*** is provided by the National Committee for Monitoring Activities of the Intergovernmental Action Group against Money Laundering and Terrorist Financing (CNSA-GIABA). CNSA-GIABA is an inter-institutional body created by Decree No. 09/MDPMEF/DGTCP/DIF of 13 February 2006 on the establishment, powers and composition of the CNSA-GIABA. It is made up by representatives from the Ministries of Economy and Finance, Justice, and Security as well as the President of the FIU and a representative from BCEAO. Its mission is to inspire and assist the government in the design, development and implementation of policies and activities against money laundering and the financing of terrorism. To this end, it initiates on a regular basis meetings between all stakeholders in the AML/CFT system. Following are structures involved in these meetings:

- Central Bank of West African States (BCEAO) ;

[56] In addition to the ministries involved in AML/CFT, this committee comprises other stakeholders of the AML/CFT system such as BCEAO (see par. 824).

- Inter-Ministerial Anti-drug Committee (CILAD) ;
- Directorate of Economic and Financial Police;
- Directorate of Territorial Surveillance;
- National Gendarmerie;
- Public Prosecution;
- Interpol.

1123. During the meetings held by CNSA-GIABA with these institutions, deficiencies in the system were identified and solutions proposed. Operational since 2003 and formalized in 2006, CNSA-GIABA contributed to the adoption of Law No. 2005-554 of 2 December 2005 relating to the fight against money laundering, and participated in the proceedings preparatory to the drafting of the Order related to the fight against the financing of terrorism. In addition, it participated in the establishment of CENTIF in Cote d'Ivoire. At its instigation, several awareness-raising and training activities were carried out for public authorities and the private sector in terms of AML/CFT. The coordination of the mutual evaluation process in Cote d'Ivoire was carried out by CNSA-GIABA, as well as the works related to the development of the national AML/CFT strategy.

1124. The mission noted that CNSA-GIABA of Cote d'Ivoire does not include formally-designated private sector representatives, or those from certain ministries (Ministry of Foreign Affairs, Ministry of Territorial Administration, Ministry of Geology and Mining, etc.). This shortcoming seems to come from the guidelines adopted by GIABA Technical Commission in 2008 relative to the composition and establishment of an interdepartmental AML/CFT committee in ECOWAS member countries. Yet, it is noteworthy that Article 6 of the above-mentioned decree n°09/MDPMEF/DGTCP/DIF of 13th February 2006 specifies that the Committee may be assisted by any expert from the private or the public sector, and whose contribution seems necessary for the proper performance of its duties.

1125. ***Operational cooperation*** is provided by the CENTIF. To this end, the CENTIF has in its organization chart a service responsible for administrative cooperation whose mission is to coordinate, at national level, the activities of all the competent authorities in AML/CFT. These authorities include customs, police and judicial officials and the other services whose contribution is deemed essential in terms of information exchange.

1126. This operational cooperation is of a permanent nature through the network of CENTIF institutional correspondents appointed to liaise with public administrations, more specifically, the public prosecution, the department of economic and financial police, the police department in charge of the fight against drugs and narcotics, the High Command of the National Gendarmerie and the Directorate of Customs Investigations.

1127. It is worth noting the creation, at the Department of Treasury, of a sub-committee in charge of the fight against organized financial crime, some of whose powers are similar to those of CENTIF-CI, hence the potential risk of conflict of competence. In this respect, it is urgent to ensure better coordination between the CENTIF and those of the Treasury Branch in order to prevent duplication and ensure a proper coordination of the national action in connection with AML/CFT.

Additional element – Consultation mechanisms between the relevant authorities, the financial sector and the other stakeholders (c.31.2)

1128. Consultations between the relevant authorities, the financial sector and the other stakeholders are held as part of the political and operational cooperation provided by CNSA-GIABA and CENTIF. They are mainly held in the form of meetings and periodic work sessions, notably with conformity officials of banks and insurance companies.

Meetings of CENTIF and CNSA-GIABA with professional sectors

Year	Number of meetings per sector	
	Financial sector	DNFBPs
2008	05	2
2009 (as at September)	21	3

Source: CENTIF/ CNSA-GIABA

Recommendation 32

Regular monitoring of the effectiveness of AML/CFT regimes (c. 32.1)

1129. Pursuant to Article 3 of the establishment decree, CNSA-GIABA is in charge of supervising the self-assessment and mutual evaluation missions coordinated by GIABA. In this regard, CNSA-GIABA has prepared the mutual evaluation of Cote d'Ivoire. This activity makes it possible to verify the effectiveness of the AML/CFT system. The regular control of the effectiveness of the AML/CFT system shall be performed through the monitoring of the implementation of recommendations from the mutual evaluation.

1130. Aside from this process driven by GIABA at regional level, no mechanism has been established by Ivorian authorities, in order to ensure the regular monitoring of the national AML/CFT system.

Keeping of statistics (c.32.2)

1131. In general, a major deficiency has been noted concerning statistics in Côte d'Ivoire. This has resulted in recurrent absence of exhaustive statistics relative to AML/CFT in all the sectors concerned. Under such conditions, it is difficult to verify the efficiency of the national AML/CFT system.

Analysis of Effectiveness

1132. The mission has noted the cooperation and collaboration efforts made by the relevant authorities in terms of AML/CFT. The dynamism and enthusiasm of CENTIF and CNSA-GIABA members have been underscored. Yet, this cooperation should be formally extended to other relevant stakeholders. Moreover, there is a need to ensure a proper and coherent coordination of the national AML/CFT policy in order to avoid any duplication (see par. 829).

1133. In practice, it was established that stakeholders of the DNFBP sector (independent legal professions, and money carriers) are reluctant to participate in the AML/CFT system. In addition, the keeping of statistics is fragmented and irrelevant. It does not facilitate an objective analysis of the AML/CFT effectiveness.

1134. Côte d'Ivoire does not have a mechanism to measure the overall efficiency of its AML/CFT system.

6.1.2 Comments and Recommendations

1135. Ivorian authorities should:

- Extend the normative composition of CNSA-GIABA to all the relevant stakeholders, in particular self-regulatory bodies and supervisory entities. This would present the advantage of establishing in Côte d'Ivoire an integral mechanism for cooperation and coordination, bringing together all the authorities towards the national AML/CFT effort.
- Consider the establishment of centralized system for production of national statistics in connection with AML/CFT.
- Put in place a national mechanism for the regular monitoring of the AML/CFT system's efficiency.

6.1.3 Compliance with Recommendations 31 and 32 of FATF

Rec.	Rating	Summary of factors underlying rating
R.31	**PC**	• The national coordination mechanism (CNSA-GIABA) established in Cote d'Ivoire does not fully integrate the authorities with competence in AML/CFT, which is detrimental to its efficiency; • Lack of operational cooperation amongst national stakeholders.

6.2 Special UN Conventions and Resolutions (R.35 & RS.I)

6.2.1 General description of the laws and other measures, situation and background

Recommendation 35 and Special Recommendation I

Ratification of Conventions relating to money laundering (c.35.1)

1136. As per the criteria of Recommendation 35, Côte d'Ivoire has ratified the following UN Conventions:

- UN Convention against the illicit trafficking in narcotic drugs and psychotropic substances of 1988 (Convention of Vienna), 19 July 1991 ;
- UN Convention against transnational organized crime of 2000 (Convention of Palermo), 6 December 2011 ;
- Convention for the suppression of the financing of terrorism, on 13 March 2002.

1137. Under Article 87 of the Ivorian Constitution, "Treaties or agreements duly ratified or approved shall, upon their publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its implementation by the other party". It is worth noting that, in this respect, in spite of the ratification of this instrument, Cote d'Ivoire's adherence to the

Palermo Convention is yet to be completed. In fact, the Ivorian Government is yet to submit the instrument for the ratification of this Convention to the UN Secretariat.

1138. Compliance with this procedure requires some declarations from Ivorian authorities. In this regard, the mission noted exchanges of correspondences between the Ministry of Foreign Affairs and the Ministry of Justice. Therefore, the drafting of the declarations required for the finalization of the convention adherence process is incumbent on the Ministry of Justice which has already taken the necessary action. Such declarations concern Article 5, 16 and 18 of the Convention and include the appointment of a central authority empowered to receive and process requests for mutual legal assistance. Once in possession of these declarations drafted by the Ministry of Justice, the Ministry of Foreign Affairs should immediately complete the accession process by submitting the instrument of ratification together with the declarations to the UN. This was not done when the mission was there.

1139. According to FATF (See Guidelines on the Special Recommendations) "the term ratification means that the country has carried out all the necessary national procedures at legislative and executive level to approve the UN Convention and that it has submitted the necessary instruments of ratification, as indicated in the UN Convention and in the UN Security Council Resolutions, so that they come into force". As a result, Cote d'Ivoire should observe all the necessary procedures in order to give the commitment under the Palermo Convention its full force.

Additional elements – Ratification and implementation of other relevant international Conventions (c.35.2)

1140. Cote d'Ivoire ratified on 6 December 2011 the UN convention against corruption (Convention of Merida) and, on the same date, the African Union Convention on Preventing and Combating Corruption (Maputo Convention). The country has also adopted the ECOWAS Protocol on the fight against Corruption.

Ratification of Conventions related to the financing of terrorism (c.SR I.1)

1141. On 13 March 2012, Côte d'Ivoire ratified the UN Convention on Suppression of the Financing of Terrorism. The country has also ratified the following Conventions and Protocols attached to this convention:

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 10 March 1988 ratified on 21st June 2012;
- Convention for the suppression of unlawful acts directed against civil aviation security of 23rd September 1971, ratified on 9th January 1973;
- Convention for the prevention and suppression of crimes against persons enjoying international protection, including diplomatic staff of 14th December 1973, ratified on 13th March 2002;
- International convention against hostage taking of 17th December 1979, ratified on 22nd August 1989;
- Protocols for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 10 March, ratified on 6th June 2012 and 23ed March 2012;
- International convention for the suppression of terrorist bomb attacks of 15th

December 1997, ratified on 13th March 2012.

1142. Cote d'Ivoire is yet to ratify the International Convention on the physical protection of nuclear material of 3rd March 1980 as well as the Protocol for the su0ppression of unlawful acts of violence at airports serving international civil aviation of 24 February 1988.

1143. The UN Convention on Suppression of the Financing of Terrorism has been implemented nationally with the adoption of Order n°2009-367 of 12 November 2009 related to the fight against the financing of terrorism transposing the UEMOA Directive relating to the same subject. However, this is yet to be fully implemented.

Implementation of UN Security Council Resolutions relating to the prevention and suppression of financing of terrorist acts (c.SR I.2)

I – Implementation of Resolution S/RES/1267 (1999) and subsequent Resolutions

1144. Regulation No. 14/2002/CM/UEMOA of 19 September 2002 on freezing funds and other financial resources in the fight against the financing of terrorism in UEMOA Member States is a community legal instrument of direct implementation. In Côte d'Ivoire, it informs decisions to freeze funds and other property of people linked to Al-Qaida and the Taliban, as listed by the UN Security Sanctions Committee, under Resolution S/RES/1267 (1999).

1145. Article 4 of that Regulation stipulates that "all the funds and other financial resources belonging to any natural or legal person, entity or body designated by the Sanctions Committee, are frozen". The list of individuals or entities subject to the freezing measures is updated upon decision of the UEMOA Council of Ministers, a community authority which has jurisdiction in this respect. The latest of these decisions is Decision n° 09/2008/CM/UEMOA amending Decision n° 09/2007/CM/UEMOA of 27 April 2007 relating to the list of individuals, entities or bodies subject to the freezing of funds and other financial resources as part of the fight against the financing of terrorism in UEMOA member countries.

1146. In practice, the lists set out upon decision of the UEMOA Council of Ministers are addressed to BCEAO, which in turn, forwards them to banks for implementation, subject to penalties. In addition to this procedure implemented at UEMOA Level, the lists are also processed at national level. Indeed, the UN sends these lists to the Government of Côte d'Ivoire, through the Ministry of Foreign Affairs, which in turn, forwards them to the Ministry of Economy and Finance because of their financial implications. The Ministry of Economy informs the Public Treasury Department that will transmit the lists to the banks and credit institutions.

1147. Besides, some embassies accredited to Cote d'Ivoire communicate, individually, to the Ministry of Finance, via the Ministry of Foreign Affairs, names of lists of targeted persons and entities established in the country. In this regard, the mission has got hold of correspondences from a foreign embassy relating to asset-freezing measures as part of the national lists or the implementation of other UN Resolutions such as Resolution 1904 (2009).

II – Implementation of Resolution S/RES/1373 (2001)

1148. Resolution 1373 (2001) has not been enforced. Thus, Cote d'Ivoire is yet to draw up a national list of people or organizations involved in terrorist activities and no relevant authority has been formally empowered in terms of administrative freezing.

Additional elements - Ratification or implementation of other relevant international Conventions (C.35.2)

1149. The 1990 European Council Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the 2002 Inter-American Convention against Terrorism can neither be signed nor ratified by the Côte d'Ivoire. Sub-criterion 35.2 is not applicable to Côte d'Ivoire**.**

Analysis of Effectiveness

1150. Cote d'Ivoire has signed and ratified the Vienna Convention, the Palermo Convention and the Convention for the Suppression of Financing of Terrorism. However, the procedure to accede to Palermo Convention is yet to be completed. In addition, the implementation of these international legal instruments in the fight against financial crime is not completed. The conditions for the implementation of Resolution 1267 (1999) do not seem to be satisfactory. The mission noted that the process of decision making and transmission of the lists to reporting entities seems to be long and there is lack of coordination and monitoring relative to the effective application of freezing decisions. Moreover, the Security Council lists are not widely disseminated to banks. Furthermore, there are no clear-cut instructions or guidelines likely to help the recipients to understand and effectively implement the Resolution 1267(1999).

1151. As regards Resolution 1373 (2001), it is yet to be implemented. Thus, Côte d'Ivoire has not established a national list of people or organizations involved in terrorist-related activities. To date, Côte d'Ivoire has not formally appointed any authority competent in terms of administrative freezing, nor has it defined a mechanism required to this end.

6.2.2 Comments and Recommendations

1152. Cote d'Ivoire should:

- Complete its process to accede the Palermo Convention;
- Ensure a comprehensive implementation of the Conventions of Vienna, Palermo and the International Convention for the Suppression of the Financing of Terrorism ;
- Improve conditions for the implementation of Resolution 1267 (1999), notably by reviewing all the process for decision-making and dissemination of lists, by extending the scope of assets and reporting entities and by promulgating guidelines.
- Implement Resolution 1373 (2000), by appointing an authority with competence on administrative freezing and the mechanism required for the freezing.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I of FATF

Rec.	Rating	Summary of factors underlying rating
R.35	**PC**	• The process to accede the Palermo Convention is not complete; • The Conventions of Vienna and Palermo are yet to be fully implemented.
RS I	**PC**	• The conditions for the implementation of Resolution 1267/1999 are not satisfactory; • Resolution 1373/2001 is not implemented.

6.3 Mutual Legal Assistance – R. 36-38, SR.V, R.32

6.3.1 General description of the laws and other measures, situation or background

1153. The AML Act (Articles 53 to 70) and the CFT Order (Articles 50 to 67) provide for several provisions relative to the mutual legal assistance procedures amongst UEMOA member states in terms of AML/CFT. These provisions are also applicable to the requests for mutual legal assistance from third countries, subject to the principle of reciprocity.

1154. Côte d'Ivoire has also signed and ratified legal cooperation conventions and agreements at universal, regional or bilateral level. These instruments include :

- The Justice Cooperation Agreement of the African and Malagasy Common Organization (OCAM) ratified by Decree n° 62-443 of 27 November 1962;
- The 1992 ECOWAS Convention on Mutual Assistance in Criminal Matters mic Community of West African States (ECOWAS);
- The Convention on Cooperation and Mutual Legal Assistance between members of the Council of the Entente of 20 February 1997;
- The 24 April 1961 Agreement on legal cooperation supplemented by Decree No. 61-253 of 5 August 1961 on the ratification of the cooperation treaty and cooperation agreements signed on 24 April 1961 between the Government of Côte d'Ivoire and the Government of the French Republic.

Recommendation 36

Range of mutual assistance measures in AML/CFT (c. 36. 1)

1155. Article 53 of the AML Act and Article 50 of the CFT Order sets the modalities of mutual legal assistance and offer a wide range of measures including all investigation activities:

- Compilation of testimonies or statements;
- Assistance to provide judicial authorities of the requesting State with detained people or other individuals, for purposes of testimonies or assistance in the conduct of the investigation;
- Submission of judicial documents;
- Searches and seizures;
- Examination of objects and places;

- Provision of information and evidence;
- Submission of original papers or certified true copies of relevant files and documents, including bank statements, accounting records, registers showing the running of an enterprise or its business activities.

1156. The two instruments provide for other measures including:
- Service of judicial act;
- Facilitating the voluntary appearance of people with the view to providing information or testimonies to the requesting country;
- Identification, freeze or confiscation of assets laundered or intended to be laundered, proceeds from money laundering or assets used or likely to be used for terrorist financing purposes, as well as instruments of such offences or assets of an equivalent value ;
- Taking precautionary measures ahead of the confiscation;
- Execution of confiscation orders.

1157. Regarding the provisions relative to mutual legal assistance laid down in the treaties or conventions on mutual legal assistance in criminal matters. Those provided for under the 1992 ECOWAS Convention on Mutual Legal Assistance are similar to the provisions of the AML Act and CFT Order.

Mutual legal assistance not subject to unreasonable, disproportionate or unjustifiably restrictive conditions (c.36.2)

1158. Cases of refusal of mutual legal assistance are strictly listed by the AML Act and the CFT Order. Thus, the request for mutual legal assistance shall be refused only when:
- It does not come from a competent authority under the legislation of the requesting country, or if it has not been transmitted regularly;
- Its execution is likely to disrupt public order, sovereignty and security, or affect the basic principles of law;
- The facts on which it is based are subject to criminal prosecution or have already been subject to a final judicial decision on the national territory;
- The measures sought or any other measures having similar effects would not be permitted or used with respect to the offence referred to in the request, under the current legislation;
- The measures sought shall not be imposed or implemented due to the prescription of the money laundering offence, as per the legislation in force or the law of the requesting State ;
- The order whose enforcement is requested is not binding according to the current legislation;
- The foreign decision has been made under conditions which do not offer any adequate guarantees in terms of defence's rights;
- There are substantial grounds for believing that the measure or order being sought is directed at the person in question solely on account of his race, religion, nationality, ethnic origin, political opinions, gender or status.

1159. The public prosecution may appeal against the refusal to grant enforcement issued by a jurisdiction within fifteen (15) following this decision. In addition, the Government of the Republic of Côte d'Ivoire shall promptly inform the requesting country of the grounds for refusal to execute the request.

1160. The Ivorian authorities have indicated that there is no reason why the mutual assistance requests should face particular difficulties, provided that they meet the requirements.

Clear and effective procedures for executing requests for mutual legal assistance (c.36.3)

1161. The request for mutual legal assistance is received by the Ministry of Foreign Affairs which, in turn, sends it to the Ministry of Justice. Thus, the attorney general to whom the request is assigned forwards it to the public prosecutor, in order to seize the investigating judge for execution. Upon execution, the request for mutual legal assistance returns to the Ministry of Justice and is subsequently transmitted to the requesting authorities through diplomatic channels.

1162. Ivorian authorities noted that efforts have been made regarding this process. But the mission could not have all the necessary elements to assess whether the mutual legal assistance has been granted in time, in a constructive and effective way. No case of mutual assistance related to AML/CFT has been reported to the mission.

Mutual legal assistance on tax issues (c.36.4)

1163. The fact that the offence giving rise to a request for mutual legal assistance may also relate to tax issues is not among the grounds for refusal listed by the law. According to Ivorian authorities, a request for mutual legal assistance shall not be refused solely on the grounds that it relates to tax issues. No such case has been reported to the mission.

Mutual legal assistance despite laws imposing secrecy and confidentiality (c.36.5)

1164. Article 55 of the AML Act and Article 52 of the CFT Order explicitly stipulate that professional secrecy cannot be invoked to refuse to execute a request for mutual legal assistance.

1165. In the absence of implementation, no such difficulty can be invoked.

Powers of the relevant authorities extended to the requests for mutual legal assistance n accordance with Recommendation 28 (c.36.6 and c.36.8)

1166. The provisions of the AML Act and the CFT Order allow for the use of powers of the relevant authorities in terms of investigation and prosecution of such offences, in response to a request for mutual legal assistance. Thus, they can secure documents and information and are also empowered to enforce coercive measures for the production of documents held by financial institutions or other stakeholders, for the search of persons or premises and for the seizure and gathering evidence.

Conflict of jurisdiction (c.36.7)

1167. Article 47 of the AML Act and Article 43 of the CFT Order authorize the transfer of proceedings when the prosecution authority from another UEMOA member state considers that, for whatever reason, the institution or continuation of proceedings faces major obstacles and that adequate criminal proceedings are possible on the national territory. The requesting State may, in such circumstances, ask the national judicial authority to perform the necessary acts against the alleged offender. The request for transfer of proceedings can be accompanied by a request for precautionary conservatory measures including temporary detention and seizure. The same applies when such a request is made by authorities of a third State, provided that the prosecution authorities of the requesting State are legally empowered to introduce such a request.

International cooperation concerning SR. V in application of c. 36.1-36.8 of R.36

Application of criteria 36.1—36.6 of R.36 to the financing of terrorism (c.V.1)

1168. Criteria 36.1 – 36.6 (relative to R.36) apply to the obligations provided for in SR.V. Indeed, the widest possible measure of mutual legal assistance in terms of money laundering also applies to the fight against financing of terrorism. Therefore, the deficiencies related to relatively slow mode of internal transmission of requests and lack of specific training of investigating and prosecuting authorities in terms of AML/CFT also apply to the analysis of this criterion of special recommendation SRV.

1169. It is particularly noteworthy that since the offence of terrorism is not criminalized in Cote d'Ivoire, no mutual legal assistance seems possible for now.

Additional elements – Application of the additional elements of Recommendation 36.8 to the financing of terrorism (c. SR.V.6)

1170. The Additional elements of R.36 apply to the financing of terrorism. In fact, the powers of search, seizure and gathering of evidence are widely granted to investigating and prosecuting authorities for investigating financing of terrorism.

Recommendation 37 (dual criminalization in terms of mutual assistance)

Mutual legal assistance in the absence of dual criminalization, in particular as regards less intrusive and non-restrictive measures (c.37.1 and c.37.2)

1171. The AML Act does not expressly provide for dual criminalization as a condition for the execution of a request for mutual legal assistance. Yet, in ordinary law, Article 658 of the Ivorian Criminal Procedure Code (CPP) stipulates that "any Ivorian national who, while outside the national territory, is found guilty of an act which constitutes an offence under Ivorian law may be prosecuted and sentenced by the Ivorian courts if the offence is punishable under the legislation of the country where it has been committed". Article 659 adds, "Any person who, while inside the territory of the Republic, is an accomplice to a crime or offence committed abroad, may be prosecuted and sentenced by the Ivorian courts, if the offence is punishable both under the law of the foreign country and Ivorian law, provided that

the offence which constitutes a crime or offence has been ascertained by a final decision of the foreign court".

1172. These ordinary law provisions establishing the principle of dual criminalization appear to be binding in terms of mutual legal assistance. The consequence arising from this situation is that, for want of incrimination under the Ivorian criminal code, the mutual legal assistance cannot be granted when it relates to predicate offences such as terrorism, the financing of a terrorist organization or an individual terrorist, the trafficking of migrants, the stock market offences and market manipulation. Ivorian authorities have, however, argued that this dual criminalization rule shall be interpreted in a flexible way as part of the fight against money laundering.

1173. Furthermore, Côte d'Ivoire cannot, in principle, extradite any of its nationals but is compelled to prosecute them for the cases subject to the request for extradition.

1174. With regard to extradition and the forms of mutual legal assistance for which dual criminalization is required, the Ivorian State does not face other legal obstacles or practices regarding the granting of such mutual assistance when:

- The condition for dual criminalization is respected;
- The two countries incriminate the conduct underlying the offence;
- The request does not disrupt public order;
- When the subject of the request is not an Ivorian citizen, this status is recognized at the time of the offence for which extradition is requested;
- When the crime or offence is not of a political nature or when it does not result from circumstances suggesting that the extradition is requested for political purposes. As regards acts committed during an insurrection or a civil war, by either party engaged in the fight and in the interest of their cause, they can give rise to an extradition only when they constitute acts of odious barbarity and vandalism banned by the laws of war, and only after the civil war has come to an end;
- The crimes or offences have not been committed in Côte d'Ivoire;
- The crimes or offences, although committed outside Cote d'Ivoire, were prosecuted and a final decision handed down there;
- According to the laws of the requesting State or those of the requested State, the time-limit for court action is not acquired prior to the request for extradition.

1175. The legal or practical obstacles likely to result from technical differences between the laws of foreign countries and Côte d'Ivoire, in terms of mutual legal agreement, can only be assessed based on a nonexistent jurisprudential production.

Application of criteria 37.1 and 37.2 of Recommendation 37 to the financing of terrorism (c.V.2)

1176. Criteria 37.1 – 37.2 (relative to R.37) also apply to the obligations provided for in SR.V. In this regard, it should be noted that the mutual legal assistance in terms of the financing of terrorism, or any other judicial matter, is possible in Côte d'Ivoire only in case of dual criminalization. No exception is provided for less intrusive and coercive measures. Thus, Article 4, paragraph 2 of the law of 10 March 1927 relative to the extradition of foreigners

and Article 71 of the AML Act consider dual criminalization as a major condition for the extradition. Therefore, extradition cannot be granted without the aforesaid condition.

Recommendation 38 and Special Recommendation V

Existence of appropriate laws and procedures to respond in an efficient and timely manner to the requests for mutual legal assistance made by foreign countries and concerning identification, freeze, seizure or confiscation of assets (c.38.1, c.38.2 & c.38.6)

1177. The AML Act stipulates that the competent authority gives right to the requests for mutual assistance from foreign countries concerning the identification, freeze, seizure or confiscation of assets related to ML/FT (tracing the source, investigations on financial transactions, collection of testimonies, etc.). The only reservation is that third party assets should not be violated. CFT Order includes the same provisions. Yet, none of these provisions has been implemented.

1178. The confiscation of property of equivalent value is expressly provided in the CFT Order which stipulates that: "when the funds, assets and other financial resources to be confiscated cannot be represented, their confiscation can be ordered in value." As for the AML Act, its Article 45 provides for the mandatory confiscation "to the tune of their value, assets acquired lawfully and to which the offences are associated…"This provision appears to be inadequate in terms of freezing, seizure and even confiscation of assets of equivalent value.

Coordination of seizure and confiscation with other countries (c.38.3)

1179. There are formally no mechanisms for coordinating initiatives of seizure and confiscation with other countries. Ivorian authorities have indicated that in practice the coordination takes place among judicial or ministerial authorities of each party involved in the procedure.

Fund for the confiscated assets (c.38.4)

1180. Article 41 of the CFT Order stipulates that "the Government can allocate the funds and other financial resources, as well as the movable and immovable property intended to be used for the committing of the offence, to a fund to combat organized crime or to compensate victims of FT offences or their eligible parties". However, Ivorian authorities have yet to set up such a fund.

Sharing of confiscated assets (c.38.5)

1181. Article 63 of the CFT Order provides for "the enjoyment by the State of the disposition on the confiscated assets on its territory, at the request of foreign authorities, unless an agreement signed with the requesting state decides otherwise." This provision is yet to be implemented.

Additional elements – Recognition and execution of non-criminal foreign confiscation decisions (c.38.6).

1182. The Ivorian legislation does not provide for the confiscation of assets in the absence of conviction of any person (civil confiscation).

Application of criteria 38.1—38.3 of Recommendation 38 to the financing of terrorism (c.V.3)

1183. Criteria 38.1 – 38.3 (relative to R.38) also apply to the obligations provided for in SR.V. To this end, it should be noted that Côte d'Ivoire does have the legal framework for cooperating concerning the identification of the proceeds from crime, the seizure, freeze and confiscation of the proceeds. However, there are no effective mechanisms and procedures for freezing, seizure and confiscation of proceeds of crime, in particular in terms of AML/CFT.

1184. In addition, the concept of property of equivalent value is not fully taken into account by the legislative framework, thus limiting the scope of application for the seizure and confiscation in accordance with FATF recommendations. No mechanism is put in place for the coordination of initiatives for seizure and confiscation of proceeds of crime with other States.

Application of additional elements of Recommendation 38.4—38.6 to the financing of terrorism (c.SR.V.7)

1185. The additional elements of Recommendation 38 apply in principle to the financing of terrorism, but they have not been implemented in Côte d'Ivoire. In fact, no fund is provided for the seized assets, in which all or part of the seized assets will be deposited for the purpose of penal proceedings, health and education or for other purposes.

1186. Moreover, the sharing of assets among countries having coordinated their actions in the confiscation is not envisaged, as well as non-criminal foreign confiscation decisions.

Keeping of statistics demonstrating the effectiveness and proper functioning of AML/CFT regimes (c.32.2)

- **Statistics on International legal cooperation**

1187. The Sub-Directorate in charge of International legal cooperation in the Ministry of Justice and Human Rights came up with the following statistics on international legal cooperation:

Year	International commissions of inquiry, investigation and extradition requests received for execution and other legal cooperation requests.
2011	415
2010	314
2009	231
2008	115

1188. These figures, which only include passive requests, reveal that there was an exponential increase in international commissions of inquiry, investigation and extradition requests and other legal cooperation requests between 2008 and 2011. However, figures on the share of requests processed have not been indicated.

1189. According to figures from the Ministry of Foreign Affairs, 42 countries worldwide, with France in top position, are concerned by legal cooperation with Côte d'Ivoire. Between

2008 and May 2012, the country received 144 mutual legal assistance requests (104 from France alone) and processed 10 (9 for France alone). The rate at which commissions of inquiry were processed by Côte d'Ivoire is quite slow.

1190. Over the same period, Côte d'Ivoire also issued 94 warrants (with 12 sent to France) and only 5 were executed by the requested States. These warrants were mainly issued for people with ties to the former regime. Speaking to the mission, Ivorian authorities deplored the lack of will to cooperate and thus ensure reciprocity on the part of its partners who often cite arguments over details, thereby slowing down on-going procedures.

1191. It is worth noting that the share of these figures corresponding to extradition requests has not been specified.

Analysis of Effectiveness

1192. Applicable instruments organize a mutual legal assistance regime, which enables Ivorian authorities to lend significant and quite broad assistance to foreign judicial authorities. The conditions are not prohibitive and reasons for refusal to lend assistance are generally down to relations between States.

1193. In practice, there is a low execution rate for mutual legal assistance requests received by Côte d'Ivoire. Also, Côte d'Ivoire's active requests suffer the same fate. Indeed, the assessment mission did not gain knowledge of cases of spontaneous mutual assistance. In all, AML/CFT active and passive requests were not identified and the figures presented were proof that the system in place does not work properly.

1194. The principle of dual criminalization is likely to favour the emergence of legal obstacles and practices which could derive from technical differences between the laws of foreign States and those of Côte d'Ivoire as concerns mutual legal assistance. The application of this principle could result in a situation whereby Côte d'Ivoire cannot take action on mutual legal assistance relating to offences that are not criminalized such as terrorism, financing of terrorists and terrorist groups, smuggling of migrants, insider trading and market manipulation. In this regard, the authorities admit to laxity and flexibility in the processing of international commissions of inquiry received. This constitutes an obstacle to international cooperation.

1195. There are no formal mechanisms to coordinate seizure and confiscation with other countries. AML provisions on freezing, seizure and confiscation of assets of equivalent value are inadequate. On the other hand, the CFT Order provides for a fund for managing confiscated assets but this fund has not been set up.

1196. The fact that the above-mentioned predicate offences are not criminalized is a hindrance to international cooperation regarding foreign requests to freeze, seize and confiscate funds and assets related to such offences.

1197. Similarly, the shortcomings mentioned in recommendations 36, 37 and 38 also apply to special recommendation V regarding international cooperation in combating the financing of terrorism.

6.3.2 Comments and recommendations

Recommendation 36 and SR.V

1198. In a bid to strengthen effective mutual legal assistance, Ivorian authorities should:

- Criminalize serious offences such as terrorism, smuggling of migrants, insider trading and market manipulation;
- Increase the processing rate for mutual assistance requests received;
- Set up a mechanism to measure the processing rate for both active and passive commissions of inquiry, and assess the mutual legal assistance mechanism in view of improving its effectiveness.

Recommendation 37 and SR.V

- Relax the dual criminalization requirement so that it does not become a hindrance to mutual legal assistance.

Recommendation 38 and SR.V

- Formally create mechanisms for coordinating seizure and confiscation with other countries;
- Strengthen measures on freezing, seizure and confiscation of assets of equivalent value;
- Set up a fund to manage confiscated assets.

Recommendation 32

- Develop and implement an appropriate statistical data-keeping policy.

6.3.3 Compliance with recommendations 36-38 and SR. V, R.32

Rec.	Rating	Summary of factors underlying rating
R36	**PC**	• Côte d'Ivoire's slow processing rate for MLA requests received. • No mechanism to evaluate processing rate for active and passive commissions of inquiry. • No proper MLA assessment mechanism. • Non-criminalisation of offences such as terrorism, financing of terrorists and terrorist groups, smuggling of migrants, insider trading and market manipulation.
R37	**PC**	• Potential hindrance to mutual legal assistance due to the dual criminalization principle.
R38	**PC**	• No formal mechanisms for coordinating seizure and confiscation with other countries • Inadequate AML measures on freezing, seizure and confiscation of assets of equivalent value. • No existing Fund to manage confiscated assets as stipulated by the CFT Order.

		• Non-criminalisation of offences such as terrorism, financing of terrorist organisations and terrorists, smuggling of migrants, insider trading and market manipulation.
SR. V	**PC**	• The shortcomings identified in recommendations 36, 37 and 38 also apply to SR. V.

6.4 Extradition (R. 37, 39 and SR.V)

6.4.1 General description of laws and measures, situation or background

1199. In Côte d'Ivoire, extradition is governed by the law of 10 March 1927 on the extradition of foreigners. The very title of the law automatically excludes the extradition of nationals. This law is enforced in the absence of a treaty or absence of some points not regulated by treaties. Côte d'Ivoire has also signed and ratified global, regional or bilateral conventions and agreements on legal cooperation (see section 6.3 above).

1200. Moreover, the AML Act (articles 71 to 75) and the CFT Order (articles 68 to 73) lay down various provisions on extradition procedures between UEMOA Member States in the areas of anti-money laundering and combating the financing of terrorism. These provisions are also applicable to extradition requests from third countries subject to reciprocity.

Recommendation 39

Money laundering offence which may result in extradition (c.39.1)

1201. Article 71 of the AML Act lays down the following conditions for extradition: "The following shall be subject to extradition:

a) Individuals prosecuted for the offences covered in this law whatever the length of the sentence on the national territory;

b) Individuals, who, for the offences mentioned in this law, are given a final sentence by the courts of the requesting State, without it being necessary to take into account the sentence handed down. Ordinary law regulations on extradition are unaffected, especially regarding dual criminalization." This last paragraph of the 1927 law states the dual criminalization requirement. This is a problem because Côte d'Ivoire has not criminalized some serious offences (terrorism, financing of terrorist organisations and terrorists, smuggling of migrants, insider trading and market manipulation).

1202. Extradition requests are sent directly to the Prosecutor General with a copy, for information, to the Minister of Justice. Documents attached include:

- The original or official copy, of either a final judgement, or arrest warrant or any other equivalent instrument, issued in the forms provided for by the requesting State's law and bearing the exact time, place and elements constituting the offence and their description;
- A certified true copy of applicable legal provisions with reference to penalty incurred;
- A document containing the most accurate physical description of the wanted individual, and all available information that could be used in determining his identity, nationality and where he is found.

1203. The following provisions focus on procedures regarding additional elements, provisional arrest and delivery of objects. However, neither the AML Act nor the CFT Order covers cases of refusal to extradite. Article 5 of the Ordinary law regime of the 1927 law specifies the following cases where refusal is possible:

a) When an individual, the subject of an extradition request, is an Ivorian citizen or a protégé (Ivorian), considering citizenship status at the time the offence;

b) In case of political offences or when extradition is requested for political reasons. For acts committed during uprisings or civil wars, by either party involved in the battle to further its cause, extradition may only be possible if they are acts of horrible barbarism and vandalism forbidden by international humanitarian laws, and only when the civil war is over;

c) For crimes or offences committed in (Côte d'Ivoire);

d) For crimes or offences, which, even though committed out of (Côte d'Ivoire), were prosecuted and definitively judged there;

e) When, according to the laws of the requesting State or those of the requested State, limitation was reached before the extradition request, or limitation of the sentence was reached before the arrest of the wanted individual and generally each time the requesting State's public right of action shall be extinguished.

1204. The mission did not obtain information on any jurisprudence likely enable it to assess the real impacts of these cases of refusal to extradite.

1205. Regarding the extradition clauses provided for in mutual legal assistance treaties and conventions applicable to criminal matters, those provided for, especially by the 1994 ECOWAS Convention on extradition, are identical to provisions of the AML Act and CFT Order.

Extradition of nationals, and where necessary, their trial on the national territory (c.39.2)

1206. The AML Act is silent on the extradition of nationals. The above-mentioned law of 10 March 1927 states in article 5 that an extradition request shall not be granted when an individual, the subject of the request, is a citizen (an Ivorian). If the individual is not extradited, he could however be prosecuted based on internal law provisions, upon official denunciation by the competent foreign authority.

Cooperation with a third State on issues relating to procedure and evidence (c.39.3)

1207. Ivorian authorities argue that pursuant to their international commitments, they will prosecute their nationals where they will not extradite them, in accordance with the principle of "extradite or prosecute" (in Latin "aut dedere aut judicare"). As mentioned above, the AML Act is silent on the issue of the extradition of nationals. However, this is not the same with the CFT Order which states in article 73 that: "In case of refusal to extradite, the case shall be brought before competent national courts so that proceedings can be initiated against the concerned for the offence which gave rise to the request."

1208. Under Ordinary law, article 658 of the Code of Criminal Procedure (CCP) favors the implementation of the "extradite or prosecute" principle, as it states that "any Ivorian national who, outside the national territory, is guilty of a crime or offence, may be charged and prosecuted by Ivorian courts, if the offence is punishable under the laws of the country where the offence was committed (double jeopardy). This Ordinary law requirement remains a problem because Côte d'Ivoire does not criminalize some serious offences (terrorism, financing of terrorist organizations and terrorists, smuggling of migrants, insider trading and market manipulation).

1209. The mutual legal assistance cooperation mechanism described earlier is thus fully applicable. Nevertheless, Ivorian legal authorities may refuse to cooperate in the cases provided for by the law (see above). In addition to this is the dual criminalization principle provided for by the code of criminal procedure. Whatever the case, where there is refusal, when Ivorian legal authorities get a request, they are bound to inform the requesting State's prosecuting authorities about their decision.

Enabling measures and procedures for the meticulous processing of extradition requests and procedures (c.39.4)

1210. No information was provided to the mission neither on the length of the procedure nor on its findings. Ivorian authorities simply indicated that the processing period depends on the quality of elements constituting extradition requests from the requesting State. The lack of details is a hindrance to the effective assessment of the extradition system. As a matter of fact, no extradition request on money laundering charges has been received.

Additional element – Existence of simplified extradition procedures, especially for those who waive the formal procedure and extradition based on arrest warrants or judgements (c.39.5)

1211. Article 72 of the AML Act provides for a simplified procedure consisting in directly sending the extradition request to the competent Prosecutor General with a copy, for information, to the Minister of Justice. Let us however note that arrest warrants or judgments are not sufficient to extradite an individual. There must be an express extradition request to the requested State.

1212. In addition, there is no simplified procedure for people who accept to waive the formal extradition procedure.

Recommendation 37 (dual criminalization in extradition)

Mutual legal assistance granted in the absence of dual criminalization, especially concerning less intrusive and non-binding measures (c.37.1)

1213. Articles 4, 2°(2) of the law of 10 March 1927 on the extradition of foreigners, and 71 of the AML Act consider dual criminalization as a main requirement for extradition. Consequently, extradition may not be granted if this requirement is not fulfilled.

The absence of legal or practical obstacles to granting mutual assistance in extradition or other forms of mutual legal assistance for which dual criminalization is required when two countries criminalize the conduct underlying an offence (c.37.2)

1214. With regard to extradition and other forms of mutual legal assistance for which dual criminalization is required, Côte d'Ivoire has no legal or practical obstacles to the granting of such assistance when:

- The dual criminalization requirement is fulfilled;
- Both countries criminalize the conduct predicate the offence;
- The request does not disrupt the peace;
- The cases stipulated in article 5 of the 1927 law on extradition of foreigners.

Implementation of criteria 39.1—39.4 of recommendation 39 on the financing of terrorism (c. V.4)

1215. Criteria 39.1-39.4 (relating to R.39) are also applicable to extradition procedures linked to terrorist acts or to the financing of terrorism. Indeed, pursuant to article 68 of the CFT Order, individuals prosecuted on charges of financing terrorism may be extradited. Article 73 states that in case of refusal to extradite, the case shall be referred to the competent national courts so that proceedings can be initiated against the concerned for the offence based on which the extradition request was made." The "extradite or prosecute" principle is applied to them.

1216. To ensure effective prosecution of financing of terrorism offences with other countries, Côte d'Ivoire has signed several legal cooperation agreements as indicated in the response to criteria 39.3 below. Besides, title IV of the CFT Order contains provisions on international cooperation and mutual legal assistance. Article 69 of the CFT Order provides for a simplified procedure which allows, when an extradition request is made against an individual that committed a financing of terrorism offence, the sending of the request directly to the competent Prosecutor General copying, for information, the Minister of Justice.

1217. Furthermore, it should be noted because if the non-criminalization of terrorism, Cote d'Ivoire can neither prosecute terrorist criminals (except where such acts are rebranded in association with the criminals), nor extradite them in so far as it does not extradite its own nationals.

Implementation of the additional elements of recommendation 39.5 on the financing of terrorism (c.V.8)

1218. The additional elements of R.39 should apply to the financing of terrorism, but in Côte d'Ivoire, no simplified extradition procedure has been provided for individuals who accept to waive the formal extradition procedure (see paragraph 912 above).

Record keeping (c.32.2)

1219. According to figures produced by the Ministry of Foreign Affairs, between 2008 and May 2012, only one active extradition request and one passive request were initiated. These procedures are alleged to have nothing to do with money laundering or terrorism financing.

Analysis of the Effectiveness

1220. The legal framework of extradition for money laundering is well-developed. The dual criminalization principle is a serious obstacle to both money laundering and terrorism

financing especially with the non-criminalization of serious offences such as terrorism, financing of terrorist organizations and terrorists, smuggling of migrants, insider trading and market manipulation.

1221. Moreover, the mission had no information allowing it to assess the system's effectiveness, in particular by analyzing the time it takes to process and respond to extradition requests.

6.4.2 Comments and recommendations

1222. Ivorian authorities should:

- Strengthen the legal framework for extradition by criminalizing serious offences such as terrorism, financing of terrorist organisations and terrorists, smuggling of migrants, insider trading and market manipulation;
- Ensure that dual criminalization is no hindrance to effective mutual legal assistance and extradition, especially as concerns less intrusive and non-binding measures;
- Keep records likely to enable the assessment of the time it takes to process and respond to extradition requests received and made.

6.4.3 Compliance with recommendations 32, 37, 39 and SR. V

Rec.	Rating	Summary of factors underlying rating
R37	**PC**	• The required dual criminalization principle may undermine the effectiveness of the extradition mechanism.
R39	**PC**	• Obstacles due to the non-criminalization of serious offences such as terrorism, financing of terrorist organisations and terrorists, smuggling of migrants, insider trading and market manipulation; • Lack of information for assessing the system's effectiveness especially through the analysis of the time it takes to process and respond to active and passive extradition requests.
SR. V	**PC**	• Shortcomings identified in R.39 also apply for SR. V.

6.5 Other Forms of International Cooperation (R.40, SR.V And R.32)

6.5.1 Description and analysis

Recommendation 40

Extent of international cooperation mechanisms (c. 40.1)

1223. The competent national authorities extend the broadest international cooperation to their foreign counterparts.

I – International Cooperation with law enforcement authorities

1224. AML/CFT law enforcement authorities cooperate well with their counterparts from third countries within a legal and institutional framework comprising agreements, legislative and regulatory provisions.

- **The FIU**

1225. Pursuant to article 23 of the AML Act, CENTIF, upon request specifying reasons received from the CENTIF of a UEMOA Member State, shall disclose during an investigation, all information and data on investigations undertaken following a suspicious transaction report at the national level. Regarding the Financial Intelligence Units of third countries (outside of the UEMOA area), CENTIF may, subject to reciprocity, share information with the financial intelligence services of such States when the latter are bound by similar professional secrecy obligations.

1226. In a bid to facilitate information sharing, CENTIF has signed agreements with the financial intelligence services of Ghana, Nigeria and France. In the pipeline are also agreements with the FIUs of Belgium and Lebanon. However, the signing of agreements between CENTIF and the intelligence unit of a third country requires prior approval by the Minister of Finance.

1227. We would like to point out that since the start of its activities, CENTIF has, within the framework of cooperation with FIUs, processed requests from units in Burkina Faso, Benin, Togo, Senegal, France, Canada, Luxemburg, Moldavia, Kurdistan, Tajikistan, Belgium, and Germany. CENTIF is also a member of the Egmont Group. It is also connected to Interpol's I-24/7 system which enables direct sharing of information with the police forces of the 188 member countries.

- **Customs**

1228. Section 217 of the Customs Code provides for cooperation between counterpart customs authorities in the investigation and combating of custom offences. Also, Côte d'Ivoire's customs has signed cooperation agreements with its counterparts in other WAMU and ECOWAS member states especially Senegal, Mali and Ghana based on the International convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences of 9 June 1977.

1229. Within ECOWAS, there is the Inter-State Road Transit (ISRT) convention, which allows information sharing on goods in transit in the ECOWAS area. Also, there is a Regional Intelligence and Liaison Office (RILO), a division of the World Customs Organization (WCO), in Côte d'Ivoire. This office allows information sharing between regional offices at the global level on one hand, and between national operational units on the other. Sharing is done through a customs network known as the Customs Enforcement Network (CEN) to which Côte d'Ivoire's customs is connected.

- **The Police**

1230. Cooperation between Côte d'Ivoire's police and that of other States is mainly through the International Criminal Police Organization (ICPO-Interpol). This organization is represented in Côte d'Ivoire by Interpol's National Central Bureau (Interpol-NCB). The Interpol-NCB in Abidjan works in close collaboration with the International Criminal Police Organization (ICPO) Secretariat and the other national bureaus in the investigation and prosecution of criminal offences. It collaborates with the competent services of the national gendarmerie, customs and all other public services that contributed to fighting against international crimes, including money laundering and terrorism financing.

1231. The Interpol-NCB also has a secure communication system known as I-24/7 which enables direct sharing of information between the police forces of its 188 member countries. This system makes use of databases on the various forms of international crimes, including money laundering, terrorism and its financing.

1232. Within ECOWAS, a criminal police cooperation agreement between member States was signed by the Heads of State and Government on 19 December 2003 in Accra. This agreement paves the way for simple police-to-police handover of an ECOWAS citizen guilty of an offence or a crime without using the more demanding extradition procedure.

1233. Information sharing between police services within the framework of cases under investigation is done through commissions of inquiry. Here, the judge in the requesting country writes to his counterpart in the requested country and the latter, through a sub-delegation Order, often seizes a judicial police officer (police or gendarme) to execute the police acts requested in the presence or absence of the investigators of the requesting country.

II – Cooperation between finance sector control and supervisory authorities

- **UMOA Banking Commission**

1234. At the regional and international level, the evaluation mission, during its on-site visit, got no information on cooperation mechanisms, if any, set up by different supervisory and regulatory authorities with counterpart structures.

Swift, constructive and effective assistance (c. 40.1.1)

1235. Pursuant to article 54 of the AML Act, the deeds on assistance shall be time-bound. Thus, it is possible, in mutual legal assistance requests, for the requesting State to indicate the timeframe within which it would like to see its request processed. However, analysis reveal that the processing of mutual legal assistance requests usually takes relatively long periods mainly because the system for transmitting such requests takes time.

1236. Also, simplified procedures may apply according to articles 72 and 73 of the Banking Regulation law of the WAMU zone and additional information is sent within a fortnight.

1237. It should be noted that at the level of the competent authorities, especially financial sector supervisory bodies, the cooperation framework is not often used by the sector's actors in AML/CFT cases. In any case, the evaluation mission received no satisfactory statistics on cooperation between Ivorian authorities and their foreign counterparts.

Well-defined and effective mechanisms for facilitating information sharing between counterparts (c. 40.2)

1238. Côte d'Ivoire, through the competent AML/CFT authorities, has set up mechanisms, mainly through agreements, to ease cooperation and the sharing of information between counterparts. Accordingly, there are agreements at the level of law enforcement authorities and at that of financial sector supervisory authorities.

Spontaneous sharing of information (c. 40.3)

1239. Though informal, spontaneous sharing of information is possible during investigations into money laundering or predicate offences, in accordance with articles 24 of the AML Act and 12 of the decree creating CENTIF. The only requirement applicable to information sharing remains reciprocity and confidentiality.

1240. It should be noted that information sharing between CENTIF/Côte d'Ivoire and its counterparts happens following duly submitted requests.

Investigations conducted on behalf of foreign counterparts (c. 40.4)

1241. Investigations may be conducted on behalf of counterparts by CENTIF and/or other law enforcement authorities.

Investigations by the FIU for its foreign counterparts (c. 40.4.1)

1242. Pursuant to article 23 of the AML Act, CENTIF, upon request duly specifying reasons received from a CENTIF of a UEMOA Member State during an investigation, shall share all information and data on investigations undertaken on the basis of a suspicious transaction report at the national level. Based articles 17, 23 and 24 of the AML Act, CENTIF is empowered to assist other FIUs by consulting not only its own database but other databases to which it has direct or indirect access, including the databases of law enforcement authorities, public databases, administrative databases, and databases available on the market. This means that when it receives a cooperation request, CENTIF can use its investigative powers.

Investigations by law enforcement authorities on behalf of their foreign counterparts (c. 40.5)

1243. The empowerment of national law enforcement authorities to conduct investigations on behalf of their foreign counterparts results mainly from international commissions of inquiry thanks to which such authorities, on behalf of a judge from another State, conduct investigative activities within the framework of a judicial enquiry, or other judicial police activities.

Statistics on international commissions of inquiry received by the National Police

Years	Cases received	Cases forwarded	Damage (in CFAF)
2011	04	00	1, 118, 160, 300
2010	00	00	00
2009	05	00	2, 558, 400
2008	04	01	8, 924, 330
2007	02	01	9, 976, 587

Source: Economic and Financial Police Directorate

1244. These statistics point to the low rate in the processing of mutual legal assistance requests. Out of fifteen (15) International Commissions of inquiry received by the Economic and Financial Police, only two (2) were processed. Overall, from 2008 to 2012, Côte d'Ivoire received 144 mutual legal assistance requests from third countries (source: Ministry of Foreign Affairs). Only ten (10) out of the one hundred and forty-four (144) requests Côte d'Ivoire received were executed, indicating a very low execution rate.

Absence of disproportionate or unduly restrictive conditions on information sharing (c. 40.6)

1245. Information sharing is not subject to disproportionate or unduly restrictive conditions.

Cooperation on tax issues (c. 40.7)

1246. A cooperation request cannot be rejected for the simple reason that it concerns tax issues.

Cooperation despite the existence of laws imposing secrecy and confidentiality (c. 40.8)

1247. Article 34 of the AML Act waives professional secrecy by stating that it cannot be invoked by financial institutions and designated non-financial businesses and professions (DNFBPs) to refuse disclosing information to supervisory authorities and even CENTIF. The same applies to information needed during an investigation into money laundering, ordered by the investigating magistrate or conducted under his supervision by the State's enforcement agents.

1248. Besides, article 55 of the AML Act states that professional secrecy may not be cited as grounds to refuse to execute a request.

Control and safeguards governing the use of information (c. 40.9)

1249. According to article 20 of the AML Act, CENTIF members and correspondents are bound by the obligation of confidentiality. They take an oath before taking office and are bound to respect the secrecy of information gathered, which may only be used for the purposes provided for by law, that is, seeking out and punishing money launderers. Article 9 of the decree creating CENTIF obliges CENTIF members and correspondents to always keep secret information collected as they perform their duties and even after the cessation of such duties. In any case, such information may only be used to the ends provided for by the law.

1250. Concerning the other law enforcement authorities, they are bound by the duty of confidentiality and compliance with the code of ethics of their respective professions. They are the subject of morality investigations before recruitment and take an oath before taking office.

Additional elements - Cooperation with non-counterpart authorities (c.40.10, c.40.11)

1251. Mechanisms only exist to enable the quick and constructive sharing of information with counterpart authorities.

Application of criteria 40.1—40.9 of recommendation 40 to the financing of terrorism (c.V.5)

1252. Criteria 40.1 – 40.9 (regarding R.40) also apply to the obligations provided for by SR.V. National competent authorities extend to their foreign counterparts the broadest possible international cooperation in the combating of the financing of terrorism. Within this framework, law enforcement authorities have a legal and institutional framework that is

favorable to international cooperation. The problem is, the mutual legal assistance request execution rate remains low, and execution time is relatively lengthy.

Application of additional elements of recommendation 40.10-40.11 to the financing of terrorism (c.V.9)

1253. Additional elements of R.40 should also apply to the financing of terrorism, but it should be noted that in Côte d'Ivoire it is not possible to share information with non-counterparts. However, Côte d'Ivoire's CENTIF may receive information from other competent authorities on behalf of its counterparts abroad.

Record keeping by the competent authorities (c.32.2)

Statistics on requests for international cooperation received and processed

Years	Requests received	Requests processed	Requesting countries
2011	9	6	Germany, Bahrain, Kirghizstan, Luxemburg, Moldavia, Switzerland, Togo
2010	8	4	Belgium, Benin, United States, France, Luxemburg, Seychelles, Togo
2009	4	3	France, Luxemburg, Interpol Paris, Togo
2008	3	3	Canada, Senegal, France
Total	24	16	

Source: CENTIF

Statistics on international cooperation requests made

Years	Requests made	Requested countries	Responses
2011	3	Benin, Togo and Ghana	Granted
2010	2	Benin, Togo	Granted
2009	2	Senegal, Luxemburg	Granted

Source: CENTIF

Analysis of Effectiveness

1254. There is a legal and institutional framework which can enable competent Ivorian AML/CFT authorities to ensure effective international cooperation, especially in information sharing with their counterparts. In fact, relevant agreements were signed by CENTIF, law enforcement authorities and financial sector supervisory authorities and their counterparts to better govern their cooperation and information sharing framework.

1255. In practice however, only CENTIF actually shares information with UEMOA Member States and third countries. Other law enforcement authorities are finding it hard to execute mutual legal assistance requests from third countries within reasonable timeframes. For example, from 2008 to 2012, Côte d'Ivoire received one hundred and forty-four (144) mutual assistance requests and only executed ten (10).

1256. Law enforcement authorities could neither establish that they had also requested information sharing from their counterparts regarding ML/FT, or in tracing financial flows especially concerning correspondent banking (for financial sector supervisory authorities).

6.5.2 Comments and Recommendations

1257. In view of the above-mentioned shortcomings, we recommend the following:

- Empower CENTIF to freely sign agreements with its counterparts from third countries without prior permission from the supervisor;
- Offer proper training on AML/CFT to law enforcement authorities to enable them to better execute AML/CFT-related mutual legal assistance requests;
- Set up an effective cooperation mechanism between supervisory authorities and their foreign counterparts to ease information sharing.

6.5.3 Compliance with FATF recommendation 40

Rec.	Rating	Summary of factors underlying rating
R.40	**PC**	• Low commissions of inquiry execution rate and very lengthy execution timeframe; • Shortcoming in the use of the framework for cooperation with foreign counterparts by financial sector supervisory authorities in the area of AML/CFT; • CENTIF's cooperation with foreign FIUs is subject to prior authorisation by the supervisory authority.
SR.V	**PC**	• Implementation of the shortcomings identified under recommendation 40; • Failure to effectively implement CFT cooperation mechanisms.

7. OTHER ISSUES

7.1 Resources and Statistics

1258. The first part of this report analyses resources and statistics respectively. The tables below only briefly underscore the final compliance rating assigned to each of these two recommendations (R.30 and R.32) as well as a summary of factors underlying the compliance rating.

7.1.1-Resources

7.1.2 Compliance with FATF recommendation 30

Rec.	Rating	Summary of factors underlying rating
R30	**NC**	• Lack or inadequacy of resources for investigating authorities, law enforcement authorities, and supervisory authorities to ensure proper management of AML/CFT despite good structuring;

		• Inadequate human, financial and material resources allocated to supervision and monitoring authorities; • Lack of specific AMLCFT training for staff members and supervision authorities; • Overall lack of training on AML/CFT; • Lack of special training programme on AML/CFT for magistrates and the criminal investigation officers.

7.1.3- Statistics

7.1.4 Compliance with FATF recommendation 32

Rec.	Rating	Summary of factors underlying rating
R 32	**NC**	• No record-keeping policy, and tools for evaluating the operation and effectiveness of the AML/CFT mechanism; • The keeping of records on predicate offences, mutual legal assistance and other forms of cooperation is fragmented; • No statistics on ML/FT investigations, prosecutions, convictions and sanctions; • No detailed statistics on extraditions.

7.2 Other Relevant AML/CFT Measures and Issues

1259. N.A

TABLE 1 RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

40 Recommendations	Rating	Summary of factors underlying rating
Legal system		
1. Money laundering offence	**PC**	• Appendix; • Non-criminalization of terrorism, smuggling of migrants, insider trading and market manipulation; • No clarification concerning the indirect origin of proceeds of crime; • Uncertainty about the applicability of the money laundering offence to persons committing the predicate offence; • Lack of ownership of the AML/CFT Act by all prosecuting and law enforcement authorities; No effective implementation of the AML Act.
2. Intent and criminal liability of Legal persons	**LC**	• No circular letter explaining the AML Act to enforcement authorities; • The effective and dissuasive nature of sanctions cannot be assessed because sentences are not enforced, seven years after the entry into force of the AML Act; • Lack of statistical tools to assess the functioning and effectiveness of the AML legal regime.
3. Confiscation and provisional measures	**PC**	• No effective implementation of instruments applicable to freezing, seizure and confiscation for offences linked to money laundering, terrorist financing and predicate offences; • No mechanism for determining the amount of sums seized in connection with money laundering and the arrangements for managing such sums to assess the effectiveness of legal measures relating to seizure and confiscations, and for putting a figure on the sums.
Preventive measures		
4. Professional secrecy laws	**LC**	• No provision organising the use of third parties and intermediaries; • No provision on arrangements pertaining to the transmission of information by a third party introducer; • No implementation of required due diligence
5. Customer due diligence	**NC**	• Very limited identification requirements,

40 Recommendations	Rating	Summary of factors underlying rating
		and in particular, beneficial owners are not identified; • No obligation to get information about the purpose and nature of the relationship; • No constant due diligence; • No due diligence obligations for existing customers; • Imperfect implementation by the banking sector and no implementation by other components of the financial sector.
6. Politically exposed persons	**NC**	• No comprehensive, clear and comprehensible enhanced due diligence for politically exposed persons; • No due diligence obligations on insurance organisations, foreign currency and value exchange dealers and money transfer companies regarding PEPs; • No obligations on correspondent banks; • Imperfect implementation of the mechanism in components of the financial sector.
7. Correspondent banking	**PC**	• No obligation on correspondent banks; • Incomplete implementation, limited to a few institutions.
8. New technologies and non face-to-face business	**NC**	• Incomplete and vague requirements; • No clear and homogenous set of measures to be implemented when starting non-face-to-face business relationships or executing non-face-to-face transactions.
9. Third parties and introducers	**NC**	• No legal provision organising the use of third parties and introducers; • No provisions specifying arrangements for transmitting information by a third party introducer; • No implementation of required due diligence.
10. Record-keeping	**LC**	• No details as to the nature and availability of records to be kept; • No obligation to ensure the timely availability of records for competent national authorities; • Record-keeping timeframe not compliant as regards electronic money; • Content of record-keeping obligation unknown to reporting professionals.
11. Unusual transactions	**PC**	• Lack of clarity of requirements in the various instruments because such requirements are not harmonised; • No obligation to make available to auditors

40 Recommendations	Rating	Summary of factors underlying rating
		information and the report containing information gathered; • Limited knowledge or even ignorance of obligations.
12. Designated non financial businesses and professions (DNFBPs) - R. 5, 6, and 8-11	**NC**	• Auditors and chartered accountants not bound by AML/CFT obligations; • No formal obligations to apply recommendations 5, 6, 8 to 11 to DNFBPs; • No evaluation of the country's exposure to the DNFBP sector; • No specific Politically Exposed Persons due diligence obligations; • No provisions on the use of new technologies for AML/CFT purposes; • No obligations for casinos to identify beneficiary owners and take reasonable steps to check the identities of beneficiary owners; • General ignorance of AML/CFT obligations and lack of effectiveness; • No statistics to allow the assessment of the application of registration measures applicable to identification and transactions; • Shortcomings identified upon analysis of compliance with recommendations 5, 6 and 8 to 11 in section 3 on Financial Institutions, also apply to DNFBPs.
13. Suspicious transaction reporting	**PC**	• Vague definition of the extent of the obligation to report attempted money laundering transactions and proceeds from the list of predicate offences under recommendation 1; • All financial institutions are not bound by the suspicious transaction reporting obligation; • No system for evaluating the mechanism or measures in order to improve the rate of reporting of suspicious transaction from reporting entities other than banks; • Very limited dissemination of the STR format among reporting entities; • Ignorance of obligations on data confidentiality; • No effective implementation of the STR obligation by all reporting entities.
14. Protection and no tipping off	**LC**	• The scope of the protection of the confidentiality of data shared by the FIU

40 Recommendations	Rating	Summary of factors underlying rating
		with others is very limited.
15. Internal controls, compliance and audit	**PC (see MER adopted at the 22/11/12 Plenary)**	• The banking sector mechanism is incomplete; • No obligation, except for banking system, to adopt a harmonised AML programme; • No effective implementation of AML internal control obligations; • No AML training and retraining programme for employees.
16. Designated non financial businesses and professions (DNFBP) - R. 13-15 and 21	**NC**	• The suspicious transaction reporting obligation applies to proceeds from some predicate offences, but not all offences as defined under recommendation 1; • The suspicious transaction reporting obligation does not expressly include attempted transactions; • Unsatisfactory understanding and ownership of AML/CFT obligations by DNFBPs; • With no report on suspicious transactions, effectiveness cannot be assessed. • Shortcomings identified after analysing compliance with recommendations 13, 14, 15 and 21 in section 3 relating to Financial Institutions also apply to DNFBPs.
17. Sanctions	**PC**	• No financial sanctions for infringement of regional financial market regulations; • No sanction for financial institutions for not implementing AML/CFT provisions, thus making assessment of the proportionality of sanctions difficult.
18. Shell banks	**NC**	• No formal ban on the setting up of shell banks or the continuation of their activities in Côte d'Ivoire ; • No provisions on the use of shell banks by correspondent banks; • No obligation for financial institutions to ensure that their customers, which are foreign financial institutions, do not authorise shell banks to their bank accounts; • No plan to counter the illegal carrying on of banking activities, resulting in no legal proceedings being initiated.
19. Other forms of reporting	**NC**	• No assessment of the feasibility and relevance of a system through which all financial institutions would report cash transaction above a certain amount to a national agency which has a computerized

40 Recommendations	Rating	Summary of factors underlying rating
		database accessible to the competent authorities.
20. Other NFBPs and secure transaction techniques	**NC**	• General ignorance and no implementation of AML/CFT obligations; • Non application of measures to promote the use of banking services and book-money payment methods; • No guidelines to ensure proper implementation of AML/CFT obligations by NFBPs.
21. Special attention for higher-risk countries	**NC**	• Inconsistency between legal provisions and sectoral instructions applicable to financial organisations; • No additional security counter-measures for countries not implementing or inadequately implementing FATF recommendations; • No mechanism for informing reporting professionals about concerns raised by the shortcomings of the AML/CFT mechanism of countries other than those identified by the FATF; • No specific obligation to enhance due diligence for transactions without an economic or apparent licit purpose as regards transactions conducted with legal or natural persons residing in countries that do not implement or inadequately implement FATF recommendations.
22. Foreign branches and subsidiaries	**NC**	• No legal provisions for all financial institutions to ensure that their foreign branches and subsidiaries respect AMC/CFT measures; • No obligation to inform supervisors about difficulties encountered in each component of the financial sector; • No controls by supervisors to ensure effective implementation of obligations.
23. Regulation, supervision and monitoring	**PC (see MER adopted at the 22/11/12 Plenary)**	• Poor standard of rules applicable to the checking of the aptitude and morality criteria of the managers of some financial sector components (they are only reviewed when they file the licensing application); • No special procedure for checking the lawful origin of money contributed when setting up a bank or financial institution,

40 Recommendations	Rating	Summary of factors underlying rating
		and no procedure for checking the beneficial owner's identity. Same situation for the other reporting entities; • No effective monitoring of micro-finance institutions, insurance companies and money transfer companies; • No implementation of the licensing procedure applicable to money and value transfer service providers.
24. Designated non financial businesses and professions (DNFBP) - regulation, supervision, and Monitoring	**NC**	• Absolutely no AML/CFT inspections conducted at the level of DNFBPs; • General ignorance of AML/CFT mechanism in the regulation and supervision of DNFBPs; • No implementation of the power to impose sanctions by the competent authorities.
25. Guidelines and feedback	**NC**	• No explanatory guide, instructions or guidelines for each reporting entity category, except instructions whose wording is not aligned with legal provisions; • Insufficient specific feedback provided to reporting entities on a case-by-case basis.
Institutional and other measures		
26. Financial Intelligence Unit (The FIU)	**LC**	• In spite of advice provided to reporting entities on how to go about STR, some reporting professions (especially DNFBPs) only have vague and incomplete mastery the national AML/CFT mechanism; • The Suspicious Transactions Reporting (STR) format does not take into account transactions linked to the financing of terrorism; • No suitable feedback to financial institutions after STRs; • No report on AML/CFT typologies and surveys; • Small number of cases sent to the Prosecutor's office; • Insufficient technical and financial resources; • No evaluation of the effectiveness of Côte d'Ivoire's AML/CFT mechanism;

40 Recommendations	Rating	Summary of factors underlying rating
		• No formal and effective record-keeping policy.
27. Law enforcement authorities	**PC**	• No AML/CFT specialisation for magistrates in the prosecutor's office (Prosecutor General and investigating magistrate); • No effective use of the following techniques: postponing the arrest of an individual or seizures, or not making such arrests and seizures is possible in judicial police cases. • No group makes searches, seizures, confiscation and freezing of proceeds from ML or intended for FT; • No study by the competent authorities on the vulnerabilities to and risks of ML and FT.
28. Powers of competent authorities	**LC**	• Essential criteria for this recommendation are complied with in Côte d'Ivoire but they are not effective because investigating authorities have not yet really conducted ML and FT investigations.
29. Supervisors	**LC (see MER adopted at the 22/11/12 Plenary)**	• Incomplete prudential supervision; • No AML/CFT controls by the Banking Commission, the Central Bank, the Regional Commission for Insurance Control (CRCA) and the Regional Public Savings and Capital markets Board (CREPMF).
30. Resources, integrity and training	**NC**	• Absence or inadequacy of resources available to investigating authorities, law enforcement authorities, as well as supervisory authorities, allowing them to correctly carry out AML/CFT initiatives, in spite of the good structure in place; • General lack of AML/CFT training; No special AML/CFT training for magistrates and the judicial police.
31. National cooperation	**PC**	• The national coordination mechanism (CNSA-GIABA) set up in Côte d'Ivoire does not fully integrate the competent AML/CFT authorities, which is detrimental to its effectiveness. • Insufficient operational cooperation between actors on the national territory.

40 Recommendations	Rating	Summary of factors underlying rating
32. Statistics	**NC**	• No policy on the keeping of statistics, no tool for assessing the functioning and effectiveness of AML/CFT mechanism; • Patchy statistics on predicate offences, mutual legal assistance and other forms of cooperation; • No statistics on ML/FT investigations, prosecutions, convictions/sanctions; • No detailed statistics on extradition.
33. Legal persons – beneficial owners	**NC**	• Difficulties in ensuring the maintenance and updating of the RCCM in the registries of all the competent jurisdictions, due to lack of national register; • Lack of data centralization, due to lack of prescribed national register; • No regular updating by reporting entities of data contained in the RCCM; • Limited checking of information gathered at the court registry; • Difficulty in tracing beneficial owners and those who actually control legal persons based on the information contained in the RCCM • No mechanism to check whether those subject to the RCCM fulfil their obligations; • No regular update of information on associations.
34. Legal structures – shareholding	**NA**	• The Ivorian Law does not recognize legal structures such as trusts and trust funds; • The reporting entities have no record of any mechanism or structure belonging to these categories in the exercise of their professional activities..
International Cooperation		
35. Conventions	**PC**	• The Palermo Convention accession procedure has not yet been completed. • The Vienna and Palermo Conventions are still to be fully implemented.
36. Mutual Legal Assistance	**PC**	• Low execution rate by Côte d'Ivoire of foreign MLA requests. • No mechanism to measure the time it takes to process active and passive commissions

40 Recommendations	Rating	Summary of factors underlying rating
		of inquiry. • No mechanism to evaluate the effectiveness of MLA system. • Non-criminalization of offences such as terrorism, the financing of terrorist organisations and terrorists, smuggling of migrants, insider trading and market manipulation.
37.dual criminalization	**PC**	• The required dual criminalization principle may undermine the effectiveness of the MLA mechanism.
38. Mutual Legal Assistance (MLA) on confiscation and freezing	**PC**	• No formal mechanisms to coordinate seizure and confiscation initiatives with other countries; • Poor quality of provisions on freezing, seizure and confiscation of assets of equivalent value in the area of AML; • No Fund set up to manage confiscated assets as provided for by the CFT Order; • Non-criminalization of offences such as terrorism, financing of terrorist organisations and terrorists, smuggling of migrants, insider trading and market manipulation.
39. Extradition	**PC**	• Obstacle linked to the non-criminalization of serious offences such as terrorism, financing of terrorist organisations and terrorists, smuggling of migrants, insider trading and market manipulation; • No elements to assess the effectiveness of the system, especially by analysing the time it takes to process and respond to active and passive extradition requests.
40. Other forms of cooperation	**PC**	• Low commissions of inquiry execution rate and very lengthy execution time; • Limited use of the framework for cooperation, with foreign counterparts by supervisory authorities of the financial sector in the area of AML/CFT; • The framework for cooperation between CENTIF and foreign FIUs is subject to authorisation by the supervisory authority.

Nine Special Recommendations	Ratings	Summary of factors underlying rating
SR.I Implement UN Instruments	**PC**	• The conditions for the implementation of Resolution 1267/1999 are unsatisfactory; • Resolution 1373/2001 not implemented.
SR.II Criminalize terrorist financing	**PC**	• Appendix Non-criminalization of the financing of a "terrorist organisation" and the financing of a "terrorist"; • No ratification of some United Nations Conventions against terrorism; • No domestic implementation of United Nations Conventions against terrorism; • General ignorance of reporting entities' AML/CFT obligations; • Difficulty in assessing the effectiveness and dissuasive nature of sanctions because penalties are not effectively enforced; • Lack of statistics on cases of prosecution, conviction/sanction for financing of terrorism; • Lack of statistical data keeping policy and instrument to evaluate the functioning and efficiency of the CFT regime.
SR.III Freezing and confiscation of terrorist assets	**NC**	• Many shortcomings in the implementation of Resolution 1267(1999): • limitation by Regulation 14/2002 on measures for freezing of "funds and other financial resources"; • the dissemination of lists limited to banks; • The decision process for the enforcement of Res.1267 does not make for the prompt freezing of funds and other assets of targeted persons and entities; • no effective procedures known to the public on the timely unfreezing of funds and assets of persons or entities inadvertently affected by the freezing mechanism; • no effective procedures known to the public on the timely review of requests for removal from the list of persons targeted, and unfreezing the funds and assets of persons or entities removed from lists; • no suitable procedures for authorising access to funds or assets that were frozen following resolution S/RES/1267(1999) and about which decision will be made on their use to cover basic expenses, pay

		certain types of commissions, expenses and remuneration for services as well as extraordinary expenditure; • no appropriate procedures allowing an individual or entity whose funds or assets have be frozen to challenge such measure in view of having it reviewed by a court. • No implementation of Resolution 1373(2001).
SR.IV Suspicious transaction Reporting	**PC**	• General ignorance of CFT reporting obligations; • No effectiveness: CENTIF has yet to receive any STR on the financing of terrorism.
SR.V International cooperation	**PC**	• The shortcomings identified under recommendations 36, 37 and 38 also apply to SR V; • The shortcomings identified under R.39 also apply to SR V; • Implementation of the shortcomings identified under recommendation 40; • No effective implementation of CFT cooperation mechanisms.
SR.VI AML/CFT requirements for money/value transfer services	**NC**	• No issue by the Central Bank of licenses for the operation of money/value transfer (MVT) services; • No supervision of the activities of MVT service providers; • MVT activities are not directly bound by the banking law; • No fight against the development of an informal sector of MVT service providers; • No list of staff.
SR.VII Wire transfer rules	**NC**	• Very limited scope for the information to be gathered; • No obligation on the circulation of information on the originator; • No monitoring of the implementation of these measures.
SR.VIII Non-profit Organizations	**NC**	• . No assessment of risk inherent in NPOs; • General ignorance of AML/CFT obligations that fall to NPOs; • No sensitization, training and support from government to NPOs regarding AML/CFT

		in view of preventing the abuse of illegal transaction; • Inadequate keeping of NPO records as provided for by the CFT Order. • No monitoring and supervision of NPOs; • Limited resources available to supervisory structures; • No implementation of the criminal sanctions regime; • No instruments for assessing the effectiveness of the mechanism in force.
SR.IX Cross-border Declaration & Disclosure	**NC**	• Ineffectiveness of the system for declaring cash and negotiable instruments for want of disclosure by travellers; • No systematic disclosure of information on the physical transfer of cash and negotiable instruments to CENTIF; • No disclosure, to the customs of transit and destination countries, of the physical transportation of precious metals and stones; • No automatic system for managing information on the physical transportation of cash, value or negotiable instruments; • No available mechanism for freezing funds based on Resolutions 1267 and 1373 of the UN Security Council; • No synergy between customs and other border services regarding control of the physical transportation of cash and value; • Inadequate sensitization about AML/CFT to ensure understanding of the need for effective control of cross-border physical transportation of cash and value.

TABLE 2 PRINCIPAL RECOMMENDATIONS TO IMPROVE THE AML/CFT REGIME

FATF 40+9 Recommendations	Principal measures recommended
legal system and institutional measures	
Criminalization of Money Laundering (R 1, R 2)	The Ivorian authorities should: • Appendix revise the AML Act to ensure that the criminalization of ML is in line with the Vienna and Palermo conventions, particularly specifying that the money laundering offence applies to assets indirectly representing proceeds from crime as well as the persons who commit predicate offences; • criminalize terrorism, smuggling of migrants, insider trading and market manipulation; • ensure the dissemination and explanation of the AML Act to law enforcement authorities (for example magistrates); • undertake duly scheduled training for magistrates; • Effectively enforce the law by taking to court, within reasonable timeframes, cases that have met all trial conditions.
Criminalization of Terrorist Financing (SR II)	In any case, Ivorian authorities should take all necessary measures to ensure that: • the CFT Order is "regularised" to comply with the requirements of the Ivorian domestic law; • the Appendix to the UEMOA CFT directive is transposed into national law; - the CFT Order is revised to include the: criminalization of the financing of a "terrorist organisation" and a "terrorist"; • CFT Order is implemented by widely circulating it to reporting entities, which should be trained in order to increase their level of awareness about the risk of terrorist financing.
Confiscation, freezing, and seizing of proceeds of crime (R3)	Ivorian authorities should: • ensure the effective implementation of instruments on freezing, seizure and confiscation due to offences of money laundering, terrorist financing and other predicate crimes; • provide for a mechanism making it possible to know the exact amount of money seized in connection with money laundering/terrorist financing/predicate crimes and their management arrangements to ensure the effectiveness of legal measures on seizures and confiscation, and put a figure on the sums of money involved.
Freezing of funds used for terrorist financing (SR III)	• Regarding Resolution 1267, Ivorian authorities should: - subject to the freezing measures under Resolution 1267, not only money and assets in the possession of, or directly or indirectly

	controlled by persons or entities explicitly designated by the UN Security Council Sanctions Committee, but also those acting on their behalf and on their instruction; - extend freezing measures to all "funds and assets", to enable the above-mentioned Resolutions to cover all financial assets, assets of every kind, whether tangible or intangible, movable or immovable, as well as all types of legal documents or instruments attesting to ownership or interests in the said assets; - extend the scope of the regulation to include all actors in possession of funds or assets belonging to persons or entities directly or indirectly involved in the commission of terrorist acts and provide for effective monitoring of compliance with such obligations by supervisory authorities; - provide for a clear and fast mechanism for circulating lists from the Sanctions Committee; - lay down effective procedures made known to the public for the timely unfreezing of funds or assets of persons and entities inadvertently affected by a freezing mechanism, after ascertaining that the person or entity is not concerned; - lay down suitable procedures for authorising access to funds and assets frozen in line with Resolution S/RES/1267(1999) and about which decision would be made for their use to cover basic expenditure, pay certain types of commissions, service charges and remuneration, as well as and other extraordinary expenditure; - lay down appropriate procedures allowing a person or entity whose funds or assets were frozen to challenge the measures with a view to having it reviewed by a court. • Concerning Resolution 1373, Côte d'Ivoire should: - be in a position to designate, from a national list if necessary, the persons and entities whose money and assets should be frozen; - provide for a clear and fast procedure for reviewing and giving effect to initiatives regarding the freezing mechanisms of other countries; - lay down procedures that are effective and known to the public for the timely review of requests to remove from the list the names of persons targeted and unfreeze funds or assets of persons removed from the lists; - lay down procedures that are effective and known to the public for the timely unfreezing of funds and assets of people and entities inadvertently affected by a freezing mechanism, after ascertaining that the person or entity is not concerned; - lay down appropriate procedures to enable a persons or entity whose funds or assets have been frozen to challenge such action in view of having it reviewed by a court; - adopt measures to ensure the safeguard of the rights of third parties acting in good faith.
The Financial Intelligence Unit and its functions (R26)	• draw up AML/CFT types per sector; • step up information and sensitization sessions targeting reporting entities in order to cover all identified AML/CFT sectors;

	• ensure regular feedback to reporting entities regarding the action taken on their STRs; • draw up formal AML/CFT guidelines and types; • revise its AML STR form to include aspects linked to terrorist financing; • increase its technical and financial resources; • provide impetus to and participate in evaluating the effectiveness of the AML/CFT mechanism in Côte d'Ivoire; • improve its AML/CFT policy on the keeping of statistics.
Law enforcement, prosecution and other competent authorities (R 27, R28)	In view of the shortcomings identified, we recommend the following: • specialisation of an investigating magistrates' office in AML/CFT cases; • creation within the prosecutor's office of sections specialized in economic and financial crimes; • formalization of the use of special techniques in investigations into ML/FT and predicate offences; • regular conduct of studies to assess ML and FT risk and identify vulnerable sectors in order to optimize the results of law enforcement authorities; • training of law enforcement authorities; • institution of an appropriate policy on the keeping of statistics.
Cross-border Declaration or Disclosure (SR IX)	In view of the shortcomings identified, we recommend the following: • setting up of a system for declaring the transportation of cash or bearer negotiable instruments at borders, by making sure to give each traveller a declaration form right from the very first customs control line; • setting up a system for the systematic disclosure by customs to CENTIF of information on the transportation of cash or negotiable instruments and value; • setting up of a system for disclosing information on the transportation of precious stones and metals, to transit countries and countries of destination; • setting up of an automatic system for managing information on transportation of cash, value and negotiable instruments; • ensuring of direct access to WCO's CEN network and to Interpol's I-24/7 network, for all border, land, coastal and airport customs services
Preventive Measures – Financial Institutions	
Risk of money laundering or terrorist financing	
Customer due diligence, and record keeping (R. 5 to 8)	Ivorian authorities should: • publish procedures manuals or didactic operational guides, in

	consultation with competent professional associations, to help all reporting professionals fulfil their due diligence obligations regarding PEPs for example, and their obligations to identify and check identities through methods that are suitable and proportionate to ML risks, using independent reliable sources; • also specify arrangements for identifying beneficial owners, which constitutes one of the most difficult preventive measures to implement; • include information that can be useful in gaining knowledge about the purpose and nature of business relationships that reporting persons must collect and analyse to assess risks or arrangements and implementation by professionals of a mechanism allowing them to perform constant due diligence on their customers' transactions; • play a catalytic role in revising community instruments, to include not only the definition of the notion of politically exposed persons and the related due diligence, the notion of beneficial ownership and the associated due diligence, but also to explain the due diligence applicable to legal persons; • support the efforts of institutions, often well ahead in PEP due diligence methods, and adopt a repressive policy against financial institutions which are reluctant to fulfil this obligation in order not to allow an increase in infringements of rules of competition between the various reporting professionals; • consider a formal ban on issues of anonymous securities and contracts at all levels of the financial sector, and impose an obligation for reporting professionals to create a special mechanism to monitor anonymous accounts or accounts whose holder is "insufficiently" identified; • impose the obligation to lay down procedures and a calendar for identifying existing customers; • impose an obligation to identify beneficial owners and issue a circular explaining details on the execution of this obligation; • institute a due diligence obligation regarding a business relationship and the "profiling" of customers, which could be explained through detailed instructions or guidelines; • impose an obligation to identify originators in electronic transfers and keep such data; • explain details regarding the performance of enhanced due diligence for high-risk categories of PEPs and cross-border correspondent banking and other similar relationships with more detailed explanation of measures to be implemented by financial institutions; • introduce specific due diligence obligations applicable to non-face-to-face business relationships; • strengthen obligations on business relationships in which third parties or introducers get involved, notably with a clarification of the required structural due diligence; • expressly ban the opening of accounts or establishment of business relationships in the absence of sufficient customer identification

	information; • concomitantly revise sectoral "instructions and regulations" to include the following: arrangements on the identification of existing customers, identification of beneficial owners, implementation of constant due diligence, identification of electronic transfers, system for monitoring numbered accounts or those opened under false names in order to bring them into compliance with AML and CFT obligations; • revise standards applicable to the micro-finance and currency changing sectors to outline and specify all preventive measures by adapting them to the specific characteristics of these two components of the financial sector exposed (in the case of small entities) to lesser risks; • quickly adopt a legal framework for carrying out money transfer activities; • stand up against informal sector foreign currency dealers; • ensure the effective implementation of existing obligations in accordance with international standards.
Third parties and introduced business (R9)	In view of the foregoing, it would be necessary to: • clarify the ultimate responsibility of financial institutions by revising enactments; • supplement the provisions of the AML Act and CFT Order, and recommend through guidelines or operational guide or manual that insurance companies check a certain number of pieces of information and adopt measures allowing them to adequately monitor relations with brokerage firms; • clearly specify the conditions in which the use of third parties and introducers in the area of AML/CFT is authorised, as well as the obligations of parties; • require that financial institutions resorting to third parties immediately obtain from such third parties information necessary for the performance of due diligence (criteria 5.3 to 5.6); • financial institutions that resort to a third party be bound to get immediately from the third party necessary information on customer due diligence (criteria 5.3 to 5.6); • financial institutions be bound to take proper measures to ensure that the third party is able to provide, in a timely manner, and upon request, copies of identification data and other relevant documents on customer due diligence; • financial institutions be bound to ensure that the third party is bound by a regulation and is supervised (pursuant to recommendations 23, 24 and 29), and that it has taken steps to comply with the customer due diligence measures provided for under recommendations 5 and 10; • take into account available information making it possible to know whether the country from which the third party operates conveniently implements FATF recommendations;

	• revise the AML Act and the CFT Order to specify that the institution in this kind of scenario maintains the ultimate responsibility for customer due diligence and identification; • introduce conditions and due diligence framework in the regulations applicable to capital markets operators, taking into account the specific characteristics of the trade, and the related money laundering risks; • check the execution of the obligation pertaining to business introduced by insurance brokers; • financial institutions ensure that the third party is bound by regulation and is supervised (pursuant to Recommendations 23, 24 and 29), and that it has adopted measures to be in compliance with the customer due diligence measures provided for by recommendations 5 and 10.
Financial institution secrecy or confidentiality (R4)	The authorities should: • make sure they provide more information on their mission and on the safeguards available for the reporter (reporting entity or person) in the legal mechanism by ensuring the widest circulation of information to professionals targeted and start brainstorming on the resources to be deployed to assuage concerns from reporting professionals. This may pave the way for some professionals, who have never made reports, to file reports they had forgotten to file; • define the required legal framework so that measures on professional secrecy do not hinder information sharing between financial institutions when required by recommendations 7 and 9 or Special Recommendation VII (cf. correspondent banking relationships, introduced business, etc.); • revise instruments governing international cooperation to introduce provisions requiring that recipients of requests for cooperation undertake to comply with a set of principles that safeguard the confidentiality of the information disclosed to them; • raise awareness on the strict use of data covered by professional secrecy only for purposes arising from the mission entrusted by the requesting authorities.
Record keeping and wire transfer rules (R10 and SR VII)	**Recommendation 10** The authorities should consider: • the possibility of extending the timeframe for keeping records for as long as a competent authority (other than judicial) requests in the accomplishment of its mission; • the obligation to handover, in a timely manner, to the competent national authorities, all documents on customers and transactions; • the possibility for auditors to gain access to the register provided for in article 10 while carrying out their missions. **Special Recommendation VII** National authorities should consider adopting and introducing the

	following measures: • for cross-border wire transfers, include an obligation for the originator's financial institutions to provide complete information on the originator either in the message or on the wire transfer payment form; • for domestic wire transfers, include an obligation for the financial institution to have only the originator's account number appear or, in the absence of an account number, use a single identification method in the message or payment form; • oblige financial institutions to ensure that non-routine transactions are not processed in batches when this can lead to enhanced risk of money laundering or financing of terrorism; • oblige each intermediary financial institution in the payment chain to keep all necessary information on the originator with the corresponding transfer; • oblige financial institutions to adopt effective procedures based on risk assessment so as to identify and process transfers not accompanied by complete originator information; • include instructions in the institution of internal control measures to ensure implementation of SR VII; • make sure criteria 17.1 to 17.4 apply to SRVII.
Monitoring of transactions and relationships (R11 and R21)	Authorities should: • inform and sensitize all financial institutions about their special supervisory obligation, especially with respect to the provisions of relevant applicable instruments; • revise community standards applicable to each component of the financial sector to introduce an obligation to pay special attention and explain their implementation arrangements; • ensure through a suitable control system that reports on the review of unusual transactions are indeed available, and relevant to the requirements of the competent authorities and put at the disposal of auditors; • provide for legal provisions on suitable additional counter measures when a country continues to not implement or inadequately implements FATF recommendations; • implement effective measures to ensure that financial institutions are regularly informed about concerns raised by shortcomings in the AML/CFT mechanisms of other countries.
Suspicious transaction reports and other reporting (R. 13, R14, R19, R 25 and SR IV)	The competent Ivorian authorities should by their actions with authorities of the UEMOA zone and in their areas of jurisdiction ensure greater harmonization of standards in order to eliminate differences in the drafting sectoral instructions (BCEAO instructions, CREPMF instruction, electronic money institutions, CIMA regulations) which hinder the uniform and coherent implementation of the mechanism put in place by the AML Act and CFT Order. Also, a better link should be established between the various instruments, in accordance with the hierarchy of standards, in order that sectoral instructions, *interpretative* standards, do not

	amend some provisions in instruments that are higher than them in the hierarchy. Additionally, the authorities should: • expressly include, in particular in all sectoral instruments, attempts to carry out transactions in the scope of AML/CFT suspicious transaction reporting; • speed up the implementation of the reporting mechanism, especially by ensuring the fulfilment of reporting obligations by reporting institutions; • provide for regulatory measures which authorize, under certain conditions, the exchange of information on the existence and content of a suspicious transaction between financial institutions belonging to the same group to allow the implementation of a coordinated, or even centralised and effective AML/CFT policy; • ensure that designated financial institutions bound by suspicious transaction reporting obligations receive suitable and appropriate feedback in line with FATF guidelines; • ensure consistency between the provisions of various legal standards and those of other sectoral regulations concerning the provision of feedback to reporting entities on cases sent to court; • implement a proportionate and dissuasive sanctions policy to non compliance with reporting obligations; • adopt and even support the formalization by professional associations or sectoral explanatory guides or guidelines for each of the professions covered; • explicitly extend the scope of the safeguarding of the confidentiality of data shared with other natural or legal persons other than those bound by instruments currently applicable; study the feasibility and need to set up a system through which financial institutions would report all cash transactions above a certain amount to a national central agency with a computerised data base; • adopt explanatory guides or guidelines adapted to the various reporting professionals under AML/CFT law (financial institutions and designated non financial professions).
Internal controls, compliance, audit and foreign branches (R15 and R22)	The competent authorities should: • adopt internal control sectoral regulations, for non-CIMA reporting entities consistent with the Ordinary law prudential mechanism, and clarify their expectations especially with regard to money transfer companies, MFIs and licensed and currency changers (limited or no controls); • promote the establishment within each banking institution, insurance company, MFI, money transfer company and currency exchange bureau of an appropriate, independent and convenient internal control mechanism, provided with the necessary resources; • specify that the two-tier or internal audit system, one of whose missions is to check the regularity and conformity of transactions and effectiveness of first-tier systems, must be structured around an internal auditor who works alongside an audit committee for

	financial institutions, while it has to rely on a Board of Directors, combined with an audit committee or an internal audit service; • recommend the implementation of a formalised internal control system in micro-finance institutions, that is suitable to the specific characteristics of the weaker of such structures (often with limited human, technical and financial resources); • require that financial institutions provide for specific procedures for checking compliance, especially a systematic prior approval procedure, including a written notice from the compliance officer or a person duly authorised by the latter to this effect, for new products, or, for major changes to pre-existing products, or for the provision of money transfer services and the organization of the AML/CFT compliance mechanism; • recommend the formalization of obligations regarding staff recruitment procedures applicable to various components of the financial sector; • schedule on-site control missions to the various components of the financial sector to check compliance by reporting entities with their AML/CFT obligations with the institution of formal coordination (Central Bank of West African States (BCEAO), CB, MEF…); • institute an obligation for the financial institutions concerned to ensure that their foreign subsidiaries and branches implement AML/CFT standards, and inform their respective supervisors in case of challenges or difficulties.
Shell banks (R18)	The competent authorities should: • adopt measures to ban shell banks in Côte d'Ivoire; • stipulate in an enactment the obligation for financial institutions to ensure that foreign financial institutions with which they do business do not permit shell banks to use their accounts; • formalize and implement a clear policy to combat illegal bank transactions, relying on the coordination of control resources at community level and at that of each Member State.
Regulation and supervision – competent authorities and their functions (including sanctions) (R17, R23, R25, R29, R30)	In view of these observations, the following are recommended: • strengthen the human resources available to supervisory authorities considering the number of financial institutions to be supervised, and their geographical area of jurisdiction; • adopt specific AML/CFT measures to ensure the supervision of money transfer companies, providing for the definition of alert thresholds that should trigger the implementation of enhanced due diligence, and possibly thresholds beyond which reporting professionals will have to make suspicious transaction reports to the FIU; • consolidate government actions regarding currency changing persons and insurance introducers by equipping the competent services of the Treasury Directorate with the human and technical resources required for it to exercise its oversight and supervisory powers, the scope of which should include all those involved in money transfer transactions;

	• enforce all the facets of disciplinary powers, which should result in the imposing of disciplinary sanctions in case of serious breach revealed after prudential AML/CFT supervision; • determine the quantum of criminal sanctions per category of breach of regulations in connection with the operation of the regional financial market; • reinforce government action towards licensed currency changing offices, especially in the area supervision, by making sure not to increase the relative advantages of informal currency changers, at the risk, should the contrary happen, of further establishing their activity; • circulate guidelines for use by non-financial sector professionals so as to help them own the AML/CFT mechanism.
Money and value transfer services (SR VI)	Ivorian authorities should: • revise for clarification purposes the mechanism applicable to money and value transfer operations: • subject to direct licensing the carrying out of MVT operations by all sectoral actors • clarify the responsibilities of those involved in MVT to ensure the uniform implementation of the AML/CFT mechanism in the UEMOA Zone; • adopt a more proactive approach towards "formal sector" MVT service providers to ensure they comply with obligations under SR VI, and , in this regard, take a census, call on the structures identified to regularize their situation or stop activities on pain of the sanctions provided for by the law, and finally, ensure the effectiveness of supervision carried out by approved introducers; • put the General Directorate of Treasury in charge of keeping a register listing all MVT service providers, and formalize actions aimed at preventing the anarchical development of these activities in the provinces by retailers with no AML/CFT training, skills or experience.
Preventive Measures – Non-Financial Businesses and Professions (NFBPs)	
Customer due diligence and record-keeping (R12)	The Ivorian authorities should: • complete the list of DNFBPs accountable to the AML/CFT obligations, including public and chartered accountants; • reinforce the content of AML/CFT obligations applicable to DNFBPs; • foster better knowledge and understanding of such obligations by DNFBPs and encourage them further to effectively implement them; • help DNFBPs have an AML/CFT risk identification, evaluation, supervision, management and mitigation process.
Suspicious Transaction Reporting (R16)	Ivorian authorities should ensure that DNFBPs: • have clear guidelines and operational guide from their self-regulatory bodies to ensure ownership and implementation of their

	AML.CFT obligations; • are sensitized to effectively fulfil their suspicious transaction reporting obligations; • put in place an internal control and retraining system in line with FATF recommendation 15; • put in place a mechanism for paying special attention to NCCTs or countries not effectively implementing FATF recommendations pursuant to recommendation 21.
Regulation, supervision, monitoring, and sanctions (R24 and R25)	Ivorian authorities should ensure that: • casinos (including on-line casinos) are subject to comprehensive regulatory and supervisory systems aimed at guaranteeing that they effectively implement AML/CFT measures provided for by FATF recommendations; • a competent authority, charged with the AML/CFT regulatory and supervisory system, is designated by each DNFBP. DNFBP supervisions should be executed fast and effectively, and sanctions provided for should be enforced effectively, where necessary; • guidelines are elaborated to assist DNFBPs implement and comply with their AML/CFT obligations. Such guidelines should describe ML/FT techniques and methods and indicate additional measures, if any, that DNFBPs could take to ensure the effectiveness of their actions; • sensitization efforts are sustained targeting each DNFBP category, focussing especially on the existence of risks and the vulnerability of their sector.
Other designated non financial businesses and modern safe money management techniques (R20)	1. Ivorian authorities should: • generally, consider applying to NFBPs all recommendations made with regard to due diligence, oversight and supervision applicable to financial institutions and DNFBs; • specifically, assess risks in the NFBP sector, offer AML/CFT information and training sessions to NFBPs; elaborate guidelines/operational guide to implementing AML/CFT obligations; reinforce the policy on expanding the use of banking services and bank-money.
Legal Persons, legal structures and Non-profit Organizations	
Legal Persons–Access to beneficial ownership and control information (R 33)	• The national authorities are invited to implement all provisions of OHADA instruments, making sure in particular that: - all required records are fully collected; - records to be received are verified, in collaboration with the competent intermediaries; - reporting entities update data in the RCCM; - information is centralised in the national register and made operational, thereby facilitating the verification of the actual maintenance of the RCCM in the registry of the competent jurisdictions; - relevant information likely to allow the identification of beneficial owners and those who really control legal persons is recorded;

	- a mechanism for overseeing the implementation of obligations by reporting entities accountable to the RCCM is put in place. • Furthermore, associations should be required to update information on their membership, transactions and assets.
Legal structures– Access to beneficial ownership and control information (R.34)	• Recommendation 34 is not applicable to Côte d'Ivoire.
Non-Profit Organizations (NPOs) (SR VIII)	Ivorian authorities should: • assess specific risks inherent in the NPO sector and put in place a mechanism that would effectively safeguard this sector against misuse for ML/FT purposes, mainly, because of the high number of active NPOs, the high use of cash, the proximity to the informal sector and existing hotbeds in the sub-region; • organise sensitization campaigns and training workshops so as to prevent the misuse of NPOs to increase ML/FT activities. Such campaigns should focus on raising awareness within associations to the risks they are exposed to in their sector, available measures to get protection against such risks and their role in the overall AML/CFT mechanism; • activate the ongoing review of the 1960 law to adapt it to the new threats in the NPO sector; • ensure the keeping of the NPO register as required by the CFT Order; • specify the type of records to be kept by NPOs; • create mechanisms for following up and supervising associations and NGOs, and reinforce supervisory structures; • apply, if necessary, the criminal sanctions regime.
National and International Cooperation	
National cooperation and coordination (R31)	Ivorian authorities should: • extend the composition of CNSA-GIABA standards to all relevant actors, especially to self-regulatory and supervisory bodies. This will have the advantage of instituting in Côte d'Ivoire a comprehensive cooperation and coordination mechanism, bringing together all authorities involved in the national AML/CFT effort. • consider creating a mechanism for the centralised production of national statistics on AML/CFT; • create a national mechanism for regularly checking the effectiveness of the AML/CFT mechanism.
The Conventions and UN Special Resolutions (R35 and SR I)	Côte d'Ivoire should: • complete its procedure to accede to the Palermo Convention; • fully implement the Vienna and Palermo Conventions as well as the International Convention for the Suppression of the Financing of Terrorism; • improve conditions for implementing Resolution 1267(1999), especially by revising the whole process for making decisions and publishing lists, by broadening the list of assets and reporting entities and by issuing guidelines. • implement Resolution 1373(2000), especially by designating the

	authority that is competent in administrative freezing and the required freezing mechanism.
Mutual Legal Assistance (R 32, 36-38 and SR V)	**Recommendation 36 and SR. V** To reinforce the effectiveness of mutual legal assistance, Ivorian authorities should: • criminalize serious offences such as terrorism, smuggling of migrants, insider trading and market manipulation; • increase the rate at which MLA requests are processed; • set up a mechanism to assess the time it takes to process active and passive commissions of inquiry and to assess the MLA mechanisms so as to improve its effectiveness. **Recommendation 37 and SR.V** • Make flexible the dual criminalization requirement so it does not become a hindrance, beyond what is strictly necessary in MLA cooperation. **Recommendation 38 and SR.V** • Formally create mechanisms for coordination with other countries regarding seizure and confiscation; • Reinforce measures applicable to freezing, seizure and confiscation of assets of equivalent value; • Set up a Fund for confiscated assets. **Recommendation 32** • Devise and implement a proper statistics-keeping policy.
Extradition (R32, 37 and 39, SR V)	Ivorian authorities should: • reinforce the legal framework on extradition by criminalizing serious offences such as terrorism, financing of terrorist organisations and terrorists, smuggling of migrants, insider trading and market manipulation; • ensure that dual criminalization does not hinder the effectiveness of MLA and extradition, especially concerning less intrusive and non-binding measures; • keep statistics that can allow the assessment of the time it takes to process and respond to extradition requests received or issued.
Other Forms of Cooperation (R40 and SR V)	In view of the abovementioned shortcomings, we recommend the following: • empower CENTIF to freely sign agreements with counterparts in third countries without prior permission from the supervisor; • provide suitable training on AML/CFT to law enforcement authorities to enable them to better process MLA requests received; • create an effective mechanism for cooperation between supervisory authorities and their foreign counterparts to enable information sharing.
Other issues	
Other relevant AML/CFT	

measures or issues	NA
General structure - Structural issues	

APPENDIX1: List OF STRUCTURES CONTACTED DURING THE ON-SITE MUTUAL EVALUATION VISIT TO COTE D'IVOIRE

DATE	BODY	NUMBER OF PARTICIPANTS
Monday 07 May 2012	**MINISTRY of ECONOMY and FINANCE**	**21**
	-Directorate General of Treasury and Public Accounting	
	-Directorate General of Customs (Airport)	**32** **24**
	-Directorate General of Taxation (Tax Audit Directorate)	**-**
	- Revenue Collection Directorate (General Inspectorate of Finance and Anti-Corruption Brigade)	**13**
	MINISTRY OF FOREIGN AFFAIRS	
	Directorate of Legal and Consular Affairs in charge of ratifying conventions and protocols	**18**
	MINISTRY OF THE INTERIOR	**19**
	Directorate General of National Police	
	Economic and Financial Police Directorate	
	Judicial Police Directorate	
	Narcotics and Drugs Directorate	
	Territorial Surveillance Directorate (DST)	
	Anti-Drugs Inter-Ministerial Commission (CILAD)	
	Intelligence Directorate	

	Directorate General of Territorial Administration	
	Directorate of Community Life	
Tuesday08 May 2012	Central Bank of West African States (BCEAO)	**23**
	UMOA Banking Commission	**20**
	Regional Council of Public Savings and Capital markets (CREPMF)	**15**
	Regional Stock Exchange (BRVM)	**15**
	National Public Contracting Regulatory Board (ANRMP)	**14**
Tuesday 08 May 2012	Senior Gendarmerie Commander	**24**
Wednesday 09 May 2012	Prosecutor General, Court of 1st Instance, Abidjan Plateau	**25**
	Senior Court Registrar (Trade register)	
	Directorate General of Mines and Geology (Directorate of Mining Development)	**14**
	CASINO VENEZA (Café de Rome)	**11**
Thursday 10 May 2012	**MINISTER DELEGATE AT THE PRIME MINISTER'S OFFICE, KEEPER OF THE SEALS, MINISTRY OF JUSTICE**	
	Departments	**20**
	MINISTRY OF HOUSING DEVELOPMENT AND HABITAT	
	Head offices	**16**
	Real Estate Agencies: AZUREENNE DE PROMOTION	**14**

	Real Estate Experts: GABOLO FERDINAND (07 52 95 17)	**22**
	Rapid Money Transfer Structure: WESTERN UNION (Aghien II plateaux)	**12**
Friday 11 May 2012	Insurance Directorate	**20**
	Insurance Company (COLINA)	**20**
	Insurance Company (NSIA)	**17**
	Association of Insurance Companies (ASA-CI)	**22**
	Civil Society 1 : Transparency - Justice	**14**
	Civil Society 2 : SOS Transparency	**10**
	Bank (SGBCI)	**11**
Monday 14 Mai 2012	Bank (BIAO-CI)	**10**
	Bank (ECOBANK)	**15**
	Management and Intermediation Company (SOGEBOURSE)	**9**
Monday 14 May 2012	Management and Intermediation Company (BICIBOURSE)	**10**
	Professional Association of Banks and Financial Institutions (APBEF-CI)	**20**
Tuesday 15 May 2012	Micro-Finance Institutions (CREDIT ACCESS)	**10**
	Micro-Finance Institutions (MICROCRED)	**12**
	Professional Association of Decentralised Finance Systems (APSFD-CI)	**11**
	Micro-Finance Directorate	**11**

	National Financial Information Processing Unit (CENTIF-CI)	**15**
	Treasury Directorate/FINEX (Money and currency money changers and transfer outside of Côte d'Ivoire)	**21**
Wednesday 16 May 2012	Currency changing (Devise Ivoir Forex)	**9**
	National Association of Licensed Money and Currency Changers of Côte d'Ivoire (ANACMA-CI)	**4**
	Public Accountants (OULAI FLAN)	**11**
	Order of Public Accountants and Chartered Accountants (JOSEPH LEGBLE)	
	Lawyer (Me ANNE SOLO PACLIO)	
	Lawyer (Me BOMISSO)	
	The Law Society (President of the Bar)	**12**
	BICI-CI	**9**
Friday 18 May 2012	Notary (Me SIDIBET-KRAMO ANGELE)	
	Notary (Me GBATA LEVRIT JOSEPH)	
	National Chamber of Notaries of Côte d'Ivoire	**11**
	Cash and Value Transporters (BRINK'S WEST AFRICA)	**12**
	National Committee to Follow up GIABA Activities (CNSA-GIABA)	**21**
	National and International NGOs	**10**

APPENDIX 2: SUMMARY OF DOCUMENTS PROVIDED BY CÔTE D'IVOIRE

Appendix 1: Law no. 2005-554 of 02 December 2005 on Anti-Money Laundering (AML Act)

Appendix 2: Law no.81-640 of 31 July 1981 to lay down the Penal Code as amended by law no. 92-522 of 6 July1995, law no. 96-764 of 3 August 1996, law no. 97-398 of 11 November 1997 and law no. 98-756 of 23 December1998

Appendix 3: Bill on Combating the Financing of Terrorism (CFT draft bill)

Appendix 4: Law no.88-686 of 22 July 1988 on the combating of trafficking and the illicit use of narcotics, psycho-chemical agents and poisonous substances

Appendix 5: Law no.98-749 of 23 December 1998 on the combating of violations of regulations applicable to firearms, munitions and explosive substances

Appendix 6: Law no.77-427 of 29 June 1977 on the combating of corruption.

Appendix 7: Law no.96-766 of 03 October 1996 to lay down the Environment Code

Appendix 8: Law no.88-651 of 07 July 1988 on the protection of public health and the environment against the effects of toxic and nuclear waste and other substances

Appendix 9: Decree no.88-1108 of 25 November 1988 to ratify the International Convention against the Taking of Hostages, signed in New York on 17 December 1979

Appendix 10: Law no.64--291 of 1 August 1964, as amended by Order no.88-225 of 2 March1988 to lay down the Customs Code

Appendix 11: Law no.61-349 of 09/11/1961, as amended by law no.62-254 of 31 September 1962 to lay down a Maritime Code 2

Appendix 12: Law no.90-589 of 25 July 1990, as amended by law no. 95-495 of 26 June 1995 to lay down banking regulations

Appendix 13:Order no.2009-29 of 16 March 2009 to ratify the Convention governing the Banking Commission of the West African Economic and Monetary Union (UEMOA)

Appendix 14: Directive no.04/2007/CM/UEMOA of 4 July 2007 on Combating the Financing of Terrorism within UEMOA Member States

Appendix 15: Law no.97-397 of 11 July 1997 on litigations arising from violations in exchange controls.

Appendix 16: Law no.60-366 of 14 November 1960, as amended by Law no.62-231 of 29 June 1962, Law no.63-2 of 11 January 1963, Law no.63-526 of 26 December 1963, Law

no.69-371 of 12 August 1969, Law no.81-640 of 31 July 1981, Law no.96-673 of 25 July 1996, Law no. 97-401 of 11 July 1997, Law no.98-745/746/747 of 23 December 1998 to lay down the Criminal Procedure Code

Appendix 17: Regulation no.14/2002/CM/UEMOA of 19 September 2002, on the freezing of funds and other financial resources in the combating of the financing of terrorism in member countries of the West African Economic and Monetary Union (UEMOA).

Appendix 18: Resolution S/RES/1267 (1999)

Appendix 19: Decision no.09/2008/CM/UEMOA to amending decision no. 09/2007/CM/UEMOA of 27 April 2007, relating to the list of persons, entities or organisations targeted by the freezing of funds and others financial resources as part of efforts in the fight against the financing of terrorism in UEMOA Member States.

Appendix 20: Resolution S/RES/1373 (2001)

Appendix 21: Law no.2007-498 of 31/05/2007 to authorise the President of the Republic to ratify the Protocol against the illicit trafficking of migrants by land, air and water, which supplements the United Nations Convention against organised transnational crime, adopted on the 15 November 2000, in New York 3

Appendix 22: Decree no.2002-49 of 21/01/2002 to ratify the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999

Appendix 23: Instruction no.01/2002/RB of 2 July 2007 on Anti-Money Laundering within Financial Institutions

Appendix 24: Regulation no.09/98/CM/UEMOA of 20 December 1998 on the financial relationships outside of Member States of the West African Economic and Monetary Union (UEMOA)

Appendix 25: Revised Treaty of the West African Economic and Monetary Union (UEMOA)

Appendix 26: Statutes of the Intergovernmental Action Group against Money Laundering in West Africa (GIABA)

Appendix 27: Regulation 04/CIMA/PCMA/PCE/SG/08 of 04 October 2008 to lay down procedures applicable to insurance institutions within Member States of the Inter-African Conference on Insurance Markets (CIMA) as part of anti-money laundering and financing of terrorism initiatives

Appendix 28: United Nations Convention against corruption, 10 December 2003, signed by Côte d'Ivoire

Appendix 29: Directive no.07/2002/CM/UEMOA of 19 September 2002 on anti-money laundering efforts within UEMOA Member States

Appendix 30: Law no.93-661 of 9 August 1993, as amended by Order no.2000-241 of 28 March 2000 on Banking Secrecy

Appendix 31: Decree no.2006-261 of 09/08/2006 on the creation, organisation and functioning of CENTIF 4

Appendix 32: Internal Regulations of CENTIF of 16 May 2008

Appendix 33: CENTIF's Code of Conduct

Appendix 34: Note CENTIF's Technology- and Communication- Watch Committee (CVTC)

Appendix 35: Decree no.2007-653 of 20 December 2007 appointing members of CENTIF

Appendix 36: Action Plan of the Ministry of the Economy and Finance

Appendix 37: AML/CFT Strategy Paper

Appendix 38: National good governance and anti-corruption programme 2010-2014

Appendix 39: Order no.388 MEF/CENTIF of 16 May 2008 to lay down a suspicious transaction reporting model

Appendix 40: CENTIF-CI correspondents' procedures manual

Appendix 41: CENTIF's Code of Ethics

Appendix 42: Four CENTIF quarterly reports

Appendix 43: 2008 CENTIF yearly report

Appendix 44: Egmont Group membership application letter

Appendix 45: CENTIF-CI presentation in Doha (Qatar) 5

Appendix 46: DG CENTIF Mauritius mission report

Appendix 47: Draft Agreement between CENTIF-CI and ANIF Cameroon

Appendix 48: CENTIF-CI organisation chart

Appendix 49: Summary Table of encounters, meetings and other activities of CENTIF-CI and CNSA-GIABA

Appendix 50: Uniform Act on Commercial Companies Economic Interest Groups (EIGs)

Appendix 51: Decree no.2004-565 of 14/10/2004 to raise the capital and conversion of the state-owner corporation know as “Caisse d’éparge et des chèques postaux” into a banking institution known as “Caisse nationale des caisses d’éparge” abbreviated as CNCE.

Appendix 52: The CIMA Treaty of 09 August 1993

Appendix 53: Order no.1061 MEF DGCPT of 26/12/1997 to organise the Directorate of Insurance and spell out its powers

Appendix 54: Decree no.2007-468 of 15/05/2007 to organise the Ministry of the Economy and Finance (Art. 23: organisation of the micro-finance directorate)

Appendix 55: Convention on the setting up of the *Conseil Régional de l’Epargne Publique et des Marchés Financiers* (CREPME (Regional Public Savings and Capital markets Board)

Appendix 56: Instruction 11/05/RC on currency changing

Appendix 57: Statutes of the Central Bank West African States (BCEAO) 6

Appendix 58: Order no.037 MEF/DGTCP of 31 January 2008 to lay down details on organisation and Functioning of the Directorate of Treasury, and spell out its powers

Appendix 59: Law no.92-570 of 11/09/1992 to lay down the General By-laws of the Public Service.

Appendix 60: Bill organising decentralised financial systems

Appendix 61: General regulations on the organisation, functioning and supervision of the UEMOA regional financial market.

Appendix 62: Law no.81-588 of 27/07/1981 to lay down regulations of the legal profession

Appendix 63: Law no.97-513 of 04 September 1997 to amend law no. 69-372 of 12 August 1969 to lay down the rules and regulations of the profession of notary

Appendix 64: Law no.92-568 of 11/09/1992 to set up the order of Public and Chartered Accountants and organise the professions

Appendix 65: Circular no.05-92/CB on the disclosure to the banking commission of the list of managers in office and changes to the list

Appendix 66: Law no.96-562 of 22 July 1996 to regulate mutual credit and savings institutions or cooperatives

Appendix 67: Decree no.97-37 of 22 January 1997 to implement the law regulating mutual credit and savings institutions or cooperatives

Appendix 68: Order no.103/MEF/DGCPT of 26 June 2000 to lay down supervisory arrangements in the regulation of currency exchange and financial relations with foreign countries.

Appendix 69: Decree no.98-371 of 30/06/1998 to regulate gambling institutions 7

Appendix 70: Law no.60-315 of 21/09/1960 on Associations

Appendix 71: By-laws of the Abidjan Bench

Appendix 72: Decree no.89-216 of 22/02/1989, on insurance, financial settlements, accounting and customs of CARPA lawyers

Appendix 73: Decree no.2002-356 of 24/07/2002 to repeal law no.69-373 of 12 August 1969 spelling out the implementation details of law no.69-372 of 12 August 1969, as amended and finalized by law no.97-513 of 4 September 1997 to lay down the by-laws of the profession of notaries

Appendix 74: Decree no.96-634 of 09/08/1996 to lay down regulations to law no.95-553 of 18 July 1995 on the Mining Code

Appendix 75: Decree no.2008-155 of 28 April 2008 to organise the Ministry of Mines and Energy

Appendix 76: Law no.95-553 of 18/07/1995 to lay down the Mining Code

Appendix 77: Decree no.2003-143 of 30/05/2003, on an addendum to decree no.96-634 of 9 August 1996 to outline regulations to law no.95-553 of 18 July 1995 to lay down the mining code on the import and export of rough diamonds in view of the implementation of the Kimberley process

Appendix 78: Decree no.79-718 of 02/10/1980 to regulate the professions of real estate agent, property estate appraisers and business assets sale or rental representatives.

Appendix 79: Law no.99-478 of 02/08/1999 to organise the sale of buildings to be constructed and property development

Appendix 80: Decree no.2007-472 of 15/05/2007 to organise the Ministry of Construction, Urban Planning and Housing 8

Appendix 81: Order no.19 MT of 30/09/1977 to spell out requirements for granting and withdrawing the professional authorisation and licences of travel offices.

Appendix 82: Decree no.77-604 of 24/08/1977 to regulate travel agencies and offices.

Appendix 83: Decree no.2005-73 of 03/02/2005 to regulate private security and money transportation activities

Appendix 84: Directive no.08/2002/CM/UEMOA on measures to promote the use of banking services and bank-money payment methods

Appendix 85: Instruction no.01/2003/SP of 8 May 2003 on the promotion of bank-money payment methods and the calculation of interest payable in case of default of payment.

Appendix 86: Regulation no.15-2002-CM-UEMOA of 19/09/2001 on payment systems in Member States of the West African Economic and Monetary Union (UEMOA)

Appendix 87: Uniform Act on General Commercial Law (OHADA)

Appendix 88: Law no.89-814 of 19/07/1989 to organise the securities market

Appendix 89: Order no.09 MDPMEF. DGTCP. DIF of 13/02/2006 on the creation, powers and membership of the National Committee to Follow up activities of the Intergovernmental Action Group against Money Laundering in West Africa (GIABA) CNSA - GIABA

Appendix 90: Decree no.94-399 of 28/07/1994 to set up the Inter-ministerial Committee on Drug Control, abbreviated as CILAD

Appendix 91: Law of 10 March 1927 on the extradition of foreigners 9

Appendix 92: The Transmittal Letter of the project to set up a fund to manage proceeds from seized and forfeited assets

Appendix 93: Law no.72-833 of 21 December 1972 as amended by laws no.78-663 of 05 August 1978, no.93-670 of 09 August 1993, no.96-674 of 29 August 1996, no.97-516 of 04 September 1997, no.97-517 of 04 September 1997 to lay down the Civil Procedures Code

Appendix 94: Decree no.61-253 of 05/08/1961 to ratify the cooperation treaty and cooperation agreements signed on 24 April 1961 between the governments of the Republic of Côte d'Ivoire and the Republic of France

Appendix 95: Law no.62-389 of 24/10/1962 to authorise the President of the Republic to ratify the General Cooperation Agreement in the area of Justice, signed in Tananarive on 12 September 1961 OCAM.

Appendix 96: Decree no.62-543 of 12 December 1962 to ratify the Treaty on conciliation, judicial settlement and arbitration between the Republic of Côte-d'Ivoire and Switzerland.

Appendix 97: Decree no.65-09 of 11 January 1965 to ratify the General Cooperation Agreement in the area of Justice between the Republic of Côte-d'Ivoire and the Republic of Mali.

Appendix 98: Decree no.76-832 of 26 November 1976 to ratify the Agreement on legal cooperation between Republic of Tunisia and the Republic of Côte d'Ivoire

Appendix 99: Draft CENTIF-CI /CRF/ third party Cooperation Agreement

Appendix 100: Constitution of the Republic of Côte d'Ivoire

Appendix 101: Charter of the group of Francophone banking supervisors

Appendix 102: Charter of the Committee of West and Central African (CSBAOC) banking supervisors

Appendix 103: Summary table of the training programme of the Economic and Financial Police

Appendix 104: Degree no.2007-464 of 08/05/2007 to organise the Ministry of the Interior

Appendix 105: Decree no.2001-479 of 09/09/2001 to lay down the staff rules of Personnel of the National Police

Appendix 106: Decree no.2001-782 of 14 December 2001 on regulations to law no. 2001-479 of 9 August 2001 to lay down the staff rules of Personnel of the National Police relating to the Recruitment and Training of Personnel of the National Police

Appendix 107: Decree no.203 MS. CAB of 7 February 2007 on the Creation, Organisation and Functioning of the Ethics Commission of the National Police

Appendix 108: Decision no.401 MSI.DENP of 31 October 1999 to spell out Training Programmes and arrangements on Training at the Police Academy

Appendix 109: Rule no.09/2001/CM/ECOWAS to adopt the Customs Code

Appendix 110: Decision no.2005-08 PR of 15 July 2005 on the Creation of the National Human Rights Commission of Côte d'Ivoire (CNDHCI)

Appendix 111: Decree no.2006-70 of 26/04/2006 to organise the Ministry of Justice and Human Rights

Appendix 112: Law no.78-662 of 04/08/1978 as amended and supplemented by laws no.94-437 of 16/08/1994 and no.94-498 of 06/09/1994 to lay down the by-laws of magistrates

Appendix 113: Decree no.67-331 of 01 August 1967 to lay down rules governing the gendarmerie 11

Appendix 114: Decree no.60-209 of 27 July 1960 to create the National Armed Forces (FANCI)

Appendix 115: Decree no.61-361 of 13 December 1961 on the internal services of the National Gendarmerie of Côte d'Ivoire

Appendix 116: Decree no.61-210 of 12 June 1961 on recruitment into the Armed Forces

Appendix 117: Decree no.93-607of 2 July 1993 on the common regulations to the by-laws of the Public Service

Appendix 118: Decree no. 68-440 of 17/09/1968, on rules governing General Discipline in the National Armed Forces amended by Decree no. 96-574 of 31/07/1996 to lay down rules governing Service and General Discipline in the National Armed Forces

Appendix 119: Decree no. 64-313 of 17 August to set the method of breaking down customs fines and deposits

Appendix 120: Declaration of the Customs Cooperation Council on Customs Good Governance and Ethics

Appendix 121: Instruction no.35/2008 on the anti-money laundering amongst authorised actors on the ECOWAS regional capital market.

Appendix 122: Law no.2010-272 of 30 September 2010 to prohibit trafficking and the worst forms of child labour

Appendix 123: Law no.96-564 of 25 July 1996 on the Protection of Intellectual Creations and Copyrights of Artists and Producers of Phonograms and Video grams

Appendix 124: Law no.98-757 of 23 December 1998 on the suppression of certain forms gender-based violence

Appendix 125: Judgements no.852/11 of 11 July 2011, no.235 of 20 January 2012 and no.419 of 31 January 2012 of the Abidjan-Plateau Court of First Instance

Appendix 126: Decree no.2011 – 257 of 28 September 2011 to organise the Ministry of State, Ministry of Justice

Appendix 127:Order no. 92-80 of 17 February 1992 on the suppression of certain forms of gender-based violence

Appendix 128: Letter from the Directorate of the Treasury and Public Accounting and from the Legal Officer of the Treasury to financial institutions

Appendix 129:Order no.2009-367 of 12 November 2009 on combating the financing of terrorism in ECOWAS Member States

Appendix 130: Egmont Group's mission statement

Appendix 131: Request to reactivate the CENTIF/Egmont Group link

Appendix 132: Decree appointing CENTIF members

Appendix 133: Decree no. 2011-388 of 16 November 2011 to organising the Ministry of State, Ministry of the Interior

Appendix 134: Rule 09/2010/CM/UEMOA of 01 October 2010 on the External Financial Relations of ECOWAS Member States

Appendix 135: Circular no.3723 of 03 October 2011 relating to the reporting of breaches of exchange regulations to CENTIF-CI

Appendix 136: International Mutual Administrative Assistance in conformity with the World Customs Organisation

Appendix 137: Instruction no.20/99 on the opening of trading accounts

Appendix 138: Decision no.004/PR of 06 December 2011 to ratify and publish the United Nations Convention against Corruption, adopted on 31 October 2003 in New York

Appendix 139: Proposed committee for the coordination of mutual evaluation deliberations and preparation of the national AML/CFT strategy of Côte d'Ivoire

Appendix 140: Decree no.060/MEF/DGTCP/DEMO of 27 February 2012 to organise the Treasury Directorate and spell out its powers

Appendix 141: Code of ethics of public treasury personnel

Appendix 142: Decree no.2011-222 of 07 September 2011 to organise the Ministry of the Economy and Finance

Appendix 143: Decree no.062/MEF/DGTCP/DEMO of 27 February 2012 to organise the micro-finance Unit and spell out its powers

Appendix 144:Order no.2011-367 of 03 November 2011 regulating decentralised financial systems

Appendix 145: Report on the supervisory mission of the sub-directorate in charge of external finance

Appendix 146: Decree no. 2009-29 of 12 February 2009 to amend Decree no. 98-371 of 30 June 1998 to regulate gambling institutions

Appendix 147: Draft decree on NPOs

Appendix 148: Law no. 96-672 of 29 August 1996 to regulate the legal consulting profession

Appendix 149: Decree no. 2011-118 of 22 June 2011 to spell out the powers of members of government

Appendix 150: Law no. 97-515 of 04 September 1997 to amend and supplement law no. 83-787 of 02 August 1983 on the status of auctioneers

Appendix 151: Decree no. 94-455 of 25 August 1994 to supplement Decree no. 83-1307 of 18 November 1983 to implement law no. 83-787 of 02 August 1983 on the status of auctioneers

Appendix 152: OHADA Uniform Act governing cooperatives

Appendix 153: Decree no.2003-143 of 30 May 2003 to supplement Decree no.96-634 of 9 August 1996 to implement law no. 95-553 of 18 July 1995 on the Mining Code relating to the import and export of rough diamonds in view of implementing the Kimberley process. Implementation of the Kimberley Process. Training document on the implementation of the Kimberley process (State of Progress)

Appendix 154: Statistics produced by Financial Police Department (arrest warrants received and executed; predicate crimes; international commissions of inquiry; seminars and trainings undergone by personnel of the economic and financial police directorate)

Appendix 155: Statistics produced by the Inter-Ministerial Anti-Drug Committee (summary table of seizures made 2011; summary report on individuals arrested and brought before courts in 2011; summary report of seizures over the last four years)

Appendix 156: Decree no.2012-14 of 18 January 2012 to spell out the organisation, powers and functioning of the judicial and penitentiary services

Appendix 157: Bill to combat terrorist acts; Letter of the Minister of Foreign Affairs to the Minister of Justice of 22 March 2012 on the transmittal of the ratification instruments of AML/CFT Conventions; Copy of the draft response of the Minister of Justice to the Minister of Foreign Affairs on the ratification of AML/CFT Conventions

Appendix 158: Statistics from the Court (Statistics on offences for January 2012; Statistics on offences for February 2012; Statistics on offences for March 2012; Statistics on offences for the first quarter of 2012).

Appendix 159: Data received from the Abidjan court registry (statement of the registration of traders (natural and legal persons) from 2005 to 2009; statement of the registration of traders (natural and legal persons) in 2010; statement of amendments in 2010; statement of removals and filings in 2010; statement of files from January to December 2011 (registration); statement of the files from January to December 2011 (amendments); statement of files from January to December 2011 (removal); statement of files received from 02 January to 20 April 2012 (registration); statement of files received from 02 January to April 2011 (amendment); statement of files received from January to April 2011 (removal); Business register – Registration procedure for legal entities; Extract of entries in the Abidjan-Plateau trade register concerning ECOBANK-Côte d'Ivoire on 21 May 2012; Extract of entries in the Abidjan-Plateau trade register concerning BICICI on 21 May 2012)

Appendix 160 : Overview of the use of banking services; National instruments on the use of banking services (**law** no.93-661 of 9 August 1993 on bank secrecy; **Decision** no.

132/MEMEF/DGTCP/DT/SDAMB of 2 June 2003 to set the reference amount for cash transactions; Inter-Ministerial **Decision** no. 134/MEMEF/DGTCP/DT/SDAMB of 2 June 2003 on the forms and conditions of access to central bank files; **decision** no.135/MEMEF/DGTCP/DT/SDAMP of 2 June 2003 to set the amount of stamp duty on endorsable cheque specimen; **Decision** no.049 of 24 February 2004 to amend order no.28 of 10 February 1999 to spell out conditions and details of the discharge penalty on the regularisation of cheque payment incidents; Decree no. 056 /MEMEF/DGTCP/DT/SDAMB of 26 January 2009 to set up the committee to follow up the implementation of the plan of action to promote the use of banking services as well the use of book-money payment methods; Order no. 2009-384 of 01 December 2009 relating to measures to promote the use of banking services and book-money payment methods; Order no.2009-388 of 01 December 2009 relating to the combating of cheque-, bank card-related offences and other instructions relating to cheques, bank cards and other electronic payment instruments and techniques; Proposed matrix of actions to promote the use of banking services and the book-money payment methods broken down into quarterly periods; Monthly memo on the use of banking services - March 2012)

Appendix 161: Guide on external finance – December 2011; Memo on external finance; Decision no. 124/MEF/DGTCP/DT of 26 July 2011 to draw up the list of authorised intermediaries, empowered to carry out financial transactions with foreign countries; Presentation of the currency changing sector in Côte d'Ivoire at the end of 2010; Alphabetical list of those authorised to carry out currency changing at the end of April 2012; List of authorised currency changing outfits in business at the end of 2012; Report on the audit of the opening of the currency changing office WORLD MONEY EXCHANGE; Provisional report on the joint Treasury/BCEAO mission to audit the currency changing transactions of KHALIL CHANGE; Minutes of the consultation meeting on illegal currency changing activities at the SOCOCE gallery.

Appendix 162 : Memo on the LCF Sub-Directorate; Fight against transnational organised crime (TOC); Notice of embargo and financial sanctions measures against the Islamic Republic of Iran; Freezing of assets of two (02) individuals added to the list of entities and persons hit by U.N. Security Council sanctions; Letter from the BICICI following one from the Director General of the Treasury and Public Accounting relating to a measure to freeze the assets of Abdul Haq, leader of the Eastern Turkestan Islamic Movement (ETIM); Letter from the SGBCI following a letter from the Director General of the Treasury and Public Accounting relating to a measure to freeze the assets of the Saudi organisation known as "Union of Good"; Letter from the SGBCI following one from the Director General of the Treasury and Public Accounting relating to a measure to freeze the assets and prohibit transactions with three persons added to the list of persons targeted by U.N. Security Council sanctions; draft decree relating to the forfeiture procedure; draft decree relating to the seizure procedure; Report on the seminar " the three (3) steps in the effective prevention of fraud and money laundering"; Report on the regional training workshop on money laundering investigations; Mission report on "Specialised courses on the fight against financial crimes, money laundering and the financing of terrorism", BCEAO-BEAC project; Order

No.037/MEF/DGTCP of 31 January 2008 to organise the Treasury directorate and spell out its powers; Decree 2011-222 of 07 September 3011 to organise the Ministry of the Economy and Finance; Order No. 060/MEF/DGTCP/DEMO of 27 February 2012 to organise the Treasury directorate and spell out its powers

Appendix 163 : List of licensed non-life insurance companies operating in Côte d'Ivoire as of 31 December 2011; List of licensed life insurance companies in Côte d'Ivoire as of 31 December 2011; List of reinsurance companies; List of brokers operating as of 15/05/2012; List of generalstaff that hold a professional card that is up-to-date as of 10 May 2012; List of trustees that hold a professional that is up-to-date as of 10 May 2012; List of Bank and Financial Institution employees that are holders of a professional insurance agent card that is up-to-date as of 10 May 2012; Supervisory Authorities; Changes in the number of insurance companies in Côte d'Ivoire from 2005 to 2012

Appendix 164: Answers of the micro-finance directorate to the supplementary questionnaire submitted by evaluators. (NB: These answers do not concern the micro-finance sector)

Appendix 165: Decree of 26 July 1932 to reorganise the land tenure regime; Decree of 12 April 1933 to promulgate in French West Africa the decree of 26 July 1932 to reorganise land ownership in French West Africa; Article 3 of the tax schedule to law no.70-726 of 31 December 1971 to pass the finance law for management in 1971; Article 36 of the tax schedule to finance law no.2002-156 of 15 March 2002 to pass the 2002 finance law; Article 33 of the finance schedule to finance law no.2003-206 of 07 July 2003 to pass the 2003 finance law; Article 22 of the tax schedule to finance law no.2005-161 of 27 April 2005 to pass the 2005 finance law

Appendix 166: Document comprising conventions on money laundering and the financing of terrorism: ratification decisions, ratification instruments; Report on the implementation of U.N. Resolutions 1267 (1999) and 1373 (2001); Draft of the 3rd report of the Republic of Côte d'Ivoire to the U.N. Security Council Counter-terrorism Committee; Request for freezing of assets (USA); Request for the freezing of assets (UNO); List of Non-Governmental Organisation (NGOs) operating in Côte d'Ivoire; State of legal cooperation between Côte d'Ivoire and other States.

Appendix 167: Workforce per Directorate; statement of some suspicious financial transactions; Decree no. 2011-222 of 7 September 2011 to organise the Ministry of the Economy and Finance; General table of customs workforce; Circular no. 3723 of 3 October 2011 relating to the reporting of infringements of exchange regulations to CENTIF CI; Decree no. 68-410 of 3 September 1968 relating to infringements of customs laws and regulations; – Law no. 97-397 of 11 July 1997 relating to litigations concerning breaches of exchange controls.

Appendix 168: Guide of the Administration's correspondent; CENTIF-CI actions in the 2011 Strategic Plan of Action of the Ministry of the Economy and Finance; STR and information request statistics; Breakdown of cases processed per analyst; Statistics on trainings received

and provided; Signed cooperation agreements; CENTIF-CI budget over the 2008-2012 period; List of CENTIF-CI personnel; STR analysis method.

Appendix 169: Documents received from the Professional Association of Decentralised Financial Systems of C.I (Statutes and internal regulations; National Micro-Finance Policy/Plan of Action 2010-2018; DFS Plan of Action; Statistics on the DFS sector in C.I from 2002 to 2011; Letter to DFS on AML/CFT Sensitization and Training; Liaison bulletin of APSFD-CI/2004/February 2011)

Appendix 170 : Documents received from CREPMF (General regulations on the Organisation, Functioning and Supervision of the UEMOA regional capital market; Instruction no.45/2011 on the organisation, functioning and management of institutions that handle collective investment in securities on the UEMOA regional capital market; Instruction no.41/2009 to amend and annul instruction no.7/97 on the issuing of professional cards; Instruction no.38/2009 relating to the approval of guarantors within the framework of public offering operations on the UEMOA capital market in general; Instruction no.37/2009 to spell out requirements for operating as a rating agency on the UEMOA regional market; Instruction no.16/98 to authorise the Union's banks to serve as bookkeepers and clearing agents; Instruction no.6/97 on the authorisation of introducers, stock market investment advisers and middlemen; Instruction no.5/97 on the licensing of wealth management firms; Instruction no.4/97 on the licensing of management and intermediation firms; Instruction no.3/97 on the licensing of the central depositary/Settlement bank; Instruction no.2/97 on the authorisation of the regional stock exchange; Surveys on stock market-related criminal offences on the UEMOA regional and capital market; List of licensed actors as of 30 April 2012; AML/CFT training)

Appendix 171: Documents received by the Order of Public and Chartered Accountants (The Order 2011 table; AML policy and practical implementation guide; the role of the accounting profession in AML)

Appendix 172: Documents received from the APBEF-CI (By-laws - APBEF-CI; APBEF-CI by-laws)

Appendix 173: Documents received from BIAO-CI (Internal AML/CFT programme, December 2011 version; Report on the Implementation of the 2011 AML mechanism; Code of Ethics of BIAO-CI staff)

Appendix 174 : Documents received from BCEAO (Banking regulation law (draft); List of Banks and Financial Institutions in Côte d'Ivoire; List of currency changing offices; Statistics on the calculation of banking services use rate; Instruction no. 01/2007/RB of 02 July 2007 on combating ML within financial institutions; Instruction no. 01/2006/SP of 31 July 2006 on the issuing of electronic money and electronic money institutions; Information on the American Act known as "Foreign Account Tax Compliance Act" or "FATCA"; Implementation of U.N Security Council Resolution 1970 (2011) of 26 February 2011; Changes in the economic and

financial situation in 2012 (summary); Changes in the economic and financial situation at the end of March 2012 (summary))

Appendix 175: Document received from SGBCI (Draft of the internal AML/CFT programme)

Appendix 176: Documents received from DEVISE IVOIRE FOREX (AML measures taken at Devise Ivoire Forex; Statement of currency changing transactions)

Appendix 177: Documents received from the Ministry of Public Service and Reform (Salary scale of civil servants as of 1 May 1999; Decree no. 2007-577 of September 2007 to establish a special salary scale for the teaching staff and researchers in the Higher Education and Scientific Research sector; Decree no.2009-208 of 29 June 2009 to set the salary scales of public-sector teachers in the Education/Training sector.

Appendix 178: Extract from the Official Gazette of the Republic of Côte d'Ivoire publishing the Appendix to law No.2005-554 of 2 December 2005 on combating money laundering.